

The Performance of Human Rights on Rights-based Welfare State in Iran

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Abstract

This research is the main guide of the Iranian government through reports and general comments to demonstrate the requirement for the gradual realization of full economic, social and cultural rights (ESCR), especially for government budgets as well as and political rights (CPR). The starting point of this legal review was the contradictory findings of research on some characteristics of the rights-based welfare state (RBWS) and inequalities in ESCR as well as CPR. The study shows that the comprehensive system proposed for the RBWS in Iran, which is based more on the principles of equal opportunities, equitable distribution of wealth and poverty reduction, has not yet been able to provide at least a good living for many. Despite these evolving programs, there is still a long way from the implementation of these RBWS programs in Iran, and the politicization of these rights by enforcers can make more difficult the process of progressive realization of the state's obligations in achieving a RBWS.

Keywords: Economic, social and cultural rights (ESCR), Civil and political rights (CPR), Rights-based welfare state, Equality and poverty alleviation

INTRODUCTION

In this research, government based on right-based approaches that provided the all types of rights for its citizens is called the RBS. The condition of realizing these characteristics in the Iranian government is that its approaches are religious and Islamic, and its constitution fights against any kind of intellectual, social and economic tyranny in order to bring justice and equality of all kinds of rights to all sections of the society [1, 2].

The question is to research "are independent bodies, such as the courts, available to governments to assess how resources are mobilized (especially through taxation and prioritization of expenditures)? Can economic and social law, under international human rights law, provide a reliable standard for such assessment?" CESCR is responsible for overseeing the implementation of ICESCR. Countries ratifying the ICESCR must regularly report to the CESCR, as part of their obligations under the treaty, the steps they have taken to implement the treaty and the enjoyment of ESCR in the country. These comments and recommendations often reflect the committee's best understanding of the meaning of the provisions of a particular treaty. Occasionally, the Committee also issues public opinion to the GC on an issue that has been raised frequently during its discussions to provide greater clarity to countries and others on the meaning of specific rights and obligations in the ICESCR (Ann Blyberg and Helena Hofbauer, 2014).

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Roosevelt's lecture on the economic realities of his time on January 11, 1944, left a significant

legacy and laid the foundations for the Human Rights Commission in the newly established United Nations Organization from 1946-1948 [3] to later prepare the Universal Declaration of Human Rights [4]. The ICESCR was adopted in 1966 to protect the economic and social rights enshrined in international law in the form of a binding international treaty [5]. ESCR are important tools for holding governments and non-government actors accountable for violations, as well as mobilizing collective efforts to develop societies and global frameworks for economic justice, social welfare, participation and equality (Case A/6316 at the United Nations, 1996). Governments were then determined to continually improve the conditions for the realization of fundamental ESCR. Because governments in this world have not had and will not have enough time to do this and may have limited resources, they cannot take steps delaying such as developing policies and programs that are necessary for a sound development process and do not require a lot of resources. Therefore, governments must move as quickly and effectively as possible towards the full realization of rights in the ICESCR [6] (Ann Blyberg and Helena Hofbauer, 2014) to pave the way for the gradual realization of the RBWS's goals.

RESEARCH STRUCTURE

In the second section, after describing the set of jurisprudence, economic, social, cultural rights, civil and political rights and right-based approaches that the analysis of the RBS focuses on, two sections (third and fourth) are followed in which regulatory policies and strategies for evaluating a RBWS are reviewed, respectively. Finally, the fifth section discusses the results.

RESEARCH LITERATURE

ESCR and CPR in RBWS

First of all, a keyword is described here to prove the role of law (ESCR, and civil and political rights) on this keyword. The key word that is the main subject of this research is called RBWS. First, the welfare state promotes the well-being for its citizens based on the principles of equal opportunities, and the fair distribution of wealth, and is responsible providing the opportunities with everyone so as to use the minimum facilities for a good life. Such a government can be defined as a RBWS; because all right-based approaches have been implemented to ensure the principles of equality among the citizens of a society and to reduce poverty. Marshall describes the modern welfare state by democracy, welfare, and capitalism [7], in which government ensures the security of the people through the social and economic securities for access to basic resources [8, 9] to approach the goals of a RBWS. The commitment to the gradual access of the full realization of ESCR in a RBWS reflects the understanding that the full realization takes time and depends in part on the resources available to a state.

