

Legal and constitutional guarantees for human rights

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Abstract:

The legal and constitutional guarantees of human rights consist of a set of rules and institutions aimed at protecting fundamental rights and freedoms. These include: the supremacy of the constitution and the inclusion of rights within it; the independence of the judiciary to ensure oversight of the constitutionality of laws; the rule of law; equality; and parliamentary and public oversight. These guarantees aim to provide a binding framework for the state that prevents violations and ensures the effective implementation of rights. By relying on all the relevant articles of the Constitution, in addition to other laws and the internal regulations of certain constitutional institutions, such as the Constitutional Council and the National Human Rights Council, it becomes clear that the constitutional framers achieved a qualitative breakthrough in the area of rights and freedoms, and that they have made significant strides towards becoming leading nations in this field. The constitutional framers included all these principles, the aim of which is to enshrine and protect rights and freedoms from any violation. Each of these principles complements the others, and none can be excluded. Furthermore, the institutions established, namely the Constitutional Council and the National Human Rights Council, were entrusted with the exclusive mission of protecting human rights and fundamental freedoms. They were provided with all the legal means necessary to fulfill this mission. We guarantee the principles that safeguard human rights, such as the principle of legality, the principle of separation of powers, and the principle of equality, and we stipulate the mechanisms and means that ensure these rights and freedoms.

Keyword: human rights, constitutional, Legal, freedoms. Fundamental.

Introduction :

It is possible to refer to and summarize the general principles relating to constitutional and human rights as follows:

In both national and international contexts, human rights have become increasingly important as societies evolve and life becomes more complex, both nationally and internationally. Human rights are a branch of law.

First: Constitutional Guarantees (Supreme Mechanisms):

Supremacy of the Constitution and International Conventions: The constitution is the supreme law of the land, and the protection of rights within it gives it binding force, especially when constitutional provisions are consistent with international human rights standards[1].

Explicit Stipulation of Rights and Freedoms: The direct inclusion of civil, political, economic, and social rights in the constitutional text.

Judicial Review of Laws: The existence of a constitutional court or supreme judicial body that monitors the conformity of ordinary laws with the rights enshrined in the constitution.

Second: Legal Guarantees (Legislative and Procedural Mechanisms):

Judicial Independence and Immunity: An independent judiciary is the fundamental guarantee of the rule of law and respect for rights, providing judicial protection against the abuse of executive power.

Legality of Procedures and the Right to Defense: Guarantees of a fair trial, such as the prohibition of arrest except in accordance with the law, the right to defense, and the presumption of innocence [2].

Provision of Effective Remedies: The right of individuals to resort to the national judiciary to file complaints in the event of a violation of their rights. Third: Institutional and Political Guarantees:

National Human Rights Institutions: The existence of independent human rights commissions to monitor the situation and raise awareness.

Parliamentary Oversight: The role of parliament in overseeing the actions of the government and ensuring that laws do not violate constitutional principles.

Public and Media Oversight: Freedom of the press and civil society organizations to expose violations.

These guarantees collectively aim to protect human dignity and embody the principles of equality and non-discrimination.

In summary: With the development of societies and the increasing complexities of life in the field of transactions at the national and international levels, human rights have become of paramount importance at the national and international levels. Human rights are a branch of international law, and are called international human rights law. Therefore, protecting these rights has become a fundamental issue that must be safeguarded, guaranteed, and monitored. Despite the increase in international efforts that have taken various forms, such as international agreements and treaties related to the protection of human rights, which have had an impact on the internal legislation of countries around the world, including Iraq, which enacted in its 2005 constitution and in its internal legislation, many national guarantees and mechanisms for the protection of human rights, whether these guarantees are official, such as the existence of the constitution, the independence of the judiciary, the right to litigation, and political, civil, religious, and economic guarantees, and created a set of mechanisms for implementing these guarantees. These mechanisms are distributed among the existence of the parliament and the parliamentary committee concerned with human rights, as well as the existence of non-governmental organizations in civil society, such as the Human Rights Commission, and allowing freedom of the media, which supports the formation of public opinion that puts pressure on the government. These guarantees and structures revolve around three main functions: achieving justice and fairness, promoting human rights principles and values, and protecting human rights and values from violations by authorities or other parties [3].

