

Examining the Effects and Implications of Constitutionalizing Cultural Heritage Rights in the Iranian Legal System

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Received: 2025-08-02

Revised: 2025-12-07

Accepted: 2025-12-14

Initial Publish: 2025-12-15

Final Publish: 2026-07-01

Cultural properties—including structures, complexes, sites, historical landscapes, paintings, sculptures, inscriptions, motifs, and ornaments—constitute direct reflections of the intellectual traditions and civilizational values of nations, and their significance from economic, cultural, religious, and archaeological perspectives is highly notable. Using a legal-regulatory analysis and an examination of relevant statutory documents, this study demonstrates that the protection of cultural heritage is not confined to legal dimensions alone, but also entails direct and indirect economic and tourism-related effects, as it facilitates the attraction of domestic and international tourists, the growth of the tourism industry, and the generation of national revenue. Furthermore, these cultural-historical assets, as living and credible documents of national identity, reflect the antiquity, authenticity of civilization, and the socio-cultural and religious history of nations, and in this respect, their role in preserving traditions, norms, and ethical-religious values is undeniable. Another key challenge in the field of cultural heritage protection is the issue of trafficking in antiquities and historical artifacts, which constitutes a serious threat to cultural security and national identity. The relevant laws—comprising criminal penalties, ta'zir punishments, and civil liability—have been enacted to prevent and combat this offense, and the exercise of state sovereignty, including the power to seize, register, and supervise national artifacts, plays an effective role in controlling and reducing these harms. The findings indicate that the exercise of state authority, in addition to ensuring the legal and judicial protection of cultural properties, facilitates sustainable cultural, economic, and social development policies, creating conditions for the continuous and responsible utilization of cultural heritage. Therefore, the legal and cultural protection of historical and cultural artifacts is directly linked to economic development, tourism growth, the preservation of national identity, and the enhancement of the country's international standing, and the implementation of principles of state sovereignty—especially within the framework of Article 83 of the Constitution—plays a central role in ensuring these objectives. This study emphasizes that only through the convergence of legislation, governmental management, public awareness, and adherence to cultural protection principles can cultural and historical heritage be safeguarded against domestic and foreign threats and its true value strengthened within the social, cultural, and economic spheres of the country.

Keywords: Cultural heritage; historical monuments; Article 83 of the Constitution; state sovereignty; protection of national artifacts; trafficking of antiquities; cultural rights; tourism development; national identity; cultural protection policies

How to cite this article:

Mulaee, A., Azari Kargan, A. A., Malakooti Hashjin, S. H., & Mazhari, M. (2026). Examining the Effects and Implications of Constitutionalizing Cultural Heritage Rights in the Iranian Legal System. *Interdisciplinary Studies in Society, Law, and Politics*, 5(3), 1-14. <https://doi.org/10.61838/kman.isslp.420>



1. Introduction

Since ancient times, various works and structures have remained from human societies that are today regarded as cultural and historical assets (Khalilian, 1932). Cultural heritage, as a collection of the tangible and intangible creations of humanity, not only reflects the collective identity of nations and generations but also serves as a bridge between the past and the present and functions as a factor of social cohesion and national pride (Smith, 2015). The history of human civilization from antiquity to the modern era is filled with such heritage, which in recent centuries has been recognized within the domain of legal scholarship as the field of “cultural heritage law” (Blake, 2018).

Cultural heritage, as part of the historical, social, and cultural identity of every country, plays a fundamental role in maintaining social continuity, transmitting values and identity across generations, and creating human and social capital (UNESCO, 2023). This heritage includes tangible and intangible works, historical monuments, archaeological complexes, historical documents, artistic and cultural works, and everything passed down from previous generations (Prott & O’Keefe, 2020). The significance of cultural heritage is not limited to its historical or artistic value; it also plays an influential economic, social, and tourism-related role, as cultural objects can contribute to sustainable development through economic opportunities, employment, tourism growth, and the strengthening of cultural infrastructure (Moradi, 2004). As a result, the protection and preservation of this heritage is of strategic importance and has become one of the essential obligations of modern and developed societies (Samadi & Ansari, 2003).

Iran, with a civilizational background spanning several millennia, possesses thousands of historical and cultural properties, each representing the artistic, scientific, and social achievements of the people of this land throughout history (Khalilian, 1932). From the Achaemenid and Sassanian periods to the Islamic and contemporary eras, numerous works have remained, each reflecting part of Iran’s national and cultural identity. Nevertheless, the protection of this heritage requires strong and stable legal mechanisms, as the absence of adequate legal guarantees can result in destruction, neglect, or improper exploitation of these valuable resources

(Abbasi Lahiji, 2024). In Iran, cultural heritage protection laws are largely limited to ordinary statutes and executive regulations, and no independent, explicit constitutional principle comprehensively devoted to cultural heritage protection exists. This legal gap reduces the legal stability necessary for sustainable cultural heritage protection and poses serious challenges for cultural resource management (Carstens, 2020).

The legal preservation of cultural heritage requires understanding its status as a public and social value. Unlike private property, which can be transferred and individually exploited, cultural heritage possesses public, identity-based, and intangible dimensions that place restrictions on private use (Merryman & Elsen, 2018). These works, as part of the shared history of humanity, have non-commercial value, and their protection aims to ensure access for future generations. Moreover, cultural heritage as an element of social cohesion and national identity can strengthen civic pride, social cohesion, and cultural development. The fact that cultural objects do not belong exclusively to an individual or a specific group but represent the shared culture and history of society underscores the necessity of creating stable and comprehensive legal frameworks (Francioni & Vrdoljak, 2020).

