

The Doctrine of Proportionality in Free Speech Jurisprudence: A Comparative Analysis between Kuwait's Constitution and the European Court of Human Rights, with an Additional Focus on Environmental Law in Kuwait and the United States

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The article examines how the proportionality deals with the issue of free speech and environmental law by comparing the way proportionality is implemented in the Kuwaiti legal system and examine it with the cases decided by the European Court of Human Rights and United States courts in the field of environmental protection. The article attempts first to assess the judicial application of proportionality in freedom of speech jurisprudence in Kuwait and compare it with the ECtHR model; second, to explore the broader implications of proportionality in the context of environmental governance by comparing Kuwait with the U.S. This dual comparison is deliberate: the ECtHR provides a supranational human rights framework centered on a structured proportionality test in free speech, while the U.S. illustrates proportionality-like reasoning in environmental governance despite lacking a constitutional right to a healthy environment. Including both systems highlights Kuwait's divergences and situates its jurisprudence within broader global debates.

Introduction

In modern constitutional law, the doctrine of proportionality sets out how courts should weigh the rights of people against the needs of the state. In the fields of freedom of expression and environmental protection, the tension between the two grows the most complex and visible.² So

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² Dolzhikov, A. V. "The Constitutional Principle of Proportionality: an Interdisciplinary Approach." *Perm U. Herald Jurid. Sci.* 47 (2020): 6.

that rights can be limited while societies protect the well-being and future of all citizens, courts depend on the doctrine of proportionality to enact restrictions on rights clearly and democratically.

The article reviews how proportionality works in connection to free speech and environmental laws by comparing the two areas using a constitutional lens. It specifically studies the way proportionality is mentioned, implemented, or omitted in Kuwaiti rulings, examines these cases compared to the European Court of Human Rights (ECtHR) in the case of freedom of expression and also to the decisions made by the United States courts in the area of environment protection. The way Kuwait's Constitution, religion, and traditional politics play a role in judging fundamental rights makes it a good subject for study. The Constitution, passed in 1962, includes the right to free expression (Article 36) and looks indirectly at environmental matters (Article 16, further fortified by Law No. 42 of 2014). At the same time, the courts do not often use the proportionality method properly.^{3,4,5}

Freedom of expression, which the law protects in Kuwait, is restricted by rules concerning public order, morality, and anything religious. To sum up, this can make statutes hard to understand and result in standardized applications that miss out on the flexible reasoning found in proportionality. By contrast, the European Court of Human Rights (ECtHR), through its Article 10 jurisprudence, has developed a nuanced and transparent proportionality test to assess whether restrictions on speech are necessary in a democratic society.⁶ The ECtHR's judicial reasoning, especially in landmark cases like *Handyside v. United Kingdom* (1976)⁷ and *Otto-*

³ Al-Mutairi, Youssef Haji. "Legal Restrictions on Freedom of Opinion: A Comparative Study of American and Kuwaiti Criminal Law." *Pakistan Journal of Criminology* 17, no. 1 (2025).

⁴ Kuwait. *Constitution of the State of Kuwait*. 1962. Accessed December 29, 2025. https://www.constituteproject.org/constitution/Kuwait_1992.pdf.

⁵ Kuwait. *Environmental Protection Law No. 42 of 2014*. Accessed December 29, 2025. <https://www.elaws.gov.kw/LAW.aspx?ID=4166>.

⁶ Trykhlil, Kristina. "The principle of proportionality in the jurisprudence of the European Court of Human Rights." *EU and comparative law issues and challenges series (ECLIC)* 4 (2020): 128-154.

⁷ *European Court of Human Rights. Handyside v. United Kingdom, no. 5493/72, judgment of December 7, 1976. Accessed December 29, 2025. https://hudoc.echr.coe.int/eng#%7B%22itemid%22:[%2201-57499%22]*}.

Preminger-Institut v. Austria (1994)⁸, exemplifies how proportionality serves not merely as a technical tool but as a normative safeguard against arbitrary power.

Equally pressing is the role of proportionality in environmental law, a field where competing rights such as economic interests, property rights, health, and intergenerational equity are often at stake. Kuwait has enacted modern environmental legislation, most notably Law No. 42/2014 on Environmental Protection, but its enforcement remains weak, and judicial interpretation is underdeveloped.⁹ The United States, although lacking an explicit constitutional right to a clean environment, has developed robust administrative law frameworks and judicial doctrines such as regulatory takings and cost-benefit analyses that resemble proportionality in function if not in form.¹⁰ Cases like *Massachusetts v. EPA* (2007)¹¹ and *Chevron U.S.A., Inc. v. NRDC* (1984)¹² illustrate how U.S. courts mediate environmental interests through a lens of judicial review, deference, and administrative proportionality.

The core aim of this article is twofold: first, to assess the judicial application of proportionality in freedom of speech jurisprudence in Kuwait and compare it with the ECtHR model; second, to explore the broader implications of proportionality in the context of environmental governance by comparing Kuwait with the U.S. The analysis emphasizes judicial reasoning and constitutional interpretation, questioning whether proportionality is simply a doctrinal mechanism or a broader indicator of a legal system's commitment to rights and democratic accountability.

Methodologically, the article adopts a comparative, doctrinal approach supported by critical legal theory. It draws upon primary legal texts, key judicial decisions, and scholarly commentary to dissect how proportionality functions in different legal cultures. The comparative

⁸ European Court of Human Rights. *Otto-Preminger-Institut v. Austria*, no. 13470/87, judgment of September 20, 1994. Accessed December 29, 2025. [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-57897%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57897%22]}).

⁹ Al-Rashidi, Khaled S., and Clive Walker. "The Kuwaiti Freedom of Information Act: the Construction of Constitutional Governance." *Global Journal of Comparative Law* 13, no. 1 (2024): 1-30.

¹⁰ Weis, Lael K. "Environmental constitutionalism: Aspiration or transformation?." *International Journal of Constitutional Law* 16, no. 3 (2018): 836-870.

¹¹ United States Supreme Court. *Massachusetts v. Environmental Protection Agency*, 549 U.S. 497 (2007). Accessed December 29, 2025. <https://supreme.justia.com/cases/federal/us/549/497/>.

¹² United States Supreme Court. *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). Accessed December 29, 2025. <https://supreme.justia.com/cases/federal/us/467/837/>.

framework not only highlights jurisdictional divergences but also interrogates the underlying political, religious, and institutional logics that shape judicial behavior. Ultimately, the article seeks to contribute to the growing discourse on global constitutionalism by situating Kuwait's legal developments within broader transnational trends.

In a world increasingly characterized by overlapping crises social, political, and environmental the doctrine of proportionality offers more than a legal balancing act. It serves as a lens through which courts, lawmakers, and citizens negotiate the tensions between individual freedom and collective good. This article argues that the robust application of proportionality in both free speech and environmental cases is not merely a matter of legal elegance but a democratic imperative.

Theoretical Foundations: The Doctrine of Proportionality

The doctrine of proportionality occupies a central role in constitutional adjudication across numerous jurisdictions, acting as a normative framework to evaluate whether limitations imposed on fundamental rights are justified within a democratic legal order.¹³ It operates as both a tool of judicial reasoning and a safeguard for rights, ensuring that any restriction of constitutional liberties such as freedom of expression or property rights is justified, narrowly tailored, and least restrictive in achieving a legitimate governmental aim.¹⁴ The conceptual robustness of proportionality lies in its structured and transparent methodology, which contrasts with vague appeals to reasonableness or discretion that often accompany judicial decision-making in less developed rights regimes.

The Origins and Structure of Proportionality

Proportionality traces its intellectual roots to German administrative and constitutional law, where it emerged as a guiding principle for evaluating the legitimacy of state action. German courts formalized the principle through a tripartite test: suitability (the measure must be suitable to achieve a legitimate aim), necessity (no less restrictive means must exist), and

¹³ Bulman-Pozen, Jessica, and Miriam Seifter. "State Constitutional Rights and Democratic Proportionality." *Columbia Law Review* 123, no. 7 (2023): 1855-1928.

¹⁴ Gilani, Syed Raza Shah. "The significance of the doctrine of proportionality in the context of militant democracy to protect the freedom of expression." PhD diss., Brunel University London, 2019.

proportionality in the strict sense (balancing of the harm to rights against the public benefit).¹⁵ This three-step or four-step structure (some include the legitimacy of aim as a separate initial step) has since been adopted or adapted by various constitutional courts and human rights tribunals, including the European Court of Human Rights (ECtHR), the Supreme Court of Canada, and the Constitutional Court of South Africa.

Each stage of the proportionality test reflects a commitment to a particular value in constitutional governance. The legitimacy requirement affirms the need for state interference to be grounded in democratically endorsed objectives. The suitability and necessity tests demand evidentiary justification, requiring governments to demonstrate that they have carefully chosen means that can and will achieve their stated goals.¹⁶ The final balancing step proportionality *stricto sensu* is arguably the most contentious, as it forces judges to weigh the severity of a rights infringement against the importance of the objective served. This stage draws judicial power into the heart of political and moral deliberation, a feature praised for enhancing rights protection but criticized for threatening judicial overreach.

Judicial Reasoning and Proportionality: A Critical Appraisal

A key strength of proportionality lies in its capacity to structure judicial reasoning in a transparent, replicable, and analytically rigorous manner. According to Sweet and Mathews, unlike unstructured balancing or abstract appeals to the public interest, proportionality demands explicit engagement with each element of the test, providing an audit trail of legal justification.^{17,18} This procedural discipline is particularly valuable in rights litigation, where courts must demonstrate that restrictions are not arbitrary or excessive.