These guarantees and structures serve three main purposes. Fundamental human rights and freedoms are individual rights derived from human needs and capabilities. These rights must be respected and enjoyed by all people by virtue of their humanity, without discrimination based on gender, origin, color, language, thought, or belief. These rights and freedoms are not privileges or gifts from anyone, but are enshrined in the highest and most sublime divine law, as God Almighty says: "And We have certainly honored the children of Adam and carried them on the land and sea and provided for them of the good things and preferred them over much of what We have created, with [clear] preference."

Therefore, all divine and secular laws have added a set of fundamental rights that preserve the dignity and humanity of the individual and prevent all forms of oppression and tyranny to which they may be subjected, considering them the cornerstone of a sound society. The most important moral advancement of this era is the framing of these principles and rights within international covenants and treaties, national constitutions, and legislation. However, this codification and organization does not provide serious guarantees for the protection of human dignity and freedoms in the face of the power and might of the state and the influence of its legislative authorities. The executive branch necessitates the existence of a third authority to oversee the aforementioned two branches, forming a safeguard against any infringement of constitutional and legal human rights. This third authority is the judiciary, entrusted with this role and tasked with protecting the fundamental rights and freedoms of individuals. It does so by exercising constitutional oversight of any violations of these rights by the legislative branch, or by addressing any encroachment on the rights of society by the executive branch or other entities. We will discuss this in more detail.

First: Protecting Rights and Freedoms from Legislative Interference

The ultimate goal of any constitution or legislation is to guarantee human rights. This guarantee can only be achieved through a supreme authority that oversees and upholds constitutional principles and ensures their proper application. This prevents ordinary legislators from violating these principles during the legislative process. Therefore, the principle of judicial review of the constitutionality of laws was established, requiring an examination of the nature of this review and the methods used to obtain it.

1- Judicial Review of the Constitutionality of Laws

This necessitates an examination of the nature of this review and the methods used to obtain it. This oversight can be seen in the requirement that laws issued by the legislative authority be subject to judicial oversight to ensure their conformity and compliance with constitutional texts. The concept of this oversight is based on the supremacy of the constitution as it constitutes the top of the legal pyramid in the state.

Constitutionality of laws:

Recognizing the judiciary's authority to review the constitutionality of laws is a logical step to ensure their compliance with the constitution and the protection of individual rights. However, granting constitutional review to the judiciary has not been universally accepted. Constitutions vary in their provisions regarding the body responsible for this review. Some constitutions do not address this review at all, while others assign this responsibility to the Supreme Court, the highest ordinary court in the country. For example, Article 125 of the 1985 Sudanese Interim Constitution stipulates that the Supreme Court is the guardian of the constitution and has jurisdiction over specific matters, including reviewing the constitutionality of laws and protecting the rights and freedoms guaranteed by the constitution. Similarly, Article 93 of the 2005 Constitution of the Republic of Iraq states that the Federal Supreme Court has jurisdiction over the constitutionality of laws and regulations in force. This is despite the fact that the Federal Supreme Court is a component of the federal authority, as stipulated in Article 89, and is an independent judicial body, as stipulated in Article 11. (92) According to the same constitution, the oversight of the constitutionality of what is issued by the legislative authority is judicial review[4].

The third and final type of constitution entrusts the task of oversight to the Supreme Constitutional Court. For example, Article (175) of the Egyptian Constitution of 1971 stipulated that "the Supreme Constitutional Court alone shall undertake judicial review of the constitutionality of laws."

