

# Comparative Analysis of Constitutional Adjudication in Iran, Iraq, and Malaysia

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Constitutional adjudication is one of the fundamental mechanisms for ensuring the supremacy of the constitution and protecting fundamental rights. A comparative study of different systems shows that the structure and function of constitutional adjudication yield diverse outcomes within distinct political and legal contexts. This article examines and compares constitutional adjudication in Iran, Iraq, and Malaysia. In Iran, the Guardian Council functions as the primary body for constitutional adjudication; however, the lack of direct access for citizens and the political nature of the Council have created significant challenges. In Iraq, the Federal Supreme Court plays a central role with broad jurisdiction in interpreting the constitution and resolving federal disputes, although political and ethnic pressures have limited its independence and effectiveness. In Malaysia, the model of constitutional adjudication is based on the common law and judicial system; the Federal Courts have the authority to oversee legislation and executive decisions, yet security and religious considerations impose serious restrictions on the protection of fundamental rights. Comparative analysis shows that all three systems face challenges such as political influence and weak public access, but they differ significantly in structure, methodology, and the level of protection for fundamental rights. In conclusion, recommendations are provided to improve the constitutional adjudication system in Iran.

**Keywords:** constitutional adjudication; Guardian Council; Federal Supreme Court of Iraq; Federal Court of Malaysia; comparative study

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## 1. Introduction

Constitutional adjudication is one of the most significant mechanisms of public law for ensuring the supremacy of the constitution and realizing the rule of law (Grimm, 2016; Nikoonahad, 2025). Every legal system, to avoid sliding into authoritarianism and unlimited concentration of power, requires an institution that acts as a supervisor over the implementation of the constitution and the

interpretation of its fundamental principles (Jabbari Asa, 2016; Kelsen, 2015). The importance of constitutional adjudication can be examined from two main dimensions: first, its role in ensuring the rule of law and protecting the fundamental rights of citizens; second, its function in limiting political power and guaranteeing justice (Albert, 2018; Grimm, 2025). The rule of law implies the supremacy of legal norms over individual and political will, and constitutional adjudication, through monitoring public acts and legislation, ensures



that this foundational principle does not remain a merely abstract ideal (Carter, 2022). Likewise, given that political power is constantly prone to expansion and domination, constitutional adjudication acts as a controlling instrument that defines the boundaries of authority and prevents encroachment upon fundamental rights (Böckenförde, 2017; Tripković, 2017).

Despite the shared importance of this institution across different systems, the experience of countries demonstrates that constitutional adjudication takes on diverse forms and functions in varying legal and political contexts (sahraei, 2023; Szente, 2018). Iran, Iraq, and Malaysia represent three notable models that, while sharing some cultural and political features, exhibit fundamental differences in legal structures and institutions related to constitutional adjudication. In Iran, the Guardian Council serves as the principal organ for constitutional review; however, the lack of direct access for citizens and the prominent role of political considerations have created serious challenges to the efficiency of this mechanism (Mahmoudi Gilani, 2022; Rezaei, 2020). In Iraq, the Federal Supreme Court, established after the fall of the Ba'ath regime and the adoption of the 2005 Constitution, has gained a central role in controlling legislation and resolving federal disputes; yet, political and religious pressures have overshadowed its independence (Al-Azzawi, 2019; Al-Fahad, 2020; Al-Hamidi, 2021). In Malaysia, the constitutional adjudication system is grounded in the common law tradition within a mixed legal framework combining customary, Islamic, and English influences (Hassan, 2017; Shad, 2014). The Federal Court plays a critical role in reviewing the constitutionality of laws; however, security and religious concerns sometimes restrict the scope of fundamental rights protection (Ahmad, 2017; Ismail, 2018; Khan, 2020).

The necessity of comparative study in this context arises from two perspectives. First, the differing legal and political fabrics of these three countries allow for a clearer understanding of the capacities and challenges of each system. Iran, with a legal framework rooted in Islamic jurisprudence and the unique structure of the Guardian Council; Iraq, with its experience of transition to democracy and the Federal Supreme Court; and Malaysia, with its complex blend of common law and Sharia, each present a distinct model of constitutional adjudication (Kabgani, 2021; Molaee, 2021; Nikoonahad,

2025). Second, despite the significance of this subject, there has been no comprehensive research that simultaneously examines these three countries in a single comparative study, and this research gap justifies the present inquiry (Abbasi, 2010; habibzadeh, 2008).

