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Judicial Mechanisms and Judicial Oversight for the Protection of Non-Derogable Rights: A Comparative Study of Iraq and Iran

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This study examines judicial mechanisms and judicial oversight for the protection of non-derogable rights in Iraq and Iran, with particular attention to the effectiveness of constitutional, administrative, criminal, and prosecutorial safeguards. Non-derogable rights retain their legal force even during emergencies, public disorder, and security crises, making effective judicial protection essential to the rule of law and the preservation of human dignity. The study adopts a descriptive, analytical, and comparative approach to evaluate the institutional structures through which both legal systems seek to prevent violations, review governmental measures, investigate abuses, exclude unlawfully obtained evidence, establish responsibility, and provide reparation. In Iraq, the analysis focuses on the Federal Supreme Court, ordinary courts, the Federal Court of Cassation, and public prosecution, especially regarding detention, torture allegations, judicial control over executive power, and compensation. In Iran, the study examines the preventive constitutional oversight of the Guardian Council, the jurisdiction of the Administrative Justice Court, the role of ordinary and military courts, prosecutorial supervision, evidentiary safeguards, and compensation mechanisms. The findings indicate that both countries possess significant legal and institutional foundations for protecting non-derogable rights, but practical effectiveness is weakened by fragmented procedures, limitations on access to review, inconsistent standards, delays in investigation, insufficient evidentiary preservation, and incomplete coordination between exclusionary remedies, criminal accountability, and compensation. The study further emphasizes the necessity of distinguishing absolute rights from rights subject to lawful limitation, particularly by excluding torture and similar prohibitions from proportionality-based balancing. It concludes that effective protection requires an integrated judicial framework linking prevention, prompt and independent investigation, evidence preservation, judicial review, accountability, and comprehensive reparation. Strengthening these connections is essential for transforming formal guarantees into enforceable and practical protection.

Keywords: *Non-Derogable Rights; Judicial Review; Judicial Oversight; Constitutional Justice; Public Prosecution; Iraq; Iran*

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1. Introduction

The protection of non-derogable rights constitutes one of the most demanding tests of the effectiveness of a legal system because these rights are intended to remain protected precisely in circumstances in which governmental power is under the greatest pressure to expand. Armed conflict, terrorism, internal disorder, security crises, states of emergency, and other exceptional situations may justify the adoption of extraordinary governmental measures, but they do not

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suspend the fundamental legal proposition that certain aspects of human dignity must remain beyond ordinary political bargaining. The practical significance of this proposition depends less on the abstract recognition of rights than on the existence of institutions capable of preventing violations, identifying unlawful conduct, controlling executive and security authorities, excluding evidence obtained through coercion, establishing individual and institutional responsibility, and providing effective remedies to victims. Judicial protection is therefore central to the legal status of non-derogable rights. Without an independent and operational judiciary, constitutional and statutory guarantees may remain declaratory, particularly where alleged violations occur in detention facilities, security institutions, military structures, or other environments in which the state possesses informational and coercive advantages over individuals. The central concern of this article is consequently not whether Iraq and Iran formally recognize fundamental rights, but whether their judicial structures are capable of transforming such recognition into timely, independent, and enforceable protection.

The distinction between formal jurisdiction and practical effectiveness is especially important in evaluating judicial mechanisms. A constitutional court may possess authority to invalidate legislation, an administrative court may annul unlawful regulations, an ordinary criminal court may exclude a coerced confession, and a public prosecutor may be legally empowered to inspect detention facilities. None of these powers necessarily guarantees protection if individuals cannot obtain access to the relevant institution, if investigations are delayed until evidence disappears, if complainants fear retaliation, if judicial findings are not implemented, or if different institutions operate without procedural coordination. The Iraqi Federal Supreme Court illustrates the importance of constitutional adjudication as a constraint on legislative and executive power. Hashim explains the role of the Federal Supreme Court in safeguarding fundamental rights as part of the broader constitutional function of ensuring that public authorities remain within legally defined limits (Hashim, 2024). Hamad and Muhammad similarly emphasize that constitutional review can influence the realization of criminal justice by preventing rules or governmental arrangements from undermining constitutional guarantees (Hamad & Muhammad, 2026). Such institutional authority becomes meaningful, however, only when the reasoning of the court clearly identifies the protected right, applies the proper standard of review, and produces consequences capable of restraining the authority responsible for the threatened violation.

A similar problem appears in the field of ordinary criminal justice. Non-derogable rights are frequently violated not by legislation in the abstract but by concrete conduct during arrest, interrogation, detention, investigation, or the use of force. In these situations, the practical effectiveness of the prohibition of torture, the right to life, and the principle of criminal legality depends upon the ordinary judiciary and public prosecution. Public prosecution is particularly significant because it occupies an institutional position between initial law-enforcement activity and subsequent adjudication. Abdullah, Jasim, and Nasser describe the Iraqi public prosecution as possessing significant responsibilities connected with legality, criminal proceedings, and the supervision of detention and correctional institutions (Abdullah et al., 2026). Al-Khafaji likewise treats prosecutorial oversight as an essential component of human-rights protection, especially where the prosecution possesses authority to inspect places of detention and initiate proceedings concerning unlawful conduct (Al-Khafaji, 2017). The existence of such powers demonstrates that effective protection cannot be reduced to appellate adjudication after harm has already occurred. Preventive and investigative functions are equally important because violations of physical integrity or life may be irreversible.

The Iranian system presents a different institutional configuration. Constitutional scrutiny of parliamentary legislation is principally exercised through the Guardian Council, while administrative legality is supervised through the Administrative Justice Court. Kadkhodai Iladirani and Feili distinguish between the Guardian Council's preventive scrutiny of legislation and the subsequent review exercised in relation to administrative regulations (Kadkhodai Iladirani & Feili, 2023). This structural distinction has important consequences for individual protection. Preventive review may stop an unconstitutional law before it comes into force, but it does not provide the same remedial pathway as an individual constitutional complaint

initiated by a person whose rights have already been affected. The Administrative Justice Court, by contrast, may provide individual and regulatory remedies in the administrative sphere. Yazdani and Tavassoli regard this court as an important institutional mechanism for securing citizenship rights through review of administrative decisions and regulations (Yazdani & Tavassoli, 2018). Vaezi also emphasizes the significance of judicial control over administrative rulemaking, particularly where legality and jurisprudential compatibility must be assessed (Vaezi, 2009). Nevertheless, the fragmentation of authority between preventive constitutional supervision, administrative adjudication, ordinary courts, prosecutors, and military jurisdiction may weaken protection when the relationship among these institutions is not clearly organized.