¹⁵ Alexy, Robert. "Constitutional rights, balancing, and rationality." In *Habermas and Law*, pp. 265-274. Routledge, 2020.

¹⁶ Petersen, Niels. "Alexy and the "German" model of proportionality: Why the theory of constitutional rights does not provide a representative reconstruction of the proportionality test." *German Law Journal* 21, no. 2 (2020): 163-173.

¹⁷ Sweet, Alec Stone, and Jud Mathews. *Proportionality balancing and constitutional governance: A comparative and global approach*. Oxford University Press, 2019.

¹⁸ Ramshaw, Adam. "The case for replicable structured full proportionality analysis in all cases concerning fundamental rights." *Legal Studies* 39, no. 1 (2019): 120-142.

However, proportionality is not without its critics. One of the principal critiques is that proportionality invites excessive judicial discretion, particularly in the final balancing stage, which lacks a clear metric or algorithm for resolving competing values.¹⁹ The subjectivity inherent in weighing harms and benefits has led some scholars to argue that proportionality cloaks value judgments in the guise of legal reasoning. Furthermore, proportionality may provide a false sense of neutrality while still enabling outcomes that reflect majoritarian biases, especially when courts defer to legislative judgment without meaningful scrutiny.

Another criticism concerns its universality. While proportionality has become the gold standard in many liberal constitutional systems, its transplantability to non-liberal or hybrid legal systems such as Kuwait's raises theoretical and practical concerns. In contexts where constitutional rights are shaped by religious, moral, or cultural values that do not easily lend themselves to instrumental balancing, the proportionality test may lack normative legitimacy or interpretive resonance.²⁰ For example, the balancing of free speech against public morality in a secular liberal democracy is likely to yield different results than in a theocratic or tradition-bound constitutional culture.

Proportionality vs. Reasonableness

It is useful to distinguish proportionality from the concept of reasonableness; another standard frequently used in constitutional and administrative law. While both involve evaluative judgment, proportionality is more structured and demanding. Reasonableness reviews whether an administrative decision falls within a range of acceptable options, often deferring to institutional competence, whereas proportionality imposes a more exacting scrutiny of both means and ends.²¹ As a result, proportionality is better suited for contexts requiring robust rights protection, while reasonableness tends to dominate in areas of administrative discretion.

In Kuwait, courts have historically employed reasonableness or necessity language without the formal application of proportionality analysis. According to Almutairi, this has

¹⁹ Abdel-Monem, Akram. "Proportionality V. Categorization: The Issue of Judicial Balancing of Rights." Master's thesis, The American University in Cairo (Egypt), 2023.

²⁰ Linden-Retek, Paul. "Neither Trumps nor Interests: Rights, Pluralism, and the Recovery of Constitutional Judgment." *Clev. St. L. Rev.* 70 (2021): 393.

²¹ Bertenthal, Alyse. "Administrative Reasonableness: An Empirical Analysis." *Wis. L. Rev.* (2020): 85.

resulted in a jurisprudence that lacks transparency in justifying limitations on rights.²² By contrast, the ECtHR has institutionalized proportionality into its case law under Article 10 of the European Convention on Human Rights (freedom of expression), providing a rich body of precedents that showcase the normative utility of the doctrine.²³ The absence of such doctrinal rigor in Kuwait raises concerns about legal certainty and accountability, particularly when rights are restricted based on ambiguous concepts like “public morals” or “national unity.”

The Global Diffusion of Proportionality

Despite these critiques, the doctrine of proportionality has become a cornerstone of global constitutionalism. Its diffusion reflects a broader judicialization of politics, where courts are increasingly called upon to arbitrate complex moral and policy disputes. As posited by Orrenius, proportionality provides a methodologically coherent framework for this task, one that seeks to reconcile democratic legitimacy with individual autonomy.²⁴ Its rise also corresponds with the increasing prominence of transnational legal dialogues, as courts borrow jurisprudence from international tribunals and foreign constitutional systems to enhance their reasoning.²⁵

In environmental law, proportionality serves a similar function mediating between developmental goals and ecological sustainability. Although environmental rights are often framed differently than civil liberties, the underlying logic of balancing competing interests remains the same.²⁶ The adaptation of proportionality in this field underscores its versatility and potential to serve as a unifying principle across diverse domains of law.

The doctrine of proportionality offers a principled, structured, and critically engaged method for resolving conflicts between rights and state interests. While its theoretical coherence

²² Almutairi, Fawaz. "The Kuwaiti Constitutional Court and its Role in Protecting the Fundamental Liberties." In *Constitutional Review in the Middle East and North Africa*, pp. 137-160. Nomos Verlagsgesellschaft mbH & Co. KG, 2021.

²³ Waheedi, Salma. "Guarantees and Challenges of Judicial Independence: The Constitutional Courts of Kuwait and Bahrain as Case Studies." *Constitutional Review in the Middle East and North Africa* (2021): 61-76.

²⁴ Orrenius, Anton. "Proportionality in methodology? Identifying a methodological framework to provide acceptance and legitimacy for the CJEU." (2021).

²⁵ Sweet, Alec Stone, and Jud Mathews. *Proportionality balancing and constitutional governance: A comparative and global approach*. Oxford University Press, 2019.

²⁶ Sagar, Rahul, and Utsav Chandrappa. "Environmental Law and Sustainable Development: A Comparative Analysis." *Available at SSRN 4615776* (2023).

and judicial utility are well established in European and other liberal democratic contexts, its application in hybrid systems such as Kuwait requires careful consideration of local legal culture and interpretive traditions.²⁷ As this article proceeds to examine free speech and environmental regulation in a comparative context, proportionality will serve as both a lens of analysis and a normative benchmark for evaluating the quality of judicial reasoning and constitutional interpretation.

Free Speech under the Kuwaiti Constitution

The Constitution of Kuwait, promulgated in 1962, formally enshrines freedom of expression as a fundamental right. Article 36 declares: *“Freedom of opinion and scientific research is guaranteed. Every person shall have the right to express and propagate his opinion verbally, in writing, or otherwise, in accordance with the conditions and procedures specified by law”*.²⁸ On the surface, this provision aligns Kuwait with global human rights norms, such as Article 19 of the Universal Declaration of Human Rights and Article 10 of the European Convention on Human Rights. However, as evidenced by George, the constitutional guarantee is not absolute and is subject to statutory limitations. These restrictions, often grounded in ambiguous concepts such as “public order,” “morality,” and “national unity,” allow for expansive state intervention and frequently undermine the practical realization of free speech.²⁹

The Constitutional Text and Its Interpretive Ambiguities

While Article 36 appears liberal in form, it is structurally constrained by Article 175, which permits constitutional amendments that do not derogate from the democratic and freedom-based character of the state. Furthermore, Article 35, which guarantees freedom of belief, and Article 37, which guarantees freedom of the press, are similarly phrased with conditional language, creating interpretive ambiguity.³⁰ The Constitution lacks a formal doctrine of

²⁷ Alahmed, Mohammad. "Global norms and the nation-state: the "modernisation" of audit regulations in Kuwait." (2020).

²⁸ Kuwait. *Constitution of the State of Kuwait*. 1962. Accessed December 29, 2025. https://www.constituteproject.org/constitution/Kuwait_1992.pdf.

²⁹ George, Rachel. "The impact of international human rights law ratification on local discourses on rights: the case of CEDAW in Al-Anba reporting in Kuwait." *Human Rights Review* 21, no. 1 (2020): 43-64.

³⁰ Kuwait. *Constitution of the State of Kuwait*. 1962. Accessed December 29, 2025. https://www.constituteproject.org/constitution/Kuwait_1992.pdf.

proportionality or a structured test to adjudicate conflicts between rights and state interests, which has significant consequences for judicial interpretation.

In the absence of explicit judicial doctrines like proportionality, Kuwaiti courts tend to apply limitations on expression in a highly deferential manner toward legislative and executive authority. This is particularly evident in cases involving national security, blasphemy, criticism of the Emir, and public morality, where courts uphold restrictions without demonstrating a rigorous balancing of rights against state interests.³¹ Such decisions reflect an underlying ethos of legal formalism and public interest conservatism that stifles the progressive development of free speech jurisprudence.

Judicial Reasoning in Free Speech Cases

The Constitutional Court of Kuwait, tasked with reviewing the constitutionality of laws, has historically refrained from applying structured tests akin to the European Court of Human Rights' proportionality analysis. In *Case No. 4/1982, Constitutional*, for example, the court upheld limitations on publications critical of the ruling family by appealing broadly to the need to preserve social cohesion and national unity without assessing whether the restriction was narrowly tailored or necessary. Similarly, in *Case No. 6/2005 Constitutional*, concerning the criminalization of certain religious speech, the court accepted the state's justification that such laws prevent sectarian tension, again without systematically weighing the violation of the rights.

