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Review of the Role of Constitutional Courts in Advancing the Protection of Human Rights and Citizenship in the Digital Age

1. Mahdi. Rajaei¹ : Assistant Professor, Department of Public Law, Faculty of Law, University of Qom, Qom, Iran
2. Ali. Amiri^{2*}: Master's Student, Department of Public Law, Faculty of Law, University of Qom, Qom, Iran

*corresponding author's email: a.amiri@stu.qom.ac.ir

ABSTRACT

Historically, citizenship rights were defined strictly within the confines of national borders. However, in the contemporary era—characterized by the emergence of digital citizenship, large-scale migration, and transnational challenges such as climate change and global pandemics—this traditional definition demands urgent reconsideration. These developments have underscored the necessity of re-evaluating the conceptual foundations of civil rights. The central question arises: can existing mechanisms for the protection of civil rights, amid the growing complexities of the modern world, continue to safeguard human dignity and the fundamental freedoms of individuals? Moreover, can constitutional courts, operating within their traditional paradigms, effectively address emerging human rights disputes that transcend national boundaries and extend into cyberspace or other novel domains of risk? Addressing this question requires rigorous theoretical and empirical inquiry. The present study, conducted using a descriptive–analytical approach, argues that while constitutional courts have historically served as key defenders of citizens' rights, they must now adopt transnational and interdisciplinary strategies to remain effective in a world increasingly shaped by technological transformation and global mobility. These institutions should progress toward a greater degree of internationalization by integrating universal human rights principles into their constitutional interpretation. Furthermore, an interdisciplinary framework is essential for confronting new challenges—such as digital privacy and algorithmic governance—that demand comprehensive insights drawn from technology, sociology, and legal studies. In sum, constitutional courts must transcend traditional conceptions of judicial authority and act with greater courage, creativity, and sustained engagement to ensure that they remain vital guardians of justice and human rights in the digital age.

Keywords: *civil rights, constitution, constitutional court, digital age, human rights*

Introduction

In today's fast-paced and interconnected world—where traditional boundaries of geography and culture have blurred, and information technology has penetrated every aspect of human life—the concept of citizenship faces unprecedented challenges. Not long ago, the definition of citizenship and the scope of citizens' rights were largely confined within the framework of nation-states and their domestic legal systems. However, with the emergence of phenomena such as digital citizenship, large-scale international migration, and transnational threats like climate



change and pandemics, this definition demands substantial revision (1). These developments have not only deepened the theoretical and legal debates surrounding citizenship but also underscored the urgent need to reconsider the normative and practical foundations of citizenship rights.

In this context, the fundamental question arises: Do current mechanisms for protecting citizens' rights—given the intricate and dynamic complexities of the contemporary world—still possess the capacity to ensure human dignity and the fundamental freedoms of individuals? This question extends beyond legal domains to encompass political, social, economic, and cultural dimensions. The research hypothesis underpinning this study is that contemporary legal systems must adopt transnational and interdisciplinary approaches to address emerging challenges related to citizens' rights, thereby providing comprehensive and effective responses to the legal demands of the twenty-first century. This premise calls for a shift away from purely nationalistic frameworks toward international collaboration and multilateral legal cooperation (2). Given the interconnectedness of global challenges, it is unrealistic to expect any single state to address all civil rights issues in isolation. Rather, a network of legal and social safeguards that transcends national borders is essential for the sustainable protection of human rights.

This transformation necessitates redefining fundamental concepts within public and private law to align them with emerging global realities. The innovation of the present study lies in its consideration of the specific characteristics of legal systems grounded in Islamic jurisprudence, while simultaneously proposing localized solutions that remain compatible with international human rights standards (3, 4). This contribution is particularly significant in an era marked by the growing importance of issues such as cybersecurity, data privacy, and access to information. In other words, this study not only aims to describe challenges but also to propose innovative and pragmatic strategies to bridge existing legal gaps and to promote a fairer, more inclusive future for global citizenship.