The problem becomes more acute where non-derogable rights are confused with rights that may lawfully be restricted. Not every fundamental right is absolute, and not every non-derogable right operates identically. Torture and comparable forms of prohibited ill-treatment cannot be justified through necessity, proportionality, security interests, or emergency reasoning. The right to life, although non-derogable, requires analysis of whether deprivation of life is arbitrary rather than a simplistic conclusion that every use of potentially lethal force is prohibited. By contrast, rights such as freedom of movement may be restricted where restrictions satisfy appropriate legal requirements. The jurisprudential development of proportionality in Iraqi constitutional adjudication has therefore important but limited significance. Ghannam Jabara's analysis of constitutional jurisprudence concerning restrictions on movement demonstrates the increasing relevance of proportionality in reviewing limitations imposed by public authorities (Ghannam Jabara, 2026). Al-Khalidi likewise discusses the role of constitutional adjudication in protecting equality through judicial examination of legislative distinctions rather than through purely formal comparison (Al-Khalidi, 2021). These approaches are valuable for rights that admit lawful limitation, but they must not be transferred uncritically to absolute prohibitions.

Another central issue is the relationship between exclusionary remedies and accountability. A criminal court may reject a confession obtained under coercion, thereby protecting the fairness and integrity of criminal proceedings. Yet exclusion alone does not address the conduct of the official who employed unlawful coercion. If the legal system treats the invalidity of the confession as the sole consequence, the victim may obtain procedural relief without the violation itself being investigated. The result is a gap between protection of the trial and protection of the person. Ibrahim's examination of transformations in criminal procedure is relevant to understanding the importance of procedural design in determining whether formal guarantees operate effectively in practice (Ibrahim, 2024). Mahmoudi similarly emphasizes the prosecutor's protective role in relation to the accused and the importance of supervision over investigative processes (Mahmoudi, 2012). A comprehensive model therefore requires two parallel consequences when credible evidence of coercion appears: the challenged evidence must be excluded from the criminal case, and the allegation of coercion must independently trigger investigation of the responsible officials.

Compensation presents an additional dimension of judicial protection. Effective protection cannot always prevent the initial violation, particularly where unlawful detention, serious injury, or irreparable harm has already occurred. In such circumstances, the legal system must provide a meaningful remedial framework capable of addressing pecuniary and nonpecuniary harm. Muhammad Ali analyzes state liability for damage resulting from detention or imprisonment in cases ending in acquittal or release within the Iraqi context (Muhammad Ali, 2025). Jaafar and Omar discuss the more specific compensation model established in the Kurdistan Region, illustrating the possibility of legislatively structured state liability for detention-related harm (Jaafar & Omar, 2013). In Iran, Aghababaei Bakhshayesh and colleagues argue that existing criteria governing compensation for detained defendants require reconsideration, particularly because the legality of detention should not be mechanically equated with the eventual outcome of the criminal case (Aghababaei Bakhshayesh et al., 2020). Compensation must therefore be treated as one component of a broader chain of protection rather than as a substitute for prevention, investigation, criminal accountability, or institutional reform.

The objective of this article is to analyze judicial mechanisms and judicial oversight for the protection of non-derogable rights in Iraq and Iran, with particular emphasis on constitutional and administrative review, ordinary courts, public prosecution, detention oversight, exclusion of unlawfully obtained evidence, criminal and civil responsibility, and compensation. The article adopts a descriptive, analytical, and comparative approach. It examines how institutional design influences access to justice, the intensity of judicial scrutiny, the independence and timeliness of investigations, and the enforceability of remedies. It also seeks to distinguish clearly between absolute prohibitions and rights subject to qualified restriction, because judicial protection is weakened when courts apply balancing analysis to conduct that the legal order must prohibit categorically. The principal argument is that effective protection depends on an integrated judicial chain. Constitutional review, administrative control, prosecutorial supervision, evidentiary exclusion, criminal accountability, civil liability, and reparation should operate as complementary mechanisms rather than isolated institutional powers. The strength of the system must ultimately be measured by whether it prevents violations where possible, identifies them promptly when they occur, protects the victim and evidence, imposes appropriate legal consequences, and provides effective redress.

2. Legal Foundations of Judicial Protection of Non-Derogable Rights

The legal protection of non-derogable rights begins with a conceptual distinction between rights that may be restricted under defined conditions and rights whose essential protection survives even the most serious emergency. The importance of this distinction is not merely theoretical. It determines the type of judicial reasoning that is legitimate when governmental conduct is challenged. Courts reviewing limitations on ordinary rights may ask whether an interference has a legal basis, whether it pursues a legitimate purpose, whether it is necessary to achieve that purpose, and whether the resulting burden is proportionate. The same framework cannot automatically be used where the conduct itself is absolutely prohibited. Torture, for example, cannot become lawful because officials claim that coercive interrogation was necessary to protect public safety. Once the conduct reaches the legal threshold of torture, public interest no longer functions as a justification. Judicial oversight is therefore required to classify the right correctly before balancing begins. The failure to make this preliminary classification risks transforming an absolute prohibition into an ordinary interest capable of being outweighed by security objectives.

The prohibition of torture provides the clearest example of an absolute judicial limit. Its practical enforcement requires more than criminalization. Courts must refuse to legitimize coercive practices indirectly through evidentiary use, prosecutors must investigate credible allegations, detention authorities must preserve medical and documentary evidence, and judicial institutions must ensure that persons who complain are not returned to situations where retaliation is likely. Judicial reasoning must also recognize that coercion frequently occurs in environments characterized by informational asymmetry. The detainee may lack immediate access to counsel or independent medical examination, while the investigating authority controls records, witnesses, physical surroundings, and communication. In such circumstances, procedural rules allocating evidentiary responsibility become central to effective protection. A legal system that demands conclusive proof from a detainee before opening an investigation may make the right practically unenforceable because the evidence necessary to prove the violation is controlled by the institution accused of committing it. The protective role of public prosecution is therefore particularly important. Al-Khafaji's comparative treatment of public prosecution and human rights shows why prosecutorial access to detention facilities and investigative authority can operate as a safeguard against violations occurring outside public view (Al-Khafaji, 2017). Abdullah and colleagues likewise emphasize the practical legal jurisdiction of the Iraqi public prosecution, indicating that prosecutorial powers have significance beyond the traditional function of presenting accusations in court (Abdullah et al., 2026).

