

The Extent of Compatibility Between Constitutional Rules and the General Principles of the Constitution

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ABSTRACT

This study analyzes the compatibility of rules of constitutional law with fundamental principles of the constitution and considers "the constitution" as a root source of all laws in the legal system. It is also highlighted that principles such as the rule of law, separation of powers and the safeguarding of rights and freedoms are an integral part of the constitutional system. The legal vehicle through which these principles are reduced to obligatory norms is the constitutional norm. The research points out that the agreement between norms in the constitution and rules written by legislation make for legal balance and help to prevent misuse of authority. This compatibility reinforces independence of the judiciary and ensures respect for fundamental rights, On the other hand, examples of incompatibilities statutes and/or administrative decisions that disregard constitutional principles. Such conflicts can have constitutional.

Keywords:

INTRODUCTION

The constitution is the supreme legal act, which determines the organisation of government, distribution of powers among state bodies and protection of individual liberties, It also lays down the essential values underlying state rule and legislation, such as the rule of law, legal protection, equality and rights. However, individual constitutional norms can in some cases stray from these general principles and pose possible legal or political problems.

Significance of the Study

The purpose of this research is to determine the relation between constitutional rules and general principles of constitution and their conformity in practice. It then considers how this alignment affects fundamental values, including the rule of law branch and its branches (in separation powers sense), social justice, equality and due respect for individual rights/freedoms. Such a match would foster fairness and stability in the state.

Reasons for Choosing the Topic

The reasons for selecting the subject are:

1. The researcher's concern to study political systems and compare them within the Arab or international framework.

1. The ambition of studying the impact of adherence to constitutional rules upon individual freedoms, distribution of power and the normative value of ordinary laws.
2. The belief that actualizing constitutionalism is the real measure of distinction between democracy on the one hand and autocracy or a police state on the other hand.

Objectives of the Research

1. To consider the place of constitutional principles as they pertain to constitutional rules and assess their coherence.
2. To Distinguish cases where normal laws are in conflict with constitutional provisions and examine their repercussions on Rule of Law, judgements and governance.
3. To draw conclusions and to propose measures which secure fair, constitutionally sound legislation in the interest of justice, equality and good constitutional practice.

Research Problem

What this study is concerned with and largely exclusively so is the confrontation created when run of the mill legislation comes into conflict with a constitution, or guiding constitutional principles. These ambiguities become barriers to judicial enforcement, leading courts including constitutional or supreme courts to take up and resolve claims of unconstitutionality in the way that is normatively expected within many legal systems as a part of constitutional oversight.

Research Questions

A number of guiding questions emerged throughout this research:

1. How can this method help to identify accord or discord between provisions in the constitution and "everyday" laws?
2. How does this approach differ from, say, historical or comparative analysis?
3. Will the study focus on specific constitutional texts or practices in different jurisdictions?
4. Are court holdings to be employed as proof of constitutional crises?
5. Will the inquiry fix simply on what the Constitution says, or also on judicial and scholarly readings?

Research Plan

Due to the significance of this study and its varied legal questions, there are generally three main segments in this report:

The First Part: Constitutional Rules -The General Principles of the Constitution.

Section II: The Interplay of Constituted Rules and the Basic Values of the Constitution.

The Third Section: The Influence of National Laws Compatible or Incompatible with the Constitutional Principles on Legal Order.

In sum, the investigator recognizes that this analysis concerns a crucial and delicate area, which involves technical and theoretical complexity. We hope that this research has contributed, if only in a modest sense, to our understanding of online discussion forums.

Chapter One

The Concept of Constitutional Rules and the General Principles of the Constitution

Constitutional law is considered a branch of law that deals with the legal rules regulating state authority and delineating its exercise of power (1) The constitution represents the apex of the legislative hierarchy within the state, from which the law derives its rules. Together, they establish a set of general principles that preserve the stability of the state while safeguarding the rights and freedoms of individuals.

From this standpoint, the researcher divides this chapter into two sections:

- **Section One:** The Concept of Constitutional Rules.

- **Section Two:** The Concept of the General Principles of the Constitution.

¹ (Sarour, Ahmed Fathi. *Constitutional Legitimacy and Human Rights in Criminal Procedures*. Dar Al-Nahda Al-Arabiya, Cairo, 1995, p. 36

Section One

The Concept of Constitutional Rules

In the nineteenth century, legal scholars began to regard constitutional law as a discipline focused on the study of constitutions in liberal states. During this period, certain transformations took place such as the abolition by Napoleon III of the chair of constitutional law following the coup of 1851 which reflected the political shifts influencing the study of this field (2). With the advent of the French Third Republic (1870–1940), the teaching of this subject was reinstated on the centenary of the French Revolution (3).

From this historical background, it can be inferred that constitutional law evolved to encompass the study of liberal systems. However, relying solely on historical considerations to formulate a comprehensive and precise definition applicable to all states would be problematic; thus, the definition of constitutional law must be objective and neutral.

Definition of Constitutional Rules

Constitutional rules are the set of legal norms that define the form of the state and its political system, regulate relations between authorities, and establish the rights and duties of individuals (4).

From this definition, it becomes clear that constitutional rules determine the nature and political orientation of the state whether it is democratic, authoritarian, or a police state.

Characteristics of Constitutional Rules

Constitutional rules possess distinctive features that differentiate them from other legal norms, the most significant of which include:

1. Supremacy: (5)

Constitutional rules are considered the highest laws within the state, and no other law may contradict them. This principle is known as the supremacy of the constitution, meaning that all laws and legislation must conform to constitutional provisions. Any law contrary to the constitution is deemed unconstitutional and void. To enforce this principle, the Supreme Constitutional Court in Egypt was established, vested with the authority to review the constitutionality of laws and legislation, ensuring their consistency with constitutional provisions.