This trend reveals two critical deficiencies in judicial reasoning. First, the absence of a proportionality framework allows for rights-limiting legislation to pass constitutional muster without adequate scrutiny. Second, the court's failure to articulate clear interpretive standards erodes legal certainty and enables the state to exercise broad discretionary powers. As Almutairi notes, the court's reasoning often exhibits a form of "textual loyalty," wherein the literal terms of

³¹ Waheedi, Salma. "Guarantees and Challenges of Judicial Independence: The Constitutional Courts of Kuwait and Bahrain as Case Studies." *Constitutional Review in the Middle East and North Africa* (2021): 61-76.

the Constitution are prioritized over broader normative principles such as democratic accountability or individual autonomy.³²

Influence of Religion and Culture on Interpretation

Kuwait's legal system is a hybrid, combining elements of civil law, Islamic law (Sharia), and constitutionalism. This pluralist structure influences how free speech is interpreted and restricted. Islamic values play a prominent role in shaping legislative content and judicial attitudes, particularly in cases involving blasphemy, public decency, or gender roles.³³ For example, Law No. 31 of 1970, which supplements the Penal Code, criminalizes speech that insults religion or the person of the Emir, both of which are considered matters of higher public interest.³⁴

The interaction between Sharia principles and constitutional rights is not always harmonious. Courts frequently elevate collective morality over individual liberty, often justifying this preference through appeals to public order or Islamic heritage. The lack of jurisprudential engagement with comparative or international human rights law further reinforces this insularity. As Almutairi argue, the result is a legal culture that treats dissent as destabilizing rather than democratically enriching.³⁵

³² Almutairi, Fawaz. "The Kuwaiti Constitutional Court and its Role in Protecting the Fundamental Liberties." In *Constitutional Review in the Middle East and North Africa*, pp. 137-160. Nomos Verlagsgesellschaft mbH & Co. KG, 2021.

³³ Waheedi, Salma. "Islamic Sharia in the legal orders of Saudi Arabia and Kuwait." *Constitutional Review in the Middle East and North Africa* 4 (2021): 307-328.

³⁴ Kuwait. *Law No. 31 of 1970 Amending Certain Provisions of the Penal Code*. No official English translation available; cited via secondary legal summaries.

³⁵ Almutairi, Fawaz. "The Kuwaiti Constitutional Court and its Role in Protecting the Fundamental Liberties." In *Constitutional Review in the Middle East and North Africa*, pp. 137-160. Nomos Verlagsgesellschaft mbH & Co. KG, 2021.

Legislative Overreach and the Criminalization of Expression

Kuwait's statutory framework contains numerous laws that limit freedom of expression beyond what would be considered acceptable under international standards. These include:

- **Cybercrime Law No. 63 of 2015**, which criminalizes online content that “insults” the state or its institutions^{36,37};
- **Press and Publications Law No. 3 of 2006**, which imposes licensing requirements and broad content restrictions on media outlets^{38,39};
- **National Unity Law No. 19 of 2012**, which criminalizes speech deemed harmful to national cohesion or religious harmony.^{40,41}

These laws are often vague and overbroad, failing the tests of clarity and foreseeability required under international human rights jurisprudence. Yet, they continue to be upheld by courts with little analysis of whether the restrictions are necessary or proportionate. This reflects a systemic weakness in rights adjudication that undermines constitutional guarantees and enables censorship under the guise of public interest.

Absence of a Structured Balancing Framework

Free speech law in Kuwait's Constitution suffers from not having a method for balancing rights and restrictions. Unlike in the ECHR, where Article 10(2) uses a strong and clear proportionality examination, Kuwaiti courts have not employed the same process.⁴² Judicial review rarely deals with conflicts of interest in a structured way, and laws curbing rights are justified mostly by assumed beliefs, not supported by evidence.

³⁶ Aissani, Rahima. "Anti-Cyber and information technology crimes laws and legislation in the GCC countries: A comparative analysis study of the laws of the UAE, Saudi Arabia and Kuwait." *J. Legal Ethical & Regul. Issues* 25 (2022): 1.

³⁷ Kuwait. *Cybercrime Law No. 63 of 2015*. Accessed December 29, 2025. <https://www.elaws.gov.kw/LAW.aspx?ID=5922>.

³⁸ Alterkait, Tahani. "Kuwait's Publication Law: A Civil Act to Protect Freedom of Expression." In *The Making of Contemporary Kuwait*, pp. 191-205. Routledge, 2024.

³⁹ Kuwait. *Press and Publications Law No. 3 of 2006*. Accessed December 29, 2025. <https://www.elaws.gov.kw/LAW.aspx?ID=3180>.

⁴⁰ Al-Mutairi, Youssef Haji. "Legal Restrictions on Freedom of Opinion: A Comparative Study of American and Kuwaiti Criminal Law." *Pakistan Journal of Criminology* 17, no. 1 (2025).

⁴¹ Kuwait. *National Unity Law No. 19 of 2012*. Accessed December 29, 2025. <https://www.elaws.gov.kw/LAW.aspx?ID=5524>.

⁴² Polymenopoulou, Eleni. "Sharia and human rights law in the constitutional framework of Gulf states." *Human Rights Quarterly* 46, no. 1 (2024): 1-24.

Because of this shortcoming, practical results are seen. In the beginning, hard law challenges the validity of judges' decisions, which often seem based only on state interests, not on fairness for everyone. Also, it makes the role of the judiciary less important compared to the executive in political systems. Because of this, the courts do not stand up strongly for constitutional freedoms, especially if the case relates to dissent, protest, or minority rights.

In spite of saying that freedom of expression is valued in the Kuwaiti Constitution, laws and practices actually limit it a great deal. Most of the time, courts use interpretations that respect state priorities and unity, and they do not use standardized tests or argumentation focused on fairness. According to AlZumai's assessment, matters of religion, culture, and politics also prevent freedom of speech since many laws allow authorities to penalize people who go against the official line. Without a clear and strict balancing process like the ECtHR has, the protection of rights often differs and often suffers from interference by the government.^{43,44} To be more in line with global human rights, Kuwait needs its courts to favor reasoning guided by principles and to include proportionality in the interpretation of its Constitution.

Free Speech and the ECHR: Proportionality in Practice

The Doctrinal Architecture of Article 10 ECHR

The European Court of Human Rights (ECtHR) has developed a strong system for safeguarding freedom of expression under Article 10 of the European Convention on Human Rights (ECHR), as noted by Lowe.⁴⁵ This part of the convention safeguards the right to speak your mind, exchange information, and take part in free conversations. Article 10(1) entitles everyone to the freedom of expression, but Article 10(2) explains that limits on this right are only acceptable when they are written by law, for a justified purpose, and necessary for democracy. Because of these conditions, the court's proportionality test now has several stages: legality, legitimacy, necessity, and, finally, proportionality in the strictest senses.⁴⁶ Rather than allowing

⁴³ AlZumai, Fahad. "Constitutional Courts in the Arab World and Freedom of Expression: A Defender or Suppressor." *Middle East Law and Governance* 15, no. 1 (2022): 29-48.

⁴⁴ Al-Rashidi, Khaled S., and Clive Walker. "The Kuwaiti Freedom of Information Act: the Construction of Constitutional Governance." *Global Journal of Comparative Law* 13, no. 1 (2024): 1-30.

⁴⁵ Lowe, James Joseph Greaves. "Freedom of artistic expression under Article 10 of the European Convention on Human Rights." (2017).

⁴⁶ Hill, Mark. "The Qualified Right to Freedom of Religion: An examination of the limitations contained in Article 9 of the European Convention on Human Rights." *Studia z Prawa Wyznaniowego* 23 (2020): 73-99.

wide legal discretion, the ECtHR demands that each restriction is checked against these things to ensure states do not use unjust measures.

This structure has elevated proportionality from a formal standard into a normative principle guiding judicial reasoning. In evaluating whether a restriction is “necessary in a democratic society,” the ECtHR does not merely defer to governmental claims; it requires that those claims be convincingly established through demonstrable need and minimal impairment of the right.⁴⁷ This approach reflects the court's broader jurisprudential philosophy that freedom of expression is not just another right it is foundational to the functioning of pluralist democracy, particularly when it concerns political, social, or artistic expression.

Proportionality and the Margin of Appreciation

The proportionality assessment is accompanied by the court's deployment of the margin of appreciation doctrine. It gives states some freedom to decide the best ways to ensure rights are respected in their own culture, laws, and society. Even though this margin gives firms room to react, it cannot be used at any time. The ECtHR has frequently pointed out that the scope of this margin depends on matters such as the content of the speech, who is speaking, and whether there is a shared agreement in Europe on the specific issue.⁴⁸ National boundaries largely limit speech on topics like politics because such speech is fundamental in a democracy. Still, areas related to obscenity or criticizing religion may have a wider range of protection.

Because of the connection between proportionality and the margin of appreciation, the law has become more flexible. The court must weigh up respect for each nation's sovereignty with its mission to make sure minimum rights standards are respected everywhere. This is very different from the situation in Kuwait, where a stronger role is given to defining cultural and

⁴⁷ Weber, Albrecht. "Limitation and Derogation of Fundamental Rights." In *Writing Constitutions: Volume 2: Fundamental Rights*, pp. 581-604. Cham: Springer International Publishing, 2024.

⁴⁸ Nikitina, Jekaterina. *Human Rights Discourse: Linguistics, Genre and Translation at the European Court of Human Rights*. Taylor & Francis, 2025.

religious beliefs to warrant curbing expression.⁴⁹ According to the ECtHR, such explanations need to be subjected to rational examination, not just unquestioningly accepted.

Judicial Application in Landmark Cases

The idea of free speech restrictions in the court has grown through a number of key decisions highlighting how they view proportionality. In *Handyside v. United Kingdom* (1976), the court recognized that freedom of expression covers ideas that may unsettle, shock, or anger some people, as well as those that are seen as safe or acceptable. While the court ultimately upheld the UK's restriction of the publication of *The Little Red Schoolbook* on the grounds of morality, it firmly established that restrictions must correspond to a "pressing social need" and be proportionate to the legitimate aim pursued.

