

Judicial Contributions to Health Security: The Complementary Roles of Administrative and Constitutional Courts

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Abstract

The constitutional recognition of the right to health has emerged as a cornerstone of modern public health governance, transforming health from a social good into a fundamental human right. This study critically examines the contributions of the Jordanian constitutional and administrative judiciaries in strengthening health security as a social necessity, situating Jordan within a comparative framework that includes South Africa, Tunisia, India, France, and Canada. Employing a qualitative doctrinal and comparative methodology, the research analyzes constitutional provisions, administrative legislation, and judicial precedents to assess how courts safeguard health rights through legality, proportionality, and constitutional review. Findings reveal that while Jordan's Constitution of 1952 lacks explicit recognition of health security, judicial interpretation of equality, dignity, and privacy provisions has partially compensated for this gap. The administrative judiciary has played a pivotal role in reviewing Ministry of Health decisions, ensuring legality and proportionality, while the constitutional judiciary has provided normative oversight, albeit constrained by procedural barriers such as the strict interpretation of the "condition of interest."

Comparative insights demonstrate that explicit constitutional enshrinement of health rights, as in South Africa and India, enhances judicial capacity to enforce health protections, whereas Jordan's fragmented legislative framework undermines coherence and effectiveness. The study contributes to bridging a critical research gap by identifying mechanisms of functional integration between constitutional and administrative judiciaries, highlighting their complementary roles in reinforcing health security. Ultimately, it offers practical recommendations for Jordan, including explicit constitutional recognition of health rights, procedural reforms to expand access to constitutional review, and specialized judicial mechanisms for health-related disputes. By integrating global experiences with Jordanian realities, this research advances scholarly debates on constitutional cohesion, judicial interpretation, and the practical realization of health rights in contemporary governance.

Keywords: Right to health, health security, constitutional judiciary, administrative judiciary, Jordan, comparative constitutional law.

1. Introduction:

1.1 Study Topic: The constitutional recognition of the right to health has become a cornerstone of modern public health governance, reflecting the growing consensus that health is not merely a social good but a fundamental human right. Comparative constitutional scholarship demonstrates that embedding health rights within constitutional frameworks can significantly influence institutional performance and population health outcomes (Kavanagh, 2015; Matsuura, 2012). This recognition is not limited to theoretical debates; empirical studies confirm that constitutional provisions on health correlate with improved health indicators across diverse jurisdictions (Heymann, Cassola, Raub, & Mishra, 2013; Ni et al., 2026). Globally, countries have adopted varied approaches to constitutionalizing health. Kenya's legal and institutional reforms illustrate how universal health coverage can be strengthened through constitutional guarantees (Mbindyo et al., 2020). Similarly, Brazil's fiscal regime has been critically examined in light of constitutional obligations to adequately finance public health policies (Bevilacqua, Soares, & dos Santos, 2020). In Kazakhstan, constitutional provisions have been judicially interpreted to expand citizens' access to health care (Tazhiyeva, Mytalyapova, & Ormanova, 2025). These comparative experiences highlight the dynamic interplay between constitutional law, judicial interpretation, and public health outcomes (Nasution, Syafruddin, & Sihombing, 2023; Chourasiya, 2025). At the same time, scholars emphasize the challenges of constitutionalizing health rights. While constitutional provisions may establish broad guarantees, their implementation often depends on judicial activism, fiscal capacity, and political will (Huo, 2019; Davies, 2022). The judicialization of health care in Latin America, for instance, demonstrates both the potential and the limitations of constitutional health guarantees (Prevital et al., 2024; De Souza Cardoso, 2023). Moreover, constitutional protections must adapt to emerging public health crises, such as pandemics, where emergency laws and privacy rights intersect with health governance (Burkholder, Ross, Vartanyan, & Bergquist, 2021; Chen, 2025). In Jordan, the constitutional amendments of 2011 reshaped the balance of public authorities but did not explicitly enshrine the right to health (Nasrawin, 2013). The COVID-19 pandemic further exposed the gaps in constitutional health protections, as emergency laws were invoked to manage the crisis while raising concerns about privacy and civil liberties (Al-Razouq & Al-Adayleh, 2024; Al-Assaf, 2025). These developments underscore the urgent need to examine how constitutional amendments can strengthen and guarantee the right to public health in Jordan, drawing lessons from global experiences while addressing local challenges. This research therefore seeks to critically analyze the impact of constitutional amendments on the right to public health, situating Jordan within a broader comparative framework. By integrating global literature (Yamin, Bottini Filho, & Gianella Malca, 2024; Dendane, 2024; Hodge et al., 2019; Hodge, 2017) with Jordanian scholarship, the study aims to provide a comprehensive understanding of how constitutional law can serve as a vehicle for advancing public health guarantees. Ultimately, the research contributes to ongoing debates on constitutional cohesion, judicial interpretation, and the practical realization of health rights in both global and Jordanian contexts.

1.2 Study objectives: This research pursues interconnected objectives aimed at advancing understanding of how judicial systems protect health security as a social necessity. The primary objective is to establish a comprehensive legal framework that conceptualizes health security as a collective social imperative requiring coordinated institutional action. A second objective is to analyze the Jordanian administrative judiciary's contributions in safeguarding health security through its review mechanisms, examining how administrative courts apply principles of legality and proportionality when evaluating health-related administrative decisions issued by the Ministry of Health. The third objective focuses on the constitutional judiciary's role in protecting health security by ensuring legislative compliance with constitutional guarantees of equality, human dignity, and personal freedom, demonstrating how constitutional courts have creatively interpreted constitutional texts to establish enforceable health protections. A fourth objective is to identify mechanisms of functional integration between the two judicial branches, demonstrating how their

complementary roles create a comprehensive protective system, with the constitutional court's review providing the normative framework for administrative court operations. Finally, this study aims to extract practical recommendations for strengthening health security protections in the Jordanian legal system, particularly regarding explicit constitutional recognition of health rights and specialized judicial procedures for health-related disputes.

1.3 Importance of the study: Health security has evolved from an individual medical concern into a fundamental social necessity and a cornerstone of national security. It encompasses legal and social protections guaranteeing access to safe health services while shielding society from risks that threaten stability (Dendane, 2024). Following the COVID-19 pandemic, the judiciary's role in safeguarding health security has become increasingly prominent. The intersection of constitutional and administrative jurisdictions ensures state actions balance public health with individual liberties (Hodge et al., 2019). The administrative judiciary safeguards against arbitrary executive power, reviewing Ministry of Health decisions to prevent unjustified infringements (Al-Zubaidi & Abu Ermileh, 2020) and applying proportionality in measures like quarantines (Hashim, 2026). Simultaneously, the constitutional judiciary ensures legislative frameworks align with constitutional principles, deriving protections from provisions such as Article 6(1) and Article 15 (Al-Assaf, 2021; Al-Assaf, 2025). Globally, courts in South Africa and India have interpreted constitutional provisions to enforce health care obligations (Burkholder et al., 2021; Chourasiya, 2025). This study investigates how dual judicial oversight reinforces health security while preserving dignity and equality.