The right to life requires a somewhat different analytical approach. Its non-derogable character does not mean that every state-caused death is automatically unlawful. Judicial control must instead determine whether force, detention conditions, failures to protect, or investigative deficiencies resulted in arbitrary deprivation of life. This gives the judiciary both a negative and a positive role.

The negative dimension prohibits state authorities from taking life arbitrarily. The positive dimension requires legal and institutional measures designed to prevent foreseeable threats and investigate suspicious deaths effectively. In practice, this means that custodial deaths, lethal-force incidents, and serious injuries involving security agencies should trigger prompt procedures for evidence preservation, medical examination, identification of responsible officials, and independent review. The importance of constitutional oversight in this area lies not only in striking down legislation that directly authorizes unlawful conduct but also in removing institutional barriers that obstruct judicial investigations. Hamad and Muhammad's analysis of the Federal Supreme Court's contribution to criminal justice demonstrates the constitutional significance of maintaining judicial authority over matters that affect liberty and criminal responsibility (Hamad & Muhammad, 2026). Hashim similarly connects constitutional adjudication to the protection of fundamental rights against governmental excess (Hashim, 2024).

The principle of criminal legality is another indispensable aspect of non-derogable protection. Judicial concern for human rights does not authorize courts to create offenses by analogy or stretch penal provisions beyond their lawful meaning. Protection from arbitrary punishment and protection from official violence are complementary rather than contradictory. A legal system committed to the rule of law must prosecute unlawful killings, torture, and abuse, but it must do so through previously established offenses and lawful procedures. This is especially important in cases involving military or security personnel, where public pressure for accountability may coexist with complex jurisdictional rules. Judicial protection fails both when official status becomes a shield against ordinary accountability and when the desire to punish produces an expansive interpretation inconsistent with criminal legality. The function of the court is therefore to identify the appropriate offense and jurisdiction while ensuring that procedural complexity does not cause evidence loss or practical immunity.

The judicial concept of proportionality has a legitimate but carefully confined role. Iraqi constitutional jurisprudence has increasingly engaged with necessity and proportionality in cases involving rights capable of lawful restriction. Ghannam Jabara's analysis of Federal Supreme Court jurisprudence concerning freedom of movement reflects the growing significance of proportionality as a method for evaluating restrictions imposed by public authorities (Ghannam Jabara, 2026). Proportionality enables courts to move beyond the mere existence of statutory authorization and examine whether governmental measures are reasonably connected to their objective, whether less restrictive alternatives were available, and whether the burden imposed is excessive. Such review is particularly important where legislation grants broad discretionary power to administrative or security authorities. Yet proportionality becomes conceptually dangerous when transferred to absolute prohibitions. A court should not ask whether torture was proportionate to the importance of the information sought. The correct legal conclusion is that such balancing is inadmissible once the act falls within the prohibited category.

Equality jurisprudence similarly illustrates the evolution from formal to substantive review. Al-Khalidi explains that constitutional courts protecting equality must consider the reasonableness of distinctions rather than treat every difference in legal treatment as automatically unconstitutional (Al-Khalidi, 2021). The broader significance of this approach lies in the recognition that judicial oversight must examine the effects and justification of state action. The same methodological commitment is relevant to non-derogable rights, although the applicable standard differs. Courts must be willing to look beyond formal labels. Indefinite confinement should not escape review merely because legislation describes it as an administrative measure. Severe coercion should not become lawful merely because officials characterize it as investigative pressure. A regulation affecting detainees cannot evade scrutiny simply because it appears in an organizational instrument rather than a penal statute. Substantive judicial review therefore requires attention to the actual effect of governmental measures on protected rights.

The relationship between judicial review and emergency powers is particularly sensitive. Emergency conditions often produce expanded executive discretion, restrictions on movement, exceptional detention arrangements, and increased involvement of security institutions. The central purpose of non-derogability is to prevent the emergency from becoming a legal vacuum.

Judicial review must remain operational because the need for independent scrutiny is generally greater, not smaller, when ordinary political and administrative safeguards are weakened. Courts must determine whether emergency declarations and measures have a lawful basis and whether restrictions placed on limitable rights remain within permissible boundaries. At the same time, they must identify measures that affect absolute prohibitions and remove them entirely from proportionality analysis. This distinction preserves both governmental capacity to respond to genuine crises and the irreducible legal status of core rights.

Institutional access is equally fundamental. Rights cannot be effectively protected where individuals lack a realistic pathway to judicial review. The Iraqi system provides subsequent constitutional adjudication through the Federal Supreme Court, but questions of standing and procedural admissibility may affect the preventive value of constitutional review. Majhoul's work on changes and reversals in higher-court jurisprudence highlights the importance of consistency and predictability in the functioning of Iraq's higher judicial bodies (Majhoul, 2024). Where courts change their approach to jurisdiction, standing, or substantive scrutiny without clear justification, individuals and lower courts may struggle to determine when protection is available. Effective constitutional adjudication therefore requires not only judicial authority but also reasonably stable doctrines concerning access and standards of review.

Iran's institutional structure raises a different access problem. The Guardian Council examines parliamentary legislation before completion of the legislative process, and this mandatory preventive mechanism may stop rules considered inconsistent with constitutional or Islamic requirements. Kadkhodai Iladirani and Feili explain the institutional relationship between the Guardian Council's jurisprudential supervision and the review of administrative regulations, demonstrating the distinctive division of oversight responsibilities in the Iranian system (Kadkhodai Iladirani & Feili, 2023). Preventive control has substantial systemic value because it may stop a defective provision before individuals suffer harm. However, the absence of a conventional individual constitutional complaint means that a person adversely affected by an operative statute does not possess the same type of direct constitutional remedy available in systems with individual constitutional petitions. The resulting protection is therefore structurally different from subsequent constitutional review.