By doing so, the study seeks to enrich public law literature and provide policymakers and legislators with forward-looking, evidence-based insights for formulating adaptive and future-oriented legal frameworks. To fulfill this purpose, the article examines three principal axes through a comprehensive and analytical perspective. The first axis, titled "Constitutional Courts in Today's World: From the Protection of National Rights to Transnational Challenges," investigates the evolving and vital role of these institutions in safeguarding citizens' rights and demonstrates how constitutional courts must transform from purely domestic entities into active participants in the international legal order.

The second theme, "The Evolution of Civil Rights Protection: The Necessity of Transnational and Interdisciplinary Approaches in the Age of Globalization," highlights the need for strategies that transcend borders and disciplinary divisions, proposing concrete solutions to confront emerging global challenges. Finally, the third axis, "The Role of Constitutional Courts in Ensuring Human Rights in the Third Millennium," explores the practical dimensions of this transformation and outlines a vision for a future in which human dignity and fundamental freedoms are universally guaranteed, irrespective of geographic boundaries.

The Concept of the Constitutional Court

The term "Constitutional Court"—derived in Persian from the fusion of "court" (*dadgah*) and "constitutional law" (*hoghoogh-e asasi*)—translates the European expressions *cour constitutionnelle* or *tribunal constitutionnel* (5). Although seemingly straightforward, this term encapsulates profound linguistic and legal intricacies. Persian translators, facing conceptual limitations, have often employed descriptive phrases to convey the meaning of this compound term, whose closest Latin equivalent would be *curia constitutionalis*. While the term has now become

conventional, a precise understanding of this pivotal institution necessitates a deeper examination of its constituent concepts.

Certain judicial bodies designated as “courts” signify higher hierarchical positions within the judiciary, such as Supreme Courts or Courts of Appeal. Others denote specialized structures—like Courts of Accounts—responsible for financial and auditing matters. For a judicial body to qualify as a “court,” three essential conditions must be satisfied:

1. A proper venue for proceedings: A physical or virtual setting designated for hearing claims and administering justice, ensuring the orderliness of judicial procedures.
2. A competent presiding judge: One or more legally authorized judges possessing both the jurisdiction and the expertise necessary to adjudicate and render judgments.
3. Existence of a dispute or admissible matter: A court’s *raison d’être* lies in adjudicating disputes or determining legal issues, whether contentious (civil and criminal) or non-contentious (administrative, fiscal, etc.) (6).

Although Gérard Cornu’s definition and the above three criteria offer a general understanding of a court, they do not fully capture its dynamic function or societal significance. The second definition—based on the conditions of justice administration—is more precise because it emphasizes the objective prerequisites of judicial authority, especially the existence of a justiciable matter. Nevertheless, none of these definitions wholly encapsulate the complex and foundational role of courts as guarantors of justice and social order.

A court, beyond its physical existence or the identity of its judges, represents an institutional embodiment of the rule of law. It ensures the protection of rights, freedoms, and social harmony. The second component of the term, “constitutional law,” refers to the supreme norm (*norme suprême*) within a legal system—a framework defining governmental structure, institutional competences, and citizens’ rights and freedoms. The constitution serves as the foundational charter of every legal system, providing the normative hierarchy within which all subordinate laws must operate (7, 8).

The Constitutional Court thus functions as the guardian of the constitution, entrusted with the duty of ensuring the faithful implementation and interpretation of its provisions. As the protector of constitutional supremacy, it prevents any violation of fundamental principles and preserves the integrity of the legal order. Consequently, the synthesis of “court” and “constitution” yields an institution with the solemn mission of upholding justice, ensuring the rule of law, and safeguarding the fundamental rights of the people (9-12).

The Functioning of Constitutional Courts in Today’s World

In the contemporary era, constitutional courts play a vital role as pivotal institutions responsible for safeguarding constitutional order and protecting the fundamental rights of citizens (13). These courts are predominantly established in states with parliamentary or semi-parliamentary systems, such as Germany, Italy, France, and Spain—countries that typically maintain dual or plural legal systems. For instance, Italy and France operate with two primary systems (administrative and judicial), while Germany employs a more intricate structure encompassing five distinct court systems. This diversity allows constitutional courts in each jurisdiction to adapt their institutional design to the specific needs and social context of their nation.