The objectives of this article are framed accordingly. The first objective is to identify the theoretical foundations, institutional structures, and practical functions of constitutional adjudication in each of the three countries. The second objective is to assess the extent to which these mechanisms effectively ensure fundamental rights and limit political power in practice (Carter, 2022; Grimm, 2025). Achieving these objectives can enrich the theoretical literature on comparative constitutional law and, in practical terms, provide recommendations for improving the constitutional adjudication system in Iran (Nikoonahad, 2025; Rezaei, 2020).

In this framework, the main research question is formulated as follows: how are the structures and methods of constitutional adjudication organized in Iran, Iraq, and Malaysia, and what strengths and weaknesses does each have in comparison with the others? Answering this question requires an in-depth analysis of the legal bases, institutional frameworks, and judicial practices of each country and a comparative examination of their systems (Dixon, 2022; Tan, 2021). The research methodology of this article is analytical-comparative. On one hand, legal sources and official documents, such as constitutions and the regulations of relevant bodies, serve as the primary materials; on the other hand, judicial precedents and the rulings of constitutional adjudicatory bodies in the three countries are analyzed. Additionally, comparative legal studies and doctrinal works are utilized to support a deeper understanding of the subject (Grimm, 2016; Kelsen, 2015). This methodology allows for both a detailed examination of each system individually and a comprehensive comparison, ultimately leading to proposed models for reforming and improving constitutional adjudication in Iran (Mahmoudi Gilani, 2022; Nikoonahad, 2025).

## 2. Materials and Methods

This study employed a descriptive-analytical method and relied on library-based resources for data collection and writing the article (Kabgani, 2021).

### 3. Theoretical Foundations

The main research variable—constitutional adjudication—and its relationship with the fundamental principles of constitutional law will first be explained.

#### 3.1. *Definition of Constitutional Adjudication*

Constitutional adjudication, as one of the key instruments of public law, is the process through which judicial or supervisory bodies review laws and governmental actions to ensure their conformity with constitutional principles and the fundamental rights of citizens (Carter, 2022). The primary goal of this mechanism is to guarantee the supremacy of the constitution and to protect basic rights against any encroachment or misuse of political power (Grimm, 2025). Constitutional adjudication can be organized under either a centralized or a decentralized model. In the centralized model, a specific organ—such as a constitutional court or the Guardian Council—holds the exclusive authority to interpret and control legislation, while in the decentralized model, all courts have the capacity, in certain cases, to examine the constitutionality of laws (Kelsen, 2015; Szente, 2018). The definition of constitutional adjudication goes beyond the mere review of statutes; it includes analyzing how justice is realized and how power is limited within foundational principles (Böckenförde, 2017; Nikoonahad, 2025). In other words, constitutional adjudication functions both as a supervisory tool and as a balancing mechanism between citizens' rights and the powers of the state (Carter, 2022). Its significance in ensuring governmental legitimacy and fostering public trust in the legal system has turned it into one of the essential pillars of modern legal structures (Grimm, 2016).

#### 3.2. *Models of Constitutional Adjudication*

Models of constitutional adjudication provide distinct institutional and procedural frameworks for overseeing the compatibility of laws and state actions with the constitution. Two primary models are recognized in legal theory: the centralized model and the decentralized model. The centralized model, also known as the "Kelsenian Model," concentrates the authority of constitutional review in a single specialized body,

typically a constitutional or supreme court (Grimm, 2025; Kelsen, 2015). This approach promotes coherence and uniformity in judicial practice but has been criticized for limited public access and potential political influence over the central body (Mahmoudi Gilani, 2022).

In contrast, the decentralized or "American Model" distributes constitutional review powers among all courts. In this system, any court may assess the constitutionality of laws and executive actions within the scope of specific cases (Albert, 2018; Tripković, 2017). This model creates flexibility and broader access for citizens but risks fragmented practice and inconsistent interpretations of the law (Dixon, 2022). Ultimately, the choice of an appropriate model depends on the political structure, the level of judicial independence, and the need to balance institutional coherence with public access (Kabgani, 2021).

#### 3.3. *Functions of Constitutional Adjudication*

Constitutional adjudication plays a pivotal role in modern legal systems and its functions can be categorized into three main areas. First is ensuring the supremacy of the constitution by preserving the primacy of its fundamental principles over conflicting laws and executive acts (Grimm, 2016). Through reviewing and controlling governmental actions, constitutional adjudication makes the rule of law a tangible reality (Böckenförde, 2017).