The Administrative Justice Court partially fills this remedial space in the field of administrative action. Yazdani and Tavassoli identify the Court as an important mechanism for safeguarding citizenship rights against unlawful administration (Yazdani & Tavassoli, 2018). Vaezi's analysis of jurisprudential adjudication of administrative regulations demonstrates that administrative review also serves a broader legality function in relation to norm-making by public institutions (Vaezi, 2009). The protective capacity of administrative justice is nevertheless dependent on the scope of reviewable acts. Where certain categories of regulations are removed from annulment jurisdiction, judicial protection becomes incomplete. The issue is especially significant when excluded regulations affect prisons, criminal procedure, judicial administration, or other areas closely connected with physical liberty and dignity.

Judicial protection also requires remedies capable of responding to different types of harm. Annulment of an unlawful regulation serves a systemic purpose by removing the norm from the legal order. Exclusion of a coerced confession protects the integrity of the individual criminal proceeding. Criminal prosecution addresses personal responsibility for unlawful conduct. Disciplinary measures address professional fitness and institutional order. Civil liability and compensation aim to repair harm suffered by the victim. These mechanisms are not interchangeable. An acquitted detainee who receives compensation may still require investigation of abusive treatment. A police officer may be criminally convicted while the victim remains entitled to compensation. A confession may be excluded even where identifying the responsible interrogator requires separate proceedings. Judicial protection becomes effective when the legal system connects these consequences instead of treating each as an isolated remedy.

The concept of an integrated protection chain provides the most useful legal framework for assessing both Iraq and Iran. Prevention should begin with lawful arrest procedures, registration of detainees, access to counsel, medical documentation, and judicial visibility. Credible

signs of torture, serious injury, disappearance, unlawful detention, or custodial death should trigger investigation without requiring the victim to overcome impossible evidentiary burdens. Evidence must then be transferred beyond the practical control of the institution accused of wrongdoing. Courts must exclude unlawfully obtained evidence while ensuring that exclusion leads to investigation rather than institutional silence. Criminal, disciplinary, and civil consequences must follow where legal requirements are satisfied. Finally, victims should obtain effective reparation. The underlying legal foundation of non-derogable rights is therefore not exhausted by a declaration that certain rights cannot be suspended. Their protected status must shape jurisdiction, procedure, evidence, remedies, and the intensity of judicial supervision throughout the legal system.

3. Judicial Mechanisms for Protecting Non-Derogable Rights in Iraq

The Iraqi system distributes protection of non-derogable rights across several judicial institutions with different but potentially complementary functions. The Federal Supreme Court exercises constitutional review and is capable of invalidating legal arrangements inconsistent with constitutional guarantees. Ordinary courts determine criminal and civil responsibility in concrete disputes. The Federal Court of Cassation supervises legal correctness and may remedy procedural failures through appellate review. Public prosecution participates in criminal proceedings, monitors legality, and exercises supervisory functions in relation to detention. The effectiveness of this institutional framework depends upon whether these actors operate as an interconnected system. A constitutional ruling invalidating an executive detention power may prevent future violations, while an ordinary court may address individual harm that has already occurred. Public prosecution may detect abuse before a trial begins, and a civil action may provide compensation after criminal proceedings conclude. The challenge is to ensure that these mechanisms do not remain fragmented.

The Federal Supreme Court occupies the most visible position in constitutional protection. Hashim characterizes the Court's role in guaranteeing fundamental rights as a central aspect of its constitutional function within the Iraqi legal order (Hashim, 2024). Its importance derives from the ability to control the constitutionality of laws and to prevent public authorities from exercising powers that constitutionally belong to the judiciary. Hamad and Muhammad further connect constitutional review by the Federal Supreme Court with guarantees of criminal justice, indicating that constitutional adjudication may directly affect the legality of detention, punishment, and judicial authority (Hamad & Muhammad, 2026). The thesis material demonstrates this protective potential through decisions that rejected executive powers to impose imprisonment or detention without appropriate judicial authority. Such jurisprudence is significant because it treats judicial control over deprivation of liberty as a substantive safeguard rather than a technical allocation of institutional competence.

This approach is especially important in cases where administrative or security authorities attempt to exercise functions resembling criminal punishment. Deprivation of liberty represents one of the most serious forms of governmental coercion, and transferring effective detention power from judges to executive officials weakens the structural guarantee of independent judicial authorization. Constitutional review can therefore protect non-derogable and closely related fundamental rights indirectly by preserving institutional separation. The principle is not that every detention dispute necessarily concerns an absolute right, but that judicial control creates the procedural environment necessary to prevent torture, disappearance, indefinite confinement, and arbitrary deprivation of liberty. Constitutional design is thus linked to practical protection.

The jurisprudence of the Federal Supreme Court also reveals the importance of examining the substantive effects of legal rules. Hashim's analysis of fundamental-rights protection supports the view that constitutional adjudication must evaluate how rules affect individuals, not merely whether the legislature possesses formal competence (Hashim, 2024). A rule authorizing continued detention after completion of a sentence, for example, cannot be justified solely by reference to financial or administrative interests if its practical effect is indefinite coercion against the person. The constitutional judiciary must identify the real nature of the measure and determine whether it violates protected physical integrity, dignity, or liberty. Such reasoning is

particularly important because governments may describe coercive measures using administrative terminology that obscures their punitive character.

At the same time, Iraqi constitutional jurisprudence has not always demonstrated a fully consistent methodology. Majhoul's examination of the reversal of judicial precedents in the Federal Court of Cassation and Federal Supreme Court illustrates the broader problem of doctrinal stability in higher judicial institutions (Majhoul, 2024). Consistency does not require courts to preserve incorrect precedent indefinitely, but departures should be accompanied by clear legal reasoning explaining why the former approach no longer applies. In the context of non-derogable rights, unexplained inconsistency may be especially harmful because security authorities, prosecutors, lower courts, and individuals need predictable rules concerning arrest, detention, investigation, and accountability. A right whose judicial meaning fluctuates unpredictably provides weaker protection than one embedded in stable standards.

The development of proportionality in Iraqi constitutional review offers both an opportunity and a methodological challenge. Ghannam Jabara's analysis of restrictions on freedom of movement demonstrates the potential for proportionality to become a more structured method of examining governmental limitations on rights (Ghannam Jabara, 2026). Properly used, proportionality can require the state to identify a legitimate objective, establish a rational connection between the measure and that objective, demonstrate that less restrictive alternatives are unavailable, and justify the overall burden imposed. Such reasoning may significantly strengthen review of emergency measures and security restrictions. However, the method must remain confined to situations in which limitation is legally possible. If torture, for example, is established, proportionality is not the appropriate test because the prohibition is categorical.