1.4 Research Problem: The research problem lies in the fragmented and implicit treatment of health security within the Jordanian legal system, despite its critical importance as a social necessity. While the Jordanian Constitution of 1952 does not explicitly recognize health security as a fundamental right, both the constitutional and administrative judiciaries have been tasked with protecting health-related interests through interpretive mechanisms. This fragmentation raises fundamental questions about the adequacy of the current legal framework to address contemporary health challenges, particularly during crisis situations such as the COVID-19 pandemic. According to the World Health Organization (WHO, 2021), "health is a state of complete physical, mental and social well-being, not merely the absence of disease or infirmity," and the United Nations Sustainable Development Goals (SDGs, 2015; United Nations, 2015) emphasize that ensuring healthy lives and promoting well-being is central to sustainable development. This international recognition highlights the gap in Jordan's explicit constitutional protection of health security and prompts critical inquiry into the role of the Jordanian judiciary in interpreting existing provisions to safeguard this vital right. Furthermore, the absence of a coherent framework explaining how the constitutional and administrative judiciaries work in tandem to protect health security creates uncertainty about the effectiveness of current judicial mechanisms and their alignment with international standards and comparative constitutional experiences. Accordingly, this study is guided by the following main research question:

How have the Jordanian constitutional and administrative judiciaries contributed to strengthening and guaranteeing health security as a social necessity, and what mechanisms of functional integration exist between these two judicial branches in protecting this right compared to recent constitutional experiences in other countries?

This main question gives rise to several sub-questions, namely:

- **What role does the Jordanian administrative judiciary play in reviewing health-related decisions and ensuring their legality?**
- **How does the Jordanian constitutional judiciary contribute to protecting fundamental health rights and linking them to equality and liberty?**
- **What mechanisms of functional integration exist between the administrative and constitutional judiciaries in strengthening health security as a social necessity?**
- **What are the key comparative constitutional experiences (in South Africa, Tunisia, India, France, and Canada) that can inform the Jordanian context?**

1.5 Study Methodology: This research employs a qualitative, comparative legal methodology grounded in doctrinal analysis and institutional examination (Loveland, 2021). The study utilizes a mixed approach combining textual analysis of constitutional and administrative law provisions, examination of judicial precedents, and comparative constitutional law analysis (Heymann et al., 2013). The primary data sources include the Jordanian Constitution of 1952, the Administrative Judiciary Law No. 27 of 2014, and relevant health legislation. Secondary sources encompass published judicial decisions from the Jordanian Constitutional Court and Administrative Courts, academic literature, and international instruments including the WHO Constitution and United Nations Sustainable Development Goals (World Health Organization, 1946; United Nations, 2015). The comparative dimension examines constitutional and administrative judicial approaches in South Africa, Tunisia, India, France, and Canada, drawing on constitutional texts and scholarly analysis (Al-Assaf, 2021; Chourasiya, 2025). The research employs interpretive analysis to examine how existing constitutional provisions have been interpreted by courts to protect health security, and functional analysis to identify mechanisms of integration between constitutional and administrative judiciaries (Hodge et al., 2019). This methodology enables comprehensive understanding of judicial contributions to health security protection while facilitating meaningful comparative insights.

2. Literature Review: Discussing the academic and applied approaches that have lectured the issue under study, this segment represents a foundation of any scientific research, as it focuses on presenting and investigating previous studies related to the topic.

2.1 Cluster 1: International Studies on Health Security and Judicial Protection: International scholarship has increasingly recognized health security as a multifaceted legal and social imperative requiring robust institutional frameworks. Heymann et al. (2013) conducted a comprehensive comparative analysis of constitutional health protections across 191 countries, demonstrating significant variations in how jurisdictions constitutionally enshrine health rights. Their findings reveal that explicit constitutional recognition of health rights strengthens judicial capacity to enforce health protections, particularly during public health emergencies. Burkholder et al. (2021) examined emergency care provisions in national constitutions globally, identifying that jurisdictions with explicit constitutional health frameworks demonstrate more effective judicial responses to health crises. Dendane (2024) argues that constitutional protection of health rights creates enforceable legal obligations on states, establishing a normative framework for judicial intervention. Loveland (2021) provides a critical analysis of how constitutional and administrative law doctrines interact to protect fundamental rights, including health security. Hodge et al. (2019) emphasize constitutional cohesion as essential for protecting public health, arguing that fragmented constitutional frameworks undermine judicial effectiveness. Nasution et al. (2023) document how constitutional courts in various jurisdictions have successfully interpreted constitutional provisions to establish health protection obligations. Thomson (2023) establishes administrative law as a critical determinant of public health outcomes, demonstrating that procedural protections and judicial review mechanisms significantly enhance health security governance. Piciacchia (2026) situates health security within broader constitutional and legal system frameworks, arguing for integrated approaches to security governance (Rayyan, Hazeem, & Alamawi, 2024).

2.2 Cluster 2: Jordanian Studies on Constitutional and Administrative Judiciary: Jordanian legal scholarship has begun addressing the role of the judiciary in protecting health rights, though significant gaps remain. Al-Assaf (2021) conducted a comparative analysis of the condition of interest (shart al-maslaha) in constitutional and administrative lawsuits in Jordan and Egypt, demonstrating how procedural requirements affect access to justice for health-related claims. Her analysis reveals that the Jordanian Constitutional Court's strict interpretation of the interest requirement creates barriers to collective health rights protection. Al-Zubaidi and Abu Ermileh (2020) examine the Jordanian administrative judiciary's role in protecting the principle of equality, arguing that administrative courts have developed important jurisprudence protecting equal access

to public services, including health services. Hatamla (2023) provides a detailed analytical study of the condition of interest in constitutional lawsuits under Jordanian law, examining how the Constitutional Court's jurisprudence has evolved. Al-Assaf (2025) analyzes the protection of privacy rights in Jordan during the COVID-19 pandemic, examining the balance between health security measures and fundamental rights protection. Hashim (2026) provides the first comprehensive study of health administrative police (al-dabt al-idari al-sihi) and its applications in Jordanian administrative courts, analyzing judicial review mechanisms and their effectiveness. Alyan (2025) conducts a comparative study of administrative investigation supervision between Jordanian and Iraqi legislation, providing insights into procedural protections. These studies collectively demonstrate that while Jordanian courts have begun addressing health-related disputes, a coherent framework integrating constitutional and administrative judicial approaches remains underdeveloped.

2.3 Cluster 3: Research Gap and Contribution of This Study: Despite substantial international and Jordanian scholarship on constitutional rights, administrative law, and public health, a critical research gap persists regarding the integrated role of constitutional and administrative judiciaries in protecting health security as a social necessity. Existing international literature primarily examines either constitutional courts or administrative courts in isolation, failing to analyze mechanisms of functional integration between these judicial branches. Jordanian studies, while valuable, remain fragmented and do not comprehensively address how the two judiciaries work together to protect health security. No existing study systematically analyzes the complementary roles of constitutional review (ensuring legislative compliance with constitutional principles) and administrative review (ensuring executive compliance with legal requirements) in creating comprehensive health security protection. Furthermore, comparative analysis between the Jordanian system and other jurisdictions (South Africa, Tunisia, India, Egypt) regarding integrated judicial approaches to health security remains absent from the literature. The COVID-19 pandemic exposed these institutional gaps, yet no comprehensive legal analysis has examined how Jordanian courts responded to health security challenges through coordinated constitutional and administrative interventions. This study addresses these gaps by: (1) establishing a theoretical framework conceptualizing health security as a social necessity requiring integrated judicial protection; (2) analyzing specific contributions of both judiciaries through doctrinal and comparative analysis; (3) identifying mechanisms of functional integration; (4) providing comparative insights from South Africa, Tunisia, India, and Egypt; and (5) offering practical recommendations for strengthening institutional coordination. By filling these gaps, this research contributes to both Jordanian legal scholarship and comparative constitutional law literature.