One of the modern and effective approaches to cultural heritage protection is the concept of the constitutionalisation of rights, which has gained considerable attention among public law and comparative law scholars (Carstens, 2020). Constitutionalisation refers to elevating legal norms from ordinary legislation to the foundational level of constitutional principles, so that other laws and regulations cannot easily modify or weaken them. Through this approach, cultural heritage rights attain a more stable and solid legal status, compelling the judiciary, legislature, and executive branch to respect them. In other words, constitutionalisation transforms cultural heritage protection from a fragile and temporary legal framework into a robust and enduring legal system, reducing arbitrary or short-term legislative changes (Dolmetsch, 2019).

In Iran, although laws and regulations concerning cultural heritage protection exist, the absence of constitutional-level foundational principles has caused serious challenges and limitations in this field. The closest relevant constitutional provisions merely refer to

limited categories of national monuments and lack sufficient enforcement guarantees; thus, they cannot comprehensively protect cultural heritage (Simpson, 2017). Consequently, administrative or legislative decisions may be issued without regard to the necessity of cultural heritage protection, and the required legal stability is not achieved. This legislative gap and the absence of foundational legal norms have made cultural heritage protection perpetually vulnerable to legal and administrative constraints, creating a need for constitutionalisation within Iran's legal system (Prott & O'Keefe, 2020).

The necessity of the present research arises from precisely this gap and the growing importance of cultural heritage. This study seeks to examine the constitutionalisation of cultural heritage rights, its theoretical and practical foundations, available mechanisms within Iran's legal system, and its potential implications for sustainable heritage protection and development. Studying this topic, in addition to strengthening the legal status of cultural heritage, can contribute to policy and legislative recommendations that support stable heritage protection and enhance national identity and social cohesion (Abbasi Lahiji, 2024).

This research aims to identify, through analytical and comparative methods, the challenges and obstacles to constitutionalising cultural heritage rights in Iran and, by examining international experiences, propose suitable legal and administrative solutions. It also seeks to demonstrate the importance of cultural heritage at the policy-making and legal management levels, drawing the attention of lawmakers and the legal community to the necessity of establishing stable legal frameworks. Furthermore, by emphasizing the role of cultural heritage in social, economic, and cultural development, the study aims to present a comprehensive perspective on heritage protection and the importance of strengthening social capital (Smith, 2015).

Ultimately, this study may help increase awareness among the legal community and lawmakers regarding the importance of cultural heritage and the necessity of creating a solid legal framework, making it an effective step toward protecting national cultural resources. The protection of cultural heritage is not merely a legal or historical obligation but a social, cultural, and ethical necessity whose fulfillment requires special attention to

the constitutionalisation of related rights in the country's legal system (Francioni & Vrdoljak, 2020).

Given the importance of cultural heritage and its unique role in national identity, elevating its legal status becomes an undeniable necessity. The constitutionalisation of cultural heritage rights does not mean enacting limited or partial laws; rather, it is a process through which heritage protection, as a fundamental value, is embedded within the legal and constitutional structure of the state. Such an approach requires all superior and subordinate laws to adhere to the foundational principles related to cultural heritage, thus minimizing arbitrary or harmful changes (Carstens, 2020).

With constitutionalisation, not only historical and cultural artifacts but all actions and policies related to their protection will benefit from a strong legal foundation. This may include defining clear frameworks for restoration and preservation, establishing oversight mechanisms to prevent destruction, and ensuring the rights of local communities and stakeholders. The importance of constitutionalisation lies in ensuring that cultural heritage, as a national asset, is protected beyond personal interests or the short-term benefits of governments, allowing future generations to benefit from it (Blake, 2018).

Moreover, the constitutionalisation of cultural heritage rights can play a significant role in the country's cultural and economic development. Protecting historical and cultural works and promoting their responsible use in tourism, handicrafts, and education can create new employment opportunities and contribute to national economic growth. Additionally, strengthening fundamental rights in this field fosters specialized knowledge and scientific research in cultural heritage and facilitates international cooperation and the exchange of experiences (Dolmetsch, 2019).

Within Iran's legal system, the constitutionalisation of cultural heritage rights faces multiple challenges, including constitutional limitations, the absence of comprehensive and harmonized laws, and executive gaps. The necessity of cooperation among governmental bodies, NGOs, and local communities highlights the importance of inter-institutional collaboration in heritage protection. Nevertheless, theoretical and international experiences in this field can help formulate

effective policies and laws in Iran and contribute to sustainable heritage protection (UNESCO, 2023).

Thus, this study not only examines the nature and foundations of constitutionalising cultural heritage rights but also analyzes its practical pathways and challenges within Iran's legal system. Assessing the social, cultural, economic, and legal impacts of constitutionalisation can serve as a basis for future policy-making and strengthening the legal status of cultural heritage in the country (Akbarzadeh, 2016).

Ultimately, addressing the constitutionalisation of cultural heritage rights is not merely a legal necessity but a strategic action toward preserving national identity, enhancing social cohesion, and ensuring sustainable cultural and economic development. Given its importance, this research aims to illuminate the path toward the constitutional and legal protection of heritage in Iran and to propose strategies for responsible and sustainable use of these assets (Abbasi Lahiji, 2024).

2. The Importance and Protection of Cultural and Historical Works

2.1. Definition of Cultural Works and Cultural Property

Cultural works refer to those artifacts that embody the tangible expression of human thought and creativity throughout history. Adding the term “cultural” to “works” limits the concept to objects with historical, artistic, or spiritual value (Merryman & Elsen, 2018). In Iranian law, the term “cultural property” is sometimes used instead of “cultural works,” which is considered nearly synonymous with “national heritage.” However, a distinction exists between cultural works and cultural property: all cultural property consists of cultural works, but not every cultural work constitutes “property” in the legal sense. For example, a mummified corpse is not considered “property” under Islamic jurisprudence but is historically and culturally valuable and may be traded on the global market. Therefore, the term “cultural works” is more precise and appropriate than “cultural property” (Prott & O'Keefe, 2020).