Similarly, Article (87) of the Iraqi Provisional Constitution of 1968 stipulated the establishment of a Supreme Constitutional Court to examine the constitutionality of laws. This court was established by Law No. (159) of 1968, and this law was repealed with the repeal of its constitutional basis, i.e., the 1968 Constitution, by the promulgation of the 1970 Constitution.

We find the same trend in Article (137) of the Austrian Constitution of 1920, as amended in 1929, which included the establishment of a court to review the constitutionality of laws, called the Constitutional Court.

Constitutional trends in determining the oversight of the constitutionality of laws:

Regardless of the constitutional approaches to determining the constitutionality of laws, we agree with the view that limits the jurisdiction for such review to a special constitutional court, for the following reasons:

- a) Limiting the review of the constitutionality of laws to a special constitutional court would lend significant importance to the subject of review and grant it greater respect from the ordinary legislature.
- b) The constitutional court is composed of judges who possess the competence and experience to examine constitutional issues, enabling them to perform their duties properly. This specialization leads to the swift resolution of cases and the issuance of rulings on the validity of ordinary laws.
- c) Some aspects of reviewing the constitutionality of laws, such as the review of the annulment of a law that violates the constitution, necessitate entrusting the task to a special court, not an ordinary court, for the reasons mentioned above[5].

Given the importance of such a court in guaranteeing human rights and freedoms, we believe it is essential that constitutions include explicit provisions assigning the task of review to a supreme constitutional court.

2- Methods Used in Judicial Review of the Constitutionality of Laws

Constitutional law scholars classify the methods used in judicial review into two types: The first is known as review through an original lawsuit (annulment review), and the second is known as review through a plea (reservation of abstention).

The first type: Annulment Review

This review is embodied in the authorization granted by the constitutional legislator to public bodies and individuals to file an original lawsuit before a competent court, according to specific conditions, demanding the annulment of a law that violates the constitution. This review leads to the annulment of the unconstitutional law if the judge finds it unconstitutional. The annulment decision then has absolute authority over all parties, thus definitively resolving the dispute regarding the constitutionality of the law.

It is worth noting that for annulment review to be exercised, the constitution must contain provisions authorizing it. If such provisions are absent, judicial review cannot be exercised through this method but rather through another means: the plea of unconstitutionality.

The power of annulment review may precede the enactment of a law (for example, granting the president or any other body stipulated in the constitution the right to refer a draft law to the court before its promulgation to examine its conformity with the provisions of the

constitution). This trend is found in the constitutions of Panama, Ecuador, and Ireland. In fact, subsequent review of annulment is more common in constitutions that adopt this system. It is important to note that the number of constitutions that grant individuals the right to file an annulment lawsuit is very small, thus limiting the exercise of this power to public bodies only. While some constitutions stipulate granting individuals the right to file an annulment lawsuit, laws are issued that deprive individuals of this right, preventing them from filing such a lawsuit before the Constitutional Court. Among the constitutions that granted this right to individuals is the Sudanese Constitution of 1985, which, in Article 32/1, grants individuals the right to directly protect their constitutional rights by filing a lawsuit before the Supreme Court to protect any of the rights established under this constitution. Its application, and the Supreme Court may issue whatever rulings it deems appropriate to guarantee these rights.

Similarly, the Spanish Constitution of 1931 broadly granted individuals the right to challenge laws that violate the Constitution, giving this right to every citizen, even if they were not personally harmed by the challenged law. The consequences of exercising the right to annulment necessitate granting individuals a direct role in using this means to protect their constitutional rights. Depriving them of this right contradicts constitutional provisions that guarantee the right to litigation for all. Therefore, constitutions must include provisions granting individuals the right to file lawsuits against laws that violate the Constitution, for the following reasons: a) The purpose of constitutional provisions concerning rights and freedoms is to guarantee these rights against violation. Individuals are more aware than others of situations in which their rights are violated, and this reinforces the positive role of individuals in managing their affairs, thus instilling in them satisfaction and a reassuring sense of justice[6].

b) Restricting the right to file such lawsuits In public bodies, the annulment review may be ineffective because some of these bodies may find it in their interest not to challenge laws that violate the constitution.

