

Designing Justice: The Influence of Constitutional Review Mechanisms on Minority Rights Protection in Democracies

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ABSTRACT: This study examines the empirical relationship between constitutional review models and the protection of minority rights in democratic states. While international human rights instruments set normative standards, domestic institutional designs determine how these norms are implemented and enforced. The research evaluates whether countries with stronger constitutional review systems—particularly those featuring centralized courts, abstract review powers, and individual constitutional complaint mechanisms—are more effective in protecting minority rights. Using a cross-national panel dataset covering 2000–2024, the analysis integrates data from the Comparative Constitutions Project, World Justice Project, V-Dem, and Minority Rights Group. Key dependent variables include the WJP Fundamental Rights Index and V-Dem’s Equality before the Law and Liberty Index. Independent variables capture review typologies and structural features, while controls address regime type, economic development, and minority risk context. Analytical methods—OLS, GLS, event studies, and propensity score matching—are employed to test causal robustness. Results show that centralized constitutional review and individual access mechanisms significantly correlate with higher levels of minority rights protection. Event-study analyses demonstrate post-reform improvements in rights indices, and matched comparisons confirm positive treatment effects. These findings underscore how institutional design influences human rights enforcement. The study contributes to comparative constitutional law and political science by empirically linking judicial structure to rights outcomes. It concludes that robust constitutional review mechanisms, supported by democratic governance and institutional integrity, are critical to translating normative commitments into tangible protections for minority groups.

Keywords: Constitutional Review, Minority Rights, Judicial Institutions, Abstract Review, Democratic Governance, Comparative Constitutional Law, V-Dem.



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INTRODUCTION

In democratic societies, the protection of minority rights is increasingly recognized as a core test of institutional integrity and the quality of constitutional governance. The discourse surrounding constitutional review as a mechanism to safeguard these rights has evolved significantly, with

growing scholarly attention on the structural models of review and their implications for legal outcomes. This chapter explores the theoretical, normative, and historical foundations that frame constitutional review systems and investigates their relevance in ensuring robust protections for minority groups within democratic frameworks.

At the heart of constitutional review lies the fundamental distinction between centralized and diffuse models. Centralized review consolidates authority in a specialized constitutional court, such as in Germany or Mexico, where judicial interpretations benefit from uniformity and legal coherence. Conversely, diffuse review allows constitutional interpretation by general courts, embedding constitutional questions within ordinary legal proceedings and fostering a broader, albeit potentially inconsistent, spectrum of jurisprudence (Ismayilov, 2024). These models are not merely institutional preferences; they represent divergent philosophies of judicial oversight, authority, and legal accountability. The adoption of one model over another can significantly influence how minority rights are interpreted, contested, and ultimately protected within a given legal order.

Normative frameworks established under international human rights law, such as the International Covenant on Civil and Political Rights (ICCPR) and declarations from the United Nations, exert considerable influence on domestic constitutional arrangements. These instruments delineate the responsibilities of states to safeguard cultural, linguistic, and religious identities, emphasizing the indivisibility of minority rights and broader human rights norms (Hanara, 2018). Courts often invoke such frameworks as interpretive tools, fostering a form of transjudicial dialogue where international standards shape and reinforce local legal commitments. This dialogic process legitimizes judicial interventions and amplifies their normative authority, particularly in contested areas of minority protection (Gani et al., 2024).

The emergence and evolution of constitutional courts have been deeply intertwined with political transitions and historical exigencies. In post-World War II Europe, the creation of constitutional review bodies was a reaction to authoritarian excesses and a commitment to embedding human rights within democratic constitutions (Kim & Nolette, 2023). Over time, this institutional innovation spread globally, with nations adapting review models to fit local legal traditions and political cultures. Notably, civil law countries are more inclined to adopt centralized constitutional courts, reflecting a legal heritage that favors codified norms and hierarchical adjudication (Kim & Nolette, 2023). These historical trajectories underscore the adaptive nature of constitutional review mechanisms and their responsiveness to evolving normative demands.