The protection of equality also reflects movement toward more substantive constitutional reasoning. Al-Khalidi shows that constitutional adjudication concerning equality may examine the rationality and justification of legislative distinctions rather than relying exclusively on formal similarity (Al-Khalidi, 2021). The relevance of this approach to non-derogable rights lies in the willingness of the judiciary to scrutinize the actual justification for governmental differentiation. Security personnel, military officers, prisoners, suspects, and politically unpopular persons cannot be placed outside the protection of core rights merely because the state assigns them a special legal classification. Judicial scrutiny must determine whether special procedures are compatible with fundamental guarantees.

The limits of constitutional review become more visible where ordinary criminal investigation is obstructed by institutional privileges. If administrative approval is required before a judicial arrest order can be executed against certain officials or military personnel, the result may be delay in investigating serious offenses. Such delay is not neutral where life, torture, or physical integrity is involved. Evidence may disappear, witnesses may be influenced, medical traces may fade, and institutional records may be altered. Constitutional review should therefore examine not only whether a special procedure has a legislative basis but whether that procedure effectively transfers control over judicial investigation to the institution whose members are being investigated. The rule of law requires accommodation of legitimate organizational considerations without allowing them to become practical immunity.

Ordinary courts and public prosecution carry the main burden of responding to concrete violations. Abdullah and colleagues emphasize the breadth of the Iraqi public prosecution's legal jurisdiction and its role in supervising legality within criminal justice (Abdullah et al., 2026). This function is especially important in closed institutions. Torture and ill-treatment ordinarily occur away from public observation, often during periods when the detainee has limited access to counsel, family members, independent doctors, or outside authorities. Prosecutorial visits to detention facilities, inspection of custody records, review of detention periods, and investigation of complaints may therefore have greater preventive value than later appellate proceedings. Al-Khafaji similarly presents public prosecution as a mechanism for human-rights protection where it possesses direct supervisory and investigative authority (Al-Khafaji, 2017).

The effectiveness of such supervision depends upon regularity, independence, and consequences. A detention inspection system that merely records observations without requiring corrective action may produce

administrative documentation without meaningful protection. Prosecutorial inspection should be capable of identifying persons held without lawful warrants, excessive detention periods, unrecorded transfers, physical injuries, denial of medical care, or evidence of coercion. Where reasonable indications of torture or serious abuse exist, investigation should begin automatically. Requiring a frightened detainee to prepare a formal and legally sophisticated complaint before action is taken is inconsistent with the preventive purpose of prosecutorial supervision.

The timing of investigation is equally important. Ibrahim's work on criminal procedure is relevant to the relationship between procedural structure and substantive justice (Ibrahim, 2024). In cases of alleged torture, delay may determine whether the violation can ever be proved. Bruising, swelling, burns, and other physical traces may heal. Surveillance material may be overwritten. Custody records may become difficult to reconstruct. Witnesses may be transferred or pressured. Immediate forensic examination is therefore not an ancillary medical service but part of the legal infrastructure of accountability. A court that reviews a torture allegation months later may be institutionally independent yet practically unable to determine the truth because the earlier investigative system failed.

The Federal Court of Cassation has an important role in correcting such failures. Appellate review can identify defects in preliminary investigation, reject unreliable confessions, or return cases for further inquiry. Yet the effectiveness of cassation review is constrained by the quality of the record produced at earlier stages. If no medical examination was ordered when torture was first alleged, an appellate court may confront an incomplete evidentiary situation. The judicial system should not allow the state to benefit from evidentiary deficiencies caused by its own failure to investigate promptly. Where credible allegations arise, especially in cases involving severe punishment, the burden on judicial authorities to clarify the circumstances should increase.

The exclusion of coerced confessions represents a critical but incomplete safeguard. From the perspective of the defendant's trial, exclusion prevents the state from gaining an evidentiary advantage through prohibited conduct. From the perspective of institutional accountability, however, the existence of a coerced confession raises a separate question about the conduct of interrogators and custodial officials. An effective court should therefore treat a substantiated or reasonably supported allegation of coercion as having two procedural consequences. The first concerns admissibility of the evidence in the defendant's case. The second concerns referral for independent investigation of the officials potentially responsible. Failure to separate these questions can reduce the prohibition of torture to a rule of evidence rather than a prohibition directed at state conduct.

Criminal accountability should also be distinguished from civil reparation. Muhammad Ali examines state liability for damage caused by detention or imprisonment where proceedings end in acquittal or release, highlighting the need for defined compensation mechanisms in Iraq (Muhammad Ali, 2025). Compensation responds to loss suffered by the individual, including financial injury and potentially nonpecuniary damage. It does not determine criminal responsibility for the conduct of officials. A state may therefore be required to compensate an individual even where no particular official is ultimately convicted, while an official may be criminally responsible regardless of whether the state has already paid compensation.

The Kurdistan Region provides a more specific model of compensation in this field. Jaafar and Omar analyze Law No. 15 of 2010 concerning state compensation for detainees and convicts upon acquittal or release (Jaafar & Omar, 2013). The significance of this model lies in its demonstration that compensation can be structured legislatively rather than left entirely to general civil liability rules. Nevertheless, compensation tied exclusively to acquittal raises conceptual difficulties. A person may be lawfully detained on reasonable grounds and later acquitted, while another person may ultimately be convicted despite having suffered an unlawful period of detention. The legality of detention and the final outcome of the criminal case should therefore be evaluated separately.

The effectiveness of Iraq's judicial mechanisms ultimately depends on procedural integration. Constitutional review must prevent legislation and executive arrangements from creating zones of unreviewable detention or institutional immunity. Public prosecution must identify violations at the earliest stage. Ordinary courts must scrutinize allegations independently and exclude evidence obtained through

prohibited conduct. Cassation review must correct procedural failures without allowing state-caused evidentiary gaps to operate against defendants. Criminal proceedings must address individual responsibility, while civil remedies must provide reparation for harm. The system possesses many of these institutional components, but their effectiveness is reduced when investigation is delayed, access is restricted, judicial standards are inconsistent, or separate remedies operate without coordination. Stronger protection therefore requires not merely additional legal rules but a more coherent connection among existing judicial powers.