This table highlights the most relevant previous studies addressing the right to health and health security from constitutional and administrative perspectives. It shows that most studies focused on a single dimension (either constitutional or administrative judiciary) or on specific international contexts (such as the United States or India), without comprehensively analyzing the complementary role of both judiciaries in strengthening health security as a social necessity.

At the Arab level, some studies have examined the Jordanian, Egyptian, and Iraqi contexts. For instance, Al-Assaf (2021) compared the condition of interest in constitutional and administrative lawsuits in Jordan and Egypt, Al-Zubaidi & Abu Ermileh (2020) explored the role of the Jordanian administrative judiciary in protecting equality, and Alyan (2025) analyzed the supervision of administrative investigations in Jordan and Iraq. Additionally, Hashim (2026) focused on the health administrative police within the Jordanian administrative judiciary. However, these studies did not make health security their central axis; rather, they addressed broader procedural or rights-related issues such as interest, privacy, equality, and public order.

Table. (1): Previous Studies on Constitutional and Administrative Judiciary Contributions to Health Security

Study	Year	Objective	Research Gap
Heymann et al.	2013	Comparative analysis of health rights protection in 191 countries	Did not focus on integration between constitutional and administrative judiciary
Hodge et al.	2019	Analysis of constitutional cohesion and public health protection	Did not address the role of administrative judiciary in implementation
Loveland	2021	Relationship between constitutional law, administrative law, and human rights	Did not focus on health security as a primary axis
Burkholder et al.	2021	Global review of emergency health provisions in constitutions	Did not analyze judiciary's role in implementation
Thomson	2023	Administrative law as determinant of public health	Did not address integration with constitutional judiciary
Nasution et al.	2023	Constitutional court's role in protecting health rights	Focused on Indonesia only
Dendane	2024	Constitutional protection of the right to health	Did not address procedural/practical mechanisms
Mello et al.	2024	Judicial decisions during COVID-19	Focused on American context only
Chourasiya	2025	Judicial interpretation of health rights in India	Focused on India only
Parment	2025	Protection of public health in courts	Did not address Arab countries
Ni et al.	2026	Constitutional rights and public mental health	Focused specifically on mental health
Piciacchia	2026	Security, constitutionalism, and legal systems	Did not focus directly on health security
Al-Assaf	2021	Interest condition in constitutional vs administrative lawsuits (Jordan/Egypt)	Did not focus directly on health rights
Al-Zubaidi & Abu Ermileh	2020	Role of Jordanian administrative judiciary in protecting equality	Did not focus specifically on health security
Hatamla	2023	Interest condition in Jordanian constitutional lawsuits	Did not address application to health rights
Al-Assaf	2025	Privacy protection in Jordan during COVID-19	Focused on privacy not comprehensive health security
Hashim	2026	Health administrative police in administrative judiciary	Did not address integration with constitutional judiciary
Alyan	2025	Supervision of administrative investigation (Jordan/Iraq)	Did not focus on health rights
European Parliament	2022	Right to health from comparative law perspective (USA)	Focused on the United States only
World Health Organization	2023	Human rights and health	Did not address judicial role in detail

Note: It is evident from previous studies that most of them addressed either the administrative or constitutional judiciary separately, or focused on specific international contexts, without examining their integration in strengthening health security. At the Arab level, studies in Jordan, Egypt, and Iraq have emerged, but they concentrated on procedural and general rights issues rather than making health security a central axis, which highlights the research gap this study seeks to address.

3. The Constitutional Framework of the Right to Public Health: The constitutional framework of the right to public health defines the legal structures and mechanisms through which constitutions recognize and enforce health rights as fundamental entitlements of citizens. It establishes substantive rights, procedural guarantees, and remedial mechanisms that extend protection beyond individual medical treatment to collective health security. This framework clarifies state obligations, individual rights, and the judiciary's role in safeguarding them, thereby creating a comprehensive system of legal protection. Scholars emphasize that such constitutional grounding transforms health into a social necessity, as highlighted by Hodge et al. (2019) and Dendane (2024).

3.1 Constitutional Foundations and Legal Gaps: The Jordanian constitutional system, established through the Constitution of 1952 and its subsequent amendments, does not contain an explicit provision recognizing health security as a fundamental right (Constitution of the Hashemite Kingdom of Jordan, 1952). This constitutional silence represents a significant legal gap that distinguishes Jordan from many contemporary constitutional frameworks that explicitly enshrine health protections. However, the Jordanian Constitution contains several general principles that can serve as foundations for deriving health security protections through judicial interpretation. Article 6(1) of the Constitution establishes the principle of equality before the law, stating that "Jordanians are equal before the law," which prohibits discrimination in access to public services, including health services (Al-Zubaidi & Abu Ermileh, 2020). Article 15 protects personal freedom and bodily integrity, which can be interpreted to encompass protection against health threats and unauthorized medical interventions. Article 23 protects the sanctity of the home and private life, which extends to protection of medical privacy and health information. These provisions, while not explicitly addressing health, create constitutional foundations upon which courts can construct health security protections through interpretive jurisprudence (Hodge et al., 2019). The absence of explicit constitutional recognition of health rights creates particular challenges during public health emergencies. When the state implements emergency measures to protect public health such as quarantines, business closures, or mandatory health interventions the lack of clear constitutional parameters for balancing health security against individual rights creates legal uncertainty (Al-Assaf, 2025). The COVID-19 pandemic exposed this constitutional vulnerability, as the Jordanian government issued numerous defense orders and administrative measures affecting fundamental freedoms without clear constitutional authorization or judicial oversight mechanisms. The Constitutional Court of Jordan, established under the Constitutional Court Law of 2012, possesses jurisdiction to review the constitutionality of legislation and to interpret constitutional provisions, yet it has rarely addressed health-related constitutional questions directly. This judicial passivity reflects both the absence of explicit constitutional health provisions and the procedural barriers to accessing constitutional review, particularly the strict interpretation of the "condition of interest" (shart al-maslaha) that limits standing to bring constitutional challenges (Al-Assaf, 2021).

3.2 Legislative Framework for Health Administration: The Jordanian legislative framework for health administration is dispersed across multiple statutes rather than consolidated in a comprehensive health code. The Ministry of Health Law of 1992 establishes the institutional structure for health administration but does not comprehensively address health security as a legal concept. The Administrative Organization Regulation of the Ministry of Health No. 63 of 2008 defines the organizational structure and competencies of the Ministry, including directorates for primary health care, hospitals, and disease control, but provides limited guidance on the legal standards governing health administrative decisions (Administrative Organization Regulation of the Ministry of Health, 2008). The Law on Communicable Diseases of 2002 addresses specific disease control measures but predates contemporary understandings of health security and does not adequately address the balance between disease control and individual rights protection. The Administrative Judiciary Law No. 27 of 2014 establishes the institutional framework for administrative judicial review, including the Administrative Court and the Higher Administrative

Court, and grants these court's jurisdiction to review the legality of administrative decisions, including those of the Ministry of Health (Administrative Judiciary Law, 2014).

The fragmentation of health legislation creates significant challenges for coherent health security governance. Different statutes address different aspects of health administration disease control, hospital operations, pharmaceutical regulation, and occupational health without establishing unified principles or standards. This legislative fragmentation is particularly problematic because it creates gaps in legal protection and inconsistencies in how different health authorities exercise their powers. For example, municipal authorities exercise health police powers (such as food inspection and sanitation enforcement) under municipal law, while the Ministry of Health exercises health police powers under national health legislation, yet no unified legal framework coordinates these overlapping authorities or establishes consistent standards for their exercise (Hashim, 2026). The Administrative Judiciary Law provides a mechanism for challenging individual administrative decisions through judicial review, but this mechanism operates reactively courts review specific decisions after they have been implemented rather than proactively establishing legal standards for health administration.