2.2. Historical Works

Historical works include structures, movable and immovable objects, and everything that has become legally protected due to its historical or artistic significance. Some experts define historical works as

movable or immovable objects to which a group or nation has become historically attached over time. Buildings, sites, paintings, sculptures, inscriptions, and motifs older than one hundred years fall into this category. Article 1 of the Law for the Protection of National Monuments of Iran classifies works built up to the end of the Zand dynasty as “national monuments” and places them under governmental protection and supervision (Samadi & Ansari, 2003). Historical works are divided into two categories:

1. Religious works: buildings and objects constructed for religious purposes.
2. National works: industrial works, structures, and places constructed in Iran up to the end of the Zand period.

With the passage of the National Heritage Registration Act in 1972, historically significant works created after the Zand dynasty may also be registered as national monuments with the approval of the Supreme Council of Culture and Art (Khalilian, 1932).

2.3. Cultural-Historical Works

Cultural-historical works include buildings, complexes, archaeological sites, paintings, sculptures, inscriptions, motifs, decorations, and any other historical element related to original heritage that is more than one hundred years old. These works possess national and cultural significance (Blake, 2018).

2.4. Trafficking in Cultural and Historical Works

In legal terminology, trafficking refers to transporting, buying, selling, or possessing goods whose import, export, or trade is prohibited (Akbarzadeh, 2016). Under Iranian law, any attempt to remove cultural heritage or national wealth from the country constitutes trafficking, and objects intended for illegal removal are subject to confiscation in favor of the state. Establishing the perpetrator's intent can be difficult due to its internal nature; therefore, courts often rely on external evidence, professional background, or reputation. According to the Supreme Court's binding precedent, any attempt to remove export-prohibited cultural objects—even if unsuccessful—constitutes the crime of trafficking (Simpson, 2017).

2.5. Importance of Cultural and Historical Works

Cultural and historical works are important for various reasons:

1. **Economic importance:** The preservation and restoration of historical works can attract tourists and stimulate the tourism industry and revenue generation (Moradi, 2004).
2. **Cultural importance:** These works transmit human spiritual messages throughout history and reinforce national identity (Smith, 2015).
3. **Archaeological importance:** Historical works act as identification documents of nations, providing information about customs, art, religion, law, and the social life of past generations (Carstens, 2020).
4. **Religious importance:** From an Islamic perspective, cultural and historical works serve as instruments of reflection upon the past and reminders of the consequences of wrongful conduct (Blake, 2018).

2.6. Destruction of Cultural and Historical Works

Under Article 555 of the Islamic Penal Code, the destruction of cultural and historical works is punishable by one to ten years of imprisonment, along with compensation for damages. This punishment is intended as a preventive and deterrent measure. Complementary punishments under Article 23 and social rights deprivation according to Article 25 of the Islamic Penal Code may also be imposed if a sentence above the minimum threshold is issued. The penalties also apply to the preliminary acts of traffickers to prevent the illegal removal of cultural works (Akbarzadeh, 2016).

3. Necessity and Importance of Constitutionalising Cultural Heritage Rights

Cultural heritage, as a precious asset and a symbol of the national identity and civilizational history of every country, plays a crucial role in shaping social identity, enhancing national cohesion, and transmitting cultural values to future generations (Smith, 2015). The protection of this heritage is not limited to physical conservation and museum-based preservation, but requires a strong and normative legal framework that can guarantee that these cultural assets are not exposed to threats, destruction, or improper exploitation (Abbasi

Lahiji, 2024). In Iran, given its several-thousand-year historical background and the abundance of cultural and historical works from both pre-Islamic and post-Islamic periods, the importance of this issue is amplified. Nevertheless, legal gaps and the limited protection offered by ordinary legislation expose this heritage to serious risks and confront its protection with numerous challenges (Samadi & Ansari, 2003).

The insufficient attention of the Constitution to cultural heritage and historical monuments is one of the most important reasons for the need to constitutionalise the relevant rights (Carstens, 2020). While the Constitution refers to certain public matters and state property, issues related specifically and comprehensively to the protection of cultural heritage have not been addressed independently. The limited provisions that do exist—such as the principle that refers to the transfer of valuable state property—cannot provide sufficient guarantees for the protection of historical and cultural works and still leave room for their misuse and destruction (Akbarzadeh, 2016). The absence of normative and foundational support at the constitutional level has meant that ordinary laws and executive regulations are unable to protect the country's cultural and historical works effectively and sustainably, and despite some efforts, such as the enactment of cultural heritage protection laws, evident legal gaps remain that lead to confusion and conflict in the performance of protective functions (Blake, 2018).

The consequences of not constitutionalising cultural heritage rights are wide-ranging and diverse. First, harm to the national identity and social cohesion of the country is among the most serious implications. Cultural heritage is not only a reflection of the history and culture of society but also contributes to the formation of collective identity and the creation of a sense of belonging within the community (Smith, 2015). The destruction or damage of such works leads to the loss of part of the nation's historical memory and diminishes the sense of national belonging, potentially weakening social cohesion. In fact, the protection of cultural heritage, in addition to its symbolic and educational value, plays an important role in enhancing national pride and strengthening social bonds, and the lack of fundamental legal support places these objectives at risk (Moradi, 2004).