2. Stability:

Constitutional rules are characterized by durability and infrequent amendment, as their modification is subject to special procedures. Amending the constitution in Iraq, for example, is a highly complex matter. There appear to be two methods of constitutional amendment:

-The first method:

Amendment under Article 142 of the Iraqi Constitution (6), although this mechanism expired four months

(2) (Fawzi, Salah El-Din. *The Encyclopedia of Political Systems and Constitutional Law*. Dar Al-Nahda Al-Arabiya, Cairo, 1995, p. 123.

(3) Darwish, Mohamed Ibrahim. *Constitutional Law*. 4th ed., Dar Al-Nahda Al-Arabiya, Cairo, 2011, p. 165.

(4) Al-Shaer, Ramzy Taha. *The General Theory of Constitutional Law*. Dar Al-Nahda Al-Arabiya, Cairo, 1983, p. 183.

(5) Amer, Hamdy Atiya Mostafa. *Protection of Human Rights and Fundamental Public Freedoms*, previously cited reference, pp. 176–177.

(6) Article 142 of the Iraqi Constitution provides:

First: At the beginning of its work, the Council of Representatives shall form a committee from among its members that represents the main components of Iraqi society. Its task is to submit a report to the Council of Representatives, within a period not exceeding four months, containing recommendations for the necessary amendments that may be made to the Constitution. The committee shall be dissolved after its proposals have been decided upon.

Second: The amendments proposed by the committee shall be submitted as a single package to the Council of Representatives for voting, and shall be considered approved upon the endorsement of an absolute majority of the members of the Council.

Third: The articles amended by the Council of Representatives, in accordance with the provisions of item (Second) of this Article, shall be submitted to the people for a referendum within a period not exceeding two months from the date of approval of the amendment by the Council of Representatives.

Fourth: The referendum on the amended articles shall be deemed successful if approved by the majority of voters, provided that it is not rejected by two-thirds of the voters in three or more governorates.

Fifth: The provisions of this Article shall constitute an exception to those contained in Article (126) regarding constitutional amendments, until the process of deciding upon the amendments referred to in this Article has been completed.

after the first parliamentary term, which began in 2006. The article explicitly specified the procedure for constitutional amendment: the House of Representatives was the competent authority to propose amendments covering the entire constitution, provided that such amendments did not affect the rights of regions and were approved through a popular referendum after parliamentary approval, The amendments could not be rejected by two-thirds of the voters in three governorates.

It was clear that these three governorates referred to the Kurdistan Region governorates (Erbil, Sulaymaniyah, and Duhok) , However, the committee entrusted with constitutional amendments at that time failed to reach common ground or a unified position to present the proposed amendments to Parliament and subsequently to the public, leading to the failure of the amendment process (7).

Thus, it can be concluded that the amendment procedure under this article has expired and cannot be revived, as any amendment pursuant to it would contradict the provisions of the Iraqi Constitution and could later be annulled by the Federal Supreme Court. Although the amendment procedure under Article 142 takes precedence over Article 126, its application has become obsolete.

-The second method:

Amendment under Article 126, which is currently the only legitimate avenue available to the competent authorities to introduce constitutional reforms and respond to the demands of demonstrators, This procedure does not require the approval of two-thirds of the population in three governorates but only the passage of the amendment through a popular referendum.

Under this article (8), the amendment process may be initiated by the President of the Republic, the Prime Minister, or by one-fifth of the members of Parliament, Constitutional amendments under Article 126 are subject to two constraints:

- **First Constraint:**

The fundamental principles enshrined in Part One, the rights and freedoms contained in Part Two, and the rights of the regions stated in Article 115 may not be amended until after two consecutive electoral cycles (9), This means that amending the constitution under this article at present is quite legitimate and not inconsistent with the principles of the Iraqi Constitution. Moreover, it avoids the conditional veto provided in Article 142, which required the consent of two-thirds of the population in three governorates. Therefore, the popular referendum remains the decisive factor in whether constitutional amendments are approved.

- **Second Constraint:**

The constitutional rights granted to regions may not be altered unless the proposed amendments are first presented to the regional legislative authority, then to the Council of Representatives, and finally submitted to a popular referendum to determine public approval or rejection of the amendments (10).

Hence, there are relatively straightforward constitutional procedures available to the Constitutional Amendment Committee under Article 126 (11), but the real obstacle lies in the seriousness and will of the committee and the competent authorities particularly regarding the political behavior of Iraqi political forces and their willingness to involve constitutional law scholars, academic experts, professional associations, and civil society

(7) Mithaq Manahi Al-Issawi. *Center for Strategic Studies, University of Karbala*, November 2012.

(8) Article 126 of the Iraqi Constitution provides as follows:

First: The President of the Republic and the Council of Ministers jointly, or one-fifth (1/5) of the members of the Council of Representatives, may propose an amendment to the Constitution.

Second: The fundamental principles contained in Chapter One, and the rights and freedoms set forth in Chapter Two of the Constitution, may not be amended except after two successive electoral terms, and based on the approval of two-thirds of the members of the Council of Representatives, the approval of the people through a general referendum, and the ratification of the President of the Republic within seven days.

Third: Other articles not mentioned in item "Second" of this Article may not be amended except with the approval of two-thirds of the members of the Council of Representatives, the approval of the people through a general referendum, and the ratification of the President of the Republic within seven days.