The foremost attribute of constitutional courts lies in their absolute independence from all branches of government. To preserve such autonomy, the organization, functioning, and jurisdiction of the court must be

explicitly codified within the constitution itself, thereby preventing undue interference by legislative or executive authorities. Any judicial body subject to external influence loses its ability to exercise impartial oversight and, consequently, cannot truly be considered a constitutional court.

The primary function of these courts is to adjudicate constitutional disputes, a jurisdictional monopoly that ordinary courts do not share. Although the nature of such cases varies among legal systems, they share a common objective: ensuring the conformity of statutes, governmental acts, and international treaties with the constitution. This specialization enables constitutional courts to handle the most sensitive legal and political issues of a nation with precision and authority.

However, in the digital age, constitutional courts face an array of unprecedented challenges that complicate the advancement of human and citizen rights. First, the rapid pace of technological innovation has surpassed the institutional and procedural capacities of the courts, generating novel legal questions that traditional constitutional jurisprudence cannot adequately resolve. Issues such as big data mining, artificial intelligence, automated decision-making, and social media regulation increasingly implicate fundamental rights, including privacy, freedom of expression, and equality (14, 15).

Second, the limited technical literacy of judges and the absence of specialized advisory bodies hinder the proper examination of digital evidence, algorithmic systems, and technological surveillance mechanisms—reducing the overall quality of judicial deliberation and limiting the courts' ability to balance public interests with individual rights (16). Third, challenges related to the authenticity, integrity, and chain of custody of electronic evidence diminish the efficiency and credibility of judicial processes. Fourth, the cross-border nature of data flows undermines the enforceability of domestic rulings, as jurisdictional boundaries blur in cyberspace. Without robust international cooperation and harmonized standards, domestic courts struggle to regulate multinational digital infrastructures effectively (5).

Fifth, the absence of standardized emergency procedures for addressing digital risks—such as disinformation campaigns or monopolistic behavior by global platforms—exposes citizens to heightened vulnerability. Sixth, excessive surveillance practices conducted without adequate judicial safeguards erode individual privacy, accountability, and immunity from arbitrary monitoring (9). Seventh, digital inequality exacerbates disparities in access to justice by marginalizing disadvantaged groups unable to utilize technological and legal tools for protecting their rights.

Collectively, these challenges indicate that the constitutional review system requires a comprehensive redesign—one that incorporates technical expertise into judicial processes while preserving essential legal guarantees. The more transparent and systematic the implementation of digital governance becomes, the greater the resulting public confidence in judicial institutions. Consequently, the judiciary must integrate digital technologies and communication systems into the administration of justice, but without compromising the human essence of judgment or undermining procedural principles (16).

To address these challenges, a multifaceted reform strategy is proposed to enhance judicial capacity, ensure legal consistency, and strengthen enforcement mechanisms.

- First, establishing a *Digital Expert Branch or Center* within the Constitutional Court would enable complex, technology-related cases to be examined by multidisciplinary teams of expert judges, technical advisors, and legal sociologists.

- Second, forming a *Technical–Legal Advisory Board* composed of experts in artificial intelligence, information security, digital rights, and representatives from civil society and international institutions would allow courts to draw upon independent and pluralistic analyses in evaluating digital evidence (14).
- Third, developing and adopting a *Technical–Judicial Regulation for Digital Evidence* is essential to define standards of data authenticity, integrity, and transparency in expert reporting.
- Fourth, introducing a *Digital Adequacy Test* based on the principles of necessity, proportionality, legitimate purpose, and transparency would ensure that intrusive actions on data or freedoms comply with clear legal criteria.
- Fifth, courts should institute *temporary and emergency mechanisms*—such as expedited platform shutdown orders or preventive injunctions—subject to immediate judicial review, to maintain a balance between swift protection of rights and the right to defense.
- Sixth, international and inter-judicial cooperation should be expanded through *cross-border enforcement protocols*, *data privacy accords*, and *adoption of global standards* for digital governance and evidence handling (15).
- Seventh, binding *guidelines on algorithmic transparency and the right to explanation* should be adopted to guarantee that citizens can understand and challenge automated decisions that affect them.
- Eighth, establishing a *Post-Judgment Monitoring and Enforcement Unit* within the judiciary would ensure compliance with technical rulings, conduct independent audits, and provide public reports on enforcement outcomes.