Second, the economic consequences of failing to constitutionalise cultural heritage rights are also significant. Cultural and historical works can be utilised as sources of income and economic opportunity, particularly in the field of cultural tourism (UNESCO, 2023). Heritage-based tourism, in addition to creating jobs and stimulating small businesses, leads to the strengthening of urban infrastructure and the sustainable development of historical areas (Abbasi Lahiji, 2024). However, the absence of a robust and normative legal system for cultural heritage protection reduces investment in this sector and restricts related economic opportunities. Investors and the private sector, confronted with legal risks and the lack of foundational guarantees, are reluctant to participate in activities linked to cultural heritage, which can ultimately diminish the impact of cultural assets on the national economy (Dolmetsch, 2019).

Third, the lack of constitutionalisation of cultural heritage rights can give rise to legal disputes between governmental bodies and the private sector. In the absence of foundational norms, the performance of protective duties and responsibilities among various organisations and institutions becomes problematic, leading to conflicts in decision-making and policy implementation (Carstens, 2020). Such disputes may result in the ineffectiveness of laws, reduced impact of regulations, and confusion in the execution of protective measures. Moreover, when laws are partial and incomplete, governmental institutions and private actors may develop divergent understandings of their responsibilities, generating practical conflicts and lowering the efficiency of the protective system (Prott & O'Keefe, 2020).

Fourth, the cultural and social consequences of the lack of foundational support for cultural heritage are also noteworthy. Protecting cultural and historical works is not merely a matter of physical care; it also involves creating space for scientific, educational, and cultural utilisation of these assets (Blake, 2018). Museums, historical monuments, and cultural centres, as sites of research and education, provide opportunities to transmit the knowledge and experiences of past generations. The destruction or damage of such works limits these opportunities and reduces the country's educational and cultural capacities. Furthermore, normative and legal protection of cultural heritage

increases social participation, enhances public sensitivity toward cultural values, and promotes societal responsibility for cultural resources (UNESCO, 2023).

Fifth, the failure to constitutionalise cultural heritage rights can pose a threat to the sustainability of future generations. Without strong normative and legal support, later generations may be unable to benefit from cultural heritage as a rich scientific, cultural, and economic resource (Francioni & Vrdoljak, 2020). Sustainable protection of cultural heritage requires foundational laws and norms that ensure continuity and stability in heritage protection beyond political and administrative changes. Constitutionalising cultural heritage rights, by creating a strong and normative legal framework, enables the optimal preservation and utilisation of these assets for future generations and prevents their permanent loss (Dolmetsch, 2019).

In view of all these factors, it can be concluded that the constitutionalisation of cultural heritage rights is not only a legal requirement but also a comprehensive cultural, social, economic, and educational necessity. Establishing strong normative foundations and elevating the status of cultural heritage at the constitutional level will guarantee the sustainable protection of cultural and historical works, enhance national identity, promote tourism and economic opportunities, and increase social cohesion (Abbasi Lahiji, 2024). Accordingly, addressing the constitutionalisation of cultural heritage rights—through legal reform, drafting of executive regulations, and creation of appropriate oversight mechanisms—is one of the most important steps toward securing the cultural and historical future of the country and plays a key role in shaping a stable and comprehensive legal system (Francioni & Vrdoljak, 2020).

4. Foundations, Legal Bases, and Executive Mechanisms for Constitutionalising Cultural Heritage Rights in the Iranian Legal System

Constitutionalising cultural heritage rights means elevating this field from the level of ordinary legislation to that of fundamental constitutional principles and values—an objective that cannot be achieved without clarifying its theoretical, legal, and practical bases (Carstens, 2020). In fact, identifying the legal foundations and drawing upon the overarching principles of Iran's legal system constitute the first step toward creating a normative framework for the

sustainable protection of cultural heritage (Abbasi Lahiji, 2024).

At the first stage, the legal foundations of constitutionalising cultural heritage may be examined along three main axes: public law foundations, Islamic jurisprudential foundations, and international foundations. From the perspective of public law, cultural heritage is regarded as part of the public interest and the common assets of the nation (Samadi & Ansari, 2003). Under the fundamental principles of public law, states are obligated to safeguard public property and resources that bear a national character and to prevent their transfer, destruction, or unlawful exploitation (Blake, 2018). Thus, in legal terms, cultural heritage falls within the domain of public property, and its protection is not merely within the discretion of the state, but one of its legal duties. On this basis, the constitutionalisation of cultural heritage rights means entrenching this obligation within the Constitution and making it one of the central pillars of the country's public policies (Carstens, 2020).

From the standpoint of Islamic jurisprudential foundations, support for cultural heritage can be justified through principles such as the preservation of public wealth and *anfāl*, the “no-harm” rule (*lā ḍarar*), and the obligation to promote good and prevent wrong. Islamic jurisprudence considers the destruction of monuments and structures that reflect the history and civilization of the Islamic community and of humanity as a form of harm to society and emphasises the necessity of safeguarding them (Akbarzadeh, 2016). On this basis, protecting cultural heritage is not only a civil duty but also a religious obligation. Likewise, the concept of *ḥaqq al-nās* (people's rights) in Islamic law can serve as an additional foundation, for cultural heritage belongs to past, present, and future generations, and its destruction signifies the violation of public and intergenerational rights (Samadi & Ansari, 2003).

From the perspective of international foundations, the constitutionalisation of cultural heritage rights is consistent with Iran's international obligations. Major instruments such as the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage require states to ensure the protection of cultural

heritage at the highest legal and political levels (UNESCO, 2023). Entrenching heritage protection within the Constitution can thus be seen as an effective step toward aligning the domestic legal system with Iran's international commitments in the field of cultural heritage (Francioni & Vrdoljak, 2020).

However, beyond theoretical and legal foundations, the realisation of constitutionalisation requires precise legal and executive measures. The first step in this direction is to review and amend the Constitution, or to adopt an expansive interpretation of existing constitutional provisions, so as to embed cultural heritage within principles relating to public property, the environment, sustainable development, and national culture (Carstens, 2020). For example, this can be achieved through the addition of a clause or note to the constitutional provision on environmental protection or through the drafting of an independent principle that explicitly addresses cultural heritage.