Fourth: No amendment may be made to any provision of the Constitution that would diminish the powers of the regions which are not within the exclusive jurisdiction of the federal authorities, except with the approval of the legislative authority of the concerned region and the consent of the majority of its population through a general referendum.

Fifth:

(a) The amendment shall be deemed ratified by the President of the Republic upon the expiry of the period specified in items "Second" and "Third" of this Article.

(b) The amendment shall enter into force from the date of its publication in the Official Gazette.

(9) Article 115 of the Iraqi Constitution provides that:

"All powers not stipulated as exclusive to the federal authorities shall be the powers of the regions and governorates that are not organized in a region. With regard to the shared powers between the federal government and the regions, the priority shall be given to the law of the regions and the governorates that are not organized in a region in case of a conflict between them."

(10) Waleed Mohammed Al-Shubaybi. *The Successive Iraqi Constitutions: 1876–2005*. Sabah Legal Library for Publishing and Distribution, Baghdad, 2019, p. 254.

(11) M. Mithaq Manahi Al-Issawi, previously cited reference

organizations in the amendment process, independent of the dominance of political parties controlling the Iraqi political scene.

Consequently, the constitutional dilemma of amendment is essentially a political problem rather than a constitutional one, since the aforementioned articles clearly and explicitly define the mechanisms for amending the Iraqi Constitution.

3. Comprehensiveness

Constitutional rules encompass all aspects of political life, including electoral rights, representative assemblies, and the parliamentary role and its influence on government. They also regulate the distribution of powers between the executive and legislative branches, define the state's economic activities, and establish the principle of transparency with its citizens (12).

Second Section

The Concept of General Principles of the Constitution

Constitutions, despite their differing philosophies, affirm a set of fundamental principles that the state, through all its authorities, must adhere to and comply with. Despite the diversity of these principles, they include some general and main principles that constitute the basic pillars for building a legal state and enhance respect for the public rights and freedoms of individuals. (13)

By constitutional principles, it is meant the fundamental constitutional principles, which represent the core values and concepts upon which the constitution is based, reflecting the philosophy and objectives of the state. (14)

These principles are considered important constitutional guarantees that ensure a balance between the public interest of society and the protection of the rights and public freedoms of individuals, These principles typically encompass the following:

- **Principle of Sovereignty:** affirms that ultimate authority rests with the people, granting them the right to enact and enforce laws free from external influence, In democratic systems, sovereignty belongs to the people; they are the source of authority, meaning that all state institutions derive their legitimacy from the will of the people. The people exercise their sovereignty through free elections, referendums, and political participation in decision-making. (15)

Internal sovereignty is represented by the state's authority over its territory and population without interference from any other entity, including the right to enact laws, implement policies, and enforce justice. External sovereignty is represented by the independence of the state in its international relations and its freedom from foreign authority, such as the right to enter treaties, join international organizations, and defend its national interests. (16)

Most constitutions affirm that the people are the source of authority, meaning the government acts on behalf of and for the benefit of the people. No authority may override the will of the people or govern without legitimacy. Powers are distributed to achieve the public interest while ensuring oversight and accountability. Thus, popular sovereignty is the essence of democracy, as citizens have the right to choose their rulers and participate in political decision-making. (17)

(12) Al-Jarf, Tuaima. *The General Theory of Constitutional Law and the Development of the Political and Constitutional System in Contemporary Egypt*. 2nd ed., Dar Al-Nahda Al-Arabiya, Cairo, 2001, p. 135.

(13) Nassar, Gaber Gad: *Al-Waseet fi Al-Qanoun Al-Dustouri* [The Medium in Constitutional Law], Cairo University Press, 2005, p. 24.

(14) Al-Sharqawi, Suad: *Nasheyat Al-Hurriyat Al-'Ammah wa In'ikasatiba 'Ala Al-Tanzim Al-Qanuni* [The Relativity of Public Freedoms and Its Reflections on Legal Regulation], Dar Al-Nahda Al-Arabiya, Cairo, 1979, p. 29.

(15) Surur, Ahmad Fathi: *Al-Shar'iyya Al-Dusturiya wa Huquq Al-Insan fi Al-Ijra'at Al-Jinaiya* [Constitutional Legitimacy and Human Rights in Criminal Procedures], previous reference, p. 176.

(16) Al-Abbasi, Mohamed Khaled Mohamed: *Al-Mabadi' Al-Dusturiya wa Al-Qanuniya ka Daman li Huquq Al-Insan fi Muwajahat Ijra'at Mukafabat Al-Irbab* [Constitutional and Legal Principles as a Guarantee for Human Rights in Facing Anti-Terrorism Measures], research published at Faculty of Law – Menoufia University, p. 159, available at:

https://jslem.journals.ekb.eg/article_212444_14b3b2c4034881f811c4fc4514477c3e.pdf

Accessed on 10/2/2025.

(17) Mustafa, Mohamed: *Al-Dabt Al-Ijtimai fi Al-Islam* [Social Control in Islam], published in *Adva'a Al-Shari'a* Journal, Issue 5, Riyadh, 2004, p. 163.