In parallel, long-term judicial training programs, recruitment of technical consultants, access to scientific resources, and the creation of systems for digital legal aid to low-income citizens would foster equal access to digital justice. Implementing these mechanisms concurrently would empower constitutional courts to issue technically sound, transparent, and enforceable rulings that effectively protect human rights in cyberspace while maintaining a balance between public security, technological innovation, and individual freedoms (14).

A deeper theoretical issue underlying the function of constitutional courts concerns the relationship between the constitution and ordinary legislation. Two major assumptions exist: either the constitution is regarded as the supreme law, unalterable by ordinary statutes, or it is treated as equal to them, subject to legislative amendment. Under the first assumption, any law conflicting with the constitution is null and void; under the second, the constitution's role as a limit on governmental power becomes meaningless (8).

This theoretical tension directly influences the mission and authority of constitutional courts, as well as their judicial composition. One crucial distinction between constitutional and ordinary courts lies in the selection of judges: members of constitutional courts are often appointed from among legal scholars, practicing attorneys, or other distinguished professionals. In some systems, limited political participation in appointments is tolerated as a mechanism for enhancing representational legitimacy. However, this practice introduces a structural conflict between judicial independence and political influence (9).

If the constitution is recognized as the supreme source of legal legitimacy, its enforcement demands an institution that is genuinely independent and impartial. Otherwise, the court's capacity to invalidate unconstitutional laws or protect fundamental rights becomes severely compromised. To reconcile the need for democratic legitimacy with judicial autonomy, constitutional systems must establish integrated safeguards—including clear eligibility criteria for

judges, balanced representation of professional jurists and civil society, transparent appointment procedures, fixed terms, immunity from arbitrary dismissal, and institutional mechanisms for accountability and mutual oversight.

Such arrangements ensure that the supremacy of the constitution attains substantive meaning while preserving the legitimacy of judicial oversight. Thus, the most effective model is one that upholds the constitution as the highest legal norm while preventing political domination over the judiciary through transparent, procedural safeguards (17).

Finally, for an institution to be genuinely recognized as a *constitutional court*, it must possess judicial authority to issue binding judgments with *res judicata* effect. If a body merely refers cases to parliament without the power to annul unconstitutional laws, its status as a “court” becomes questionable. Moreover, unlike the Supreme Court, which functions at the apex of the ordinary judiciary, the Constitutional Court exists outside the judicial hierarchy, reinforcing its independence and supervisory mandate. This structural autonomy enables it to function as an impartial guardian of the constitution, ensuring that all branches of government comply with its principles and that the rule of law remains inviolable (9).

The Criterion of Preventing Harm and Loss in the Protection of Digital Rights by Constitutional Courts

The jurisprudential principle of “*No Harm and No Harassment*” (*La Darar wa La Dirar*)—derived from the Prophetic hadiths and recognized by numerous jurists as possessing the authenticity of *tawātur*—has long been regarded as a foundational rule in Islamic legal thought (3, 12). Within the context of public law, this rule functions as a guiding criterion for balancing individual rights and social duties, establishing an interpretive framework through which courts can assess both governmental and private actions.

Beyond the prohibition of harmful rulings, the *No Harm* principle also imposes a positive obligation to remedy existing harms, thereby offering a jurisprudential foundation for reconciling personal freedoms with the broader imperatives of justice and public order (7). This interpretive rule, when extended to constitutional jurisprudence, provides constitutional courts with a normative tool for assessing the legitimacy of limitations placed upon fundamental rights. It requires that any interference—particularly with freedoms such as expression or access to information—be evaluated according to the principles of necessity, proportionality, and minimal intrusion, preventing the misuse of harm prevention as a pretext for excessive restriction (7, 12).

In the digital age, manifestations of harm have multiplied and evolved into more intricate forms, including breaches of privacy through data aggregation, reputational damage caused by misinformation, algorithmic discrimination, and structural harm stemming from the monopolization of digital markets. Within this contemporary framework, the *No Harm* rule can serve as a legal and ethical bridge between the imperative of limiting freedoms for public safety and the simultaneous duty to safeguard transparency, accountability, and access to redress (3).