This commitment should be considered important along with the commitment to use the maximum resources available. Thus, while gradual achievement is a realistic commitment, governments are not immune to problems. As governments take steps to gradually realize ESCR as well as CPR, they must show that they are using the maximum resources available to further improve the conditions of their people (Ann Blyberg and Helena Hofbauer, 2014). For the gradual realization of these rights, Roosevelt asked Congress to consider the means of enforcing the Charter of Economic Law, because he said it was certainly the responsibility of Congress, but the courts could intervene, perhaps to protect the public from restrictions on freedom of expression, and irrational detentions or cruel or unusual punishments. But in cases where law requires resource mobilization and therefore has budgetary implications, legal action is required through the courts [4]. In fact, the real measure of this gradual realization of rights was what happened to the people's real enjoyment of their rights, and any negligence (without the intervention of the courts) in setting the budget in turn negatively affected the rights of the people. For this reason, the rule of law in Iran, by strengthening participation of citizens in a parliamentary democracy, increases the transparency and efficiency of government commitments, ensures the fairness of ESCR, CPR, as well as administrative rights among all sections. Consequently, it can reduce challenges to the stark differences between freedom and restrictions.

Administrative Rights in Right-based Welfare State

The modern approach of Iran's government has developed the principles in which the applied approaches are in line with the specific needs of a particular region; with no any contribute to instability and dissatisfaction of local people and with no any difficult in the realization of right approaches in administrative matters. To achieve this goal, in the administrative law [10], the government of Iran can establish equal rights for its citizens with the approaches of fundamental rights according to Article 3 of the Constitution [11] through useful guidelines adhering to all economic, social and cultural rights.

According to William Robson, administrative law (as the body of law), in order to protect the private rights of individuals within the law, establishes a framework for the functioning of organizations and departments by establishing regular procedures, so that everyone can appropriately fulfill their duties in accordance with their obligations in front of other people or institutions. The tasks of these administrative laws today are very extensive in the government's timeline, and the task of dealing with their internal problems in planning, organizing, directing, coordinating, and controlling is much faster and easier than in the courts [12]. In Iranian administrative law, the government can establish justice with right-based approaches for its citizens through administrative suitable instructions containing all ESCR.

Van Der Walt argues that welfare state social security activities, including housing, health care, education, and other social services, are regulated by broad, complex, and ever-expanding legal networks, in the broadest possible sense. These include formal legislation, administrative laws and decisions, and most recently the constitutional welfare law or the law, as described in court rulings. The law in question is of a special kind, and this law is "regulatory" and "instrumental", not as the law traditionally dealt with specific and separate disputes, but in the formulation, guidance, formation and implementation of social security plans and the implementation of government goals [13, 14, 15]. In Iran, these benefits are provided to the general public with special administrative rights, but if all economic aids and unemployment benefits along with insurance for the affected individuals and groups are considered, it will certainly be possible to gradually realize the obligations of a RBS.

The administrative affairs and structure of the courts, the characteristics of the government cabinet and their role in Iran are already specified in the provisions of the constitution, which may have slightly changed depending on the circumstances of the country. In these decades, governments by maintain the economic and political system in the most difficult conditions of the country have tried to lessen poverty and discrimination by providing the best social and administrative services and by setting standard administrative laws and to shorten the way of getting to a RBS.

Flexibility of Legal Provisions in a RBWS

That is, is there any reason for courts and lawyers to use their current knowledge and creativity to find sources that are able to change the predefined legal implications (for example, human rights law, currency law, freedom law, expression law, commercial law, discrimination law, justice law, etc.) for its citizens? Courts must act in such a way that their amended or enacted laws and procedures are consistent with various human rights instruments.