Second is the protection of fundamental rights. Constitutional adjudication evaluates legislation and state action with respect to individual and collective rights, preventing constitutional violations and supporting social justice (Albert, 2018; Carter, 2022). This enhances public confidence in the legal order and the legitimacy of state institutions (Szente, 2018).

Third is the regulation of the separation of powers. Constitutional adjudication defines the scope and limitations of legislative, executive, and judicial authority, preventing the abuse or concentration of power (Kelsen, 2015; Tripković, 2017). In this way, constitutional adjudication functions both as a supervisory and balancing mechanism, sustaining stability and fairness within the political system (Böckenförde, 2017).

### 3.4. *Constitutional Adjudication and Fundamental Principles of Constitutional Law*

In modern legal systems, constitutional adjudication not only supervises laws and governmental actions but also safeguards core constitutional principles. The first is the principle of separation of powers, which aims to divide and balance power among legislative, executive, and judicial branches (Grimm, 2016). Constitutional adjudication preserves this balance by delineating competencies and controlling encroachment by one branch into another (Nikoonahad, 2025).

The second is the rule of law, emphasizing the supremacy of legal norms over individual and political will (Dixon, 2022). Constitutional adjudication enforces this principle by ensuring that no individual or institution acts outside legal boundaries (Mahmoudi Gilani, 2022). The third is the principle of democracy and political participation, which strengthens citizens' rights and freedoms in political decision-making (Albert, 2018; Szente, 2018). By protecting fundamental rights and ensuring transparency in legal processes, constitutional adjudication enables effective public participation and enhances the legitimacy of the political system (Grimm, 2016). Thus, constitutional adjudication simultaneously secures the independence and balance of state powers, the supremacy of law, and democratic participation (Carter, 2022).

### 3.5. *Criteria for Evaluating Constitutional Adjudication Systems*

Assessing constitutional adjudication systems requires examining key criteria that determine their effectiveness and legitimacy. The first criterion is citizen access. An ideal constitutional adjudication framework should allow direct or indirect access to judicial bodies and avoid unnecessary restrictions, as limited access can undermine the protection of fundamental rights (Kabgani, 2021; Tripković, 2017).

The second is institutional independence. Freedom from political interference and external pressures is essential to guarantee fair and impartial decision-making (Albert, 2018; Böckenförde, 2017). Independent adjudicatory bodies can apply constitutional principles without fear of political influence (Grimm, 2025).

The third is efficiency and consistency of jurisprudence. Efficiency refers to the body's ability to issue timely and

enforceable judgments, while consistency ensures that similar decisions are rendered in comparable circumstances (Kelsen, 2015; Szente, 2018). Attention to these criteria allows for the comparison of systems, the identification of strengths and weaknesses, and ultimately contributes to improving the performance of constitutional adjudication (Nikoonahad, 2025).

## 4. *Constitutional Adjudication in Iran*

This section explains the Iranian legal approach to constitutional adjudication.

### 4.1. *Historical and Legal Foundations*

The history of constitutional adjudication in Iran dates back to the Constitutional Revolution, when the 1906 Constitution and the establishment of the Court of Cassation (Divan-e Tamiz) marked the first efforts to review the conformity of laws with the fundamental principles of the constitution (Abbasi, 2010). The Court of Cassation, as a judicial institution, was responsible for examining and aligning parliamentary enactments with the constitution and is considered the starting point of constitutional adjudication in Iran. However, its limited powers and lack of full institutional independence hindered the complete realization of constitutional review objectives at that time (Habibzadeh, 2008).

After the Islamic Revolution, the 1979 Constitution introduced a new framework for constitutional adjudication. Under this constitution, the Guardian Council was designated as the principal body for reviewing the conformity of legislation with Islamic principles and the constitution, thereby assuming a key role in ensuring constitutional supremacy (Rezaei, 2020). The 1989 constitutional amendments further clarified the Council's powers and structure, aiming to address early weaknesses such as non-transparent procedures and limited public access (Jabbari Asa, 2016).