• **Principle of Rights and Freedoms:** Most constitutions, including the Constitution of the United Arab Emirates and the 2014 Egyptian Constitution, address public freedoms and guarantee their protection. However, they do not provide a specific definition, as public freedoms are broad and evolving concepts that vary in interpretation according to the political, social, and cultural context of each state. Instead of providing a strict definition, constitutions often list the most important rights and freedoms that must be protected, such as freedom of opinion and expression, freedom of movement, freedom of belief, among others, leaving their interpretation to the judiciary and lawmakers according to different contexts. (18)

Public rights and freedoms have several characteristics that make them fundamental to the life of individuals and societies, including:

- **Universality and Inclusiveness:** Public rights and freedoms are granted to all individuals without discrimination based on gender, race, religion, or social status. (19) These are rights shared by all humans by virtue of their humanity.
- **Universal Nature:** They are recognized by most states and international organizations, such as the United Nations, and are considered fundamental human rights principles, reflected in international charters such as the Universal Declaration of Human Rights. (20)
- **Inalienability:** Public freedoms cannot be waived, sold, or relinquished for any reason; they are inherent to the individual.
- **Restriction of Public Interest:** Public order, security and morality are reasonable restrictions to which the exercise of one's rights may be subjected. (21)
- **Individual Society Balance:** protects individual freedoms alongside the needs of society and prevents behaviours that breach others' rights.. (22)
- **Legal and Constitutional Protections:** such rights are guaranteed by supranational and national laws that would prevent their violation by private individuals or governments (23)
- **Separation of Powers:** created to prevent too much power in one leader, preventing tyranny or abuse. (24)

The principle of the separation of powers is a cornerstone of contemporary democratic governance. That is, the functions of government are divided among three separate agencies: Those that have the general power to make the laws (the legislature); those who have the power to execute the laws (the executive); and those who have the power to interpret the laws in case of disputes (judiciary) (25)

This principle relates to the prevention of tyranny and establishment of equilibrium in the exercise of power, so that no single agent shall have possession of all the powers, protecting public rights and freedoms (26) , Each monitor the Other to its own protection, so that neither may abuse or take advantage of its power , (27) For example, the parliament can question the government and expresses formally about confidence if it abuses its powers, this serves to make decisions procedures transparent and ensuring a single decision maker not have any critical decisions has without its over sight. For example laws, and the general budget are sent for discussion to the legislative power and the people. (28)

(18) Al-Jamal, Yahya: *Al-Nizam Al-Dustouri fi Misr* [The Constitutional System in Egypt], Dar Al-Nahda Al-Arabiya, Cairo, 1974, p. 142.

(19) Jalmi, Mahmoud: *Al-Mabadi' Al-Dusturiya Al-'Amma* [General Constitutional Principles], Dar Al-Fikr Al-Arabi, Cairo, 1994, p. 342.

(20) Al-Jarf, Ta'ima: *Nazariyat Al-Dawla wa Al-Usus Al-'Amma li Al-Tanzim Al-Siyasi* [Theory of the State and General Foundations of Political Organization], Dar Al-Nahda Al-Arabiya, Cairo, 1964, p. 470.

(21) Al-Sharqawi, Suad: *Nasbayat Al-Hurriyat Al-'Ammah wa In'ikasatiba 'Ala Al-Tanzim Al-Qanuni* [The Relativity of Public Freedoms and Its Reflections on Legal Regulation], previous reference, p. 273.

(22) Sbarini, Ghazi Hassan: *Al-Wajeez fi Huquq Al-Insan wa Hurriyatih Al-Asasiya* [A Concise Guide to Human Rights and Fundamental Freedoms], Dar Al-Thaqafa Library, 2nd ed., Amman, 1997, p. 21.

(23) Al-Bahri, Hassan Mustafa: *Al-Raqaba Al-Mutabadala bayn Al-Sultatayn Al-Tashri'iya wa Al-Tanfidiyya ka Daman li Nijadh Al-Qa'ida Al-Dusturiya: Dirasah Muqaranah* [Mutual Oversight Between the Legislative and Executive Authorities as a Guarantee for the Implementation of the Constitutional Rule: A Comparative Study], PhD thesis, Faculty of Law, Ain Shams University, 2006, p. 36.

(24) A. Hassina Shroun, A. Abdel Halim Bin Mishri: *Mabda' Al-Fasl Bayn Al-Sultat Bayn Al-Nizamin Al-Barlamani wa Al-Ra'isi* [The Principle of Separation of Powers Between Parliamentary and Presidential Systems], Mohamed Khider University, Biskra – published in *Al-Ijtihad Al-Qada'i* Journal, Issue 4, p. 190.

(25) Basyuni, Abdelghani Abdelilah: *Al-Nuzum Al-Siyasiyya wa Al-Qanun Al-Dustouri* [Political Systems and Constitutional Law], Al-Ma'arif Publishing, Alexandria, 1997, p. 192.

(26) Abaza, Ibrahim Desouki & Abdelaziz Al-Ghannam: *Tarikh Al-Fikr Al-Siyasi* [History of Political Thought], Dar Al-Najah, Beirut, 1973, p. 226 and following.

(27) Zuhair Shukr: *Al-Waseet fi Al-Qanun Al-Dustouri, Al-Qanun Al-Dustouri wa Al-Mu'assasat Al-Siyasiyya, Volume 1* [The Medium in Constitutional Law, Constitutional Law and Political Institutions, Vol. 1], University Institution for Studies, Publishing and Distribution, 3rd ed., Lebanon, 1994, p. 174.

(28) Salman, Abdelaziz: *Al-Dawla Al-Qanuniyya wa Raqabat Al-Dusturiyya* [The Rule of Law and Constitutional Review], *Al-Dusturiyya* Journal, Issue 16, October 2009, p. 69 .

Chapter Two

The Relationship Between Constitutional Rules and the General Principles of the Constitution

The relationship between constitutional rules and the general principles of the constitution is a complementary one, where the general principles of the constitution form the foundation upon which constitutional rules are built, while constitutional rules work to embody these principles in legally binding texts.