3.3 The Relationship between Health Security and Fundamental Rights: The legal relationship between health security and fundamental constitutional rights in the Jordanian system remains underdeveloped and largely implicit. Health security can be understood as a collective manifestation of several fundamental rights: the right to life (implicit in Article 15's protection of personal freedom), the right to dignity (implicit in Article 6's equality principle), and the right to privacy (protected under Article 23). However, these rights are formulated as individual protections rather than collective social guarantees, creating tension between individual rights and health security measures that necessarily restrict individual freedoms for collective benefit (Al-Assaf, 2025). The Jordanian legal system lacks a clear framework for balancing these competing interests, particularly during public health emergencies when health security measures may significantly restrict individual freedoms. The principle of equality, enshrined in Article 6(1) of the Constitution, has particular significance for health security because health protection must be provided equitably across the population. The Jordanian administrative judiciary has developed jurisprudence protecting equal access to public services, which extends to health services (Al-Zubaidi & Abu Ermileh, 2020). However, this jurisprudence remains limited and has not been systematically applied to health security contexts. The right to privacy, protected under Article 23, encompasses protection of medical information and health data, yet Jordanian law lacks comprehensive data protection legislation specifically addressing health information, creating vulnerabilities in health security governance. The right to life, while not explicitly stated in the Constitution, is implicit in the protection of personal freedom and has been recognized by the Constitutional Court as a fundamental right, yet its application to health security contexts remains underdeveloped.

3.4 Comparative Constitutional Perspectives: Comparative analysis of constitutional frameworks in other jurisdictions reveals diverse approaches to health security protection that can inform the Jordanian context. The South African Constitution of 1996 explicitly recognizes in Section 27 the right to health care services, including reproductive health care, and establishes state obligations to "take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights" (Constitution of the Republic of South Africa, 1996). This formulation creates enforceable state obligations while acknowledging resource constraints, establishing a framework that the South African Constitutional Court has actively enforced through landmark decisions requiring the state to provide antiretroviral treatment and other health services. The Tunisian Constitution of 2014 similarly recognizes in Article 38 that "the right to health is guaranteed" and establishes state obligations to "work to ensure the availability of health care for all," creating explicit constitutional foundations for health protection (Constitution of the Republic of Tunisia, 2014). The Indian Constitution of 1950, while not explicitly recognizing health as a fundamental right, protects in Article 21 "the right to life and personal liberty," which the Indian Supreme Court has interpreted expansively to encompass the

right to health, establishing through judicial interpretation what the Constitution does not explicitly provide (The Constitution of the Republic of India, 1950; Chourasiya, 2025). The Egyptian Constitution of 2014 recognizes in Article 18 that "the state shall guarantee the right to health and medical care for all citizens," establishing explicit constitutional recognition similar to Tunisia and South Africa (Egyptian Constitution, 2014). These comparative examples demonstrate that explicit constitutional recognition of health rights strengthens judicial capacity to enforce health protections and creates clearer legal standards for health administration. The Jordanian Constitution's silence on health rights, by contrast, forces courts to derive health protections from general principles through interpretive jurisprudence, a more uncertain and less efficient mechanism for establishing enforceable health security standards. However, the comparative examples also demonstrate that explicit constitutional recognition alone is insufficient; effective health security governance requires complementary administrative law frameworks establishing procedural protections and judicial review mechanisms, as well as active judicial enforcement of constitutional health provisions (Dendane, 2024).

3.5 International Legal Obligations and Health Security: Jordan's international legal obligations regarding health security, while not creating directly enforceable domestic law, establish normative frameworks that should inform Jordanian legal development. The World Health Organization Constitution of 1946 establishes in its Preamble that "the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition" (World Health Organization, 1946). This foundational international principle reflects global consensus that health is a fundamental right and social necessity. The United Nations Sustainable Development Goals, adopted in 2015, establish as Goal 3 the objective to "ensure healthy lives and promote well-being for all at all ages," establishing specific targets for reducing mortality, combating disease, and achieving universal health coverage (United Nations, 2015). Jordan, as a signatory to the SDGs, has committed to achieving these health targets, creating international obligations that should inform domestic legal development. The International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Jordan is a party, recognizes in Article 12 "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health," establishing international legal obligations that extend beyond the Jordanian Constitution (United Nations Office of the High Commissioner for Human Rights, 2008). The Committee on Economic, Social and Cultural Rights, which monitors state compliance with the ICESCR, has issued General Comment 14 on the right to health, establishing that states must ensure that health systems are accessible, affordable, and of adequate quality. These international standards, while not directly enforceable in Jordanian courts, establish benchmarks against which the adequacy of the Jordanian legal framework for health security can be assessed. The gap between these international standards and the Jordanian constitutional and legislative framework creates pressure for legal reform to strengthen health security protection (Al-Hunaiti, 2025).

This figure (1) shows the theoretical framework for protecting health security through constitutional and administrative judiciary. At its center lies the concept of health security as a social necessity, radiating into five main axes: conceptual foundation, Jordanian legal framework, judicial integration, comparative experiences, and research gap. The figure highlights the complementary relationship between the two judicial branches in promoting health security and balancing individual rights with public health requirements.

Framework of Judicial Protection of Health Security



Figure. (1): Framework of Judicial Protection of Health Security

4. The General Framework of Health Security as a Social Necessity: Health security constitutes one of the principal pillars of modern legal and social thought (Piciacchia, 2026). It is no longer perceived as merely an individual medical matter, but rather as a social and national necessity closely linked to national security and societal stability (Hodge et al., 2019). The right to health is no longer understood simply as a service provided by the state, but as a constitutional and social right requiring comprehensive judicial and legislative protection (Heymann et al., 2013). This was affirmed by the World Health Organization, which defined health as a state of complete physical, mental, and social well-being (World Health Organization, 1946). The Sustainable Development Goals further reinforced this concept by making the guarantee of health and well-being a central pillar of sustainable development (United Nations, 2015).

In the Jordanian context, the challenge lies in the absence of an explicit constitutional provision enshrining the right to health (Constitution of the Hashemite Kingdom of Jordan, 1952). Although general principles such as equality and human dignity are present (Al-Zubaidi & Abu Ermileh, 2020), this necessitates exploring the legal foundations of the right to health within Jordanian legislation (Administrative Judiciary Law, 2014) and comparative constitutions (Constitution of the Republic of South Africa, 1996; Constitution of the Republic of Tunisia, 2014; The Constitution of the Republic of India, 1950). Moreover, the relationship between health security and fundamental rights such as the right to life, dignity, and equality demonstrates that the protection of health is not merely a social demand, but an inseparable component of safeguarding constitutional rights (Dendane, 2024; Loveland, 2021).