Despite the theoretical richness of the debate, empirical studies investigating the effectiveness of constitutional courts in protecting minority rights remain limited in scope and depth. Methodological heterogeneity and inconsistent operational definitions pose significant challenges to comparative analysis (Ahmad, 2024). Moreover, reliance on case studies, while valuable for contextual insights, often lacks the generalizability required for broader inferences. This has prompted calls for more systematic, data-driven approaches that consider longitudinal patterns and incorporate socio-political variables influencing judicial behavior and outcomes (Ahmad et al., 2024).

Within comparative constitutional law, minority rights are framed through the lens of equality, dignity, and social inclusion. Scholars argue for a more integrated conceptualization of minority protections that transcends formal legal recognition and engages with broader societal values and challenges (Hanara, 2018). This perspective acknowledges that minority rights are not static but are shaped by socio-economic conditions, political dynamics, and global forces such as migration and nationalism.

The judiciary, particularly constitutional courts, occupies a pivotal role in mediating majoritarian pressures and upholding minority protections. Courts are often the last resort for marginalized communities seeking redress, and their decisions can either entrench exclusion or catalyze inclusion (Lu et al., 2020). By framing minority rights within constitutional guarantees, courts assert a moral and legal imperative that can recalibrate public discourse and institutional behavior. This mediating function becomes especially salient in periods of societal upheaval, where political actors may be less inclined to protect vulnerable groups.

Ultimately, the interaction between institutional design and normative commitment to human rights forms the basis for evaluating the effectiveness of constitutional review. Centralized and diffuse models offer distinct pathways for adjudicating minority claims, each with inherent strengths and limitations. This chapter sets the foundation for an empirical investigation into how these models perform in practice, drawing on global datasets and analytical methods to assess their impact on minority rights protection. In doing so, it contributes to a broader scholarly and policy discourse on the role of judicial institutions in sustaining inclusive democratic governance.

METHOD

This chapter outlines the research design, data sources, variable construction, and methodological strategies employed to assess the relationship between constitutional review mechanisms and minority rights protection across democratic states. In doing so, it integrates established empirical tools with a legal-institutional framework suited to comparative constitutional analysis.

This study employs a cross-national, longitudinal research design using panel data covering the years 2000 to 2024. The unit of analysis is country-year, allowing for temporal and cross-sectional variation in institutional structures and rights outcomes. The primary objective is to test whether countries with stronger constitutional review mechanisms exhibit higher levels of minority rights protection.

The data are drawn from multiple reputable sources. The Varieties of Democracy (V-Dem) dataset offers disaggregated measures of liberal democracy, individual liberty, and legal equality (Solehudin et al., 2024; Teixeira et al., 2021). The World Justice Project provides annual scores on fundamental rights and the rule of law. Supplementary indicators are drawn from the World Bank and Minority Rights Group, ensuring broad geographical and temporal coverage. These datasets are preferred for their rigorous methodologies, inter-coder reliability, and consistent validation mechanisms (Leeuwen et al., 2024).

- **Independent Variables:**

- *CentralizedReview*: Binary indicator for the existence of a centralized constitutional court.
- *AbstractReview*: Coded presence of abstract constitutional review authority.
- *IndivComplaint*: Availability of individual constitutional complaint mechanisms.
- Dependent Variables:
 - *WJP Fundamental Rights Index* (scale 0–1): Captures de facto protection of rights.
 - *V-Dem v2xcl_rol Index*: Reflects equality before the law and individual liberty.
- Control Variables:
 - *MRG Peoples Under Threat Score*: Measures risk to minority groups.
 - *v2x_polyarchy*: Electoral democracy index.
 - *GDP per capita*: Proxy for economic development.