Overall, the historical and legal foundations of constitutional adjudication in Iran show that despite a long tradition and various experiences, persistent challenges remain—particularly institutional independence, citizen access, and the relationship between judicial and political institutions (Nikoonahad, 2025). Analyzing these foundations helps to better understand the structure and functions of the Guardian

Council and the potential of Iran's constitutional adjudication system.

#### 4.2. *Structure and Related Institutions*

In Iran, the Guardian Council is the central organ of constitutional adjudication, responsible for reviewing the conformity of parliamentary enactments with the constitution and Islamic principles (Mahmoudi Gilani, 2022). The Council's oversight applies both during and after the legislative process to ensure that no laws contrary to the constitution or Sharia are implemented. By combining jurists and Islamic scholars, the Council acts not only as a legal reviewer but also as a balancing body among the branches of power, preventing excessive concentration of authority (Nikoonahad, 2025).

The Administrative Court of Justice (Divan-e Edalat-e Edari) plays an indirect but important role in safeguarding the rule of law and addressing unlawful administrative actions (Kabgani, 2021). By handling complaints against executive bodies, it helps protect citizens' rights and provides an indirect avenue for controlling governmental compliance with constitutional principles (Mahmoudi Gilani, 2022).

Altogether, the combination of the Guardian Council as the main adjudicatory body and the Administrative Court of Justice as an indirect supervisory arm creates a framework that seeks to guarantee constitutional supremacy, maintain balance among state powers, and protect fundamental rights. Nevertheless, limitations on public access and political influence remain significant challenges that must be addressed to improve the effectiveness of Iran's constitutional adjudication (habibzadeh, 2008; Nikoonahad, 2025).

#### 4.3. *Jurisdiction*

One of the core features of Iran's constitutional adjudication is the Guardian Council's jurisdiction over the conformity of legislation with Sharia and the constitution (Rezaei, 2020). The Council must review bills before and after approval by parliament to ensure alignment with the fundamental principles of the constitution and Islamic rules, thereby preserving constitutional supremacy (habibzadeh, 2008).

In addition, the Guardian Council holds interpretive authority over the constitution. This includes clarifying the scope and limits of state powers, resolving

ambiguities in constitutional text, and settling disputes between governmental bodies (Kabgani, 2021; Nikoonahad, 2025). This interpretive function not only fosters legal coherence but also enables informed decision-making and prevents normative conflicts.

Despite these significant powers, challenges persist—especially restricted direct access for citizens and the influence of political considerations on decision-making—which affect the legitimacy and effectiveness of the Guardian Council's role (Carter, 2022; Mahmoudi Gilani, 2022). Reforming these issues is essential to strengthen the authority and public trust in Iran's constitutional adjudication system.

#### 4.4. *Adjudication Procedure*

Iran's constitutional adjudication procedure is designed so that citizens have no direct access to the Guardian Council. Individuals cannot directly challenge the constitutionality of laws before the Council; access is limited to members of parliament or certain state institutions (Nikoonahad, 2025). This restriction undermines the system's capacity to fully protect fundamental rights and ensure the supremacy of the constitution (habibzadeh, 2008).

Moreover, procedural rigidity characterizes the Council's review process. Proceedings are governed by internal regulations and specific formalities with limited flexibility (Kabgani, 2021). Restrictions include the inability of civic organizations to bring claims, strict time frames for review, and a lack of transparency in publishing the reasoning behind decisions (sahraei, 2023).

Although effective in maintaining constitutional and Sharia compliance, the current process faces significant weaknesses, particularly in terms of limited public access and procedural opacity. Addressing these shortcomings could enhance the system's efficiency, legitimacy, and public trust while enabling better realization of fundamental constitutional rights (Mahmoudi Gilani, 2022).

#### 4.5. *Challenges*

One of the most significant challenges facing constitutional adjudication in Iran is politicization. The composition and decision-making of the Guardian Council are often influenced by political orientations and



governmental considerations, which may restrict judicial independence and impartiality (Grimm, 2025; Nikoonahad, 2025). This undermines public confidence in constitutional adjudication and reduces the perceived legitimacy of its decisions.

A second challenge is the limited protection of citizens' fundamental rights. The lack of direct access and the absence of effective complaint mechanisms mean many potential constitutional rights violations remain unaddressed (Ghamami, 2020; Rezaei, 2020).

The third challenge is procedural opacity. Internal processes and decision-making of the Guardian Council often lack detail and transparency, making public oversight and critical evaluation difficult (Mahmoudi Gilani, 2022).