Granting individuals this right is consistent with what international agreements stipulate regarding the importance of the role of individuals in protecting their rights. Article (8) of the Universal Declaration of Human Rights of 1948 states that "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the law."

The second type: Review by way of objection (review by abstention). This review is embodied in the objection submitted to the ordinary court by an individual as a party to the dispute, requesting that a specific law not be applied to the dispute before it because it is unconstitutional. When the court is convinced of the validity of this objection, it refrains from applying the law to the matter in dispute, but it does not challenge the law itself by annulling it. This, in turn, constitutes the difference between the two types of judicial review under discussion.

Some jurists point out that the practice of the objection by way of abstention Constitutional review does not require a specific constitutional provision, as the absence of a constitutional provision for judicial review is considered an acceptance of it through the incidental plea.

While this method does not stipulate a specific time limit for challenging the constitutionality of a law—since individuals can raise this objection at any time they deem the applicable law unconstitutional—it is almost ineffective due to differing court opinions

on the constitutionality of laws. This divergence leads to a multiplicity of legal situations and, consequently, to a lack of stability and consistency in the legal system.

The American judiciary has played a significant role in employing the method of judicial review through the incidental plea. It is worth noting that there is a pattern of constitutions that have followed this approach.

Protecting rights and freedoms from interference by the executive authority:

The executive branch, with its broad powers to regulate individual rights and freedoms, may infringe upon these rights and freedoms through its directives, orders, and actions. Therefore, it has become essential to protect rights and freedoms through the judiciary. This protection is based on the oversight of government and administrative actions by two main bodies:

1- The ordinary judiciary.

2- The dual judiciary.

1- The ordinary judiciary: This is embodied in entrusting the oversight task to a single entity, namely the judiciary, with its various courts, most notably the Court of Cassation, the Court of Appeal, or the Supreme Court, depending on the legal system in each country. The judiciary has full jurisdiction in this area to adjudicate disputes arising between individuals, or those arising between the administration and individuals. This approach aligns with the general principles that grant the courts jurisdiction over all natural and legal persons, including the government, except as otherwise provided by specific law. However, assigning the task of adjudicating disputes in which the administration is a party to the ordinary courts conflicts with the increased activity of the administration resulting from state intervention in areas previously limited to private individuals. This necessitates the adoption of a dual court system and the establishment of administrative courts with jurisdiction over such disputes.

2- Dual Court System:

This means that two judicial bodies have jurisdiction: the ordinary courts, which handle disputes arising between individuals, and the administrative courts, which handle disputes in which the administration is a party in its capacity as a public authority, or disputes for which the law stipulates its jurisdiction. The administrative courts comprise all types of administrative courts, with the State Council at the top.

Several countries have followed this approach, including France and Egypt. For example, Article 172 of the 1971 Egyptian Constitution stipulated that "The State Council is an independent judicial body, competent to adjudicate administrative disputes and disciplinary cases, and its other jurisdictions are defined by law." In Iraq, Article 7, Paragraph 2, Paragraph A of Resolution No. 106 of 1989, issued by the dissolved Revolutionary Command Council, established a court called the Administrative Court within the State Council. This article also authorized the formation of other Administrative Courts in the appellate regional centers, by a statement issued by the Minister of Higher Education upon a proposal from the Presidency of the State Council.

Paragraph E of the aforementioned article defined the jurisdiction of the Administrative Court as reviewing the validity of administrative orders and decisions issued by citizens and entities within government departments and the public sector after the enactment of this law. Following the promulgation of the current constitution in 2005, Article 101 stipulates that "A State Council may be established by law, specializing in administrative

judicial functions, issuing legal opinions, drafting legislation, and representing the state and all public bodies before the courts, except as otherwise provided by law."