The second measure is the enactment of comprehensive ordinary legislation consistent with constitutional principles. The existing Law on the Protection of National Heritage, adopted in 1930, together with its subsequent amendments, though effective at the time of enactment, no longer meets the needs of contemporary society or keeps pace with cultural and economic developments (Samadi & Ansari, 2003). Drafting a “Comprehensive Cultural Heritage Act” that, in harmony with the Constitution, clearly defines the responsibilities of institutions, the forms of public participation, enforcement mechanisms, and deterrent sanctions is one of the essential requirements of constitutionalisation (Akbarzadeh, 2016).

The third measure is strengthening supervisory and institutional mechanisms. To implement constitutionalisation effectively, specialised institutions with adequate legal powers in the field of cultural heritage must exist. The Cultural Heritage, Tourism, and Handicrafts Organization, as the principal authority, needs stronger powers and enforcement guarantees so that it can take effective and immediate action in the face of encroachments and violations (Abbasi Lahiji, 2024). Furthermore, establishing high-level councils with the participation of representatives from the judiciary, parliament, civil society organisations, and academia can support comprehensive decision-making and oversight of proper legal implementation.

The fourth measure involves institutionalising a legal culture of heritage protection through education, media, and public participation. Constitutionalisation is not merely a legal act; it also entails a transformation in social attitudes toward the value of cultural heritage (Smith, 2015). When society perceives itself as a partner in protecting cultural works, the enforcement of laws will be more successful. Therefore, public awareness-raising, teaching cultural rights in schools and universities, and supporting civil society initiatives in the heritage field constitute key practical pillars in achieving constitutionalisation (UNESCO, 2023).

The fifth measure is creating coordination among the relevant institutions. The fragmentation of responsibilities across different bodies—such as the Ministry of Roads and Urban Development, municipalities, the Ministry of Energy, and the Cultural Heritage Organisation—has often impeded effective heritage protection. Constitutionalisation can, by assigning a superior status to cultural heritage within the hierarchy of developmental and infrastructural decision-making, prevent conflicts between development and conservation (Blake, 2018; Carstens, 2020).

Overall, constitutionalising cultural heritage rights is a multidimensional process that, on the one hand, requires reliance on solid theoretical and legal foundations and, on the other hand, demands the design of effective and coordinated executive mechanisms (Francioni & Vrdoljak, 2020). In light of such measures, it may be expected that Iran's legal system will move beyond limited protective statutes toward a level of stability, coherence, and commitment at which the protection of cultural heritage is regarded not as a discretionary duty but as a fundamental and binding constitutional principle. This approach, in addition to ensuring the survival of the country's historical and cultural works, will strengthen national identity, enhance cultural capital, and increase Iran's international standing (Dolmetsch, 2019).

5. Approaches, Effects, and Challenges of Constitutionalising Cultural Heritage Rights in the Iranian Legal System

5.1. *Practical Approaches to Constitutionalising Cultural Heritage Rights*

The constitutionalisation of cultural heritage rights in Iran requires the adoption of practical, precise, and

comprehensive approaches that can support the sustainable protection of the country's cultural and historical assets both legally and operationally (Carstens, 2020). The first step in this direction is to focus on the Constitution and to amend or expand the provisions related to cultural heritage. Adding principles or clauses to the Constitution that guarantee the protection of historical, cultural, and natural properties would secure the position of this field at the highest normative level and ensure that every decision in subordinate laws and regulations is bound to respect these principles (Francioni & Vrdoljak, 2020). Such a measure not only strengthens legal protection but also creates a stable and long-term framework that cannot be easily altered.

In the next stage, it is necessary to draft and enact comprehensive legislation harmonised with constitutional principles. The current laws—especially ordinary and outdated provisions in the field of cultural heritage—are limited and insufficient and cannot respond adequately to the complex needs of society or the rapid changes in urban, industrial, and tourism environments (Samadi & Ansari, 2003). A comprehensive statute must define the responsibilities of all institutions, enforcement guarantees, deterrent sanctions, and supervisory procedures so that the process of cultural heritage protection is transformed from a fragmented and uncontrollable activity into an organised and coordinated system (Blake, 2018).

The establishment and strengthening of specialised supervisory and executive bodies is another vital step. Institutions responsible for cultural heritage must have sufficient powers to monitor, issue permits, and intervene immediately in the face of threats and violations (Abbasi Lahiji, 2024). The creation of high-level decision-making councils with the participation of representatives of the government, the judiciary, universities, cultural heritage experts, and civil society will foster coordination, reduce conflicts, and promote a unified approach to dealing with heritage-related issues (Prott & O'Keefe, 2020).

The role of education and cultural promotion is also crucial. The protection of cultural heritage cannot be achieved solely through legal measures; active public participation is one of the keys to success (UNESCO, 2023). Specialized training at universities, public information campaigns, media programs, and civic activities can increase public awareness and sensitivity

toward cultural and historical values and engage society as an active partner in heritage protection (Smith, 2015). Another important approach is the coordination between public and private entities. Fragmentation of responsibilities, conflicts of interest, and the lack of cooperation among ministries, municipalities, and the private sector lead to implementation problems and overlapping competences (Dolmetsch, 2019). The constitutionalisation of cultural heritage rights can, by assigning a superior status to this field in development, urban, and infrastructural decision-making, prevent such conflicts and create a coherent and goal-oriented framework (Carstens, 2020).