Altogether, political influence, restricted rights protection, and non-transparent procedures constitute the key obstacles to effective constitutional adjudication in Iran. Overcoming these challenges could improve efficiency and legitimacy, reinforcing the system's role in guaranteeing constitutional supremacy and safeguarding fundamental rights (Carter, 2022; Nikoonahad, 2025).

## 5. Constitutional Adjudication in Iraq

This section examines the Iraqi legal approach to constitutional adjudication.

### 5.1. Legal Background

The development of constitutional adjudication in Iraq is closely tied to the post-Saddam Hussein reforms and the adoption of the 2005 Constitution, which created a new legal framework for democratization, guaranteeing fundamental rights, and limiting governmental authority (Al-Kubaisi, 2010). Constitutional adjudication emerged as a key mechanism for supervising the conformity of legislation and executive actions with the constitution (Al-Maliki, 2012).

The 2005 Constitution provided for judicial independence and established the Federal Supreme Court as the central body of constitutional adjudication. The Court is tasked with reviewing the compatibility of parliamentary laws and executive decisions with the constitution and with resolving disputes among state institutions and between the federal government and

regional authorities (Al-Kubaisi, 2010; Al-Samarrai, 2011).

Post-Saddam developments emphasized human rights protection and balancing state powers, drawing on comparative legal experiences to build institutional independence, procedural transparency, and broader access for both state bodies and citizens (Al-Dulaimi, 2013). However, political interference, limited public access, and tensions between federal rulings and local legislation remain ongoing challenges. This historical evolution shows Iraq's effort to establish modern legal structures and independent bodies to uphold constitutional supremacy and protect fundamental rights after an era of authoritarian rule (Al-Janabi, 2015).

### 5.2. The Federal Supreme Court

Within Iraq's legal system, the Federal Supreme Court (FSC) is the principal organ of constitutional adjudication, playing a decisive role in safeguarding the supremacy of the constitution and maintaining the balance among state powers (Al-Samarrai, 2011). The FSC consists of a president and judges specialized in public and constitutional law, with its composition designed to promote independence and impartiality (Al-Kubaisi, 2010).

Judges are appointed by the president, with parliamentary approval, based on professional criteria and judicial experience to minimize political interference and preserve the Court's institutional autonomy (Al-Karim, 2014). The Court's jurisdiction covers three main areas: (1) reviewing parliamentary legislation to ensure compliance with the constitution, (2) interpreting constitutional provisions when ambiguity or conflict arises, and (3) resolving disputes among federal powers and between the central government and the regions (Al-Maliki, 2012; Al-Tamimi, 2016).

These powers make the FSC a cornerstone of constitutional governance in Iraq, enabling the protection of democratic principles, the rule of law, and fundamental rights. Nevertheless, political and regional pressures continue to affect its effectiveness (Al-Hakim, 2018).

### 5.3. Adjudicatory Procedure

The adjudication procedure of the FSC is designed to ensure legal oversight while allowing, to a limited extent,

the participation of political bodies and citizens. Legislative and executive organs can request constitutional review before passing new laws, and the FSC must strike down any legislation that violates fundamental constitutional principles (Al-Dulaimi, 2013).

Citizens can also bring claims indirectly through political parties, groups, or representatives, providing a channel for defending fundamental rights and preventing constitutional violations (Al-Hamidi, 2021; Al-Janabi, 2015). Direct individual access, however, remains limited and typically requires intermediaries.

The FSC operates based on its internal regulations and judicial precedents, examining complaints through both public and closed sessions, reviewing evidence, and issuing binding and unifying decisions (Al-Karim, 2014). Additionally, the Court is obligated to issue authoritative rulings when disputes arise between the federal government and the regions or among federal institutions, ensuring constitutional coherence and the balance of powers (Al-Tamimi, 2016). This procedure, though restricted in direct public access, attempts to balance legal oversight, judicial independence, and the protection of fundamental rights.

#### 5.4. Judicial Practice

The FSC has developed significant jurisprudence that consolidates constitutional principles and regulates relationships among federal entities (Al-Tamimi, 2016). A defining feature of its decisions is their binding and unifying effect on all government bodies and regional authorities. These rulings not only annul unconstitutional laws but also provide interpretative guidance for similar future cases (Al-Shammari, 2017). Another key function is conflict resolution between the federal government and the regions or among federal powers. Through detailed evidence review and constitutional reasoning, the FSC prevents legal and administrative deadlocks (Al-Karim, 2014). Additionally, the Court issues strategic opinions and constitutional interpretations that go beyond individual cases and serve as precedents for future adjudication (Al-Hakim, 2018).