The general principles of the constitution, as previously explained, represent the intellectual and value based foundations upon which the state's constitutional system is based. From this perspective, the researcher will clarify them in two sections, The first section addresses cases of alignment between the rules and the general principles of the constitution, while the second section discusses cases of misalignment between the rules and the general principles, as follows:

- **Section One:** Cases of alignment between constitutional rules and the general principles of the constitution.
- **Section Two:** Cases of misalignment between constitutional rules and the general principles of the constitution.

Section One

Cases of Alignment Between Constitutional Rules and the General Principles of the Constitution

Alignment between constitutional rules and the general principles of the constitution occurs when constitutional rules are a true reflection of the fundamental constitutional principles, translating these principles into legally binding texts applicable in reality. Some cases in which this alignment occurs include:

- **Constitutional application of the principle of the rule of law:**

The general principle is the supremacy of law, where the constitution must include explicit provisions clearly expressing the constitutional principles. This means that all individuals and institutions, including the governing authorities, are subject to the law, and that constitutional texts define the principle of equality before the law, judicial independence, and mechanisms for oversight and accountability against any violations of laws.

(29)

Moreover, constitutional texts must be specific and enforceable, leaving no wide scope for interpretation (30) that may lead to their violation. The Supreme Constitutional Court or the Constitutional Council, whichever is competent, monitors the conformity of laws and governmental decisions with the constitution (31), and ordinary courts are also granted the right of constitutional review over laws to ensure they do not violate the constitution, enabling citizens to challenge the unconstitutionality of laws that violate their rights or constitutional principles through preliminary objections raised by any party to the judicial case, provided the objection is serious. (32)

- **Constitutional application of the principle of separation of powers:**

Democratic systems are based on distributing powers among the legislative, executive, and judicial authorities to prevent tyranny. Therefore, texts have been established defining the competencies of each authority, such as the parliament's powers in legislation, the government's powers in executing laws, and the judiciary's independence from other authorities. (33)

- **Constitutional application of the principle of protecting rights and freedoms:**

Freedoms such as freedom of expression (34) and freedom of the press are fundamental guarantees provided by the constitution for human rights, with constitutional provisions ensuring freedom of opinion and expression and preventing arbitrary detention.

(29) In Iraq, the Supreme Federal Court exclusively undertakes a number of tasks stipulated in the Iraqi Constitution of 2005, most notably the judicial review of the constitutionality of laws and regulations, in accordance with Article 93 of the Constitution.

Article 25 of the Egyptian Supreme Constitutional Court Law No. 48 of 1979 states that: "The Supreme Constitutional Court exclusively undertakes the following: First: judicial review of the constitutionality of laws and regulations."

(30) Al-Ayyash, Ghazi Obeid, *The Constitutional Limits of Individuals' Right to Assembly: An Analytical Study of the Position of the Kuwaiti Constitutional Court*, Kuwait Global Law Journal, Year 4, Issue 13, March 2006, pp. 277–278.

(31) Darwish, Mohamed Ibrahim, *Constitutional Law*, Dar Al Nahda Al Arabia, Cairo, 2004, p. 696 and following.

(32) Article 19 of the Universal Declaration of Human Rights provides that: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers."

(33) Article 33 of the Iraqi Constitution of 2005 provides: First, every individual has the right to live in a healthy environment; Second, the state guarantees the protection of the environment and biodiversity, and the right to academic freedom.

(34) Article 34 of the same constitution states: First, education is a fundamental factor for societal progress and a right guaranteed by the state, which is compulsory at the primary level, and the state ensures combating illiteracy; Second, free education is a right for all Iraqis at various levels; Third, the state encourages scientific research for peaceful purposes benefiting humanity, and supports excellence, creativity, innovation, and all forms of talent; Fourth, private and community education is guaranteed and regulated by law.

- **Constitutional application of the principle of social justice:**

The general principle is to achieve social justice through fair distribution of wealth and ensuring equal opportunities for all citizens. Accordingly, provisions have been included that mandate the provision of basic services, such as education and healthcare for everyone, and establish economic policies that achieve justice in resource distribution. ⁽³⁵⁾

Section Two

Cases of Misalignment Between Constitutional Rules and the General Principles of the Constitution

Misalignment between legal rules and the general principles of the constitution may occur in several cases, including:

- **Violation of the constitution by ordinary laws:**

This occurs when the legislative authority enacts a law that conflicts with constitutional principles, such as a law that violates the principle of equality or fundamental rights and freedoms.

- **Example:** Racial segregation laws in South Africa (Apartheid) between 1948 and 1994, where the South African government adopted the apartheid system, imposing strict racial segregation in all aspects of life, including education, housing, and employment. ⁽³⁶⁾

Another example is the Jim Crow laws in the United States, from the late 19th century until the mid-20th century, which enforced racial segregation in southern states, leading to systematic discrimination against African Americans in areas such as education, voting, and public facilities.

- **Conflict between administrative regulations/decisions and the constitution:**

This occurs when the executive authority issues decisions or regulations that violate constitutional provisions or exceed constitutional limits. An example is a decision banning peaceful demonstrations, despite the constitution guaranteeing this right.

- **Judicial authority exceeding constitutional principles:**

This occurs when judicial rulings do not conform to constitutional principles, such as justice and the right to a fair trial. National constitutions vary from one country to another in guaranteeing the right to protest, but most ensure this right. For example:

The Iraqi Constitution of 2005, Article 38, guarantees that the state, without violating public order or morals:

1. Freedom of opinion by all means,
2. Freedom of the press, printing, advertising, media, and publishing,
3. Freedom of assembly and peaceful demonstration, regulated by law.