5.2. *Effects and Implications of Constitutionalising Cultural Heritage Rights*

The constitutionalisation of cultural heritage rights has far-reaching effects on the legal system, on heritage protection, and on society as a whole. The first effect is the elevation of the legal status of cultural heritage. By entrenching these rights at the constitutional level, strong enforcement guarantees are created for the competent authorities, and heritage protection is transformed into a binding legal obligation (Francioni & Vrdoljak, 2020). This obligation ensures that no decision in other laws and regulations is made without regard to fundamental principles and that the protection of cultural heritage is always considered a priority.

The second effect is the enhancement of the capacities of executive and judicial institutions. Constitutionalisation enables organisations and responsible bodies to pursue protective objectives within a clear legal framework and to adopt swift and effective decisions in the face of threats such as destruction, theft, or loss of heritage assets. This leads to strengthened legal security and a reduction in unlawful activities in the field of cultural heritage (Blake, 2018).

The third effect is the reinforcement of national identity and social cohesion. Cultural heritage symbolizes the historical and cultural identity of society, and its continuous legal protection strengthens social cohesion, respect for national culture and history, and citizens' sense of belonging to the country (Smith, 2015). It also creates a bridge between different generations and supports the transmission of cultural values into the future.

The fourth effect is the enhancement of economic and tourism opportunities. Effective protection of cultural and historical works can lead to the attraction of domestic and foreign tourists and create substantial economic opportunities in the fields of tourism, handicrafts, and related services (Moradi, 2004). Constitutionalising cultural heritage rights can contribute to increased economic efficiency and the sustainable development of different regions of the country (Abbasi Lahiji, 2024).

The fifth effect is the creation of institutional coordination and coherence. The entrenchment of cultural heritage rights at the constitutional level encourages various governmental bodies, municipalities, the private sector, and civil organisations to act in a coordinated manner and reduces conflicts and overlaps in implementation. This institutional coordination enhances the effectiveness of protective measures and enables the sustainable and purposeful use of cultural resources (Prott & O'Keefe, 2020).

5.3. *Challenges and Limitations in the Path of Constitutionalising Cultural Heritage Rights*

Despite the importance and necessity of constitutionalising cultural heritage rights, this process faces numerous challenges and limitations. The first challenge is the lack of infrastructure and existing weaknesses in legal and institutional structures. Current laws are limited and scattered, and many responsibilities of competent authorities are either undefined or unaccompanied by sufficient powers to confront threats (Samadi & Ansari, 2003).

The second challenge is the conflict between development and protection. Development projects in industry, urban planning, and tourism sometimes conflict with the needs of heritage conservation, and in the absence of a stable legal framework, cultural and historical works may be placed at risk of destruction (Carstens, 2020). This tension between short-term economic interests and the long-term protection of culture is one of the major obstacles to constitutionalising cultural heritage rights.

The third challenge is the lack of social participation and awareness. Society, as the primary stakeholder in cultural heritage protection, has not yet fully recognised its role and does not participate actively. Insufficient education, inadequate cultural promotion, and the

absence of effective information campaigns have resulted in low public sensitivity to heritage issues and limited public participation in their protection (UNESCO, 2023).

The fourth challenge is the complexity and cost of implementation. Constitutionalisation requires structural changes in institutions, adequate budgets for protection, coordination among various organisations, and the training of specialised human resources. Limited financial and human resources can hinder the effective implementation of these policies (Dolmetsch, 2019).

The fifth challenge is resistance from powerful stakeholders and the dispersion of authority. Some institutions and groups may oppose legal changes and new restrictions introduced by constitutionalisation and may delay or obstruct implementation. Managing such resistance requires careful planning, stakeholder engagement, and the creation of broad national consensus (Francioni & Vrdoljak, 2020).

The sixth challenge is the lack of comprehensive data and information. Effective drafting and implementation of constitutionalisation policies require accurate data on cultural assets, their conservation status, and the nature and magnitude of threats. The absence of complete information can complicate decision-making and planning (Blake, 2018).

Ultimately, although the path toward constitutionalising cultural heritage rights is fraught with challenges and limitations, its advantages in strengthening heritage protection, enhancing national identity, promoting social cohesion, improving economic performance, and fostering institutional coordination clearly demonstrate the necessity of this process and underscore the importance of efforts aimed at its implementation (Abbasi Lahiji, 2024).

6. The Exercise of State Sovereignty over Cultural Heritage in Light of Article 83 of the Constitution

The exercise of state sovereignty over cultural heritage in Iran, based on constitutional principles—particularly Article 83—comprises a set of legal powers, executive responsibilities, cultural policies, and protective measures. This article allows the state to manage matters related to the protection of historical and cultural works in line with the public interest, national identity, and principles of social justice (Samadi & Ansari, 2003). In other words, the state plays not only a policy-making and

supervisory role but also a direct executive role in the protection of cultural heritage, thereby ensuring that these assets are safeguarded against destruction, trafficking, and misuse and remain accessible to future generations (Akbarzadeh, 2016).

6.1. Legal and Regulatory Dimensions of State Sovereignty

One of the most important dimensions of the state's exercise of sovereignty is the drafting and enactment of national laws and regulations. Laws such as the Law on the Registration of National Monuments adopted in 1931 and its subsequent amendments in 1933 and 1935, the Law on the Punishment of Trafficking in Antiquities enacted in 1933 and 1935, and the Law on the Protection and Restoration of Cultural Heritage adopted in 1935 and 1972 provide the necessary legal framework for the protection of cultural and historical property (Samadi & Ansari, 2003). These statutes define the procedures for registration of movable and immovable works, the criteria for identifying national monuments, penalties for destruction and trafficking, and the responsibilities of executive agencies (Blake, 2018).