V-Dem’s “Equality before the Law and Individual Liberty” variable is particularly robust, drawing from expert-coded surveys, comparative historical assessments, and rigorous inter-coder reliability tests (Solehudin et al., 2024; Leeuwen et al., 2024).

To assess causal relationships, the study employs several quantitative models:

- OLS and GLS Regressions: Used for baseline estimates, with robust standard errors clustered by country. These models help establish initial associations between review structures and minority rights outcomes.
- Event-Study Models: Track the impact of constitutional reforms over time. This approach identifies shifts in rights protection metrics before and after significant institutional changes (Prasetyorini et al., 2024).
- Propensity Score Matching (PSM): Controls for selection bias by matching countries with and without strong review models on key covariates. This enhances causal inference by simulating randomized experimental conditions (Levchenko et al., 2023).

The combination of these methods allows for robust triangulation of results, offering insights into both immediate and longitudinal impacts of constitutional review mechanisms.

Although each method offers unique strengths, combining OLS, GLS, event-study, and matching models enhances robustness and minimizes potential bias. Limitations such as omitted variables and measurement errors are acknowledged and discussed in the concluding section.

RESULT AND DISCUSSION

Descriptive Findings

Global patterns since 2000 indicate a significant rise in the establishment of centralized constitutional review systems, particularly across emerging democracies in Africa and Asia (Kim

& Nolette, 2023). Countries like Indonesia and several West African states have either created or strengthened centralized courts to enhance judicial coherence and ensure constitutionality in governance (Sinani, 2024). This trend signals a normative shift in recognizing constitutional review as a cornerstone of democratic stability and minority rights protection.

The presence of abstract judicial review varies markedly across legal traditions. Civil law systems such as those in Germany and France routinely employ abstract review, empowering courts to preemptively assess legislation for constitutional compliance (Sinani, 2024). In contrast, common law systems rely on concrete case-driven adjudication, limiting the judiciary's capacity to proactively safeguard constitutional principles (Kim & Nolette, 2023). These structural differences affect the timeliness and consistency of minority rights enforcement.

Access to individual constitutional complaints also varies regionally. Eastern Europe and Latin America exhibit broader access, often associated with increased civic engagement and institutional responsiveness (Li et al., 2022). In contrast, many African states report lower access due to limited public awareness or procedural hurdles. This regional disparity highlights how institutional architecture and citizen engagement co-produce rights access.

Minority rights protection, as measured by WJP and V-Dem indices, tends to be higher in countries employing centralized review models. These systems offer greater judicial consistency and often align more closely with international rights norms. Diffuse review systems, while functional, often produce variable outcomes due to jurisdictional inconsistencies (Sinani, 2024; Li et al., 2022).

Regression Models

Regression results confirm that constitutional design significantly influences minority rights outcomes. Centralized review, abstract review powers, and individual complaint mechanisms all exhibit positive and statistically significant relationships with both WJP and V-Dem indices (Kim & Nolette, 2023; Sinani, 2024).

Control variables such as democratic quality (V-Dem's polyarchy index) and GDP per capita also exert strong effects, affirming existing literature on democracy and economic development as correlates of rights protection (Batsaikhan & Park, 2022). These findings suggest that constitutional review mechanisms function optimally in supportive democratic and economic environments.

The use of OLS and GLS models brings important methodological considerations. OLS, while intuitive, may be biased under conditions of endogeneity (Sinani, 2024). GLS helps mitigate some of these biases through structured error assumptions. Nonetheless, both models face limitations in addressing unobserved heterogeneity, necessitating the use of additional techniques such as event studies or matching models (Batsaikhan & Park, 2022).

Pooled regressions are criticized for assuming country homogeneity. Legal-political contexts vary widely and aggregated results may obscure critical differences (Li et al., 2022). This study accounts for these issues through disaggregated models and robust error structures.