An example of judicial misalignment is a ruling issued without guaranteeing the defendant's right to defend themselves. ⁽³⁷⁾

⁽³⁵⁾ Article 46 of the Egyptian Constitution of 2014, amended in 2019, states: "Everyone has the right to a healthy and sound environment, and its protection is a national duty. The state shall take the necessary measures to preserve it, prevent harm to it, and ensure the rational use of natural resources in a manner that achieves sustainable development and guarantees the rights of future generations."

Accessed on 12/2/2025 via: <https://aawsat.com/home/article/3379986/>

Available at: Accessed on 12/2/2025 via: <https://www.ajnet.me/encyclopedia/2022/11/13>

⁽³⁶⁾ Peaceful assembly is considered a fundamental right guaranteed in many constitutions and international instruments, including:

- Universal Declaration of Human Rights 1948, Article 20: "Everyone has the right to freedom of peaceful assembly and association."

- International Covenant on Civil and Political Rights 1966, Article 21: "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security, public safety, public order, public health or morals, or the protection of the rights and freedoms of others."

National constitutions vary in guaranteeing the right to protest, but most recognize this right. For example:

- Iraqi Constitution 2005, Article 38: The state guarantees, without prejudice to public order and morals: First, freedom of opinion by all means; Second, freedom of the press, printing, advertising, media, and publication; Third, freedom of peaceful assembly and demonstration, organized by law.

- *Guarantee of the Right of Defense in International Instruments:*

- Universal Declaration of Human Rights 1948, Article 10: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."

- *Guarantee of the Right of Defense in National Constitutions:*

- Iraqi Constitution 2005, Article 19: "... Second: No crime nor penalty except by law. No penalty shall be imposed except for the act considered a crime by law at the time of its commission, and no harsher penalty may be applied than the penalty in effect at the time of the offense; Third: Litigation is a protected right guaranteed to all; Fourth: The right of defense is sacred and guaranteed at all stages of investigation and trial; Fifth: The accused is presumed innocent until proven guilty in a fair trial, and may not be tried again for the same charge after release unless new evidence emerges..."

⁽³⁷⁾ ()Dr. Hwamda, Ahmed Mohamed, *Contemporary Legal Issues*, Amman, Jordan: Dar Al-Hamed, 2011, First Edition, p. 176.

Section Three

The Impact of Compatibility or Incompatibility on the Legal System

The extent to which national laws conform to constitutional principles and international conventions directly affects the stability and legitimacy of the legal system. When laws are consistent with these principles, they reinforce the rule of law and the protection of rights. Conversely, when conflicts arise, they may lead to legal complications such as constitutional challenges or the non-implementation of international agreements.

From this point of view this section can be divided into two parts. I will first discuss the effect of the compatibility of constitutional rules with the general principles of the constitution on the legal system and then I will discuss the effects of the incompatibility of constitutional rules with the general principles of the constitution on the legal system, as follows:

- First Subtopic: The Effect of Harmonising Constitutional Rules with the General Principles of the Constitution of the Legal System.
- Second Subtopic: The Effect of the Incompatibility of Constitutional Rules with the General Principles of the Constitution on the Legal System.

First Subtopic

The Impact of the Compatibility of National Laws with the General Principles of the Constitution on the Legal System

When national law, the constitution, and international treaties converge, the result is:

- **Strengthening Legal Legitimacy:**

Enhancing legal legitimacy is important to guarantee compliance with the law, to bolster the rule of law, and to preserve the constitution as the supreme law of the land. This type of adjustment makes it possible for laws to work properly, with only a few modifications and/or judicial conflicts. ⁽³⁸⁾

- **Protection of Rights and Freedoms:**

This occurs when Arab constitutions explicitly safeguard fundamental rights and freedoms. For instance, Article (3) of the Universal Declaration of Human Rights ⁽³⁹⁾ stipulates that "Everyone has the right to life, liberty, and security of person." This ensures that no laws are enacted in violation of constitutionally and internationally guaranteed rights.

There must also be judicial oversight exercised by constitutional or supreme courts, allowing individuals or affected entities to challenge the constitutionality of a given law before these bodies ⁽⁴⁰⁾. Individuals may thus seek recourse to courts for effective remedies in case of rights violations. Article (8) of the Universal Declaration of Human Rights 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 constitution or by law."

Additionally, political oversight must be exercised by specialized bodies or committees within the legislative authority to review draft laws before enactment, ensuring their compatibility with the constitution.

- **Strengthening Trust in Legal and Judicial Institutions:**

Consistency in law supports judicial stability and enhances public confidence in the decisions of the courts. It means that laws are consistent with the principles of the constitution, standards internationally accepted, that are applied equitably and uniformly. Importance of this consistency for the judiciary:

Stability of the Legal Norm:

Rule of law contributes to predictability and stability of the law so that people and organizations can act knowing what the consequences of their actions will be. When the constitution secures the independence of the

⁽³⁸⁾ Al-Jarbou, Ayyoub bin Mansour. *Judicial Oversight of the Constitutionality of Regulations and Its Mechanisms (An Analytical Study of Regulatory Texts and Judicial Rulings in the Kingdom of Saudi Arabia – A Comparative Jurisprudential Study)*, *Journal of the College of Sharia and Law*, Vol. 18, No. 5, June 2024, pp. 257–258.

⁽³⁹⁾ Al-Kahwaji, Abdul Rahim. *The Concept of Rights and Public Freedoms and Their Types*, *The Legal Journal*, Faculty of Law, Cairo University – Khartoum Branch, Vol. 14, No. 4, November 2022, pp. 1267–1268.