Another key case, *Lingens v. Austria* (1986), involved a journalist who was criminally convicted for defaming a politician.⁵⁰ The court held that such criminal penalties were disproportionate, particularly when applied to political discourse. It emphasized that the role of the press as a public watchdog is essential and that the threshold for permissible restrictions on political expression must be exceptionally high. This case exemplifies the ECtHR's unwillingness to accept vague or overbroad justifications for restrictions on political critique.

By contrast, *Otto-Preminger-Institut v. Austria* (1994) demonstrates the court's application of a wider margin of appreciation in the context of religious sensitivities. The Austrian authorities had banned a film deemed offensive to Christian beliefs. While acknowledging the importance of freedom of artistic expression, the court deferred to Austria's interest in preserving religious harmony, concluding that the restriction fell within an acceptable range of discretion.⁵¹ Although controversial, the decision underscores the court's attempt to reconcile competing values through structured proportionality, even when the outcome arguably limits expressive freedom

⁴⁹ Di Federico, Giacomo. "The Potential of Article 4 (2) TEU in the Solution of Constitutional Clashes Based on Alleged Violations of National Identity and the Quest for Adequate (Judicial) Standards." *European Public Law* 25, no. 3 (2019).

⁵⁰ European Court of Human Rights. *Lingens v. Austria*, no. 9815/82, judgment of July 8, 1986. Accessed December 29, 2025. <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-57523%22%5D>.

⁵¹ Potz, Richard, and Brigitte Schinkele. *Religion Law in Austria*. Kluwer Law International BV, 2024.

In *Animal Defenders International v. United Kingdom* (2013), the court upheld a general ban on political advertising, reasoning that the restriction served to protect the fairness of democratic discourse by preventing undue influence from wealthier voices.⁵² The decision reflects the court's contextual balancing of freedom of expression with electoral integrity. Notably, it examined the availability of alternative avenues for expression and the proportionality of the measure's impact, reinforcing its commitment to evidence-based adjudication.

Methodological Rigor and Normative Coherence

What distinguishes the ECtHR's jurisprudence is not simply its outcomes but the transparency and methodological rigor with which decisions are reached. As posited by Pirola, each case involves a detailed analysis of the legal basis for the restriction, the legitimacy of the governmental aim, and whether the interference was necessary and proportionate in light of the facts.⁵³ Such reasoning is different from the practice of Kuwait's Constitutional Court, which sometimes does not tell apart the different types of speech and rarely thinks about whether less restrictive measures could be used.

Sufficiently, the ECtHR does not support decisions using unclear or general reasons of morality or security. Accordingly, governments have to demonstrate that the restrictions are really needed in a democratic nation, using example-based or factual proof. Strong justification for laws helps restrict any attempts to pass laws that could misleadingly target people with minority viewpoints.

As well, the court has put in place a practice of providing reasons for its rulings, which supports its authority and helps people expect future outcomes. The ECtHR does this by making judgments that are based on reason and publicly available, making the law more certain and

⁵² European Court of Human Rights. *Animal Defenders International v. United Kingdom*, no. 48876/08, judgment of April 22, 2013. Accessed December 29, 2025. <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-119244%22%5D%7D>.

⁵³ Pirola, Francesca. "Between Deference and Activism: The ECtHR as a Court on States or a Court on Rights? Exploring the ECtHR interpretative tools." PhD diss., Université Côte d'Azur; Università degli studi di Milano-Bicocca, 2023.

helpful for national courts and legislators.⁵⁴ It has, in fact, led to the practice of deliberative constitutionalism, where rights and interests are reviewed with both proper legal methods and the interest of the general public in mind.

Critiques and Limitations of the ECtHR Model

The ECtHR's reliance on proportionality has received criticism even with its many benefits. Certain experts believe that when proportionality reaches its last stage, called *stricto sensu* balancing, there aren't clear rules for objective decisions, and judges might use their ideas. Not having a fixed process to weigh harms and benefits can lead others to feel concerned about possible inconsistencies or secret principles being used. When it happens that some chambers decide matters differently in similar cases, this creates ambiguity, which is also perceived as a problem in the consistency of the law.

Also, it has been argued that giving lots of freedom to states, predominantly in cases related to religion, sexuality, and national security, is excessive under the margin of appreciation system. Decisions such as *Otto-Preminger* and *Wingrove v. UK* have been challenged for permitting restrictions that would fail a stricter proportionality test.⁵⁵ The tension between looking at national rights and managing foreign relations is a natural challenge for the ECtHR in its role above national law.

Even so, the basic importance of proportionality is not affected by these issues. They argue that more attention should be given to improving and keeping the law consistent. The ECtHR prioritizes proportionality, which is very different from Kuwait's courts, where its lack of a clear structure for weighing interests has led to unnecessary and weakly justified limits to free speech.

⁵⁴ Grassi, Michele. "A (Not Always) Difficult Balance between Legal Certainty and Legality: The Effects of *cjeu* and ECtHR Case Law on National *Res Judicata*." *The Italian Review of International and Comparative Law* 3, no. 1 (2023): 145-156.

⁵⁵ Pinto, Thiago Alves. "An empirical investigation of the use of limitations to freedom of religion or belief at the European Court of Human Rights." *Religion & Human Rights* 15, no. 1-2 (2020): 96-133.

Lessons for Comparative Jurisdictions

This doctrine from the ECtHR gives a good example to countries such as Kuwait, which are driven to protect basic rights while respecting their traditions. Proportionality sets up guidelines to compare different interests, but it does not make everyone use the same standard values.⁵⁶ It includes views of culture and morality but requires these to be looked at openly, rationally, and consistently. It is important in these places when public morality is used to justify speech bans but without any real court oversight.

Using proportionality as a doctrinal principle would bring many benefits to Kuwaiti courts. This approach would not rely on straightforwardly importing laws from IHL but would adapt formal reasoning into usual court proceedings.⁵⁷ Consequently, legal certainty would improve, the number of arbitrary outcomes would decline, and the court's role in protecting the Constitution would be strengthened. It has been shown by the ECtHR that proportionality goes beyond legal rules; it is a sign of respecting democracy, individual rights, and every organization's accountability.

Comparative Analysis: Kuwait vs. ECtHR in Free Speech Jurisprudence

Contrasting Constitutional and Institutional Frameworks

Freedom of expression laws in Kuwait and those set by the European Court of Human Rights (ECtHR) show that the interpretation and reasoning used by judges are unlike each other. Kuwait's legal system blends elements from Islamic law, civil law, and rules set under monarchical rule.⁵⁸ The Constitution upholds free expression in Article 36, but the restrictions it offers are very wide, and judges generally give a lot of weight to the state and traditional ethics. As opposed to this, the ECtHR is part of a supra-national system based on the liberal democratic rules set out in the European Convention on Human Rights. According to Article 10, the ECtHR has set up detailed rules so that free speech is protected unless government limits are proven

⁵⁶ Alduwaisan, Humoud. "Reforming Criminal Confiscation Laws in Kuwait Using Models from Australia and the United Kingdom: A Comparative Study on the Possibilities and Limitations in Overcoming the Problem of the Linkage Requirement of Conviction-based Confiscation in Kuwait." PhD diss., Flinders University, College of Business, Government and Law., 2020.

⁵⁷ Rashdan, Mohab Ali. "Towards a Structural Judicial Approach in the Egyptian Administrative Courts: Proportionality as a Practical Solution." Master's thesis, The American University in Cairo (Egypt), 2023.

⁵⁸ Al Mutairi, Mohammad MMSA. "Constitutionalising the Executive Powers in Kuwait with Reference to the UK's Law and Experience." PhD diss., University of Leeds, 2017.

necessary. Since the ECtHR has strong independence and its own rules, it does thorough judicial review, which is very different from the restricted and formalistic approach used by Kuwaiti courts.

Judicial Reasoning and the Use of Proportionality

A key difference between the systems is in how they respond to the question of restricting what can be said. When using a proportionality test, the ECtHR makes sure there is legality, legitimacy, necessity, and strict proportionality. In Dahlberg's view, the court requires that speech restrictions in each stage are written in law, based on a confirmed public benefit, and proven to be needed to protect a democratic society. The final balancing step demands that the harm caused to the speaker is not excessive relative to the benefit of the public interest.⁵⁹ This layered structure ensures that judicial reasoning remains transparent, context-sensitive, and rights-oriented.

Kuwaiti courts, by contrast, lack a codified or consistently applied proportionality framework. In cases involving speech deemed offensive to religious values or critical of political leadership, courts typically uphold state-imposed sanctions without assessing whether less intrusive measures might achieve the same objectives or whether the limitation genuinely responds to a pressing social need. This absence of structured balancing leads to outcomes that lack analytical depth and appear driven more by political and moral considerations than by a principled interpretation of rights. Consequently, constitutional rights in Kuwait risk being undermined by judicial decisions that prioritize deference to executive authority and abstract invocations of morality over rigorous scrutiny of the law's necessity and impact.