Article 83 of the Constitution confers legal legitimacy on state intervention in the private ownership of cultural property. This means that even if a cultural object is privately owned, the state can, by registering it as a national monument, impose restrictions on its use, sale, transfer, or restoration to safeguard the public interest and national identity (Carstens, 2020). Such state action is an example of the exercise of public sovereignty over national and cultural resources (Merryman & Elsen, 2018).

6.2. Executive Management and Operational Supervision

Following the enactment of laws, executive management and operational supervision function as the primary tools for the state's exercise of sovereignty. The Ministry of Culture and Islamic Guidance and the Cultural Heritage, Tourism, and Handicrafts Organization, as state representatives, are responsible for implementing protective policies. This includes:

Registration of historical and cultural, movable and immovable works.

Restoration and reconstruction of historical buildings and sites.

Protection of archaeological sites and valuable areas.
Management of museums and heritage repositories.
Supervision of archaeological, research, and excavation activities.

For example, the registration of national monuments even after the Zand period by the former Supreme Council of Culture and Art is a clear instance of lawful state intervention in heritage protection (Khalilian, 1932). Likewise, the establishment of conservation standards, restoration protocols, and executive guidelines ensures that cultural and historical works are used and displayed while preserving their authenticity (UNESCO, 2023).

6.3. *Restriction of Private Ownership and Protection of the Public Interest*

Article 83 allows the state to limit or oversee private ownership in order to protect cultural heritage. Many cultural and historical properties under private ownership have national importance and may be exposed to destruction, change of use, or misuse. Registration of such properties as national monuments restricts private ownership so that owners are obliged to comply with conservation rules, restoration obligations, and prohibitions on unauthorized changes of use (Akbarzadeh, 2016). These restrictions guarantee public interests and the cultural identity of society and prevent the destruction and misuse of heritage assets (Prott & O'Keefe, 2020).

6.4. *Constitutionalisation of Cultural Heritage Rights*

The constitutionalisation of cultural heritage rights means creating a long-term legal, institutional, and social framework for heritage protection (Carstens, 2020). This comprises three main dimensions:

1. **Legal dimension:** Drafting and enacting up-to-date comprehensive laws, such as statutes on the registration of national monuments, the trafficking of antiquities, and the protection of historic urban fabrics. These laws specify institutional responsibilities, registration and protection procedures, and sanctions for destruction and trafficking (Samadi & Ansari, 2003).
2. **Executive and supervisory dimension:** Establishing specialised organisational

structures for operational management and oversight of heritage, including the Ministry of Culture and Islamic Guidance, the Cultural Heritage Organization, museums, and archaeological offices (Abbasi Lahiji, 2024).

3. **Constitutional principles dimension:** Ensuring that protective measures are aligned with constitutional principles, such as those relating to public ownership, economic management, and the promotion of public culture and national identity (Francioni & Vrdoljak, 2020).

6.5. *Economic Dimension of State Sovereignty*

The protection of cultural heritage can generate significant economic impacts. The restoration and maintenance of historical works, attraction of domestic and foreign tourists, and the development of the tourism industry create income and employment opportunities (Moradi, 2004). The experience of countries such as Greece and Spain shows that revenue from cultural tourism can constitute a substantial share of the national economy. For example, Greece, with a population of about 11 million, has been able in a given year to earn around 1 billion dollars from tourism, while Spain has earned about 21 billion dollars. With appropriate investment, Iran can likewise create sustainable income sources through the protection of historical monuments and the development of tourism (Blake, 2018).

6.6. *Cultural, Identity-Based, and Educational Dimension*

Cultural heritage conveys the cultural, historical, and social messages of humanity over time. Historical and cultural works function as identification documents of nations and solidify national identity (Smith, 2015). Even small objects such as pottery, inscriptions, or simple motifs can provide valuable information about the social behaviour, art, technology, and lifestyle of past generations. Through the exercise of sovereignty, the state ensures that such works are preserved and that future generations can use them for education, research, and identity-building (UNESCO, 2023).

6.7. *Religious and Spiritual Dimension*

Many of Iran's historical and cultural works, in addition to their artistic and historical value, possess religious and spiritual significance. From an Islamic perspective, the material remains of past societies serve as a means of learning from the experiences of predecessors, strengthening piety, and understanding the correct way of life. The Qur'an repeatedly emphasises the importance of reflecting on the fate of earlier communities and presents cultural and historical remains as moral and educational resources. By exercising sovereignty over such works, the state guarantees both their physical and their spiritual protection (Akbarzadeh, 2016).

6.8. *Preventive Measures and Sanctions*

One of the key instruments of state sovereignty is prevention and punishment. According to Article 555 of the Islamic Penal Code, the destruction of cultural and historical works is punishable by one to ten years' imprisonment in addition to compensation for damage. Alongside the principal penalty, accessory and complementary sanctions have been envisaged to ensure the effectiveness of the law (Akbarzadeh, 2016). These measures serve to prevent destruction and to protect the public interest and the cultural heritage of the country (Merryman & Elsen, 2018).

6.9. *Trafficking in Cultural Works and State Sovereignty*

The trafficking of cultural works is one of the most serious threats to national heritage. Under Article 45 of the Law on the Punishment of Traffickers, the removal of cultural and historical objects from the country, and their purchase, sale, or possession with the intent of export, constitute criminal acts and are subject to severe penalties, including imprisonment and confiscation of property (Samadi & Ansari, 2003). The exercise of state sovereignty in this field involves border control, monitoring of domestic and international markets, and cooperation with international organisations to prevent the trafficking of cultural property (Simpson, 2017; UNESCO, 2023).