⁽⁴⁰⁾ Al-Banna, Mahmoud Atef. *Al-Waseet fi Al-Nuzum Al-Siyasiyyah (The Intermediate in Political Systems)*, Dar Al-Fikr Al-Arabi, Mansha'at Al-Ma'arif, Alexandria, 1898, p. 118 and following.

judiciary and the right of access to the courts, taken together these guarantees serve to strengthen the protection of rights and freedoms and give them practical effect. (41)

- **Prevention of Legal Conflict:** (42)

Uniformity of law minimizes clashes between different statutes and thereby prevents confusion and promotes efficient and effective administration of the law

Second Subtopic

The Impact of the Incompatibility of National Laws with the General Principles of the Constitution on the Legal System

Divergences between the national legislation and the constitution or relevant international treaties may give rise to various legal and political issues, for instance:

Challenges of Unconstitutionality:

Unconstitutional statutes can be challenged in constitutional courts, and if found to violate the constitution, can be struck down. This serves to protect rights, ensures the separation of powers, and protects the rule of law. (43)

- *Example:* In Egypt, a law inconsistent with the constitution may be challenged before the Supreme Constitutional Court for annulment. (44)

- **Impact on International Relations:**

Forgetting international treaties can create friction and provoke punitive measures. The tensions caused by the U.S. withdrawal from the Iran Nuclear Agreement of 2018 and the rifts with European nations that remained in the deal can illustrate this. States that do not comply with International Criminal Court diktats create friction of their own. (45)

- **Weakening of the Rule of Law:**

The legal system becomes discredited and unreliable and may result in the imposition of stricter laws and legislative rights abuses. People and businesses can become paralyzed by fear or the prospect of legal entanglements and vague or contradictory laws. These can also facilitate the abuse of transparency laws. Laws directly hindering the freedom of the press and openness of a polity can impose severe disincentives on transparency. Numerous states impose severe restrictions on freedom of expression, and the press, as well as on the other media, in the name of national security, public disorder, and public disorder. (46)

In Conclusion

The Aim of legal stability is to obtain cohesion of national laws with the Constitution and international treaties. Legislative review and empowered constitutional courts can be disrespected and a negative sovereignty balance, caused by international obligations, can be maintained to further the rule of law.

Research Summary

To safeguard the rule of law and the integrity of institutions, it is essential that there be coherence between the provisions of the Constitution and the fundamental principles of the Constitution. Any clash between the precise provisions of the Constitution and the underlying fundamental principles is likely to undermine trust and adversely affect rights and liberties. For this reason, regular reviews of the Constitution, empowered constitutional courts, and an active civil society are necessary to ensure an equitable and democratically oriented system of law

(41) Judgment of the Egyptian Supreme Constitutional Court, Case No. 15 of Judicial Year 17 (Constitutional), Session of 2/12/1995.

(42) Al-Bakri, Sami. The Problem of Old Laws in the Context of Legislative Modernization, Dar Al-Fikr Al-Qanouni, 2018, p. 125.

(43) Fatima Al-Nasser. Constitutional Challenge as a Guarantee for the Protection of Rights and Freedoms, Journal of Constitutional Studies, 2021.

(44) Sami Al-Harbi. *Annulment of Unconstitutional Laws and Its Impact on the Legal System*, Arab Center for Law and Legislation, 2022.

(45) Matawe, Mohamed. *American-European Policies Toward the Iranian Nuclear Agreement: Perceptions and Interpretations*, Journal of the Faculty of Economics and Political Science, Vol. 21, No. 4, October 2020, p. 147.

(46) Al-Kilani, Abdul Rahman. *Freedom of the Media Between Constitutional Guarantees and Legislative Restrictions*, Arab Center for Media Studies, 2021.

Findings

1. Laws that violate the constitution are annulled by constitutional courts, potentially causing legislative instability.
2. Passing unconstitutional laws weakens the rule of law and may impair the independence and effectiveness of public institutions.
3. Such conflicts can produce inconsistent judicial decisions, reducing public confidence in judicial fairness and independence.
4. Not considering constitutional provisions can constrict rights such as the right to freedom of expression, or the right to access justice, which may violate the core of democracy.
5. Rising disharmony results in an increase of cases brought before the constitutional courts. This overloads the judiciary and disrupts the balance of the legislature.
6. 6. The executive may use unlawful legislation to extend its dominion, which undermines democracy and the separation of powers.
7. The existence of conflicting laws and the constitution creates legal chaos, which discourages investment, and is a trigger for political unrest.

Recommendations

1. Enhance oversight of the constitution by empowering judicial organs and other relevant organizations to review and assess the constitutionality of laws prior to enactment and permitting the judiciary to raise constitutional questions in the course of judicial proceedings.
2. Establish preventive and subsequent constitutional reviews: preventive reviews assess the constitutionality of laws before enactment and subsequent reviews allow the challenge of laws that are unconstitutional after enactment.
3. Bolster judicial independence by reinforcing the autonomy of constitutional and judicial bodies to deliver unbiased decisions and shielding judges from political pressures during the review of legislation.
4. Systematic and continual legislative reforms should be done through specialized committees that evaluate and revise obsolete laws to be consistent and conform to the constitution especially to the bill of rights.
5. Legislation should be drafted and formulated with the active engagement and participation of civil society and other stakeholders in the law-making process should be released for public discourse prior to formal adoption by the relevant organs.
6. Increase engagement and constitutional training of public officials and legislators to enhance knowledge and understanding of the constitution and integrate constitutional law courses in the curriculum of higher education institutions to promote law literacy.
7. Strengthen the mechanisms of constitutional review by streamlining the processes, removing judicial and administrative blockages, and speeding up the review process to eliminate unconstitutional laws without delay.