Variable Protection Based on Content and Speaker Identity

A crucial element of the ECtHR's jurisprudence is its recognition that not all forms of expression warrant equal protection. The court applies a graduated level of scrutiny depending on the type of speech and the identity of the speaker. Political speech, journalistic expression, and matters of public interest attract the highest level of protection. The court has held in cases like *Lingens v. Austria* and *Thorgeir Thorgeirson v. Iceland (1992)* that public officials must

⁵⁹ Dahlberg, Maija. "Do you know it when you see it?: A study on the judicial legitimacy of the European Court of Human Rights." (2015).

tolerate greater levels of scrutiny and that criminal penalties for political speech are rarely proportionate.⁶⁰

Kuwaiti jurisprudence, on the other hand, does not demonstrate this level of differentiation. Courts have upheld harsh penalties for criticism of political figures, including the Emir, under laws that criminalize insults against the state or its symbols.⁶¹ Such speech is often treated as inherently threatening to national unity without judicial engagement with the democratic importance of political dissent. Additionally, speech that challenges prevailing religious or moral norms is quickly suppressed under vague public order justifications.⁶² The lack of analytical categories within Kuwaiti judgments distinguishing between types of speech or considering the speaker's societal role reflects a flattening of expressive freedom that fails to account for its democratic function.

Institutional Autonomy and Political Context

The ECtHR's institutional autonomy enables it to issue judgments that are often politically sensitive but grounded in principles of human rights law. It functions independently of the governments whose laws it reviews, and its legitimacy derives from its interpretive consistency and commitment to fundamental freedoms. National governments may occasionally push back against the court's rulings, but the ECtHR remains an authoritative voice in the European legal order.

In Kuwait, the judiciary exists within a system where political power is concentrated in the executive, particularly the Emir, who also plays a significant role in judicial appointments. Although the Constitutional Court is formally independent, it operates in an environment where political sensitivity, religious values, and concerns about national stability heavily influence legal

⁶⁰ European Court of Human Rights. *Thorgeir Thorgeirson v. Iceland*, no. 13778/88, judgment of June 25, 1992. Accessed December 29, 2025. <https://hudoc.echr.coe.int/ukr#%7B%22itemid%22:%5B%22001-57795%22%5D%7D>.

⁶¹ Al-Mutairi, Youssef Haji. "Legal Restrictions on Freedom of Opinion: A Comparative Study of American and Kuwaiti Criminal Law." *Pakistan Journal of Criminology* 17, no. 1 (2025).

⁶² Landau, David, and Rosalind Dixon. "Abusive judicial review: courts against democracy." *UC Davis L. Rev.* 53 (2019): 1313.

outcomes.⁶³ As a result, the judiciary tends to exercise restraint, especially in cases involving dissent or criticism of public institutions. This context limits the courts' willingness and perhaps capacity to engage in the kind of active rights protection that characterizes ECtHR jurisprudence.

Cultural and Normative Underpinnings

The differences between Kuwait and the ECtHR also reflect broader cultural and normative commitments. The ECtHR's view of freedom of expression comes from liberal democratic theory, which emphasizes that democracy needs free discussions, disagreements, and accountability.⁶⁴ It is not only a legal idea; proportionality here is a moral statement about how state actions should be balanced with the rights of individuals. We see this when the court decides cases by protecting offensive, contentious, or politically challenging speech.

Unlike elsewhere, the main focus of Kuwaiti courts is to protect the values of morality, religion, and social unity. Having a proportionality framework would show that these priorities can be supported without always censoring, but in its absence, they are usually seen as justifications for taking down speech. Public interest is often considered before individual rights in cases of speech, and Maktabi notes these notions are hardly examined or kept in balance with democratic expression.⁶⁵ Because of this, the law is careful, tends to be moralistic, and is often paternalistic, which makes it hard for it to address more difficult issues about rights.

Towards Convergence: Possibilities for Reform

Even so, the ECtHR's approach to proportionality can teach important things to Kuwait for future lawmaking. Introducing proportionality as the main idea behind constitutional adjudication would not mean bringing over all Western legal customs. An alternative would be to design a methodology for the courts to assess when and how rights should be limited, a process flexible enough to fit local circumstances.⁶⁶ Even though religion and public values can be

⁶³ Waheedi, Salma. "Guarantees and Challenges of Judicial Independence: The Constitutional Courts of Kuwait and Bahrain as Case Studies." *Constitutional Review in the Middle East and North Africa* (2021): 61-76.

⁶⁴ Foster, Steve. "Free speech, equality and diversity: the legitimacy of controlling content-based expression under the ECHR and in domestic law." *Tolley's Communications Law* 28, no. 3 (2023): 102-118.

⁶⁵ Maktabi, Rania. "Institutional legal reform in Kuwait after 2011: The paradoxes of establishing rule of law amidst authoritarian upgrading." *Hawwa* 18, no. 2-3 (2020): 357-395.

⁶⁶ Alazmi, Athari. *A Critical Approach to Human Rights Education in Kuwait: Empowering Learners for Social Change*. The University of Toledo, 2020.

important, proportionality means that they have to be explained, supported by evidence, and have a reasonable impact.

Many important benefits come from including proportionality in Kuwaiti law. It would make decisions of the judiciary clearer, help ensure that decisions are similar, and confirm the judiciary's importance in protecting the Constitution. Adopting such changes would align Kuwait's legal system more closely with international human rights, which now often regard proportionality as a standard in interpreting constitutions. According to Al Fahad, because freedom of expression is usually held back by both the state and society in the region, Kuwait could make a difference by including a stronger focus on human rights in its Constitution.⁶⁷

There are obvious differences between the way Kuwait's courts and the ECtHR approach cases and regard the idea of free speech. The approach used by the ECtHR, which centers on proportionality, blends clear guidelines with solid Elaboration: strong leadership (Attard, 2020). Courts show that they are able to serve both public interests and expressive freedom well. In Kuwait, in contrast, the law transparently offers freedom to express oneself, but courts often ignore it because of uncertainty in limits, deference to executive authority, and a lack of justified reasoning.⁶⁸ It will be necessary to reform laws and also make sure that both the culture and institutions start to depend on judicial review as a main aspect of constitutional governance. Promoting proportionality as a judicial rule would help Kuwait take an important step by committing to meet its constitutional promises in judgments that are clear, just, and rights-focused.

Environment and Constitutional Rights in Kuwait

Environmental Protection within Kuwait's Constitutional and Legal Framework

Environmental governance in Kuwait occupies a paradoxical position. On the one hand, the state has made significant legal advancements in recent years, particularly through the

⁶⁷ Al Fahad, Mohammad Abdulwahab JH. "A triangle of pluralist norms at play: an analytical study of the debates of the Constituent Assembly, the Constitution of Kuwait and judgments of the Kuwait Constitutional Court." PhD diss., University of Warwick, 2021.

⁶⁸ Waheedi, Salma. "Constitutional Courts in Arab Gulf States: A Comparative Study of Kuwait and Bahrain." *Al-Abhath* 70, no. 1-2 (2022): 215-248.

enactment of Law No. 42 of 2014 on Environmental Protection, a comprehensive statute aimed at regulating environmental hazards, emissions, and sustainability standards.^{69,70} On the other hand, Kuwait's Constitution remains largely silent on the explicit recognition of environmental rights. While Article 16 of the Constitution vaguely refers to the state's responsibility to ensure public welfare, no provision enshrines the right to a healthy environment as a fundamental right. This legislative-constitutional gap creates a disconnect between environmental governance and constitutional accountability. Unlike the ECtHR's jurisprudence on free speech, Kuwait's environmental laws are not adjudicated within a framework of fundamental rights, thereby limiting opportunities for judicial enforcement or rights-based environmental claims.

Moreover, environmental protections in Kuwait often exist in tension with economic priorities, particularly those related to the oil and petrochemical sectors, which constitute the backbone of the national economy. This structural dependency on hydrocarbon extraction and export has produced a regulatory culture that is more accommodating of industrial interests than of long-term sustainability. In light of this, while Law No. 42/2014 adds penalties for destroying nature and forms the Environment Public Authority (EPA) to lead implementation, enforcing the law is inconsistent, and taking environmental cases to court is rare. Using constitutional methods or thinking about proportionality in environmental cases is rarely done by courts, even if pollution threatens human health or nature.

The Role of the Judiciary in Environmental Disputes

Kuwait's courts have not written a significant amount of case law explaining how environmental laws are connected to its Constitution. A lack of expression of environmental rights in the Constitution and the way environmental law is mostly handled by experts at the EPA are also reasons why people find it difficult to take action.⁷¹ In disputes, for example, those about industrial pollution, garbage, or damage from development projects, courts are more likely to check the procedure instead of focusing on individuals' real problems. The narrow way used for

⁶⁹ Al-Matouq, Abdullah, and Ohoud Bushaibah. "Wastewater Pollution and Its Effects on the Marine Environment in Kuwait." In *Environmental Hazards in the Arabian Gulf Region: Assessments and Solutions*, pp. 477-501. Cham: Springer Nature Switzerland, 2024.

⁷⁰ Kuwait. *Environmental Protection Law No. 42 of 2014*. Accessed December 29, 2025. <https://www.elaws.gov.kw/LAW.aspx?ID=4166>.

⁷¹ Al-Otaibi, Ahmad S., and John H. Minan. "The role of the judiciary in promoting the right to a clean environment in kuwait, Egypt and the united states." *Arab Law Quarterly* 35, no. 5 (2020): 549-591.

review is more like administration than constitutional law and prevents a strong connection from being made between environmental damage and the rights or interests of the public.

Most importantly, Kuwaiti courts do not say that environmental damage caused by a conflict should be measured by its proportionality. No clear system exists to judge if the resulting social or ecological effects justify the activities permitted by the government that harm the environment. This contrasts with jurisdictions where environmental rights are constitutionally recognized or where proportionality is used to adjudicate between economic development and ecological preservation.⁷² Without such a framework, the judiciary is left without the tools to weigh competing interests meaningfully or to challenge state decisions that prioritize short-term economic gain over long-term environmental protection.