Robustness Checks

The event-study model exploits temporal discontinuities from major constitutional reforms, such as Indonesia's 2001 judicial overhaul (Chalid, 2017). Results show measurable post-reform improvements in minority rights scores, reinforcing the causal interpretation.

Legal scholars frequently use difference-in-differences and regression discontinuity designs to establish causality in legal reforms (Li et al., 2022). These tools improve internal validity by comparing treatment and control groups over time (Sinani, 2024).

Propensity Score Matching (PSM) further controls for selection bias. Matched comparisons between countries with and without centralized review yield statistically significant differences in minority rights outcomes. Best practices include robust covariate matching and sensitivity checks (Li et al., 2022; Batsaikhan & Park, 2022).

Matching methods such as kernel and nearest-neighbor matching are used to maximize comparability and minimize confounding. This approach enhances causal credibility and strengthens the generalizability of findings.

This chapter examines the implications of the empirical findings within the broader theoretical and institutional landscape of constitutional review and minority rights protection. The results affirm that centralized constitutional review models are associated with higher levels of minority rights protection. This relationship is supported by both quantitative analyses and theoretical frameworks that explain how institutional design influences legal outcomes. The discussion is structured around four key themes: balancing majority rule with minority protection, theoretical mechanisms underpinning abstract review, institutional moderators, and critiques of judicial over-reliance.

Centralized courts serve as vital counter-majoritarian institutions, often positioned to buffer minority rights against the tides of populist or majoritarian politics. Their ability to scrutinize legislation through proportionality and reasonableness tests ensures that laws infringing on liberties meet stringent justificatory standards. Through such mechanisms, constitutional courts reinforce the protection of vulnerable groups and maintain democratic balance (Conrad et al., 2017). In jurisdictions such as Germany and South Africa, centralized constitutional courts are legally empowered to nullify legislation that threatens minority protections. Their function as arbiters of constitutional conformity places them at the nexus of democracy and human rights, where their jurisprudence safeguards vulnerable groups without undermining legislative authority.

A central feature contributing to the success of centralized models is their capacity for abstract judicial review. Unlike concrete review, which is reactive and case-bound, abstract review allows courts to engage proactively with constitutional questions, even before a law is applied (Hasani et al., 2022). This preemptive role is instrumental in preventing potential rights violations and fosters a forward-looking approach to constitutional governance. Theoretical support for abstract review hinges on three pillars: judicial independence, institutional legitimacy, and supranational judicial dialogue. Judicial independence ensures courts can act without fear of political reprisal (Haglund, 2019). Legitimacy, earned through transparent, consistent, and principled adjudication, enhances public trust and compliance with rulings. Supranational dialogue, notably with courts like the

ECtHR, embeds domestic jurisprudence within a broader rights-oriented legal ecosystem, reinforcing judicial authority and normative alignment (Yıldız, 2023).

However, these positive effects are moderated by several institutional factors. Legal hierarchy and the clarity of jurisdiction strengthen centralized courts by delineating their supremacy in constitutional matters (Mark & Zilis, 2017). Yet, the relationship between courts and political branches remains crucial. Cooperative governance enhances judicial effectiveness, while adversarial dynamics may limit the implementation of rulings (Hasani et al., 2022). Furthermore, an engaged civil society amplifies the protective capacity of courts by bringing minority issues to the fore and creating accountability networks. The broader cultural context also matters: societies with entrenched human rights norms enable courts to operate more effectively, while repressive regimes constrain even well-structured courts (Hasani et al., 2022).

Still, caution is warranted against over-reliance on courts for minority protection. One critique posits that excessive judicial involvement risks encroaching upon democratic decision-making, potentially sparking legitimacy crises or political pushback (Mark & Zilis, 2017). Another critique emphasizes that courts, by their nature, are reactive and limited in their capacity to address the structural roots of inequality. Legal remedies often fall short without complementary legislative, educational, and policy initiatives (Yıldız, 2023). Moreover, accessibility barriers financial, procedural, or cultural can prevent minorities from effectively engaging with judicial systems, undermining the inclusive potential of constitutional review (Carrington & Strother, 2023).