4.1 Definition of Health Security and Its Position within the National and Social Security System: Health security is defined as the ensemble of measures, policies, and legal and social guarantees that ensure the protection of society from health hazards, whether communicable diseases, epidemics, environmental threats, or deficiencies in basic health services (World Health Organization, 1946; Heymann et al., 2013). It is not limited to individual medical concerns but encompasses health infrastructure, regulatory legislation (Administrative Judiciary Law, 2014), and judicial oversight that ensures balance between public health requirements and individual rights (Hodge et al., 2019). The World Health Organization has affirmed that health constitutes "a state of complete physical, mental and social well-being, not merely the absence of disease or infirmity" (World Health Organization, 1946), thereby establishing health security as an integral component of national security systems, directly linked to societal stability and the protection of

human resources (Piciacchia, 2026). In the national context, health security is understood as a fundamental element of national security (Dendane, 2024), insofar as any dysfunction in the health system or widespread epidemic outbreak can threaten the political, economic, and social stability of the state (Burkholder et al., 2021). Consequently, health security has become a social necessity requiring legislative and judicial intervention (Thomson, 2023) to ensure continuity of health services and protect society from hazards. Furthermore, health security is intimately connected to fundamental rights such as the right to life, dignity, and equality (Al-Zubaidi & Abu Ermileh, 2020; Constitution of the Hashemite Kingdom of Jordan, 1952), as these rights cannot be effectively realized without a safe and functional health system (Loveland, 2021).

4.2 The Legal Basis for the Right to Health in Jordanian Legislation and Comparative Constitutions: The right to health constitutes a fundamental right enshrined in international instruments, including the Constitution of the World Health Organization of 1946, which established that "the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being" (World Health Organization, 1946). Similarly, the International Covenant on Economic, Social and Cultural Rights of 1966 obligates state parties to take necessary measures to ensure this right (United Nations Office of the High Commissioner for Human Rights, 2008). In the Jordanian context, the Constitution of 1952 does not explicitly recognize the right to health (Constitution of the Hashemite Kingdom of Jordan, 1952); however, it contains general principles such as equality, human dignity, and personal freedom (Al-Zubaidi & Abu Ermileh, 2020), which can be judicially interpreted to encompass health protection (Loveland, 2021). Jordanian legislation, including public health law and social security law, provides a partial legislative framework for ensuring health services (Administrative Judiciary Law, 2014), yet falls short of explicit constitutional recognition (Dendane, 2024).

At the comparative level, numerous modern constitutions explicitly recognize the right to health (Heymann et al., 2013). The Tunisian Constitution of 2014 provides in Article 38 that health is a right for every person and the state must ensure prevention and health care for every citizen (Constitution of the Republic of Tunisia, 2014). The South African Constitution obligates the state to provide basic health care to all citizens and permits individuals to resort to courts to compel state compliance with this obligation (Constitution of the Republic of South Africa, 1996; Hodge et al., 2019). In India, although the Constitution does not explicitly recognize the right to health, the Supreme Court has interpreted the right to life in Article 21 as encompassing the right to health and medical treatment (The Constitution of the Republic of India, 1950; Chourasiya, 2025). These comparative experiences demonstrate that constitutional recognition of health rights strengthens judicial capacity to protect such rights (Burkholder et al., 2021) and provides citizens with effective legal tools to assert their claims (Nasution et al., 2023). Consequently, the legal basis for the right to health in Jordan remains incomplete (Al-Assaf, 2021), relying upon judicial interpretation of general constitutional provisions (Thomson, 2023), whereas in certain comparative jurisdictions this right has been explicitly enshrined in constitutional texts (Dendane, 2024), thereby highlighting the necessity of developing Jordanian constitutional provisions to align with international standards (Piciacchia, 2026) and ensure effective protection of health security (Loveland, 2021).

4.3 The Relationship between Health Security and Fundamental Rights (Right to Life, Dignity, and Equality): Health security constitutes a direct extension of fundamental rights enshrined in constitutions and international instruments (World Health Organization, 1946; United Nations Office of the High Commissioner for Human Rights, 2008). The right to life cannot be conceived without a safe health system ensuring prevention and treatment (Constitution of the Hashemite Kingdom of Jordan, 1952; The Constitution of the Republic of India, 1950), nor can human dignity be realized in the absence of equitable and comprehensive health services (Loveland, 2021; Dendane, 2024). Furthermore, equality demands that all individuals enjoy equal opportunities to access health care without discrimination (Al-Zubaidi & Abu Ermileh, 2020; Constitution of the Republic of South Africa, 1996).

The right to life, the supreme constitutional right, is intimately connected to the state's capacity to protect its citizens from health hazards through legislation and preventive and therapeutic measures (Heymann et al., 2013; Hodge et al., 2019). Human dignity manifests itself in respect for the human body and its protection from disease and neglect (Chourasiya, 2025), making health security a prerequisite for achieving such dignity (Nasution et al., 2023). Regarding equality, ensuring health security requires that health services be available to all on equal terms, without discrimination based on gender, age, or socioeconomic status (Burkholder et al., 2021; Thomson, 2023). The relationship between health security and these fundamental rights demonstrates that health protection is not merely a social demand or public service (Piciacchia, 2026), but rather an integral component of the rights system guaranteed by the state to its citizens (Al-Assaf, 2021). Consequently, health security becomes a social and constitutional necessity (Administrative Judiciary Law, 2014), requiring intervention by both administrative and constitutional judiciaries (Loveland, 2021) to ensure respect for and effective implementation of these rights (Dendane, 2024).

5. The Administrative Judiciary and Its Role in Promoting Health Security: The administrative judiciary in Jordan represents a fundamental safeguard against the arbitrary exercise of executive authority in the health sector. By reviewing decisions issued by public health institutions, it ensures compliance with the principle of legality and protects citizens' access to essential medical services. At the same time, its role extends beyond dispute resolution to promoting equality before the law, particularly in cases involving medical fees and restrictions on healthcare access. Through this oversight, the administrative judiciary contributes to reinforcing health security as a social necessity and balancing individual rights with public health requirements.

5.1 Powers of the Administrative Judiciary in Reviewing Health-Related and Administrative Decisions: Article (120) of the Jordanian Constitution constitutes the constitutional foundation upon which the government issues administrative and regulatory bylaws. One of the most notable examples is the Administrative Organization Bylaw of the Ministry of Health No. (63) Of 2008, which defines the administrative structure and the powers of the various directorates within the Ministry. This bylaw complements the Public Health Law No. (47) Of 2008, which sets out the general obligations of the state in safeguarding public health, while the bylaw translates these obligations into practical powers and organizational procedures. Article (120) of the Jordanian Constitution stipulates: "The administrative divisions of the Hashemite Kingdom of Jordan, the formations of government departments, their grades, titles, methods of administration, and the manner of appointing and dismissing employees, supervising them, and defining their powers and competences shall be determined by bylaws issued by the Council of Ministers with the approval of the King" (*Jordanian Constitution, Article 120, 1952/last amendment*). The importance of administrative judiciary emerges here, as any decision issued under this bylaw or law is subject to its review pursuant to the Administrative Judiciary Law No. (27) Of 2014, which allows challenges against decisions of the Ministry of Health, municipalities, or medical committees when they contravene the principle of legality or equality. Thus, the constitutional article, the law, and the bylaw form an integrated system, with the administrative judiciary acting as a guarantor of their fair application in line with fundamental constitutional rights such as equality and dignity, thereby reinforcing health security and protecting the right to public health. (Alayaydeh et al., 2024).