Legislative Advances and Policy Gaps

Law No. 42/2014 represents a progressive step forward in formalizing environmental regulation. It mandates environmental impact assessments (EIAs), sets emissions limits, provides mechanisms for public complaints, and includes provisions for fines and imprisonment in cases of non-compliance.⁷³ However, the law falls short of embedding these obligations within a rights-based or constitutional framework. For example, there is no judicially enforceable right for individuals or communities to seek remedies for environmental harm unless they can prove a direct, personal injury. This evidentiary threshold excludes broader ecological or collective interests.

Furthermore, while the law acknowledges principles such as the “polluter pays,” it lacks integration with broader public health objectives and does not incorporate mechanisms for environmental justice or intergenerational equity.⁷⁴ People in the public are not always allowed to join environmental debates, and civil society members are unable to affect how regulations are

⁷² Wirthová, Lucia. "From Kuwait to Ukraine: Conflict's Implications on the Natural Environment and the Responses of International Humanitarian Law." *International & Comparative Law Review/Mezinárodní a Srovnávací Právní Revue* 23, no. 1 (2023).

⁷³ Racu, Vitalie. "The Impact of Law No. 190 of 21.07. 2022." *Revista Institutului National Justitiei* (2023): 8.

⁷⁴ Tanwar, Parth, and Jaispriya Poply. "Navigating the Nexus: Interdisciplinary Perspectives on Justice, Equity, and Fairness in Environmental Law." *Equity, and Fairness in Environmental Law (May 28, 2024)* (2024).

made. Such gaps mean that the environmental system belongs to the government, and there is little public accountability to put laws into action.

Unlike what is happening internationally, which highlights environmental duty as both a legal and moral requirement, Kuwait relies heavily on enforcement without giving much importance to norms in its environmental law. It does not treat environmental protection as a requirement under the Constitution or as a human right, which means it does not influence thinking in courts and society.

Environmental Vulnerabilities and National Context

Kuwait deals with significant environmental problems such as high temperatures, desertification, pollution of the sea, and worse air quality, and much of this is made worse by rising industry and not enough checking by regulators. Saudi Arabia produces energy in a limited way and also has very high per capita emissions of carbon.⁷⁵ However, such trends emphasize the importance of strong environmental regulation, yet state regulations have not kept up with international advances.

Since there are no environmental rights in the Constitution, getting environmental justice becomes difficult for many people. Though the EPA has powers for investigation and prosecution, it is rare to see environmental cases being handled with justice, and there are few signs that susceptible groups are protected from environmental hazards.⁷⁶ There is a great issue with those who are affected, especially marginalized groups near industrial areas, because pollution there is often high, and their health outcomes are usually less favorable. That these matters go unmentioned by the judiciary is a missed chance to bring environmental governance closer to themes of equity, health, and sustainability.

⁷⁵ Al-Matouq, Abdullah, and Ohoud Bushaibah. "Wastewater Pollution and Its Effects on the Marine Environment in Kuwait." In *Environmental Hazards in the Arabian Gulf Region: Assessments and Solutions*, pp. 477-501. Cham: Springer Nature Switzerland, 2024.

⁷⁶ Coglianese, Cary, and Daniel E. Walters. "Litigating EPA Rules: A Fifty-Year Retrospective of Environmental Rulemaking in the Courts." *Case W. Res. L. Rev.* 70 (2019): 1007.

The Missed Potential of Proportionality in Environmental Adjudication

The doctrine of proportionality may be useful in building a stronger environmental legal system in Kuwait. Proportionality would require courts to balance environmental costs against reasons given for government action, making the decision more rights-oriented. After that, courts might examine if the government's approval of a polluting development helped its economic goals, if there were less destructive alternatives, and if the harm done was in line with the gains.

Thus, this could be done by the courts interpreting what is already in the Constitution about health, welfare, and development rather than immediately adding environmental rights to the Constitution. For example, Article 11, which mandates that the state “care for the youth and protect them from exploitation,” could be read as including protection from environmental hazards. Similarly, Article 16’s reference to promoting the general welfare could justify a broader reading that includes ecological well-being. However, without the methodological discipline that proportionality brings, such interpretive expansions remain unlikely under Kuwait’s current judicial ethos.

Comparative experiences demonstrate that proportionality can be transformative in environmental litigation. Courts in South Africa, Colombia, and India have used proportionality reasoning to balance environmental degradation against development needs, recognizing that sustainability requires more than regulatory enforcement it requires a value-based commitment to intergenerational equity.⁷⁷ Kuwait’s courts could take inspiration from such jurisdictions to evolve their interpretive practices and begin treating environmental harm as a constitutional issue rather than a technical infraction.

Though Kuwait has made progress in passing environmental protection legislation, especially Law No. 42/2014, this has not led to matching progress in how courts interpret or apply the Constitution.⁷⁸ Since there is no constitutional right to a healthy environment and

⁷⁷ May, James R., and Erin Daly. "Global judicial handbook on environmental constitutionalism." (2019).

⁷⁸ Naim, Nadia. "An examination of the intellectual property regimes in the Gulf Co-operation Council (GCC) states and a series of recommendations to develop an integrated approach to intellectual property rights." PhD diss., University of Bradford, 2019.

judges do not use proportionality in such cases, the legal system is unable to deal well with major ecological issues. Courts have not dealt with environmental law very much, partly because sustainability is not seen as an important principle or right by many judges. Giving courts a sense of proportionality in making environmental decisions could equalize court treatment of different environmental issues and better maintain commitments to society and the future. Making such a change would bring Kuwait into line with modern global practices and strengthen the judiciary's job of watching over both citizens' rights and the country's environment.

Comparative Insight: Environmental Regulation and Rights in the United States

The U.S. Approach to Environmental Protection: Statutory and Constitutional Dimensions

Unlike many modern constitutions that explicitly reference the right to a healthy environment, the United States Constitution does not contain any provision that directly guarantees environmental rights. Environmental protection in the U.S. is primarily grounded in statutory law rather than constitutional doctrine. Key federal statutes such as the National Environmental Policy Act (NEPA)⁷⁹, the Clean Air Act (CAA)⁸⁰, the Clean Water Act (CWA)⁸¹, and the Comprehensive Environmental Response⁸², Compensation, and Liability Act (CERCLA) form the backbone of environmental governance.⁸³ These laws empower regulatory agencies like the Environmental Protection Agency (EPA) to implement and enforce environmental standards. Although judicial review plays a role in this system, it functions largely to assess agency compliance with statutory obligations rather than as a forum for constitutional rights-based litigation.

Nevertheless, environmental concerns have occasionally intersected with constitutional doctrines, especially through the Takings Clause of the Fifth Amendment, the Commerce Clause, and procedural due process. The U.S. Supreme Court has also applied proportionality-like

⁷⁹ United States. *National Environmental Policy Act of 1969*, 42 U.S.C. § 4321 et seq. Accessed December 29, 2025. <https://www.epa.gov/nepa>.

⁸⁰ United States. *Clean Air Act of 1970*, 42 U.S.C. § 7401 et seq. Accessed December 29, 2025. <https://www.epa.gov/clean-air-act-overview>.

⁸¹ United States. *Clean Water Act of 1972*, 33 U.S.C. § 1251 et seq. Accessed December 29, 2025. <https://www.epa.gov/laws-regulations/summary-clean-water-act>.

⁸² United States. *Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)*, 42 U.S.C. § 9601 et seq. Accessed December 29, 2025. <https://www.epa.gov/superfund/superfund-cercla-overview>.

⁸³ Elliott, E. Donald, and Daniel C. Esty. *Advanced Introduction to US Environmental Law*. Edward Elgar Publishing, 2021.

reasoning, albeit under different nomenclature, when assessing whether environmental regulations amount to regulatory takings that require compensation. While the absence of an explicit environmental right limits the courts' ability to develop robust rights-based environmental jurisprudence, the presence of detailed statutory regimes and a strong tradition of judicial review compensate for this deficiency by offering procedural and substantive avenues for environmental accountability.

Judicial Review and the Role of Courts in Environmental Governance

The U.S. judiciary has played a pivotal role in shaping environmental policy through its interpretation and enforcement of environmental statutes. Landmark cases such as *Massachusetts v. EPA* (2007) illustrate the capacity of courts to influence administrative behavior and to affirm the government's duty to address environmental harms. In *Massachusetts*, the Supreme Court held that the EPA had the authority under the Clean Air Act to regulate greenhouse gases as pollutants and that it could not refuse to do so arbitrarily.⁸⁴ The court's decision was grounded in principles of administrative accountability, scientific evidence, and statutory interpretation, and it reflects a form of proportionality reasoning by balancing environmental risk against governmental inertia.

Similarly, the principle of Chevron deference established in *Chevron U.S.A., Inc. v. Natural Resources Defense Council* (1984) grants federal agencies interpretive latitude over ambiguous statutory provisions, provided their interpretation is reasonable. While this doctrine initially empowered agencies like the EPA to act decisively in the face of complex regulatory challenges, it has also been criticized for weakening judicial oversight and enabling political manipulation of environmental enforcement.⁸⁵ The U.S. Supreme Court's evolving stance on Chevron, especially in recent years, suggests an emerging tension between administrative expertise and judicial skepticism, which has implications for environmental regulation. At the constitutional level, courts have occasionally used the Fifth Amendment's Takings Clause to assess whether environmental regulations go "too far" in diminishing property value.

⁸⁴ United States. *Clean Air Act of 1970*, 42 U.S.C. § 7401 et seq. Accessed December 29, 2025. <https://www.epa.gov/clean-air-act-overview>.