We believe in the effectiveness of this approach, as the dual judicial system is more efficient in protecting rights and freedoms through the important guarantees offered by the administrative judiciary in this area, including its jurisdiction over claims for the annulment of flawed administrative decisions and disciplinary cases [7].

Third: Exceptions to the Subjection of Laws to Judicial Review.

Some legislations in most countries have adopted a practice that includes exceptions to judicial review. This approach may be justified by the requirements of the public interest, as some legal scholars have stated. However, provisions that prohibit the right to litigation or that restrict the appeal process to committees lacking judicial authority contradict the constitutional provisions of all the world's constitutions, which affirm that the right to litigation is guaranteed to all people. An example of this is Article (10) of the Iraqi Judicial Organization Law No. (160) of (1979): "The judiciary shall not consider any matter considered an act of sovereignty." Similarly, the judiciary in the United States of America has ruled that "decisions issued by the administration to deport a foreigner before their entry into the United States are not subject to judicial review." Given the importance of the right to litigation in protecting rights and freedoms, we find that some constitutions have not allowed any act of the state to be immune from judicial review. For example, Article (19) of the current Iraqi Constitution states that the right to litigation is a protected and guaranteed right for all. Article (26) of the Transitional Constitution of Sudan of (1985) states that (the right to litigation is guaranteed for all, and any person has the right to resort to the competent courts, and no act of the state is immune from judicial review).

Consensus of the jurists:

Constitutions described by some legal scholars as constitutions under which litigation is permissible because they guarantee this right against all state actions constitute a model that all constitutions should emulate. On the one hand, this is true. On the other hand, provisions that prevent the judiciary from having the authority to review challenges to state actions are unconstitutional according to the consensus of most legal scholars.

Therefore, exceptions that restrict the judiciary's jurisdiction must be limited to very narrow boundaries so as not to affect the established general principle that all state actions are subject to judicial review.

Undoubtedly, failing to limit exceptions contradicts the principle of the rule of law, which is embodied in the subjection of both rulers and the ruled to the law.

From our presentation of the concept of the judiciary's role in preserving fundamental rights and freedoms (judicial review), we conclude that this review is the effective and crucial guarantee for human rights and freedoms against the state exceeding its assigned functions or abusing those powers. The judiciary is the cornerstone of justice among people, given its impartiality and independence, and the practice of holding public hearings and issuing reasoned judgments—all of which instill a sense of confidence in the fairness of the legal system.

Legal scholars have unanimously agreed that judicial review is an effective means of protecting rights and freedoms, providing individuals with a genuine guarantee. It empowers them by providing recourse to an independent body with robust safeguards to overturn, amend, or seek compensation for actions taken by public authorities that violate established legal principles.

Constitutional Law and Human Rights:

For the judiciary to effectively fulfill its role and thus guarantee rights and freedoms, judicial bodies must be meticulously organized. Their members must enjoy all the immunities granted to judges, and no authority should be imposed upon them other than the constitution and the law. A special constitutional court should be responsible for overseeing the constitutionality of laws. Furthermore, the right to challenge laws that violate the constitution must be accessible to all individuals, not just public bodies and institutions. It is also essential to establish an independent judiciary to adjudicate cases or disputes in which the administration is a party. No administrative decision should be immune from judicial review, and all state actions must be subject to judicial oversight. Anything less would deprive individuals of the most effective guarantee for protecting their rights, as laws, decisions, and orders that are not subject to judicial review may directly infringe upon individual rights and freedoms.

Constitutional law and human rights are fundamental pillars in building any democratic legal system. Constitutional law represents the legal framework that defines the fundamental principles of the state, regulates public authorities, and ensures their separation. Human rights, on the other hand, are concerned with protecting the fundamental freedoms of individuals and ensuring that these freedoms are not violated by the state or other individuals.

What is the concept of constitutional law?

- Constitutional law is a branch of public law that defines the fundamental legal rules of the state and regulates its three branches of government (legislative, executive, and judicial).
- It establishes constitutional guarantees to protect individual rights. The constitution reflects the values and principles that govern the state, such as the rule of law, democracy, and social justice.