7. Conclusion

The cultural and historical heritage of every country, as an irreplaceable asset and a form of sustainable wealth,

reflects the scientific, artistic, social, cultural, religious, and ethical achievements of past generations. These works—which include buildings, complexes, historical sites, motifs, paintings, statues, sculptures, inscriptions, and other tangible and intangible cultural elements—are not only concrete evidence of the identity and civilization of a nation, but also play an unparalleled role in consolidating and rearticulating that nation's culture and history. In light of Article 83 of the Constitution of Iran, the exercise of state sovereignty over cultural heritage is regarded as a fundamental legal obligation and enables coherent policy-making, the enactment of protective legislation, and the establishment of effective executive mechanisms. This article provides a basis for the creation of a legal and managerial framework in the areas of protection, restoration, registration, use, and response to the destruction and trafficking of cultural and historical works, and ensures that protective and supervisory measures are implemented in a coordinated and sustainable manner.

From an economic perspective, the protection of cultural heritage can become a powerful tool for national sustainable development. Global experience has shown that intelligent investment in the field of cultural heritage, while preserving authenticity and historical values, leads to increased tourism, the creation of numerous employment opportunities, the attraction of foreign capital, and the growth of the tourism industry. Successful examples from countries such as Greece and Spain demonstrate that cultural heritage can serve as a primary source of national income, and that its economic value is considerable even in countries with relatively small populations. In Iran as well, given its multi-millennial civilization and abundant cultural assets, the proper protection and use of these resources can play a significant role in economic development, reducing unemployment, and strengthening both the micro- and macro-levels of the national economy.

From a cultural and social viewpoint, historical and cultural works reflect the identity, values, traditions, and beliefs of nations. Even when they appear small or marginal, these works can reveal important details about the social, cultural, and artistic life of earlier generations and play a vital role in education and in the transmission of knowledge and culture to future generations. The protection of cultural heritage, in addition to creating an emotional and identity-based bond between

generations, provides a basis for the cultural development of society, raising public awareness, and strengthening social cohesion.

From a religious and spiritual perspective, cultural heritage can serve as a means of recalling the experiences of past peoples and reinforcing ethical and religious values. Religious and ritual works created for devotional and faith-based purposes, in addition to their artistic and historical value, constitute a source of teaching, moral reflection, and the strengthening of piety and religious understanding. The Qur'an and other religious sources repeatedly emphasize the importance of learning from the fate of earlier generations, and cultural-historical works represent the most concrete evidence for realizing these teachings.

From a legal perspective, Iranian laws in the field of cultural and historical heritage—including the Law on the Registration of National Monuments, the Law on the Punishment of Trafficking in Antiquities, and the provisions related to criminal liability and compensation for damage—demonstrate the legislator's comprehensive approach to protecting these assets. By emphasizing the material and moral elements of offenses, such as criminal intent and any act connected with the removal of cultural objects from the country, these laws have established a clear framework for preventing the destruction, trafficking, and misappropriation of cultural heritage. In addition, the imposition of criminal penalties, compensation for damages, and the application of complementary sanctions reinforce the preventive and deterrent dimensions of the law and consolidate the state's role in safeguarding and managing these works.

Cultural and historical heritage also plays a central role in education and research. Educational and research programs, the establishment of temporary and permanent exhibitions, cultural tours, and academic activities help the general public and experts to understand the value and importance of cultural heritage and to participate actively in its protection. This social participation, together with state supervision and management, guarantees the long-term protection and sustainable use of these assets.

The importance of protecting cultural and historical heritage is also evident in their role as sources of archaeological and historical information. Cultural and historical objects provide valuable evidence regarding

the customs, traditions, laws, beliefs, art, science, language, politics, and social systems of nations throughout history. The study of these works makes it possible to reconstruct the processes of social, political, and cultural evolution and to analyse the impact of historical events on societies, thereby allowing them to act as the identity card and certificate of a nation.

In general, success in protecting cultural and historical heritage requires convergence and interaction among four fundamental pillars:

1. Effective legislation: drafting comprehensive, clear laws harmonized with international standards that provide the legal framework for protection and for responding to destruction and trafficking;
2. State management and exercise of sovereignty: supervision and enforcement of laws by specialised institutions such as the Ministry of Culture and Islamic Guidance and the Cultural Heritage Organization, with emphasis on Article 83 of the Constitution as a guarantee for the correct and sustainable implementation of policies;
3. Education, research, and the promotion of public awareness: educational planning and research and cultural activities that raise awareness among society and experts regarding the value and importance of cultural heritage;
4. Active participation of society and the private sector: strengthening the sense of belonging and social responsibility, utilizing local capacities, and encouraging public participation in the protection, restoration, and cultural and economic use of heritage.

The convergence of these pillars makes it possible to ensure sustainable protection, intelligent economic and cultural utilization, balanced social development, and the enhancement of the country's international standing. Cultural and historical heritage, in addition to preserving national authenticity and identity, can act as a driving force for sustainable cultural, social, and economic development and provide the basis for elevating Iran's cultural, political, and economic position in the world. Any negligence in protecting these irreplaceable assets constitutes a direct threat to national identity, social cohesion, economic development, and the country's international status.

In conclusion, the protection of cultural and historical heritage is not only a legal and governmental responsibility but also a moral, social, economic, and cultural duty for all members of society. The combination of effective legislation, strong state management, rigorous research and education, and active public participation is the only way to guarantee the safeguarding, preservation of authenticity, and sustainable development of these valuable works and to maintain the identity, culture, and civilization of a nation throughout history.

Authors' Contributions

Authors contributed equally to this article.

Declaration

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

Transparency Statement

Data are available for research purposes upon reasonable request to the corresponding author.

Acknowledgments

We would like to express our gratitude to all individuals helped us to do the project.

Declaration of Interest

The authors report no conflict of interest.

Funding

According to the authors, this article has no financial support.

Ethical Considerations

In this research, ethical standards including obtaining informed consent, ensuring privacy and confidentiality were observed.

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