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Article

Judicial Review of the Constitutionality of Laws as a Guarantee of the Rule of Law

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Abstract: This study examines judicial review of the constitutionality of laws as an institutional guarantee of constitutional supremacy, the rule of law, and the protection of rights and freedoms. Using a qualitative legal research design that combines historical, doctrinal, analytical, and comparative approaches, the study traces the emergence of judicial review, explains its legal foundations, and compares the principal mechanisms used to organize constitutional review. The analysis distinguishes diffuse and concentrated review, identifies the entities entitled to initiate constitutional challenges, and evaluates judicial powers including non-application, injunctions, declaratory judgments, and annulment. It also compares review by original action with review through a plea of unconstitutionality and considers the Iraqi experience through the constitutional role of the Federal Supreme Court. The results indicate that judicial review is most effective when constitutional adjudication is institutionally independent, procedurally accessible, and capable of producing authoritative remedies against unconstitutional legislation. The study concludes that constitutional review is a central guarantee of legality and constitutional supremacy, but its practical contribution to the rule of law depends on judicial independence, professional competence, procedural safeguards, and protection from political influence.

Keywords: judicial review, constitutionality of laws, rule of law, constitutional supremacy, rights and freedoms, Federal Supreme Court

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1. Introduction

The constitution represents the apex of the legal hierarchy of the state and expresses the fundamental framework through which public authority is organized and rights and freedoms are guaranteed. The characterization of a state as a legal state is therefore inseparable from respect for constitutional rules. Ordinary legislation must conform to the constitution in both form and substance, and any law that contradicts constitutional provisions raises a question of constitutionality. [1], [2]

Comparative constitutional systems differ in the institutions and procedures used to secure constitutional supremacy. Some systems historically relied on political review, while others entrusted constitutional control to judicial bodies. Judicial review is generally regarded as a stronger legal guarantee because it subjects legislative action to an independent legal assessment and provides a mechanism through which unconstitutional norms can be denied application or removed from the legal order. [3], [4]

The supremacy of the constitution over ordinary legislation is a foundational element of the rule of law. Effective constitutional review protects the hierarchy of legal norms, constrains legislative and executive authority, and helps safeguard rights and freedoms against unlawful interference. The

importance of judicial review therefore extends beyond institutional conflict: it concerns the capacity of the legal system to ensure that public power remains constitutionally limited. [5], [6]

In Iraq, the democratic transition after 2003 placed renewed emphasis on judicial constitutional review, and the 2005 Constitution assigned the Federal Supreme Court a central role in determining the constitutionality of laws and regulations. Against this background, this article analyzes the legal nature, historical development, organizational methods, procedural forms, and practical significance of judicial review as a guarantee of the rule of law. [7], [8].

2. Materials and Methods

2.1 Research Design

This study employs a qualitative legal research design. It is doctrinal and analytical in character and is supported by historical and comparative methods. The historical method is used to trace the emergence and development of judicial review, particularly the early American experience, while the analytical method is used to examine constitutional principles, legal rules, and scholarly interpretations concerning constitutional supremacy and judicial control. The comparative dimension is used to distinguish different institutional models and procedural forms of constitutional review. No survey, experiment, or statistical sampling was undertaken because the research question concerns legal institutions, doctrines, and constitutional mechanisms. [9], [10]

2.2 Sources and Legal Materials

The materials analyzed consist of constitutional-law books, comparative public-law studies, doctoral research, constitutional provisions, and legal writings addressing the supremacy of the constitution, judicial review, rights and freedoms, and the organization of constitutional courts. Particular attention is given to sources discussing decentralized and concentrated review, original actions for annulment, pleas of unconstitutionality, injunctions, declaratory judgments, and the relationship between constitutional adjudication and the rule of law.

2.3 Analytical Procedure

The analysis proceeded in four stages. First, the study identified the normative foundation of constitutional supremacy and the legal meaning of judicial review. Second, it reconstructed the historical emergence of judicial review and the reasons for its development. Third, it classified the principal institutional and procedural models used in comparative constitutional systems. Fourth, it evaluated these models in terms of their capacity to protect constitutional legality, individual rights, judicial independence, and authoritative enforcement. The Iraqi constitutional framework was then considered as an applied example of concentrated constitutional review.

2.4 Scope and Limitations of the Method

The study is limited to a doctrinal and comparative assessment of constitutional review and does not measure court performance empirically. Its findings therefore concern legal design, institutional logic, and the implications of review mechanisms rather than statistical estimates of judicial effectiveness. This limitation is consistent with the article's purpose, which is to explain how judicial review operates as a legal guarantee of constitutional supremacy and the rule of law.