5.2 Models of Jordanian Administrative Judiciary Jurisprudence in Public Health Cases: While comprehensive published decisions on health-specific matters remain limited in publicly available sources, the Jordanian administrative judiciary has nonetheless developed jurisprudence addressing various aspects of health administration. According to Al-Zubaidi and Abu Ermileh (2020), the administrative courts have examined cases where individuals or groups challenged administrative decisions affecting health rights, particularly in the context of access to health services and the application of health regulations. One significant area of administrative judicial review concerns decisions by the Ministry of Health and its subordinate institutions regarding the provision or denial of health services. The administrative courts have reviewed cases where

individuals challenged decisions denying them access to specific treatments, medications, or medical procedures, typically scrutinizing whether the Ministry of Health acted within its statutory authority, whether proper procedures were followed, and whether the decisions were proportionate to legitimate public health objectives (Al-Zubaidi & Abu Ermileh, 2020).

The administrative courts have also addressed cases involving the application of administrative police powers in the health field. Administrative police powers the authority of administrative bodies to issue binding orders to protect public health and safety have been subject to judicial review. According to Hashim (2026), the Jordanian administrative courts have reviewed decisions imposing quarantine measures, restricting movement for disease prevention, and mandating health examinations, examining whether such measures were based on clear legal authority, were necessary and proportionate to the health objective, and included adequate procedural safeguards. Hashim notes that the administrative judiciary has developed principles requiring that health administrative police measures be subject to meaningful judicial scrutiny and must not be indefinitely extended without legal justification. During the COVID-19 pandemic, the administrative judiciary faced unprecedented challenges in reviewing health-related administrative decisions. According to Al-Assaf (2025), the Jordanian administrative courts had to balance the urgent need to protect public health with the requirement to respect individual rights and procedural fairness. This experience highlighted the critical role of the administrative judiciary in ensuring that emergency health measures, while necessary, are subject to meaningful judicial scrutiny and are not indefinitely extended without legal justification. Among the most prominent practical models of Jordanian administrative judiciary jurisprudence in the field of health is the ruling of the High Administrative Court No. (289/2023), dated 18 July 2023, which annulled the decision of the Jordanian Medical Council refusing to recognize a subspecialty in "Pediatric Cardiology." The Court based its judgment on the fact that the decision was tainted by a defect of cause and violated the legal standards stipulated in the Jordanian Medical Council Law and its Resolution No. (122/2021). The Court emphasized that administrative judicial review constitutes a fundamental guarantee for protecting the right to health and reinforcing the principle of equality before the law (Alayaydeh et al., 2024).

5.3 Comparative Analysis with Regional Experiences; the Role of Administrative Judiciary in Health Security: The Jordanian administrative judiciary represents a fundamental pillar in protecting the right to health and ensuring the legality of administrative decisions issued by the Ministry of Health, the Jordanian Medical Council, and municipalities. Its role was clearly demonstrated in Judgment No. (289/2023) issued by the High Administrative Court, which overturned the Jordanian Medical Council's decision not to recognize a subspecialty in "Pediatric Cardiology," affirming that the decision was flawed in its reasoning and contrary to legal principles. This ruling reflects how the administrative judiciary can be a tool for enhancing health security through judicial oversight of administrative decisions that affect health infrastructure and the rights of both physicians and patients. Comparing this Jordanian experience with international studies, we find that Thompson (2023) in the Canadian Journal of Public Health emphasizes that administrative law is a crucial factor in public health because it ensures the accountability of health institutions and strengthens oversight of resource allocation. This aligns with the role of the Jordanian administrative judiciary, which monitors the legality of decisions issued by the Medical Council and the Ministry of Health, ensuring that they are based on fair legal grounds that respect equality and safeguard the right to health. Jordanian Public Health Law No. 47 of 2008 stipulates that the Ministry of Health is responsible for all health affairs in the Kingdom, including maintaining public health, regulating health services, and providing health insurance for citizens. These legal obligations underscore the Ministry's commitment to protecting public health and regulating health services equitably. This aligns with the role of the Jordanian Administrative Judiciary, which oversees the legality of decisions issued by the Medical Council and the Ministry of Health, ensuring they are based on fair legal grounds that respect equality and safeguard the right to health. The Administrative Judiciary operates under the Administrative Judiciary Law No. 27 of 2014, Article (5) of which grants administrative court's jurisdiction to review appeals against

final administrative decisions. Article (8) empowers the court to annul any administrative decision that violates the law, suffers from flawed reasoning or procedural defects, or constitutes an abuse of power. This role was demonstrated in practice in Supreme Administrative Court ruling No. 289/2023, which overturned the Medical Council's decision not to recognize a subspecialty in pediatric cardiology, confirming that the decision was flawed in its reasoning and contrary to legal principles. This illustrates how administrative justice can be a tool for strengthening health security and guaranteeing the constitutional rights of both physicians and patients.

In France, administrative justice plays a pivotal role in protecting the right to health by enforcing the Public Health Code and reviewing the legality of administrative decisions related to health. For example, Article L1110-1 states: "Everyone has the fundamental right to the protection of their health. This right must be enforced by all available means for the benefit of every individual" (Légifrance, Code de la santé publique, Article L1110-1). Similarly, Article L1110-2 stipulates that "all persons are guaranteed the right to benefits, within a framework of respect for equality and dignity" (Légifrance, Article L1110-2), while Article L1110-3 requires that health decisions respect the principle of equality and non-discrimination. Furthermore, Article L1411-1 stipulates that national health policy must guarantee prevention, treatment, and the continuity of health services, and obliges public authorities to provide the necessary resources. In cases of health emergencies, Article L3131-1 grants the government special powers to address epidemics and health crises; however, these measures remain subject to judicial review to ensure proportionality and legality. These legal provisions form the basis for appeals before administrative courts against decisions of the Ministry of Health or public hospitals. The Council of State interprets these articles and establishes judicial principles that balance the protection of public health with individual rights. In landmark cases, such as the Council of State's ruling of April 7, 2010, in the case of Ms. Beltrack, the court affirmed the hospital's liability for hospital-acquired infections. During the COVID-19 pandemic, the court reviewed the legality of government measures, which require proportionality and adequate protection for healthcare workers. Thus, the French administrative judiciary goes beyond official oversight and effectively contributes to health security and the continuity of medical services. This makes it a rich comparative model that can be useful in studying the role of the Jordanian administrative judiciary in providing protection.

6. Constitutional Judiciary and the Protection of the Right to Health: The constitutional judiciary serves as the primary guardian of constitutional rights, including the right to health, by reviewing legislation and government policies to ensure compliance with constitutional provisions. In Jordan, its role remains limited compared to countries such as South Africa, India, and Tunisia, where constitutional courts have actively protected health rights. This chapter highlights the jurisdiction of the Jordanian Constitutional Court, its jurisprudence on privacy, equality, and treatment, and its role in exceptional circumstances like epidemics. The comparative analysis identifies gaps in the Jordanian system and draws lessons from international experiences to strengthen mechanisms for safeguarding health rights through constitutional justice.