4. Judicial Mechanisms in Iran and Comparative Evaluation of Iraq and Iran

Iranian protection of non-derogable rights is institutionally dispersed among the Guardian Council, the Administrative Justice Court, ordinary courts, prosecutors, military courts, supervising judicial authorities, and compensation mechanisms. This dispersion produces both strengths and limitations. Different institutions may address legislation, administrative regulations, individual criminal violations, detention conditions, evidentiary questions, and reparation. The existence of multiple layers of supervision can potentially create a dense protective structure. At the same time, fragmentation may produce gaps where no institution possesses complete jurisdiction or where the connection between review and remedy is weak. The Iranian model is therefore best assessed not by counting institutions but by examining whether individuals facing violations of life, physical integrity, dignity, or liberty can obtain timely, independent, and effective judicial intervention.

The Guardian Council performs a form of preventive constitutional oversight rather than conventional constitutional adjudication initiated through individual litigation. Kadkhodai Iladirani and Feili explain the distinctive supervisory role of the Council and its relationship with the review of administrative regulations (Kadkhodai Iladirani & Feili, 2023). Its preventive function has a significant advantage: parliamentary legislation is examined before it becomes fully operative, allowing constitutional or jurisprudential defects to be addressed before they cause widespread harm. This model can therefore operate as systemic prevention. The difficulty is that an individual adversely affected by legislation after enactment does not possess a direct constitutional complaint identical to those available in some constitutional-court systems. Protection is therefore strong at the abstract preventive level but less individualized at the subsequent remedial level.

This institutional design becomes especially important when the right under review is absolute. The constitutional prohibition of torture should function as a categorical restriction on legislative and executive authority. Reasoning based on conflict of interests, necessity, or choosing a lesser evil may be appropriate in some areas of law, but it is incompatible with a prohibition that permits no justification once the prohibited conduct has been established. The central judicial principle should therefore be classification before balancing. A reviewing institution must first determine whether the contemplated conduct falls within an absolute prohibition. If it does, the inquiry ends with invalidity. Only rights that permit lawful restriction should proceed to necessity and proportionality analysis.

The Administrative Justice Court operates differently. It provides subsequent judicial review in disputes involving administrative acts and may annul unlawful regulations within the scope of its jurisdiction. Yazdani and Tavassoli describe its role in achieving and guaranteeing citizenship rights, emphasizing the significance of administrative adjudication in restraining unlawful governmental conduct (Yazdani & Tavassoli, 2018). Vaezi likewise identifies administrative judicial review as an important mechanism for examining regulations from the perspective of legality and jurisprudential standards (Vaezi, 2009). The Court is therefore capable of converting general constitutional and legislative norms into concrete controls on administrative power.

Its jurisprudence relating to prison regulation illustrates the protective potential of administrative review. Keshavarz's discussion of solitary confinement highlights the legal concern created when administrative regulations intensify punishment or interfere with prisoners' dignity without adequate legislative authority (Keshavarz, 2021). This issue is particularly significant because prisons and detention facilities are environments in which regulatory instructions may have direct effects on physical and psychological integrity. If

administrative authorities can impose severe restrictions through internal rules that escape meaningful judicial scrutiny, the practical protection of fundamental rights is weakened. Judicial review must therefore examine not only the formal source of administrative authority but also the substantive effect of regulations on protected rights.

A principal structural limitation arises from exclusions from administrative review. Where certain regulations associated with the judiciary or other authorities cannot be challenged before the Administrative Justice Court, a category of norm capable of affecting individual rights may fall outside ordinary annulment procedures. Kadkhodai Iladirani and Feili identify important questions concerning the optimal mechanism for jurisprudential control of administrative regulations, reflecting the institutional complexity of coordinating different supervisory bodies (Kadkhodai Iladirani & Feili, 2023). The existence of an institutional gap does not necessarily mean that the regulation is entirely beyond legal control, but it may make access less direct and remedies less predictable. From the perspective of non-derogable rights, the preferable structure is one in which every norm capable of authorizing serious interference with physical integrity, detention conditions, or evidentiary rights is subject to effective review by an independent institution.

Ordinary courts and prosecutors bear responsibility for concrete violations. Mahmoudi's analysis of the role of the public prosecutor in protecting defendants demonstrates that prosecution should not be conceptualized solely as an accusatory function (Mahmoudi, 2012). The prosecutor also has responsibilities concerning legality, supervision of investigative officers, and protection of the procedural rights of persons under investigation. This role is particularly important where coercive power is exercised during police custody. Registration of detainees, monitoring of detention periods, supervision of investigative officials, and inspection of custodial conditions can prevent violations before they become irreversible.

Preventive supervision is strengthened when judicial authorities conduct regular and unannounced visits to detention facilities, examine physical and psychological conditions, and verify detention records. Yet formal inspection duties provide limited protection if their findings do not trigger mandatory consequences. A detainee displaying signs of physical injury should not depend entirely on the discretion of the same authority responsible for the underlying criminal investigation. Where reasonable indicators of torture or serious mistreatment exist, the allegation should be transferred into a procedurally distinct investigative track. The investigation must be capable of obtaining medical records, identifying interrogators, preserving video recordings, examining custody registers, and protecting the complainant from retaliation.

Iranian criminal law provides an important evidentiary safeguard through the invalidity of confessions obtained by coercion, compulsion, torture, or physical or psychological pressure. This rule expresses a fundamental principle: the state cannot lawfully convert prohibited treatment into evidence against the person subjected to it. The protective effect is substantial because criminal justice systems that rely heavily on confessional evidence create incentives for coercive interrogation. If courts consistently reject such evidence, one institutional benefit of coercion is removed. However, exclusion remains incomplete when the source of coercion is not separately investigated. Judicial systems committed to absolute prohibition must ensure that credible evidence of coercion has consequences not only for the defendant's case but also for the officials responsible.

This issue is especially acute in capital proceedings. Where the ultimate penalty is irreversible, courts must exercise particularly intensive scrutiny over the origin of decisive evidence. An allegation of torture supported by injuries, inconsistent custody records, delayed access to counsel, or other objective indicators should not be dismissed merely because a prior record states that the confession was voluntary. The court must examine the circumstances in which the statement was obtained. A legal system that excludes torture in principle but accepts confessions without serious examination of voluntariness risks protecting the formal appearance of legality rather than the substantive right.