Sources of Constitutional Law:

The sources of constitutional law can be classified as follows:

1. The written constitution: This is the official document that contains the fundamental constitutional principles.
2. Constitutional custom: Unwritten constitutional rules that are formed through ongoing political practices and traditions.
3. Judicial precedent: Decisions issued by constitutional courts that interpret the constitution.
4. International conventions: Such as treaties concluded by states that affect the constitutional order.

Objectives of Constitutional Law:

- Regulating the relationship between public authorities.
- Guaranteeing the separation of powers to prevent tyranny.
- Providing a legal framework to protect citizens' rights.
- Establishing the principle of the rule of law.

Human Rights in Constitutional Law?

Human rights occupy a fundamental place in constitutional law, forming the basis upon which the constitutional legitimacy of the modern state rests. The topic can be addressed through the following points:

Definition of Human Rights:

- Human rights are a set of fundamental rights and freedoms that every individual enjoys by virtue of being human.
- They are inalienable and cannot be waived. These rights include the right to life, liberty, dignity, equality,
- and other civil, political, economic, and social rights.

Types of Human Rights:

1. Civil and Political Rights: These include freedom of expression, freedom of belief, the right to a fair trial, and the right to life.
2. Economic, Social, and Cultural Rights: Such as the right to education, health, adequate housing, and work.
3. Collective or Solidarity Rights: Such as the right to a healthy environment, development, and peace.

Constitutional Protection of Human Rights:

Constitutions play a pivotal role in protecting human rights. Most modern constitutions include chapters dedicated to guaranteeing these rights.

Constitutional appeal mechanisms also guarantee the right of individuals to be protected from legislation that violates their fundamental rights.

What is the relationship between constitutional law and human rights?

The relationship between constitutional law and human rights is close and interconnected, with each forming a legal framework that reinforces the other. This relationship can be illustrated through the following points:

The role of the constitution in protecting human rights:

- The constitution is the fundamental document that defines basic rights and freedoms and establishes guarantees for their protection.
- Most constitutions explicitly stipulate human rights principles or refer to relevant international conventions.

Constitutional courts as a mechanism for protecting human rights:

- Constitutional courts are responsible for monitoring the constitutionality of laws to ensure they do not conflict with fundamental rights.
- Individuals can appeal to these courts to challenge laws they believe violate their constitutional rights.

Recent developments in constitutional law and human rights?

The fields of constitutional law and human rights have witnessed remarkable developments recently, both nationally in Egypt and internationally.

Globalization and its impact on human rights:

- With the spread of globalization, human rights have become universal in nature, as international conventions and treaties increasingly influence national constitutional laws,
- leading to enhanced protection standards in many countries.

The role of technology in promoting human rights:

- Technological advancements have strengthened freedom of expression through social media,
- but have simultaneously presented new challenges related to privacy and cybersecurity [8].

The impact of revolutions and uprisings on the development of constitutional law:

- The world has witnessed numerous pro-democracy movements in recent decades,
- prompting many countries to adopt constitutional reforms aimed at strengthening rights and freedoms.

Conclusions:

from aspiration into daily experience for all Constitutions determine how power is shared, how rights are safeguarded, and how societies coexist. When these frameworks are weak, the everyday essentials of human rights — justice, participation, equality, accountability — are the first to erode. When they are strong, they lay the groundwork for peace, inclusion, and democratic resilience.

In honor of this year's theme, explore six of our key human rights-relevant resources. Together, they demonstrate how constitutional governance transforms human rights. Designing Resistance: How to Fortify Democracy and Protect Human Rights. Defending the Pillars of Rights: Time, Space, and Information. Constitutional Safeguards for Human Rights in the Digital Age. Courts as Champions of Women's Rights: A Global Judicial Shift Bridging the Gap: Constitutions, Custom, and Women's Rights
Primer Tools for Rights-Based Constitution Building

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