OPEN PEER REVIEW

The Role of Judicial Review in the Realization of Constitutional Rights in Iran and Iraq

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1. Round 1

1.1. Reviewer 1

Reviewer:

The paragraph beginning “Comparative constitutional experience demonstrates that there is no single institutional model through which constitutional supremacy must be guaranteed” correctly introduces institutional diversity, but the analytical typology remains underdeveloped. The manuscript should specify the criteria by which constitutional review systems are classified, including centralized versus decentralized review, abstract versus concrete review, preventive versus subsequent review, and judicial versus political or quasi-judicial review. These dimensions should not be collapsed into a single binary. In particular, characterizing Iran as “preventive” and Iraq as “subsequent” is analytically useful, but these labels concern timing rather than institutional nature. A clearer multidimensional typology would significantly strengthen the comparative design.

In the paragraph stating that “The Iranian constitutional structure is distinguished by the central role assigned to the Guardian Council in reviewing parliamentary enactments,” the manuscript should more precisely delimit the constitutional powers being examined. The article refers broadly to Articles 91–99, but the analysis would be stronger if it expressly identified which constitutional provisions establish composition, legislative review, time limits, interpretation, and other relevant competences. The distinction between the Council's review for conformity with Islamic criteria and review for conformity with the Constitution should also be more carefully maintained. This is especially important because the article later evaluates rights protection, and the normative basis and voting structure applicable to these two forms of review are not identical.

The statement that “ordinary citizens cannot generally bring a direct constitutional complaint before the Guardian Council alleging that an existing statute has violated one of their constitutional rights” is central to the article and should be developed much more rigorously. The authors should distinguish the absence of a direct constitutional complaint from the existence of indirect channels through which constitutional issues may arise within the Iranian legal system. The current formulation risks presenting access as an all-or-nothing variable. The analysis would benefit from identifying precisely what forms of indirect

access exist, what legal consequences they can generate, and why they do or do not constitute functional substitutes for direct constitutional review.

The discussion beginning “The classic distinction between political and judicial constitutional review remains useful, but it must not be treated as absolute” is conceptually promising and should be expanded because it represents one of the article's strongest potential contributions. The Guardian Council should not simply be classified as a “political” body because its functions, composition, constitutional authority, and legal reasoning contain elements that complicate such categorization. The authors should consider describing it as a specialized constitutional supervisory institution with political, legal, and religious characteristics. This would avoid importing a European judicial-versus-political dichotomy too mechanically into a constitutional order with a distinctive institutional architecture.

In the paragraph on preventive review, the claim that “This form of review can be efficient because it avoids the social and institutional costs created when unconstitutional laws remain operative for years before being invalidated” is theoretically plausible but should be qualified. Preventive review may avoid the costs associated with subsequently invalidating legislation, yet it can also fail to identify constitutional defects that emerge only through application. The manuscript later acknowledges this point, but the theoretical section should state more clearly that preventive and subsequent review address different types of constitutional risk. This would prevent the discussion from appearing to rank the two forms before the comparative evidence has been fully considered.

Authors revised the manuscript and uploaded the document.

1.2. Reviewer 2

Reviewer:

The paragraph discussing the Iranian system's “other mechanisms that contribute to the protection of individual rights, including administrative judicial review and parliamentary complaint procedures” requires a clearer doctrinal separation between constitutional review and rights-remedial mechanisms. The Administrative Justice Court and the Article 90 Commission serve important functions, but neither is institutionally equivalent to constitutional adjudication by the Guardian Council. The authors should explain whether these mechanisms are being assessed as substitutes, complements, or merely contextual safeguards. Otherwise, there is a risk of comparing the Iraqi Federal Supreme Court's constitutional jurisdiction with a bundle of heterogeneous Iranian institutions, which could weaken the symmetry of the comparative analysis.

The paragraph beginning “Iraq represents a substantially different institutional configuration” should provide a more exact account of the constitutional foundations of the Federal Supreme Court. The article correctly emphasizes Articles 92–94, but the institutional analysis should distinguish between the constitutional status of the Court, its jurisdiction, the final and binding nature of its decisions, and the statutory framework governing its organization. These are analytically separate issues. The manuscript would be strengthened by demonstrating how each dimension influences constitutional-rights protection rather than treating the Court's judicial status as a single institutional characteristic.

The assertion that “individuals who satisfy procedural requirements may obtain access to constitutional adjudication in circumstances that do not have a direct equivalent in the Iranian Guardian Council model” needs greater procedural specificity. The article repeatedly treats Iraq as offering “broader access,” but it does not sufficiently explain the relevant rules of standing, interest, admissibility, or routes of referral. Since citizen access is one of the manuscript's principal comparative variables, this dimension should be operationalized more rigorously. The authors should indicate who may initiate constitutional proceedings, whether access is direct or incidental, what constitutes a sufficient interest, and how individual administrative disputes are distinguished from constitutional challenges to general norms.

In the paragraph stating that “the existence of formal judicial access, however, does not automatically guarantee effective constitutional rights,” the manuscript introduces an important distinction between formal access and substantive effectiveness, but the concept of “effectiveness” remains insufficiently defined. The authors should identify measurable or doctrinal indicators, such as ease of standing, timeliness, independence, publication of decisions, consistency of reasoning, binding force, compliance, availability of remedies, and practical implementation. At present, “effectiveness” sometimes refers to institutional

independence and elsewhere to enforcement or citizen access. A clearer analytical framework would prevent conceptual overlap and make the comparative conclusions more persuasive.

The paragraph containing the objective—"The objective of this article is to examine how these institutional differences affect the realization of constitutional rights in Iran and Iraq"—would benefit from a more explicit research question and a formally articulated comparative hypothesis. The manuscript contains an implicit hypothesis that institutional accessibility and independence matter more than whether review is formally judicial or political, but this should be expressed with greater precision. The authors should also clarify what is meant by "realization" of constitutional rights: prevention of unconstitutional legislation, availability of remedies, actual correction of rights violations, or the broader institutionalization of constitutional norms. Defining the dependent concept would improve methodological coherence.

In the theoretical section, the sentence "Constitutional review derives its normative significance from the principle that the constitution occupies a superior position within the legal hierarchy" should be followed by a more explicit distinction between constitutional supremacy as a normative principle and judicial enforceability as an institutional consequence. A constitution may be formally supreme without providing a strong model of constitutional adjudication. The manuscript currently moves rather quickly from normative hierarchy to institutional review. A more nuanced account should acknowledge that the institutional enforcement of constitutional supremacy can take judicial, political, mixed, or diffuse forms and that the relationship between supremacy and judicialization is contingent rather than logically necessary.

Authors revised the manuscript and uploaded the document.

2. Revised

Editor's decision: Accepted.
Editor in Chief's decision: Accepted.