Questions of military jurisdiction create another area requiring careful judicial management. Offenses committed by military or police personnel may fall within specialized jurisdiction depending on their relationship to official duties. The existence of military courts is not inherently inconsistent with protection, but

jurisdictional disputes should not delay investigation of deaths, injuries, or torture allegations. Evidence preservation must occur immediately regardless of which court ultimately tries the case. Judicial independence at the final trial stage cannot compensate for loss of evidence during the initial hours or days after an incident. The investigation should therefore be insulated from the operational chain of command of the institution whose personnel are accused.

Compensation for detention provides another important Iranian mechanism. Aghababaei Bakhshayesh and colleagues argue that the criteria and procedures governing compensation for detained defendants require reconsideration (Aghababaei Bakhshayesh et al., 2020). The main conceptual problem is the tendency to connect compensation closely to acquittal or termination of prosecution rather than to the legality of the detention itself. These are different legal questions. A person may ultimately be acquitted after having been lawfully detained on reasonable grounds, while another person may eventually be convicted even though part of the pretrial detention was excessive, procedurally defective, or unlawful. A rights-based compensation model should therefore examine whether the detention complied with legal requirements independently of the final criminal outcome.

The comparative position of Iraq and Iran reveals both structural differences and shared weaknesses. Iraq possesses a constitutional court with significant authority to review legislation and other constitutional questions after enactment. Iran relies more heavily on preventive legislative review through the Guardian Council and subsequent administrative review through the Administrative Justice Court. Iraq therefore has a more recognizable model of constitutional adjudication, while Iran has a stronger institutionalized mechanism of mandatory pre-enactment scrutiny. Neither model is sufficient by itself. Iraq may confront problems of standing, doctrinal inconsistency, and uneven scrutiny, whereas Iran lacks a direct individual constitutional complaint capable of challenging legislation from the perspective of a concrete rights violation.

The comparison also shows convergence in the role of public prosecution. In Iraq, Abdullah and colleagues describe public prosecution as possessing broad legal functions connected with legality and criminal proceedings (Abdullah et al., 2026). Al-Khafaji emphasizes its human-rights protective role, particularly in contexts involving detention and supervision (Al-Khafaji, 2017). In Iran, Mahmoudi similarly presents prosecution as responsible for protecting the rights of the accused as well as supporting criminal enforcement (Mahmoudi, 2012). In both systems, therefore, the institutional foundation for preventive supervision exists. The main challenge is converting statutory competence into effective action.

Both systems also confront a similar problem regarding the relationship between judicial exclusion and accountability. Courts may invalidate coerced confessions or identify defects in criminal procedure, yet these procedural outcomes do not automatically produce investigation of those responsible for the coercion. This institutional separation weakens deterrence. A more coherent model would require courts to transmit substantiated allegations to an independent investigative authority and would prevent the accused security institution from retaining practical control over the evidence. Such an approach would connect the evidentiary, criminal, and disciplinary dimensions of the prohibition.

Compensation reveals a comparable conceptual difficulty. Iraq lacks a comprehensive uniform federal model equivalent to the more specific compensation arrangements examined by Muhammad Ali (Muhammad Ali, 2025), although the Kurdistan Region provides a structured example discussed by Jaafar and Omar (Jaafar & Omar, 2013). Iran has established mechanisms for compensation in certain detention cases, but Aghababaei Bakhshayesh and colleagues identify important deficiencies in the criteria used to determine entitlement (Aghababaei Bakhshayesh et al., 2020). Both systems would benefit from separating the legality of detention from the ultimate outcome of prosecution and from recognizing that full reparation may include nonpecuniary harm, rehabilitation, correction of official records, and other appropriate measures in addition to financial compensation.

The strongest comparative conclusion is that institutional multiplicity cannot substitute for procedural integration. Iraq and Iran both possess courts, prosecutors, supervisory bodies, evidentiary safeguards, and compensation rules capable of contributing to the protection of non-derogable rights. Their principal vulnerability lies in the points of

connection between these mechanisms. Protection weakens when a torture complaint remains inside the original criminal file rather than generating an independent investigation, when a court excludes evidence without referring the responsible officials for investigation, when an inspection report produces no compulsory corrective measure, when compensation depends on the outcome of prosecution rather than the legality of detention, or when regulations affecting fundamental rights fall outside ordinary review. The comparative reform priority should therefore be the construction of an integrated judicial pathway capable of moving automatically from detection to investigation, evidence preservation, adjudication, accountability, and reparation.

5. Conclusion

The protection of non-derogable rights is a decisive indicator of whether a legal system remains governed by law when governmental power is exercised under conditions of pressure, emergency, or security concern. The comparative analysis of Iraq and Iran demonstrates that the central problem is not the complete absence of constitutional, statutory, or judicial mechanisms. Both systems contain multiple institutions capable of contributing to protection. The more fundamental difficulty lies in the fragmentation, accessibility, independence, consistency, and practical enforceability of those mechanisms. Rights that are formally guaranteed may remain vulnerable when judicial review is difficult to initiate, when investigative authorities are not sufficiently independent from the institution accused of abuse, when evidence is not preserved immediately, when courts treat exclusion of unlawful evidence as the end of the matter, or when compensation rules fail to correspond to the actual nature of the violation.

A clear conceptual distinction between absolute rights and rights capable of lawful restriction must form the foundation of judicial reasoning. Torture and comparable prohibited treatment cannot be legitimized through arguments of necessity, emergency, proportionality, public security, or competing public interests. Judicial institutions must identify such absolute prohibitions before entering any balancing inquiry. Proportionality remains an important method for reviewing restrictions on rights that legally permit limitation, but its expansion into the domain of absolute prohibitions would undermine the defining characteristic of those rights. The right to life similarly requires careful judicial analysis focused on arbitrariness, legality, preventive obligations, and effective investigation rather than a simplistic assumption that every use of force is governed by identical legal standards.