⁸⁵ Stern, Shai, and Itay Biton. "The Regulatory Triad: Reimagining Environmental Law in the Post-Chevron Era." *Vill. Env't LJ* 36 (2025): 1.

Public Participation, Procedural Rights, and Environmental Justice

A notable strength of the U.S. environmental governance model is its emphasis on procedural rights, particularly through mechanisms such as Environmental Impact Assessments (EIAs), public consultations, and citizen suits.⁸⁶ According to NEPA, major projects undertaken by federal agencies need to be studied for their environmental impact, and then the results are included in Environmental Impact Statements (EIS). This is a chance for people to express concerns about health or local environmental issues, and it also gives them a way to stop the approval of harmful actions.

Also, people and organizations in the U.S. are allowed to take government agencies or private companies to court if they disobey environmental rules. The power to bring lawsuits, which citizens have, turns them into watchdogs for the environment and increases the legitimacy of environmental decisions. In Kuwait, most people are not involved in environmental regulation, which takes place mostly from the top, and access to legal options for addressing environmental damage is limited for the public.

But there are problems with the U.S. system as well. Many low-income and minorities are still being exposed to more pollution, waste, and bad air than others, which makes achieving environmental justice a continuous challenge. According to Page and Broussard, because of these systemic inequities, calls are rising for the courts and regulators to follow a more equitable framework. While some progress has been made particularly through executive orders and agency guidelines constitutionalizing environmental justice remains an unresolved issue.⁸⁷ In contrast, Kuwait's environmental policies rarely address distributional impacts, and the lack of environmental litigation or community participation means that similar disparities often go unrecognized or unremedied.

⁸⁶ Akerboom, Sanne, and Robin Kundis Craig. "How law structures public participation in environmental decision making: A comparative law approach." *Environmental Policy and Governance* 32, no. 3 (2022): 232-246.

⁸⁷ Page, Shelly Taylor, and Patricia A. Broussard. "Environmental Racism in America: Minority Communities as Dumping Grounds for Environmental Waste." *S. Ill. ULJ* 49 (2024): 199.

Flexibility through Proportionality-like Reasoning

Although the United States does not employ the doctrine of proportionality in the formal sense seen in European and international human rights law, it often adopts proportionality-like reasoning in administrative and constitutional adjudication. Courts assess whether governmental actions are excessive, whether less restrictive means are available, and whether the anticipated benefits justify the burdens imposed on individual rights or businesses. In *Entergy Corp. v. Riverkeeper, Inc.* (2009), for instance, the Supreme Court allowed the EPA to consider cost-benefit analysis in determining the “best technology available” for reducing environmental harm, illustrating how proportionality-type evaluations operate within a statutory framework.⁸⁸

This flexibility is both a strength and a weakness. On the one hand, it allows courts to account for contextual factors and to avoid rigid doctrinal outcomes. At the same time, the lack of an easy way to decide on proportionality can cause unfairness, intervention by judges, or harsh ways of interpreting environmental laws. Whereas the ECtHR has a clear method to weigh rights and other countries are offering environmental rights as part of their constitutions, the U.S. system is more cautious and practical and relies on laws.

Lessons for Kuwait’s Environmental Governance

The U.S. has good examples that Kuwait can use to improve environmental governance. In some cases, rather than a constitutional requirement, protection of the environment relies on systematically designed laws and independent regulators.⁸⁹ Also, the U.S. model proves that public involvement, the review of possible problems, and the ability to go to court help ensure better environmental accountability. These ways improve visibility, and help groups impacted by environmental actions take part in decision-making.

Kuwait could develop its environmental adjudication by including reasoning related to proportionality. Evaluating if government actions are suitable, targeted, and with suitable impacts

⁸⁸ United States Supreme Court. *Entergy Corp. v. Riverkeeper, Inc.*, 556 U.S. 208 (2009). Accessed December 29, 2025. <https://supreme.justia.com/cases/federal/us/556/208/>.

⁸⁹ Alahmed, Mohammad. "Global norms and the nation-state: the "modernisation" of audit regulations in Kuwait." (2020).

on the environment and health should be a duty placed on courts.⁹⁰ Adding these ideas to environmental law would make it easier to regulate consistently, create more confidence in environmental law court rulings, and make the public feel more secure about environmental administration. Also, citizens' ability to use complaint mechanisms in Kuwait, as established by Law No. 42/2014, could be made better with judges taking collective interests into account and resolving issues tied to procedural barriers.

All this demonstrates that, in the U.S., good policymaking for the environment requires both coordination across agencies and the expertise of scientists. The EPA is trusted despite its political issues because it has professional expertise and is required to act with actual evidence. Just as the Kuwaiti Commission for Human Rights was empowered, the Environment Public Authority (EPA) could be in a similar situation if its independence were protected, its information transparent, and its decisions checked against what is considered fair and accountable.

The environmental regulation model in the United States is clear, well-structured, and supported by statutes, decisions by its courts, administrative rules, and community groups. Even though there is no specific legal right to a healthier environment, the country's laws give people various ways to influence and support environmental actions.⁹¹ Proportionality-like reasoning is found in regulatory takings, cost-benefit analyses, and administrative reviews to weigh out differences in people's interests.

Rather than being technically strong and not very restrictive as in Kuwait, American policies take into account the rule of law and the strength of institutions and ensure citizen participation. Moving away from classical enforcement methods and encouraging citizen involvement would help Kuwait improve its environmental protections.⁹² It requires changes in

⁹⁰ Carnegie Endowment for International Peace. *Sustainable Development in Kuwait: Between Rhetoric and Action*. Washington, DC: Carnegie Endowment for International Peace, 2023. Accessed December 29, 2025. <https://carnegieendowment.org/sada/2023/09/sustainable-development-in-kuwait-between-rhetoric-and-action?lang=en>.

⁹¹ Akerboom, Sanne, and Robin Kundis Craig. "How law structures public participation in environmental decision making: A comparative law approach." *Environmental Policy and Governance* 32, no. 3 (2022): 232-246.

⁹² Atta, Nausheen, and Ayyoob Sharifi. "A systematic literature review of the relationship between the rule of law and environmental sustainability." *Sustainable Development* 32, no. 6 (2024): 7051-7068.

the law, along with judges being more likely to see harm to the environment as a matter of constitutional importance. Even with its problems, the U.S. model gives useful direction as the world moves forward.

Cross-Sector Comparison: Free Speech and Environment – Proportionality in Context

Proportionality as a Cross-Cutting Legal Doctrine

The doctrine of proportionality, while most commonly associated with the adjudication of civil and political rights such as freedom of expression, has increasingly found relevance in other legal domains, including environmental governance.⁹³ What unites these seemingly disparate fields is the fundamental tension between individual or sectoral interests and collective societal goods. In both free speech and environmental cases, courts are called upon to determine whether a limitation or state action is justified in pursuit of a legitimate aim and whether the infringement on a right or interest is excessive relative to the benefit achieved. As such, proportionality functions as a meta-principle of constitutional reasoning that bridges normative and institutional domains.⁹⁴ However, as this comparative study reveals, the application of proportionality in Kuwait, the European human rights regime, and the United States differs not only in form but in function, depending on the maturity of legal institutions, the scope of constitutional protections, and the prevailing political and cultural values.

Variability in Judicial Engagement with Proportionality

In the ECtHR's free speech jurisprudence, proportionality is deeply embedded within a structured analytical framework. The court carefully examines whether a restriction is lawful, pursues a legitimate aim, and is necessary and proportionate in a democratic society. According to Hartmane, this structured approach ensures that restrictions are not only scrutinized for their content but are weighed against democratic values, fostering a robust rights culture. The ECtHR's emphasis on transparency and context-specificity enables it to resolve complex tensions, such as those between religious sensibilities and expressive freedom or between

⁹³ Gilani, Syed Raza Shah. "The significance of the doctrine of proportionality in the context of militant democracy to protect the freedom of expression." PhD diss., Brunel University London, 2019.

⁹⁴ Rizzi Brignoli, Francesco. "Rebooting the constitutional debate: deliberative constitutionalism in the European Union." (2022).

national security and public critique.⁹⁵ This model is largely absent in Kuwait, where courts tend to justify limitations on free speech through broad appeals to public order or morality without engaging in the detailed balancing required by proportionality. The lack of judicial scrutiny has led to a constrained expressive environment where vague statutory limits and moralistic reasoning frequently undermine constitutional protections.

The situation is more nuanced in environmental governance. In the United States, courts do not use proportionality in its formal sense, yet they engage in similar balancing exercises when interpreting regulatory takings, cost-benefit analyses, or agency discretion. U.S. courts evaluate the legitimacy of environmental regulation by considering whether the restriction imposes an undue burden on private property or whether the state has acted arbitrarily in implementing the policy.⁹⁶ This form of functional proportionality enables courts to adjudicate between environmental protections and economic liberties, even in the absence of a constitutional environmental right. Kuwait's environmental jurisprudence, in contrast, lacks both a constitutional foundation and a balancing methodology.⁹⁷ Environmental law is treated largely as a matter of administrative regulation, and courts seldom assess whether government decisions are proportionate in light of ecological harm or public health outcomes.

Thematic Overlap: Balancing Individual and Collective Interests

Both freedom of expression and environmental regulation involve high-stakes balancing between individual rights and broader social interests. In speech cases, the challenge lies in weighing the autonomy of the speaker against the potential harm to public order, morality, or the rights of others. In environmental cases, courts must balance economic development, property rights, or administrative discretion against ecological preservation and public health. In both instances, proportionality offers a principled framework to assess when state intervention is justified and how far such intervention can go without infringing on core rights or values.