Preventive and compensatory mechanisms must therefore be designed not only to address current violations but also to preclude potential future threats. In this regard, the role of constitutional courts is to translate the *No Harm* principle into procedural and enforceable legal standards—using it as a benchmark for legitimacy in reviewing restrictions imposed by legislative and executive authorities, enforcing proportionality, and ensuring access to judicial remedies for digital harms.

Ultimately, the *No Harm and No Harassment* rule constitutes a vital link between Islamic jurisprudential foundations and modern public law principles, equipping constitutional courts with a dynamic interpretive framework to advance the protection of human rights and digital citizenship in a rapidly evolving technological landscape (3, 7, 12).

The Role of Expediency in the Protection of Digital Rights by Constitutional Courts

In Islamic jurisprudence, the principle of expediency (*maslaha*) is traditionally understood as “*appropriateness and suitability*” in promoting public benefit and preventing corruption (11). This principle operates as a methodological guideline to ensure that legal and governmental actions align with the overarching objectives of *Sharia* (18). In the domain of public law, *maslaha* can be reinterpreted as a criterion for balancing individual rights with collective welfare, providing constitutional courts with a moral and legal compass for interpreting modern governance challenges (19).

From this perspective, *public interest* is not synonymous with the unlimited authority of the state over personal liberties; rather, it functions as a measuring standard for the legitimacy and proportionality of governmental restrictions. Any limitation enacted to preserve public order or protect other rights must meet four essential conditions: it must be lawful, necessary, proportionate, and transparent. Moreover, it must be accompanied by procedural safeguards to prevent abuse or arbitrary restriction of fundamental rights.

In the digital context, challenges such as data centralization, unequal access, algorithmic bias, and surveillance risks necessitate a re-examination of the concept of public interest in both legislative and judicial decision-making. Lawmaking and judicial interpretation grounded in expediency should reflect four defining features: (1) respect for the rule of law and human rights, (2) adherence to proportionality in restricting freedoms, (3) institutional transparency and accountability, and (4) protection of vulnerable groups from the adverse structural impacts of technology (15).

Constitutional courts thus occupy a pivotal mediating role, applying the principle of expediency as a lens through which to assess regulatory frameworks governing emerging technologies. Yet, this must be achieved without compromising foundational tenets of public law such as inclusivity, non-discrimination, access to justice, and procedural fairness. Judicial reasoning based on *maslaha* in the digital domain requires the integration of interdisciplinary perspectives—including law, ethics, sociology, and information technology—and the establishment of robust monitoring and compensatory systems capable of harmonizing public welfare with individual freedoms (15).

Ultimately, the pursuit of public interest in the digital age must be rights-based and pragmatic. Rather than relying solely on abstract objectives, the implementation of expediency must occur through clear rules, transparent procedures, and measurable criteria of proportionality, while constitutional courts act as active arbiters that balance innovation and justice within a framework of human dignity and digital rights (18, 19).

The Principle of Social Justice: Equality and Balance in Society

In Islamic jurisprudence, justice (*‘adl*) is defined as a moral disposition or inner virtue that guides individuals toward fulfilling obligations and avoiding prohibitions (4, 10, 17). This ethical dimension of justice offers a conceptual foundation for understanding the role of public institutions—particularly constitutional courts—in protecting human rights and citizenship in the digital age.

From a public law perspective, justice extends beyond individual morality; it requires the establishment of institutional and legal structures that maintain equilibrium between rights and duties and prevent inequality or exploitation. In this view, every legislative or judicial decision must reflect a commitment to justice, particularly when

addressing the needs of minorities and vulnerable populations. Unequal access to digital resources or technological participation can exacerbate systemic inequality, thereby undermining fundamental rights.

As the guardians of the rule of law and fundamental rights, constitutional courts are tasked with scrutinizing legislative and executive mechanisms to ensure alignment with the objectives of human rights and citizenship (2). This responsibility demands the continuous development of interpretive rules for fundamental rights in light of technological innovation, strict observance of balance and proportionality, and the assurance of equal access to judicial and administrative remedies.