6.1 The Jurisdiction of the Jordanian Constitutional Court in Reviewing Health Legislation: The Jordanian Constitutional Court derives its jurisdiction from Article 131 of the Jordanian Constitution (1952, as amended), which establishes the Court and grants it specific powers, including constitutional review of laws, interpretation of constitutional provisions, and adjudication of disputes between the branches of government. Its work is governed by the Jordanian Constitutional Court Law (2012), which defines its exclusive jurisdiction, procedures, and the legal implications of constitutional provisions. However, despite the theoretical importance of these powers, the Court faces numerous practical limitations that diminish its effectiveness in protecting health rights. With regard to health legislation, the Court is authorized to review laws and regulations to ensure their conformity with the Constitution. This includes the Public Health Law (2008), laws on pharmaceuticals, regulations on medical licensing, and health insurance laws. In practice, however, the Court exercises this jurisdiction to a very limited extent. Researchers have observed that constitutional challenges related to health rights in Jordan are very limited compared to other countries. As Al-Duraidi (2023) highlighted, the right to health in Jordan faces

institutional and legislative barriers, which limit judicial challenges in this field. This reflects several factors, including limited awareness of constitutional rights, high litigation costs, and fears of political pressure. The court also faces procedural, substantive, and institutional limitations. Procedurally, plaintiffs must be directly affected by the challenged law, and strict deadlines apply for filing cases. Substantively, the court does not consider individual cases but only general laws and regulations, avoiding purely political matters. Institutionally, the court suffers from relative independence, limited resources, and slow procedures. Researchers argue that these limitations significantly weaken its ability to effectively protect health rights (Al-Duraiddi, 2023). Furthermore, the court does not review individual administrative decisions, which fall under the jurisdiction of the administrative courts (the State Council). This division of jurisdiction, while theoretically logical, can create practical gaps in the judicial protection of health rights. Another limitation is the lack of broad redress powers. The court can declare a law unconstitutional, but it cannot issue binding orders compelling the government to provide specific health services. This contrasts with constitutional courts in countries like South Africa and India, which have the power to issue binding orders (Young, 2010). The absence of such powers limits the court's effectiveness in protecting health rights finally, the Jordanian Constitutional Court does not continuously oversee the implementation of its rulings. Once a constitutional ruling is issued, there are no clear mechanisms to monitor government compliance (Al-Duraiddi, 2023). This differs from courts in countries like South Africa, which retain jurisdiction to oversee implementation (Furman, 2005). The lack of such oversight can lead to the ineffective implementation of constitutional rulings. Table (2) compares the Jordanian Constitutional Court with leading international experiences. It highlights Jordan's limited constitutional recognition and weak judicial mechanisms for enforcing health rights, in contrast to stronger models in South Africa, India, and Tunisia.

Table. (2): Comparative Constitutional Protection of the Right to Health

Criterion	Jordan	South Africa	India	Tunisia
Constitutional recognition of the right to health	Implicit (Article 6)	Explicit (Article 27)	Implicit (Article 21)	Explicit (Article 38)
Court independence	Moderate	Very high	Very high	Moderate
Mandatory positive orders	Very rare	Frequent	Frequent	Frequent
Continuous supervision of implementation	Very weak	Very strong	Very strong	Moderate
Access to constitutional justice	Very limited	Moderate	Moderate	Moderate
Number of health-related rulings	Dozens	Hundreds	Hundreds	Dozens

Note: Data is based on constitutional texts and judicial practices as reported in comparative constitutional law studies.

6.2 Analysis of Constitutional Judicial Interpretations Related to Health Rights:

Researchers face genuine difficulty in identifying clear and specific Jordanian constitutional judicial interpretations directly related to health rights. Unlike countries such as South Africa and India, where hundreds of constitutional rulings address health rights, Jordan lacks a developed constitutional jurisprudence in this field. Al-Duraiddi (2023) noted that the right to health in Jordan faces institutional and legislative barriers that hinder its realization, while Bani Salameh and Darawsheh (2018) emphasized that constitutional challenges related to human rights, including health rights, remain extremely limited compared to other countries. Regarding the **right to life**, some Jordanian constitutional interpretations have indicated that **Article 6 of the Jordanian Constitution**, which guarantees equality, tranquility, and equal opportunities, can be understood to encompass basic health rights linked to the right to life. However, this recognition has largely remained theoretical and has not translated into strong judicial rulings obligating the government to provide specific health services (Bani Salameh & Darawsheh, 2018). As for **equality**, Al-Zubaidi and Abu Armileh (2020) demonstrated that Jordanian administrative courts have played a role in protecting the principle of equality before the law, including in cases related to medical fees or restricted access to health services. Nevertheless, the scope of these rulings has remained

limited, and the courts often accepted government justifications based on economic constraints and limited resources. Concerning **medical privacy**, Al-Assaf (2025) highlighted that the right to privacy in Jordan, particularly in the context of the COVID-19 pandemic, faced varying restrictions and safeguards. Judicial protection focused mainly on preventing direct governmental interference with medical data, without developing broader jurisprudence on patients' procedural rights such as informed consent or access to their medical records.

6.3 Comparison with International Experiences: Examining international experiences in the protection of health rights through constitutional adjudication reveals diverse models in how courts approach these rights and highlights the gap between theoretical recognition and practical enforcement. While Jordanian constitutional jurisprudence remains limited in this field, several countries have developed advanced judicial practices that have turned the courts into effective instruments for promoting health justice and ensuring citizens' access to essential services. The importance of this comparison lies in its ability to draw lessons and identify strengths and weaknesses in the Jordanian experience by looking at different models that combine explicit constitutional recognition, active judicial intervention, and institutional reforms. Within this framework, three principal models are considered:

6.3.1 The South African Model: The South African model is one of the most prominent constitutional experiences in protecting health rights. The 1996 Constitution explicitly recognizes in Article 27 that every person has the right to access health care services, including reproductive health care, and obliges the state to take legislative and administrative measures to progressively realize this right within available resources (South African Constitution, 1996). This explicit recognition provided the Constitutional Court with a strong legal foundation to develop advanced jurisprudence. In *Soobramoney v. Minister of Health* (1998), the Court acknowledged that the right to health is enforceable but introduced the principle of "progressive realization." In *Minister of Health v. Treatment Action Campaign* (2002), the Court issued a mandatory order requiring the government to provide Nevirapine to prevent mother-to-child HIV transmission, a clear example of positive orders. Later cases addressed patients' procedural rights, such as consultation and participation in medical decisions (Forman, 2005). The Court is highly independent, with constitutional safeguards against political interference and sufficient financial autonomy (Young, 2010). Moreover, it possesses broad remedial powers, including structural orders and continuous supervision, requiring periodic government reports to ensure effective implementation. These features make the South African model a global reference for how constitutional adjudication can activate health rights.

6.3.2 The Indian Model: The Indian model differs from South Africa in that the 1950 Constitution does not explicitly recognize the right to health. However, the Supreme Court interpreted Article 21, which states that "No person shall be deprived of his life or personal liberty except according to procedure established by law," as encompassing the right to health (Constitution of India, 1950). This interpretation opened the door to strong jurisprudence. In *Mohini Jain v. State of Karnataka* (1992), the Court held that the right to education is part of the right to life, reinforcing the idea that socio-economic rights are connected to life itself. In *Paschim Banga Khet Mazdoor Samity v. State of West Bengal* (1996), the Court required the government to provide emergency medical treatment to injured workers, affirming state responsibility for essential medical services. In *Patients' Aid Association v. Union of India* (2000), the Court recognized patients' right to affordable access to essential medicines. What distinguishes the Indian model is its active judicial intervention: the Court not only invalidates unconstitutional laws but also issues mandatory positive orders requiring the government to provide specific health services (Young, 2010). Furthermore, the Court applies a liberal standing doctrine, allowing public interest litigation (PIL), which enables individuals to file constitutional challenges even without direct harm, thereby expanding access to constitutional justice (Andia & Lamprea, 2019).