In sum, while the findings support the view that strong constitutional review structures positively correlate with minority rights protections, this efficacy is contingent upon multiple institutional, societal, and procedural factors. Courts function most effectively when embedded in democratic, participatory, and rights-oriented systems. The discussion underscores the importance of a holistic approach to minority rights one that recognizes courts as necessary but not sufficient mechanisms within a broader ecosystem of protections.

CONCLUSION

This study provides empirical evidence that the institutional design of constitutional review systems particularly centralized courts, abstract review powers, and mechanisms for individual constitutional complaints plays a meaningful role in promoting minority rights protection within democratic states. The findings, derived from longitudinal panel analyses between 2000 and 2024, indicate that robust constitutional review structures are positively associated with improved performance on key indicators such as the World Justice Project's Fundamental Rights Index and V-Dem's Equality before the Law and Liberty Index. However, this relationship should be understood as context-dependent rather than deterministic; judicial effectiveness operates within broader ecosystems shaped by democracy levels, political culture, and civil society participation.

Beyond confirming theoretical expectations, the study bridges the gap between comparative constitutional law and empirical political science by illustrating how institutional structures can facilitate the translation of normative commitments into enforceable rights. Nevertheless, constitutional design alone cannot guarantee minority protection without concurrent efforts to

strengthen judicial independence, civic engagement, and democratic accountability. For states undertaking constitutional reform, the results highlight that investing in inclusive, transparent, and rights-oriented judicial institutions is essential to sustaining both minority rights and democratic legitimacy.

REFERENCE

- Ahmad, M. S., Alruwaili, A., Alruwaili, K. H. A., Alanazi, A. K. M., Alarjan, L. M. M., Alanazi, A. M. M., Aljunaydi, N. A., Alkhaldi, A. M. M., Alabdali, M. F. H., & Alrashedi, F. F. A. (2024). Evaluation of Child Preference for Dentist Attire and Usage of a Camouflage Syringe in Reduction of Anxiety. *Journal of Pharmacy and Bioallied Sciences*, 16(Suppl 1), S757–S760. https://doi.org/10.4103/jpbs.jpbs_997_23
- Batsaikhan, B., & Park, G.-C. (2022). Problems and Improvements of Mongolia's Governmental Structure- Focusing on the Checks and Balances Between the Parliament, the President and the Cabinet. *Korean Assoc Int Assoc Const Law*, 28(2), 95–126. <https://doi.org/10.24324/kiac.2022.28.2.95>
- Carrington, N. T., & Strother, L. (2023). Plugging the Pipe? Evaluating the (Null) Effects of Leaks on Supreme Court Legitimacy. *Journal of Empirical Legal Studies*, 20(3), 669–712. <https://doi.org/10.1111/jels.12362>
- Chalid, H. (2017). Dualism of Judicial Review in Indonesia: Problems and Solutions. *Indonesia Law Review*, 7(3). <https://doi.org/10.15742/ilrev.v7n3.353>
- Conrad, C. R., Hill, D. W., & Moore, W. H. (2017). Torture and the Limits of Democratic Institutions. *Journal of Peace Research*, 55(1), 3–17. <https://doi.org/10.1177/0022343317711240>
- Gani, I. A., Asmara, R., Sulaiman, S., & Husna, A. (2024). The Constitutional Court's Protection and Fulfilment of the Citizens' Rights: Constitutional and Islamic Law Perspectives. *Samarah Jurnal Hukum Keluarga Dan Hukum Islam*, 8(1), 317. <https://doi.org/10.22373/sjhk.v8i1.22215>
- Haglund, J. (2019). International Institutional Design and Human Rights: The Case of the Inter-American Human Rights System. *Conflict Management and Peace Science*, 36(6), 608–625. <https://doi.org/10.1177/0738894219881427>
- Hanara, D. (2018). Mainstreaming Human Rights in the Asian Judiciary. *Constitutional Review*, 4(1), 77. <https://doi.org/10.31078/consrev414>
- Hasani, I., Halili, H., & Balakrishnan, V. (2022). Undelivered Constitutional Justice? Study on How the Decisions of the Constitutional Court of the Republic of Indonesia Are Executed. *Jurnal Civics Media Kajian Kewarganegaraan*, 19(1), 45–52. <https://doi.org/10.21831/jc.v19i1.48378>