3. Results

3.1 Nature and Constitutional Function of Judicial Review

The analysis shows that judicial review of the constitutionality of laws is a legal mechanism designed to prevent ordinary legislation from contradicting the constitution. Its core function is to preserve the superior status of constitutional rules and to ensure that legislative and executive authorities act within the competencies and limits established by the constitutional order. Judicial review is particularly meaningful in systems with rigid constitutions, because constitutional rules cannot be altered through the same procedures used for ordinary legislation. [11], [12]

The hierarchy of legal norms produces a direct consequence: lower legal rules must conform to superior rules both procedurally and substantively. Constitutional review provides an institutional response when this hierarchy is disturbed by legislation that exceeds constitutional limits. Depending on the system, the reviewing body may refuse to apply the unconstitutional rule, suspend its enforcement, issue a declaratory judgment, or annul it with general effect. [13], [14]

A further result is that judicial review performs a rights-protective function. Constitutional supremacy would have limited practical value if state institutions could disregard constitutional guarantees without an effective remedy. Judicial review therefore connects the formal hierarchy of norms with the substantive protection of individual rights and freedoms and with the broader principle that all public authorities are subject to law. [15], [16]

3.2 Historical Development and the Supremacy of the Constitution

The historical analysis identifies the United States as one of the earliest and most influential settings in which judicial review developed. Before the establishment of the federal constitutional system, colonial and state courts had already confronted conflicts between local enactments and superior legal instruments. These experiences contributed to the idea that courts could refuse to apply legislation inconsistent with a higher legal norm. The later development of judicial review transformed this practice into a central feature of constitutional adjudication. [17], [18]

The study also finds that the early resistance to judicial review was closely connected to the doctrine that legislation represented the general will and therefore should not be controlled by another institution. Modern constitutional theory, however, rejects unlimited legislative supremacy in systems governed by a superior constitution. Where the constitution is legally binding on the legislature, an institution must be able to determine whether ordinary laws remain within constitutional boundaries.

3.3 Organization of Judicial Review

Comparative systems organize judicial review through two principal institutional models. In decentralized or diffuse review, courts at different levels may examine the constitutionality of legislation when constitutional questions arise in ordinary disputes. In concentrated review, constitutional adjudication is assigned to a single supreme or specialized judicial body. The diffuse model integrates constitutional review into ordinary adjudication, whereas the concentrated model seeks institutional consistency by centralizing final constitutional authority. [19], [20]

The choice between diffuse and concentrated review affects access, uniformity, and the legal effect of decisions. Diffuse review permits constitutional questions to arise across a wide range of cases, but decisions may initially have limited effect beyond the parties. Concentrated review can produce more authoritative and generally binding constitutional judgments, but access normally depends on the procedures and standing rules established for the constitutional court.

The analysis further shows that constitutional systems differ in determining who may initiate review. Some permit individuals with a direct interest to raise constitutional claims, while others reserve the right to particular public authorities or require a constitutional question to emerge from a pending dispute. These standing rules are important because the practical effectiveness of constitutional review depends not only on the existence of a reviewing court but also on the ability of constitutional questions to reach it.

3.4 Powers and Remedies of Constitutional Reviewing Bodies

Four major remedial powers emerge from the comparative analysis. First, a court may refuse to apply an unconstitutional law in the case before it without formally annulling the law. Second, some systems allow courts to issue injunctions or judicial orders preventing enforcement where unconstitutional application would cause harm. Third, courts may issue declaratory judgments determining whether a law conforms to the constitution. Fourth, concentrated constitutional systems may empower a court to annul an unconstitutional law with general and binding effect. [21], [22], [23]

These remedies differ in intensity and legal consequence. Non-application is comparatively narrow because the law may formally remain in force, while annulment removes the legal rule from the system and normally prevents renewed application. Injunctions focus on preventing or correcting enforcement, whereas declaratory judgments clarify constitutional status without necessarily requiring a separate enforcement command. The appropriate remedy therefore depends on the constitutional structure and the authority assigned to the reviewing court.

3.5 Principal Forms of Judicial Review

The study identifies two principal procedural forms. Review by original action, often associated with annulment review, permits an authorized person or institution to challenge legislation directly before the competent constitutional court. If the law is found unconstitutional, the judgment may have

general effect and remove the law from the legal order. This model emphasizes direct constitutional protection and the unification of constitutional interpretation. [24]

By contrast, review through a plea of unconstitutionality is defensive and incidental. A constitutional issue arises within an existing civil, criminal, administrative, or other dispute, and a party argues that the law intended to govern the case conflicts with the constitution. The court may then refrain from applying the law or refer the constitutional question to the competent constitutional body, depending on the national system. This form preserves the connection between constitutional review and a concrete legal controversy. [25], [26]

The comparison indicates that neither form is universally superior. Original actions provide a direct route to eliminating unconstitutional legislation, while incidental review allows constitutional protection to operate through ordinary litigation. Their effectiveness depends on standing rules, access to justice, the independence of the reviewing institution, the binding force of decisions, and the availability of remedies capable of preventing unconstitutional laws from producing continuing effects.