These aim to enhance the predictability and stability of law, reinforce public trust in the law and the institutions that create and uphold it.

REFERENCES

- Arabic References:

1. Abaza, Ibrahim Desouki, & Al-Ghannam, Abdul Aziz. *The History of Political Thought*, Dar Al-Najah, Beirut, 1973, p. 226.
2. Al-Bahri, Hassan Mostafa. *Mutual Oversight Between the Legislative and Executive Authorities as a Guarantee for the Implementation of Constitutional Rules: A Comparative Study*, Ph.D. Dissertation, Faculty of Law, Ain Shams University, 2006.
3. Bassiouni, Abdel Ghani Abdel Latt, *Political Systems and Constitutional Law*, Mansha'at Al-Maaref, Alexandria, 1997.
4. Al-Bakri, Sami. *The Problem of Old Laws in the Context of Legislative Modernization*, Dar Al-Fikr Al-Qanouni, 2018.
5. Al-Banna, Mahmoud Atef. *Al-Waseet fi Al-Nuzum Al-Siyasiyyah (The Intermediate in Political Systems)*, Dar Al-Fikr Al-Arabi, Mansha'at Al-Maaref, Alexandria, 1898.
6. Al-Jarf, Tuaima. *Theory of the State and the General Foundations of Political Organization*, Dar Al-Nahda Al-Arabiya, Cairo, 1964.
7. Al-Jarf, Tuaima. *The General Theory of Constitutional Law and the Development of the Political and Constitutional System in Contemporary Egypt*, 2nd ed., Dar Al-Nahda Al-Arabiya, Cairo, 2001.
8. Al-Jammal, Yehia. *The Constitutional System in Egypt*, Dar Al-Nahda Al-Arabiya, Cairo, 1974.

9. Al-Harbi, Sami. *Annulment of Unconstitutional Laws and Its Impact on the Legal System*, Arab Center for Law and Legislation, 2022.
10. Sorour, Ahmed Fathi. *Constitutional Legitimacy and Human Rights in Criminal Procedures*, Dar Al-Nahda Al-Arabiya, Cairo, 1995.
11. Al-Sabbarini, Ghazi Hassan. *The Concise Book on Human Rights and Fundamental Freedoms*, 2nd ed., Dar Al-Thaqafa Library, Amman, 1997.
12. Al-‘Asseili, Abdel Hay Hassan. *Public Freedoms in Political Thought and the Islamic Political System*, Dar Al-Fikr Al-Arabi, Cairo, 1974.
13. Al-Attar, Fouad. *Political Systems and Constitutional Law*, Dar Al-Nahda Al-Arabiya, Cairo, 1973.
14. Fawzi, Salah El-Din. *Al-Muheet fi Al-Nuzum Al-Siyasiyyah wa Al-Qanoun Al-Dostouri (Comprehensive Study on Political Systems and Constitutional Law)*, Dar Al-Nahda Al-Arabiya, Cairo, 1995.
15. Kamel, Fouad. *The Contemporary Philosophical Encyclopedia*, Al-Nahda Library, Baghdad, 1987.
16. Kashakesh, Karim Youssef Ahmed. *Public Freedoms in Contemporary Political Systems*, Mansha’at Al-Maaref, Alexandria, 1987.
17. Layla, Mohamed Kamel. *Political Systems: The State and Government*, Dar Al-Fikr Al-Ghareeb, Cairo, 1971.
18. Mostafa, Mohamed. *Social Control in Islam*, *Azwa’ Al-Shari’a Journal*, Issue No. 5, Riyadh, 2004.
19. Mohamed, Tamer Kamel. *Modern Political Systems and Public Policies*, Dar Majdalawi for Publishing and Distribution, Amman, 1st ed., 2004.
20. Nassar, Gaber Gad. *Al-Waseet fi Al-Qanoun Al-Dostouri (Intermediate in Constitutional Law)*, Cairo University Press, 2005.

- Periodicals:

1. Ibrahim, Ahmed Ragab Desouki. *Constitutional Guarantees of Freedom of the Press, Opinion, and Expression Between Text and Application: A Comparative Jurisprudential and Judicial Study*, *The Legal Journal*, Faculty of Law, Cairo University – Khartoum Branch, Vol. 15, No. 6.
2. Al-Jarbou, Ayyoub bin Mansour. *Judicial Oversight of the Constitutionality of Regulations and Its Mechanisms (An Analytical Study of Regulatory Texts and Judicial Rulings in the Kingdom of Saudi Arabia – A Comparative Jurisprudential Study)*, *Journal of the College of Sharia and Law*, Vol. 18, No. (unspecified).
3. Fatima Al-Nasser. *Constitutional Challenge as a Guarantee for the Protection of Rights and Freedoms*, *Journal of Constitutional Studies*, 2021.
4. Matawe, Mohamed. *American–European Policies Toward the Iranian Nuclear Agreement: Perceptions and Interpretations*, *Journal of the Faculty of Economics and Political Science*, Vol. 21, No. 4, October 2020.

- Constitutional Rulings:

- Judgment of the Egyptian Supreme Constitutional Court, Case No. 15 of Judicial Year 17 (Constitutional), Session of 2/12/1995.

- Electronic Sources:

- <https://alzayatfirm.com/ar/> — Accessed on 15/02/2025.
- https://jslem.journals.ekb.eg/article_212444_14b3b2c4034881f811c4fc4514477c3e.pdf — Accessed on 10/02/2025.
- <https://aawsat.com/home/article/3379986/> — Accessed on 12/02/2025.