Overall, the FSC's practice contributes to legal stability, strengthens institutional independence, and enhances the protection of fundamental rights. Its jurisprudence provides a cohesive framework for constitutional

governance and reinforces the legitimacy and efficiency of Iraq's constitutional adjudication system (Al-Fahad, 2020).

#### 5.5. Challenges

One of the major challenges facing constitutional adjudication in Iraq is political and ethno-sectarian pressure. Political groups and parties, especially in the judicial appointment process, can limit the independence of the FSC and influence outcomes (Al-Azzawi, 2019). Such pressures, combined with sectarian sensitivities, complicate the pursuit of justice and hinder the effective enforcement of constitutional supremacy (Al-Hamidi, 2021).

A second challenge is the weak institutional independence of the FSC. Although the 2005 Constitution formally guarantees autonomy, financial and administrative constraints and political interference reduce practical independence and erode public trust (Al-Fahad, 2020).

The third challenge is the absence of a coherent individual complaint system. Citizens lack direct access to the FSC to challenge rights violations, with existing mechanisms requiring political or institutional intermediaries. This limits the Court's protective reach over individual rights (Al-Dulaimi, 2013; Al-Hamidi, 2021).

In sum, political and ethno-sectarian pressures, weak institutional independence, and the lack of a robust system for individual complaints are the principal obstacles to effective constitutional adjudication in Iraq. Addressing these issues could enhance the legitimacy, efficiency, and impact of the FSC in protecting fundamental rights and upholding constitutional supremacy (Al-Kubaisi, 2010; Al-Maliki, 2012).

### 6. Constitutional Adjudication in Malaysia

This section explains the Malaysian legal approach to constitutional adjudication.

#### 6.1. Historical and Legal Background

Constitutional adjudication in Malaysia traces back to the country's independence in 1957, when Malaysia gained sovereignty from Britain and adopted the Federal Constitution as its foundational legal document (Shad, 2014). The Federal Constitution provided the legal

framework for dividing powers among the executive, legislative, and judicial branches, ensuring constitutional supremacy and the protection of fundamental rights. After independence, Malaysia's judiciary was modeled on the British Commonwealth system but adapted to the country's federal and multi-ethnic context (Ahmad, 2017).

The judiciary assumed the responsibility for reviewing the constitutionality of laws and interpreting constitutional provisions, playing a central role in resolving disputes between states and the federal government (Rahim, 2019; Tan, 2019). The Federal Constitution also established mechanisms for constitutional adjudication, enabling citizens and governmental bodies to challenge actions or legislation inconsistent with constitutional principles (Hussain, 2015). This framework allowed Malaysia to maintain judicial independence while providing limited yet meaningful opportunities for public and institutional participation in constitutional oversight. Overall, the historical and legal development of constitutional adjudication in Malaysia reflects efforts to create an independent federal judiciary capable of balancing state powers, safeguarding fundamental rights, and upholding constitutional supremacy (Lim, 2018).

#### 6.2. Superior Courts and the Role of the Federal Court

Malaysia's judiciary comprises state-level High Courts and the Federal Court, both essential to constitutional adjudication. The Federal Court is the highest judicial authority, tasked with the final resolution of constitutional disputes, conflicts between states and the federal government, and cases involving violations of fundamental rights (Hussain, 2015; Lim, 2018).

High Courts serve as the initial venues for constitutional challenges, preparing factual and legal grounds for cases that may progress to the Federal Court (Khan, 2020). They play a key role in examining local legislation and constitutional issues before forwarding them for unified, authoritative rulings. The Federal Court's decisions are binding on all other courts, ensuring consistency and stability in constitutional interpretation (Lim, 2021; Tan, 2019).

By providing final constitutional interpretations and safeguarding individual rights, the Federal Court consolidates legal certainty, strengthens judicial independence, and supports the protection of

fundamental rights in Malaysia (Ismail, 2018). Together, the High Courts and the Federal Court form the core of Malaysia's constitutional adjudication system, maintaining the balance of powers and upholding the Federal Constitution.