6.3.3 The Tunisian Model: The Tunisian model combines explicit constitutional recognition of the right to health with modern institutional reforms. The 2014 Constitution, adopted after the revolution, explicitly recognizes in Article 38 that "Health is a right for every human being. The

state guarantees the right to health and strives to provide the highest attainable levels of health for all” (Constitution of Tunisia, 2014). This provision provides a strong legal basis for protecting health rights. Article 116 also established a specialized Constitutional Court, reflecting Tunisia’s commitment to strengthening constitutional oversight. Although the Tunisian Constitutional Court has issued some rulings related to health rights, their number remains limited compared to South Africa and India. Practically, Tunisia faces significant challenges in implementation, as health services suffer from economic constraints and limited resources, creating a gap between constitutional texts and practical realities. Bouzir & Daouthi (2024) noted that this gap is one of the main obstacles to realizing the right to health in Tunisia, where constitutional recognition remains strong in theory but faces difficulties in effective enforcement. This model demonstrates that constitutional recognition alone is insufficient; strong institutions and adequate resources are essential to ensure the practical realization of health rights. The comparative analysis demonstrates that constitutional recognition of health rights alone is insufficient without strong jurisprudence, judicial independence, and mechanisms for enforcement. South Africa and India illustrate how courts can play an active role in shaping health policy through positive orders and continuous supervision. Tunisia shows the importance of institutional reforms but also the challenges of translating constitutional promises into practice under economic constraints. Jordan’s experience, marked by implicit recognition and weak enforcement, highlights the need to strengthen constitutional jurisprudence and judicial mechanisms to ensure that health rights move beyond theory into effective realization. which can see it at table(4) below.

Table (4).Comparative Table on Constitutional Protection of Health Rights

Criterion	Jordan	South Africa	India	Tunisia
Constitutional Recognition	Implicit	Explicit	Implicit	Explicit
Strength of Jurisprudence	Weak	Very strong	Very strong	Moderate
Positive Orders	Rare	Frequent	Frequent	Frequent
Continuous Supervision	Weak	Strong	Strong	Moderate
Access to Justice	Limited	Moderate	Moderate	Moderate
Judicial Independence	Moderate	High	High	Moderate
Practical Implementation	Weak	Moderate	Moderate	Weak

Note: This table summarizes the comparative features of constitutional adjudication of health rights in four jurisdictions. It highlights how South Africa and India have developed strong jurisprudence and frequent positive orders, while Tunisia combines explicit recognition with institutional reforms but struggles with implementation. Jordan, by contrast, remains limited in both recognition and enforcement, underscoring the need for stronger judicial engagement.

7. Integration of Administrative and Constitutional Justice in Safeguarding the Right to Health in Jordan:

This research has relied on comparing a wide range of countries with diverse experiences in protecting the right to health through constitutional and administrative adjudication, aiming to build a comprehensive analytical framework that balances advanced models with those still facing practical challenges. The choice of multiple countries does not merely reflect geographical diversity, but rather highlights different constitutional and institutional contexts and allows for extracting lessons that can benefit Jordan in developing its judicial system. While South Africa, India, and Tunisia were selected as primary models due to the depth of their experiences, references to other countries support general trends and demonstrate that safeguarding the right to health has become a global issue requiring innovative judicial solutions. The protection of the right to health in Jordan cannot be effectively achieved without integrating the roles of administrative and constitutional justice, as each faces challenges and limitations within its jurisdiction. The Jordanian Constitutional Court, despite interpreting certain constitutional provisions such as Article 6 to encompass basic health rights, continues to suffer from weak remedial powers, a scarcity of mandatory positive orders, and limited supervision of implementation (Bani Salameh & Darawsheh, 2018; Al-Assaf, 2025). Meanwhile, administrative courts have played a role in safeguarding equality before the law, including in cases related to medical fees or restrictions on access to health services, yet they often defer to governmental

justifications grounded in economic constraints and limited resources (Al-Zubaidi & Abu Armileh, 2020). This reality underscores the need for a comprehensive judicial framework in which administrative courts address individual disputes concerning service delivery, while constitutional courts establish overarching principles and issue binding positive orders to ensure the practical realization of the right to health. International experiences, particularly in South Africa, India, and Tunisia, demonstrate that explicit constitutional recognition of the right to health, coupled with judicial independence and expanded remedial powers, provides a strong foundation for effective protection (South African Constitution, 1996; Constitution of India, 1950; Constitution of Tunisia, 2014; Young, 2010; Forman, 2005; Bouzir & Daouthi, 2024). Positive orders, continuous judicial supervision, and broader access to justice through public interest litigation have proven to be effective tools in advancing health justice. For Jordan, the lesson is clear: integration between administrative and constitutional adjudication is not a secondary option but a practical necessity. Such integration would bridge the gap between theoretical recognition and actual enforcement, ensuring that health rights are protected both at the level of individual grievances and systemic reforms. Implicitly, scholars suggest that Jordan requires constitutional and institutional reforms to strengthen this synergy, empowering both courts to act as complementary guardians of health rights. This sets the stage for the concluding chapter and recommendations, which will emphasize the development of constitutional jurisprudence, expanded judicial remedies, and enhanced access to health justice as essential steps toward achieving equitable health protection.

8. Conclusion and Recommendations: This part creates the key findings of the comparative analysis and translates them into practical insights. It climaxes the main lessons for Jordan and sets the stage for actionable recommendations to strengthen health rights protection.

8.1 Conclusion: The comparative study of international experiences in protecting health rights through constitutional adjudication reveals that effective enforcement requires more than implicit recognition; it demands explicit constitutional guarantees, strong jurisprudence, and institutional reforms. While South Africa and India demonstrate how courts can actively safeguard health rights through positive orders and continuous supervision, Tunisia highlights the challenges of translating constitutional promises into practice under economic constraints.

In Jordan, the implicit recognition of the right to health, limited jurisdiction of the Constitutional Court, weak remedial powers, and restricted supervision have hindered effective protection. Administrative courts have addressed individual disputes but often defer to governmental justifications. This underscores the necessity of integrating administrative and constitutional justice to bridge the gap between individual grievances and systemic reforms. Ultimately, Jordan must strengthen judicial independence, expand access to justice, and adopt international best practices to ensure that health rights move from theory into effective realization.

8.2 Recommendations: This section represents a natural extension of the findings of the study, moving from theoretical analysis and practical comparison to the formulation of practical and legislative proposals that can contribute to the development of the legal and institutional framework. Accordingly, the importance of presenting a set of recommendations emerges as a means to enhance the effectiveness of the legal system in this field, which may be outlined as follows:

- Clear Constitutional Recognition and Judicial Independence Jordan should move from implicit acknowledgment of the right to health toward explicit constitutional guarantees. This requires amending the Constitution to enshrine health rights clearly and strengthening the independence of the Constitutional Court, ensuring it can act free from political or economic pressures.
- Expanded Remedial Powers and Continuous Supervision Courts must be granted broader authority to issue binding positive orders that compel government action in health-related cases. In addition, mechanisms for continuous judicial supervision should be established to monitor the implementation of rulings, ensuring that decisions translate into practical outcomes.
- Facilitating Access to Justice through Public Interest Litigation Access to constitutional justice should be broadened by allowing public interest litigation. This would enable citizens, civil society organizations, and professional associations to bring cases that protect collective health rights, thereby expanding participation and accountability in the judicial process.
- Integration of Administrative and Constitutional Justice A comprehensive framework should be developed to integrate the roles of administrative and constitutional courts. Administrative courts can resolve individual disputes related to service delivery, while constitutional courts can establish systemic principles and enforce broader reforms. This synergy would bridge the gap between individual grievances and structural guarantees, ensuring holistic protection of health rights.

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