Constitutional and administrative review perform indispensable preventive and structural functions. In Iraq, constitutional adjudication can restrain executive detention powers, invalidate legal arrangements inconsistent with judicial authority, and protect individuals against legislative or institutional encroachment. Its effectiveness, however, depends on stable standards of review, adequate access, coherent reasoning, and consistent application. In Iran, preventive scrutiny by the Guardian Council can stop defective legislation before implementation, while the Administrative Justice Court can provide important protection against unlawful administrative rules and decisions. The absence of a direct individual constitutional complaint and the existence of jurisdictional exclusions nevertheless reduce the completeness of subsequent rights protection. A more effective system would ensure that every binding norm capable of seriously affecting life, physical integrity, dignity, or liberty can ultimately be subjected to independent judicial scrutiny.

Ordinary courts and public prosecution are even more important in day-to-day protection because most violations occur through conduct rather than through legislation alone. The effective protection of non-derogable rights therefore begins at the earliest stages of arrest, custody, interrogation, and investigation. Registration of detainees, judicial visibility of detention, access to counsel, immediate medical examination, preservation of surveillance and documentary evidence, inspection of custodial facilities, and protection against retaliation must be treated as essential legal guarantees. These safeguards are not secondary administrative details. They determine whether later judicial proceedings will be capable of discovering the truth.

The independence of investigation is particularly crucial where officials, police officers, military personnel, prison authorities, or security agencies are implicated. Formal independence of the trial court is insufficient if the accused institution retains control over the initial scene,

records, witnesses, medical documentation, and complainant. The most important evidence is often created or lost before a case reaches trial. Credible allegations of torture, custodial death, serious injury, or unlawful detention should therefore trigger a separate investigative pathway that is functionally independent from the original investigation and from the agency whose personnel are implicated. The evidentiary burden should not be structured in a manner that requires victims to produce material controlled by the alleged violator before an investigation will begin.

The exclusion of coerced confessions must be treated as both an evidentiary and an institutional issue. A criminal court has an immediate obligation to prevent prohibited coercion from producing evidentiary benefits. Yet excluding the statement alone does not enforce the prohibition against the official who obtained it. Judicial protection becomes credible only when exclusion is accompanied by investigation of the origin of the evidence. The legal system should therefore create an automatic procedural connection between findings of coercion and referral for independent investigation. This approach would transform the prohibition from a defensive rule protecting the accused's trial into a broader mechanism of deterrence and accountability.

The same integrated approach should govern custodial deaths and serious injuries. Such incidents should automatically trigger preservation of the location, transfer of relevant records, independent medical examination, identification of officials present, protection of witnesses, and prompt judicial review. Families should not be required to identify the responsible official before the state begins investigating a death that occurred under state control. Where the state has assumed custody of an individual, it also assumes heightened responsibilities concerning documentation and explanation of serious harm occurring within that custody.

Criminal, disciplinary, civil, and administrative forms of responsibility must remain conceptually distinct while operating in a coordinated manner. Criminal proceedings determine whether individuals committed offenses and impose punishment where guilt is established. Disciplinary mechanisms determine whether officials remain fit to perform public functions and whether institutional rules were violated. Civil liability and compensation address harm suffered by victims. Administrative review can remove unlawful regulations or decisions. None of these mechanisms should be treated as a substitute for the others. Compensation cannot replace prosecution of intentional torture, criminal conviction cannot eliminate the victim's entitlement to reparation, and disciplinary measures cannot be used to reduce serious criminal conduct to an internal employment matter.

Compensation regimes in both countries should be reoriented around the illegality of the interference rather than the eventual result of the underlying criminal case. Acquittal does not necessarily prove that initial detention lacked lawful justification, just as conviction does not retroactively legalize every period or condition of detention. The correct inquiry concerns whether the deprivation of liberty complied with legal requirements at each relevant stage. Reparation should also reflect the full scope of the damage. Pecuniary loss may include income, employment opportunities, legal costs, and medical expenses, while nonpecuniary harm may involve physical suffering, psychological injury, reputational damage, family disruption, or social consequences. Appropriate remedies may therefore require financial compensation together with rehabilitation, correction of official records, or other forms of redress.

The comparative analysis further demonstrates that creating additional institutions is not necessarily the most effective reform. Iraq and Iran already possess numerous bodies with relevant legal responsibilities. The more urgent task is to connect their functions through mandatory procedures. A supervising prosecutor who discovers unlawful detention should be able to initiate immediate corrective action. A court that finds signs of coercion should be required to refer the matter for investigation. An administrative judgment annulling an unlawful regulation should produce clear consequences for affected persons. An appellate court identifying investigative failure should ensure that remedial proceedings are capable of recovering evidence where possible. Compensation decisions should operate alongside, rather than instead of, criminal and disciplinary accountability.

Transparency is also essential to judicial effectiveness. Publication of significant judgments, particularly those concerning torture, unlawful detention, custodial death, evidentiary exclusion, compensation, and official

liability, can create more predictable standards and improve institutional learning. Transparent jurisprudence allows lower courts, prosecutors, lawyers, scholars, and public authorities to understand the consequences of violations. It also facilitates evaluation of whether judicial safeguards operate consistently. Rights protection should not depend primarily on isolated decisions inaccessible to those expected to follow them.

Ultimately, the effectiveness of judicial protection should be assessed as a continuous chain rather than as a collection of disconnected institutional competencies. The chain begins with prevention through lawful custody procedures and judicial supervision. It continues through rapid detection of potential violations, independent investigation, medical documentation, preservation of evidence, and protection of complainants and witnesses. Courts must then exclude unlawfully obtained evidence where appropriate and ensure that credible violations are independently investigated. Criminal and disciplinary responsibility should follow where established, while victims must have access to effective and comprehensive reparation. Constitutional and administrative courts must simultaneously remove rules that create or tolerate structural conditions for abuse.

The protection of non-derogable rights therefore requires more than the formal existence of constitutional guarantees, criminal prohibitions, or judicial institutions. It requires that every relevant component of the legal system operate in a predictable, prompt, independent, and enforceable manner. Iraq and Iran possess important foundations for such protection, but both systems would benefit from stronger procedural integration, clearer distinctions between absolute and limitable rights, more independent investigation of official misconduct, closer linkage between evidentiary exclusion and accountability, broader access to effective remedies, and compensation mechanisms based on the actual illegality and consequences of state conduct. Judicial oversight achieves its purpose only when it transforms abstract guarantees into concrete protection for the individual at the moment when state power is most capable of causing irreversible harm.

Authors' Contributions

Authors contributed equally to this article.

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

Transparency Statement

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