#### 6.3. Jurisdiction

The jurisdiction of Malaysian constitutional adjudication is primarily based on judicial review of legislation and executive actions (Rahman, 2016). Both the Federal Court and the High Courts have the power to review parliamentary and executive acts and to annul them if they violate the Federal Constitution.

A major responsibility of Malaysian courts is the protection of fundamental rights enshrined in the Federal Constitution. Citizens can challenge violations of their rights, such as freedom of expression, property rights, and equality before the law (Chong, 2018). Courts are required to hear these claims impartially and issue binding decisions. Additionally, constitutional jurisdiction includes settling disputes between the federal and state governments and interpreting ambiguous constitutional provisions (Lim, 2021).

This broad jurisdiction strengthens the judiciary's ability to maintain constitutional supremacy, promote accountability of governmental authorities, and protect both individual and collective rights (Khan, 2020; Tan, 2021).

#### 6.4. Distinctive Features

One of the defining characteristics of Malaysia's constitutional adjudication is its mixed legal system, combining elements of common law, Sharia, and local customary law (Hassan, 2017). This hybrid nature requires the courts to balance federal and state statutes with religious and traditional principles.

Sharia courts handle matters of personal status for Muslims, such as marriage, divorce, and inheritance, while civil and federal courts oversee general public law and constitutional disputes (Rahim, 2019). When conflicts arise between Sharia rulings and civil law, the Federal Court has ultimate authority to ensure constitutional compliance while respecting religious norms (Abdul, 2020).

This unique interaction between Sharia and civil courts provides flexibility in addressing Malaysia's multi-ethnic



and multi-religious context while preserving constitutional supremacy and protecting cultural and religious rights (Ismail, 2018; Tan, 2019).

### 6.5. Challenges

One of the most significant challenges to constitutional adjudication in Malaysia is the limitation of fundamental freedoms due to security and religious considerations. Although the Federal Constitution guarantees rights such as freedom of speech and peaceful assembly, judicial and executive bodies may restrict these rights for reasons of national security or religious sensitivity (Ismail, 2018). These limitations sometimes lead to conservative interpretations of constitutional rights, weakening the judiciary's protective role (Lee, 2019).

Another challenge is the judiciary's generally restrained approach to interpreting fundamental rights. Unlike some systems with an activist constitutional review, Malaysian courts often adopt a narrow reading of constitutional guarantees and avoid politically sensitive issues (Tan, 2021). This cautious stance can reduce the effectiveness of constitutional adjudication in addressing evolving societal needs and closing legal gaps (Khan, 2020).

Finally, the complexity of the mixed legal system, coupled with security and religious constraints, can challenge judicial independence and consistency in constitutional rulings (Hassan, 2017; Rahim, 2019).

In sum, restrictions on fundamental freedoms, conservative constitutional interpretation, and the complexity of Malaysia's hybrid legal structure are key obstacles to strengthening the judiciary's role in protecting citizens' rights and ensuring constitutional supremacy (Abdul, 2020; Tan, 2021).

## 7. Comparative Analysis

The comparative analysis of constitutional adjudication in Iran, Iraq, and Malaysia reveals considerable diversity in the structures, procedures, and functions of constitutional oversight. In Iran, the Guardian Council plays a central role in supervising the conformity of legislation with Islamic principles and the constitution and has exclusive authority to interpret constitutional provisions. This body operates as the core of a highly centralized system, exercising direct control over all parliamentary enactments. In Iraq, the Federal Supreme

Court holds comparable powers, reviewing the constitutionality of laws, resolving disputes among state powers, and interpreting constitutional norms. Its centralized structure gives binding effect to its decisions on all governmental bodies. In contrast, Malaysia's Federal Court and state-level High Courts are the main institutions of constitutional adjudication but are rooted in a more judicial and decentralized model. While any court may engage in constitutional review and interpretation within its jurisdiction, the Federal Court remains the ultimate and binding authority.

A comparison of methods shows that Iran and Iraq both rely on centralized approaches, meaning a single supreme institution issues final decisions binding on all other bodies. This model ensures coherence and consistency in constitutional jurisprudence and reinforces constitutional supremacy but also creates limitations such as reduced direct public access and less flexibility in addressing complex, multi-ethnic contexts. Malaysia's decentralized and judicial model, by contrast, empowers High Courts and provides greater participatory avenues and flexibility in responding to diverse cultural and religious settings. However, it also faces challenges such as the intricate interaction between Sharia and civil courts and a tendency toward narrow interpretation of fundamental rights.