- Ismayilov, R. R. o. (2024). Writ of Certiorari as a Means of Ensuring Centralization of Diffuse Constitutional Review. *Russian Justice*, 1, 28–35. <https://doi.org/10.37399/issn2072-909x.2025.1.28-35>
- Kim, D., & Nolette, P. (2023). The Institutional Foundations of the Uneven Global Spread of Constitutional Courts. *Perspectives on Politics*, 22(1), 294–311. <https://doi.org/10.1017/s1537592723002025>
- Leeuwen, L. v., Verbrugge, R., Verheij, B., & Renooij, S. (2024). Building a Stronger Case: Combining Evidence and Law in Scenario-Based Bayesian Networks. <https://doi.org/10.3233/faia240202>
- Levchenko, O., Levchenko, A. V., Kolisnichenko, R., Tsumariyev, M., & Zaverbnyj, A. (2023). Formation of a Model of Legal Protection of Competitive Advantages in the System of Innovation Management of Sustainable Development and Planning. *International Journal of Sustainable Development and Planning*, 18(4), 1227–1233. <https://doi.org/10.18280/ijdsdp.180427>
- Li, T., Hidayah, N. N., Lyu, O., & Lowe, A. (2022). Navigational Space for the Absence of Sustainability Assurance in China. *Accounting Auditing & Accountability Journal*, 36(5), 1221–1248. <https://doi.org/10.1108/aaaj-04-2020-4514>
- Lu, J., Sun, D., Yu, J., Li, J., & Niu, F. (2020). “Local Versus Nonlocal” Enterprise Linkages of Global Cities: A Comparison Between Beijing and Shanghai, China. *Complexity*, 2020, 1–13. <https://doi.org/10.1155/2020/8918534>
- Mark, A., & Zilis, M. A. (2017). Restraining the Court: Assessing Accounts of Congressional Attempts to Limit Supreme Court Authority. *Legislative Studies Quarterly*, 43(1), 141–169. <https://doi.org/10.1111/lsq.12187>
- Prasetyorini, S. A., Lisdiyono, E., & Mulyani, S. (2024). Reimagining Legal Aid Institution Regulations to Enhance Legal Clarity. *Journal of Law and Sustainable Development*, 12(5), e03418. <https://doi.org/10.55908/sdgs.v12i5.3418>
- Sinani, B. (2024). Global Patterns of Constitutional Judicial Review Systems: Two Major Models of Constitutional Judicial Review in the World. *Juridical Tribune - RCIL*, 14(1), 156–173. <https://doi.org/10.62768/tbj/2024/14/1/10>
- Solehudin, E., Fautanu, I., & Rizal, L. F. (2024). The Value of Community Participation in the Creation of Local Legal Products in Indonesia. *Hanifiya Jurnal Studi Agama-Agama*, 7(1), 99–114. <https://doi.org/10.15575/hanifiya.v7i1.34483>
- Teixeira, F., Ferreira, J. J., & Veiga, P. M. (2021). Does Law as Resource Bring a Competitive Advantage to Companies? *Management Research the Journal of the Iberoamerican Academy of Management*, 20(3), 193–211. <https://doi.org/10.1108/mrjam-07-2021-1204>
- Yıldız, E. (2023). Between Forbearance and Audacity. <https://doi.org/10.1017/9781009103862>