Citizens, in turn, are obligated to exercise their rights within the framework of social responsibility, seeking not only personal but also collective well-being. This participatory understanding of citizenship reinforces social cohesion, fosters civic belonging, and transforms human rights from purely individualistic entitlements into shared moral and civic commitments.

Furthermore, from a constitutional perspective, legislation pertaining to the digital domain must address four core pillars:

1. Equal access to technology and information;
2. Protection of privacy and personal data;
3. Freedom of expression accompanied by safeguards against structural harms such as hate speech and misinformation; and
4. Transparency and accountability in automated and algorithmic decision-making processes.

These principles should be enshrined in constitutional or fundamental rights provisions, empowering courts to evaluate laws and regulations against the standards of human dignity and digital citizenship. In cases of conflict, constitutional courts must ensure that the protection of rights prevails through appropriate judicial remedies.

Given the transnational nature of the digital sphere, constitutional courts must also engage with international human rights norms and comparative jurisprudence, ensuring the effective protection of citizens' rights across jurisdictions (5, 14). This requires embracing cross-border cooperation and recognizing that digital justice cannot be achieved through domestic law alone.

In conclusion, integrating the jurisprudential concept of justice with public law principles such as the rule of law, proportionality, access to justice, and protection of vulnerable groups provides constitutional courts with a coherent ethical and legal framework. Such integration enables them to render judgments that uphold human dignity, promote social balance, and ensure the protection of human rights and citizenship in the face of rapid technological transformation (4, 10, 17).

Conclusion

Reviewing the role of constitutional courts in advancing the protection of human rights and citizenship in the digital age is both a strategic necessity and a structural imperative. This review must proceed on three complementary levels—structural, substantive, and procedural—to ensure that judicial independence is preserved while the technical and organizational capacity of these institutions is significantly enhanced. The establishment of specialized digital branches or centers, the formation of technical–legal advisory boards, the development of regulations for the acceptance and analysis of digital evidence, and the introduction of a digital adequacy test together enable courts to issue judgments grounded in a profound understanding of technology, credible evidence, and transparent legal standards.

When jurisprudential principles such as *No Harm and Not Harmful* and *expediency* are employed as interpretive tools, they provide a rational framework for balancing individual rights and collective interests, particularly in determining preventive and compensatory mechanisms. Constitutional courts, therefore, must not limit themselves to retrospective critique of regulations but should act proactively through interim orders, appealable emergency measures, enforcement monitoring units, and transnational cooperation protocols. However, this proactive stance must never substitute for due process, transparency, and the right to defense—cornerstones without which the protection of fundamental rights becomes structurally deficient.

Equally essential is the institutionalization of algorithmic transparency and the right to explanation in automated decision-making. Strengthening the education and digital literacy of judges and court staff, while guaranteeing equitable access to digital justice for vulnerable populations, are prerequisites for achieving genuine social justice within the technological domain. On the international level, judicial and technical cooperation among states, coupled with the adoption of global standards for data protection and human rights, remains vital to ensure the effective enforcement of judgments across borders and to mitigate the dominance of digital platforms.

Ultimately, the reform of constitutional courts in the digital age must be grounded in an interdisciplinary, rights-centered, and ethics-oriented approach—one that harmonizes traditional jurisprudential values with contemporary legal principles. Within this framework, transparency, accountability, equality, and respect for human dignity must occupy the core of constitutional adjudication. Such an approach would enable constitutional courts not only to remain steadfast guardians of the rule of law but also to act as dynamic and responsible actors in shaping the evolving relationship between technology, governance, and society. In doing so, their rulings would safeguard citizens' rights while simultaneously fostering innovation that aligns with human dignity, social balance, and universal human rights standards.

Successful reform in this realm depends upon the convergence of three essential pillars: political will, institutional investment, and public awareness. Without these, initiatives risk remaining fragmented and superficial. Yet, through coordinated and principled efforts, constitutional courts can reinforce the legal backbone of society in the digital era and prevent disproportionate consequences that threaten human dignity and the foundational values of justice.

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Authors' Contributions

All authors equally contributed to this study.

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The authors of this article declared no conflict of interest.

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Transparency of Data

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