When comparing functions, the extent of actual rights protection and effectiveness in controlling political power varies sharply among the three countries. In Iran, the Guardian Council's emphasis on Islamic and political criteria sometimes limits robust protection of fundamental rights and weakens independent oversight of political authority. In Iraq, the Federal Supreme Court plays a critical role in resolving federal disputes and safeguarding the constitution, but institutional fragility, political pressures, and the complexities of federalism reduce its capacity to protect citizens' rights fully. In Malaysia, despite tensions between Sharia and human rights, the Federal Court and High Courts have achieved a moderate level of rights protection; however, security concerns and conservative constitutional interpretation limit the judiciary's full potential to check political power.

Despite these differences, common challenges emerge. Political influence and the involvement of powerful groups undermine judicial independence, while weak public access and restricted citizen participation are

recurring obstacles in all three systems. Although the nature and severity of these challenges vary, they expose practical limits to constitutional adjudication in fully ensuring justice and constitutional supremacy.

Key differences are equally significant. Iran is more strongly shaped by Islamic and political imperatives, with judicial independence constrained in certain areas. Iraq faces institutional instability and the complexities of federalism that affect consistency and cohesion. Malaysia, though benefiting from relative judicial independence, struggles with reconciling Sharia with universal human rights standards, creating specific interpretive challenges.

Ultimately, the comparative analysis shows that constitutional adjudication in each country is deeply contextual, shaped by unique historical, political, and cultural conditions. Iran, Iraq, and Malaysia each display distinctive models with their own strengths and weaknesses but share systemic issues such as political influence and restricted public access. This comparison provides opportunities to identify best practices and lessons that can strengthen independence, efficiency, and the protection of fundamental rights in constitutional adjudication systems.

## 8. Conclusion

The comparative study of constitutional adjudication in Iran, Iraq, and Malaysia shows that despite structural and historical differences, all three countries operate systems that are only partially effective and face persistent challenges. Analyzing their structures, methods, and functions reveals the decisive impact of political, social, and cultural contexts on system performance. In Iran, the Guardian Council's centralized design provides institutional coherence but suffers from limited citizen access and political influence, weakening the protection of fundamental rights. Iraq's Federal Supreme Court, despite institutional instability and federal-political pressures, allows more varied forms of access and offers valuable flexibility in constitutional review. Malaysia's Federal and High Courts, deeply rooted in the common law tradition, balance judicial flexibility with constitutional supremacy but are constrained by security concerns and tensions between Sharia and human rights.

Answering the main research question confirms that each country's constitutional adjudication design is

closely tied to its unique legal, historical, and social framework, shaping its respective strengths and weaknesses. Iran's centralization supports legal consistency but restricts public engagement and rights protection. Iraq's model provides broader access and dispute resolution between federal and regional powers but remains vulnerable to political influence. Malaysia's judicial and relatively decentralized approach enhances independence and rights protection but struggles with the hybrid legal system and conservative interpretations.

Learning from these differences offers pathways for improvement. Iran can leverage its institutional cohesion while reforming procedural transparency and expanding citizen access. Iraq's experience with diversified complaint mechanisms highlights the benefits of more inclusive access, and Malaysia's integration of common law principles illustrates how judicial independence and interpretive flexibility can be strengthened.

For Iran, key recommendations emerge: clarify the Guardian Council's review procedures to make its decision-making more transparent and accessible; expand opportunities for citizens to bring constitutional claims directly; and draw from Malaysia's judicial model to reduce political influence and improve independence while preserving Iran's institutional structure.

In sum, constitutional adjudication in Iran, Iraq, and Malaysia is not solely a legal construct but a reflection of broader political and cultural realities. No system fully guarantees justice and fundamental rights, but comparative insights can guide reforms. For Iran, combining its structural coherence with Iraq's access mechanisms and Malaysia's judicial independence could create a stronger, more credible, and rights-protective constitutional review system—one that integrates institutional stability, judicial autonomy, and public participation to better safeguard constitutional supremacy.

## Authors' Contributions

Authors contributed equally to this article.

## Declaration

In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

## Transparency Statement

Data are available for research purposes upon reasonable request to the corresponding author.

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## Declaration of Interest

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## Ethical Considerations

In this research, ethical standards including obtaining informed consent, ensuring privacy and confidentiality were observed.

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