3.6 Judicial Review in the Iraqi Constitutional Context

Within the Iraqi constitutional framework, judicial review is associated with the Federal Supreme Court as an independent constitutional institution. The 2005 Constitution assigns the Court jurisdiction over the constitutionality of laws and regulations in force and gives its decisions binding authority. This arrangement reflects the concentrated model of constitutional review and places the Court at the center of the institutional protection of constitutional supremacy. [27]

The Iraqi experience also demonstrates that formal constitutional jurisdiction is only one component of effective review. The practical credibility of constitutional adjudication depends on the independence of judges, transparent and legally grounded appointment arrangements, protection from external influence, professional competence, and institutional conditions that permit the Court to decide politically sensitive constitutional disputes according to law.

4. Discussion

The results confirm that judicial review should be understood as an institutional bridge between constitutional supremacy and the practical rule of law. A constitution may formally occupy the highest position in the legal system, but this superiority becomes operational only when a competent institution can identify and remedy conflicts between ordinary legislation and constitutional rules. In this sense, judicial review transforms constitutional supremacy from an abstract doctrine into an enforceable legal principle. This interpretation is consistent with constitutional-law scholarship emphasizing the hierarchical organization of legal norms and the need for effective guarantees against legislative excess [1], [4], [11], [14].

The comparison between diffuse and concentrated review also demonstrates that constitutional design involves a trade-off between broad judicial access and centralized interpretive authority. Diffuse review allows constitutional arguments to arise naturally within ordinary litigation and can make rights protection more accessible. Concentrated review, however, can reduce conflicting interpretations and give constitutional judgments a clearer system-wide effect. The decisive issue is therefore not simply which model is chosen, but whether the model creates predictable procedures, meaningful access, and authoritative outcomes [17]-[20].

The distinction between original actions and pleas of unconstitutionality reinforces the same point. Annulment review is capable of removing unconstitutional legislation with general effect, which strengthens legal certainty and prevents repeated application of an invalid norm. Incidental or abstention review is more closely connected to concrete disputes and may protect litigants without requiring the judiciary to invalidate legislation in the abstract. Both approaches can support the rule of law when courts are independent and when their constitutional reasoning is respected by other state institutions [24]-[26].

The remedial dimension is equally important. A constitutional court that can declare a norm unconstitutional but cannot prevent its enforcement may provide only incomplete protection. Conversely, strong remedial powers without institutional independence can create concerns about politicization. The comparative discussion of non-application, injunctions, declaratory judgments, and annulment shows that the legitimacy of constitutional review depends on combining effective

remedies with procedural safeguards, reasoned judgments, and judicial restraint appropriate to the constitutional structure [20]-[23].

For Iraq, the constitutional assignment of review powers to the Federal Supreme Court represents an important legal guarantee, but institutional design must be supported by credible safeguards of independence. The recommendations emerging from the source analysis therefore emphasize transparent selection procedures, protection of members from improper influence, security of tenure, professional competence, and a composition capable of strengthening public confidence in constitutional adjudication. These considerations are particularly significant because constitutional decisions often concern disputes involving the highest political institutions and the distribution of public power [27].

Finally, the relationship between judicial review and rights protection should not be treated as secondary. The rule of law is not exhausted by formal compliance with constitutional procedures; it also requires public power to remain consistent with constitutionally protected rights and freedoms. Judicial review is therefore most valuable when it simultaneously preserves institutional boundaries, protects individuals, and reinforces the principle that no public authority stands above the constitution [6], [15], [16].

5. Conclusion

This study concludes that judicial review of the constitutionality of laws is one of the most important legal guarantees for maintaining constitutional supremacy and the rule of law. Its principal value lies in subjecting ordinary legislation to a higher constitutional standard and in providing a judicial mechanism capable of preventing, disregarding, suspending, declaring, or annulling laws that exceed constitutional limits. The comparative analysis shows that both diffuse and concentrated systems can perform this function, although they differ in access, institutional structure, the legal effect of judgments, and the remedies available.

The findings also show that the effectiveness of constitutional review cannot be assessed only by the formal existence of a constitutional court or judicial power. Effective review requires judicial independence, neutrality, legal competence, reasoned decisions, accessible procedures, and sufficient authority to ensure compliance with constitutional judgments. These institutional characteristics enable judicial review to protect rights and freedoms, preserve the hierarchy of legal norms, and restrain legislative or executive action that conflicts with the constitution.

In Iraq, the constitutional role of the Federal Supreme Court provides an essential framework for constitutional control. Strengthening this framework requires continued attention to the independence and composition of the Court, transparent and legally credible procedures for selecting its members, protection against external influence, security of tenure, and institutional arrangements that reinforce the authority and legitimacy of constitutional judgments. Consideration should also be given to ensuring inclusive representation and sufficient judicial capacity to address the significance and complexity of constitutional disputes.

Accordingly, judicial review should be understood not merely as a technical mechanism for resolving conflicts between legal norms, but as a structural guarantee of constitutional government. When supported by independent institutions and effective remedies, it reinforces legality, protects constitutional rights, promotes accountability, and ensures that the constitution remains the supreme legal rule governing all public authorities.

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