⁹⁵ Hartmane, Valērija Ruta. "Right to private life under the scope of mass surveillance: differences in approaches to the implementation of the principle of proportionality in the jurisprudence of the CJEU and the ECtHR." (2023).

⁹⁶ Enqvist, Lena, and Markus Naarttijärvi. "Discretion, automation, and proportionality." In *The rule of law and automated decision-making: Exploring fundamentals of algorithmic governance*, pp. 147-178. Cham: Springer International Publishing, 2023.

⁹⁷ Al-Matouq, Abdullah, and Ohoud Bushaibah. "Wastewater Pollution and Its Effects on the Marine Environment in Kuwait." In *Environmental Hazards in the Arabian Gulf Region: Assessments and Solutions*, pp. 477-501. Cham: Springer Nature Switzerland, 2024.

The key difference, however, lies in the visibility and justiciability of the interests involved. Free speech cases typically involve identifiable rightsholders and concrete expressions, allowing courts to evaluate harm and justification directly. Environmental harms, by contrast, often manifest diffusely affecting future generations, ecosystems, or communities in indirect ways. This diffuse nature makes the balancing exercise more complex and susceptible to institutional evasion. In Kuwait, this distinction is stark.⁹⁸ While courts already underperform in the speech domain, their engagement with environmental harms is even weaker, lacking both legal doctrine and interpretive infrastructure. Without proportionality or any comparable balancing test, judicial review in environmental matters remains largely ineffective.

Institutional Factors and Legal Culture

The comparative analysis also reveals that the efficacy of proportionality is deeply influenced by institutional context and legal culture. In the ECtHR, the presence of a supranational legal framework and a well-articulated body of jurisprudence empowers judges to conduct rigorous proportionality analysis. In the United States, while proportionality is not formalized, courts benefit from a strong tradition of administrative law, public participation, and access to justice, which facilitates functional balancing.⁹⁹ Kuwait, by contrast, lacks both the institutional independence and the cultural-legal infrastructure necessary to apply proportionality effectively. The judiciary does not consistently act as a counter-majoritarian institution, and legal norms often reflect dominant moral or political ideologies rather than a principled commitment to balancing individual and public interests.

This institutional context explains why proportionality is more developed in the free speech jurisprudence of the ECtHR and functionally present in U.S. environmental law but virtually absent in both domains within Kuwait. The challenge for Kuwait is not merely to adopt

⁹⁸ Kolkailah, Naiyerah. "Environmentalism in Qatar: examining the influence of Islamic ethics on environmental thought and practice." PhD diss., University of Oxford, 2023.

⁹⁹ Zhen, Ruisi. "Balancing Governance and Rights: The Interplay between Constitutional and Administrative Law." *Communications in Humanities Research* 32, no. 1 (April 30, 2024): 196–201. <https://doi.org/10.54254/2753-7064/32/20240070>.

proportionality as a legal test but to cultivate the judicial capacity, cultural legitimacy, and interpretive openness required for its meaningful application.

Toward a Unified Proportionality Ethos

Properly setting up proportionality leads to a logical way to handle disputes across different types of law. In matters of freedom of expression, as well as in policy topics such as environmental protection, the use of proportionality makes it possible to make rational decisions that respond well to both the surrounding situation and the rules involved. Courts can use constitutional interpretation to broaden their decisions and discuss issues, which makes their judgments more accepted and well-organized.

Kuwait could make significant progress in law by practicing proportionality in matters of free speech and environmental laws. It expects courts to clearly state their arguments for upholding or disregarding what the government does, to assess alternative ideas, and to make sure that taking away rights or public value is not overdone when pursuing certain aims.¹⁰⁰ Above all, it would make it clear that the judiciary protects people's rights and public welfare, not just carry out what the government wants.

The principle of proportionality links the general ideas of the Constitution with actual rulings in different areas of the law. In both of these areas, it provides a way to balance different interests' openness sensibly. Even though the ECtHR models this approach in cases of speech and U.S. courts do it in environmental matters, proportionality reasoning and willingness are lacking in Kuwait's law.¹⁰¹ Adopting one proportionality approach across Kuwait would ensure judges answer for their choices, help make legal rules work better together, and better fit Kuwait's laws with international justice and human rights.

Conclusion

This article has looked closely at the doctrine of proportionality in situations involving freedom of expression and environmental rules, comparing this policy in Kuwait, the European

¹⁰⁰ Al-Rashidi, Khaled S., and Clive Walker. "The Kuwaiti Freedom of Information Act: the Construction of Constitutional Governance." *Global Journal of Comparative Law* 13, no. 1 (2024): 1-30.

¹⁰¹ Alfouzan, Asma. "Facilitating Corporate Social Responsibility through Company Law: A Middle-Ground Proposition for Kuwait." PhD diss., University of Essex, 2020.

Court of Human Rights (ECtHR), and the United States. It becomes clear through this analysis that proportionality is useful worldwide for dealing with the friction between the rights and interests of the community. Proportionality clearly plays a beneficial role when properly applied, as it is in the ECtHR's free speech cases because it helps judges reach fair decisions, protect constitutionally given rights, and equally value different ideas. When courts do not address such things as free speech and environmental cases, as in Kuwait, they usually fall back on standards that are imprecise and overly respectful of other institutions, and this prevents both justice and accountability.

The ECtHR shows a focus on rights, making proportionality serve as both a check on decisions and an important standard. Using steps to look at legality, legitimacy, necessity, and proportionality strictly, as required by the court, allows it to balance the values involved and prevents decisions from being too arbitrary ensuring free expression is meaningful in a democracy. It uses this reasoning carefully Making sure freedom of religion is protected by state actions but only within reasonable limits. It shows that the judicial use of proportionality handles cases and fosters a culture in the Constitution where openness, diversity, and clear reasoning are present.

In contrast, there is not much constitutional jurisprudence in Kuwait about freedom of expression, and it faces a lot of restrictions. Although Article 36 clearly says that people have free expression rights, the decisions of courts tend to show a strong adherence to legal details and moral guidelines. Courts usually accept lawful limits on political and religious speech and do not use any special test or consider how they stack up with other rights. They explain away restrictions by talking about morals, religion, or national security, failing to look into whether the restrictions are really required and reasonable. For this reason, rights are not consistently protected as the courts are not allowed to review them if the Constitution is followed. Because proportionality is not considered an important rule or way of debate, this encourages authorities to shut down opposing views and dampen open debate easily.

The same kinds of issues are found in how Kuwait is managing its environment. Although Law No. 42/2014 improved the law, the field of environmental protection is still seen by lawmakers as a topic handled by regulations rather than a matter of constitutional rights.

Judges are involved less, and the courts rarely use balance tests to check if policies concerning the environment are right for citizens' health, environment, or future generations. Such disputes are resolved through the normal administrative systems instead of being looked at from a legal rights perspective. However, American law since there is no constitutional environmental right has developed its forms of proportionality in various parts of administrative law, regulation, and decisions about takings. The use of Environmental Impact Assessments and citizen suits makes it possible for people to bring environmental concerns to court in the U.S., which is not possible in Kuwait.

Understanding the use of proportionality in these jurisdictions shows that it is valuable not only in law but also in guiding ethical governance. The use of proportionality in rights conflicts means decisions have to be backed up, and they are open to review and consider all the challenges that decisions can bring. It makes sure that local traditions, including faith and culture, are included, yet it prevents these from justifying repression. So, it supports a moderate approach that is not too universal or fish-in-a-pond and helps courts handle cases that involve both national and international human rights.

That is why there are a number of suggestions that can be made. The Constitutional Court should establish proportionality as an approved judicial standard for cases about freedom of speech and other basic rights. The court could first adjust the meanings of specific constitutional provisions (for example, Article 36, Article 16, and Article 30) to match the notion of proportionality without waiting for new laws. Taking part in judicial training and looking at different constitutional ideas from around the world supports the court. Third, the Environment Public Authority and Kuwaiti courts should use the principle of proportionality when enforcing and evaluating environmental policies. It would involve judges being ready to assess the reasons for environmental policies and look for other choices that are both safer and more meaningful. Courts ought to see environmental harm as an important part of constitutional issues about public health and welfare rather than regarding it only as a technical issue unsuitable for judges.

Next, reforms should improve people's access to legal support for problems in both the speech and environment fields. Procedural safeguards such as people's ability to go to court over

environmental issues, take part in regulatory processes, and receive protection as journalists, activists, and whistleblowers are included as well. Strengthening procedural rights would back up substantive reform and form a legal system that keeps people and authorities responsible. Also, Kuwait may use instruments such as the Arab Charter on Human Rights and the Universal Declaration of Human Rights, which back up the idea of proportionality, to ensure justice. Making domestic law consistent with these frameworks would help Kuwait's international standing and give legal support to any planned reforms. By showing how proportionality should be applied, the ECtHR helps national courts in politically or culturally contentious situations.

All in all, the doctrine of proportionality is a way to apply the law and expresses the spirit of a constitution. It helps the courts sort out disagreements about rights, such as cases where free speech is in conflict with the public good or where economic growth and caring for the environment do not agree. It is clear from Kuwait, the ECtHR, and the United States examples that the need for orderly, well-reasoned, and responsible adjudication does not change even though contexts do. Kuwait can be more principled, coherent, and democratic in its Constitution if it resolves these two areas of law together. It is much more than judicial skill it is a sign of how grown-up Kuwait's constitution and rights-based approach to affairs is today.