Legal provisions can be manipulated instead of being fixed and definitive forever. Judgment itself is a strategic activity in which judges use those legal arguments that provide the best justification for their desired outcome. Despite this flexibility, however, judges are limited to the fact that only certain "pairs of reason-assisted arguments" are considered valid. In order for their arguments to be accepted in the area of expertise to which they belong, judges must reduce their arguments and the characteristics of the consequent cases in a way so as to accommodate a set of valid arguments [16]. During his presidency in the United States, Kennedy, like the mainstream legal scholars, seems to assume that law must be either decisive, or irrevocably subjective and ideological. Kennedy also

seeks meta-principles to limit the application of conflicting rules. When he finds none, he declares that judgment is merely an ideology established by law. In short, Kennedy's report is structured based on one of two cases or conventional understanding logic [17]. It is true that a large number of human rights in Iran may be absolute for decades, but they may be corrected by interpreting and weighing the scope of rights against other legitimate interests, such as the rights of others. In most cases, these reforms may be abused by the government and not apply best practices to individuals in the community who differ in race, culture, religion, language or region. This reflects the fact that the government has not implemented the minimum human rights standards for all members of its community and has distanced itself from a welfare state.

THE ROLE OF THE COURTS IN DETERMINING THE BUDGET OF A RBWS

In Section 3.1 above, we see the viewpoint of Roosevelt et al. on the government budgeting. At the heart of the issue of the fairness of ESCR is the fact that the implications of budgets imposed on states (or within the state, in other branches of government) follow such rights. It is mainly because of these budgetary implications that the so-called multipolar problem arises: courts or quasi-judicial bodies generally decide on a case-by-case basis and focus on the interests of individual litigants, as defined by litigants to decide community issues. They are not well taken care of; Such as how priorities are ranked in spending between education, health, public housing, or defense; Or, more importantly, saving the lives of those in need of expensive medical care; Or funding primary health care services for more people in low-income environments [18].

It is also because of these budgetary implications that the courts' ability to decide on economic and social rights is frequently challenged. For example, how much should be spent on education or health care or national security, and whether the tax system is sufficiently advanced to enable the realization of economic and social rights [4]. That is why tools must now be put in place to allow independent oversight bodies, including the courts, to evaluate the budgetary choices made by governments to ensure that the welfare state's goals are gradually achieved.

DISCUSSION AND RESULTS

Introduction

The starting point of this study was the contradictory findings of research on some features of the RBS and inequalities in ESCR, as well as CPR. These studies show that the politicization of these rights by enforcers can reduce the gradual fulfillment of government obligations to achieve a RBS. Thus, regulatory bodies in a RBS can impose penalties and punishments commensurate with the significance of the issue, misconduct, or negligence, which includes a set of institutions or bodies, their directors and employees, and sometimes major shareholders. On the other hand, in spite of laws and regulations in governmental and non-governmental organizations in various fields, we see a lack of training on right-based approaches as well as significant weaknesses in the methods of reporting injustice. Thus, this makes the laws and regulations ineffective in the gradual realization of the welfare state. Therefore, increasing the quality and stages of monitoring the proper implementation of laws, along with increasing fines and public information about injustices is considered important.

Therefore, religious people are needed to create political, intellectual, social and economic structures and bases (centered on the Qur'an and Sunnah) for governing and administrating the country. For the gradual fulfillment of these commitments, careful and serious supervision of righteous and devoted people is needed to provide the conditions of active participation for all classes and races through growth and guidance. Because only under such conditions, "realization of right-based approaches" will it lead to a RBWS. The executive branch, along with other branches, must eliminate the source of fundamental challenges and the bureaucratic factor in order for administrative law fulfills administrative obligations more efficiently. The administrative law was described in detail above and the importance of its serious implementation was clarified.

The Islamic society of Iran, in order to observe the principles of ESCR in which the freedom and human dignity of individuals and groups are respected, must choose wise and committed representatives so that administrative law can fulfill administrative obligations more efficiently. It is clear to every Iranian that the competence and responsibilities of the three branches are specified in the constitution of Iran, but it is important that the coordinating, supervisory and judicial councils of these forces in the city, region, district and village perform their duties well so that gradual realization of right-based approaches in all dimensions in all environments to preserve freedom, independence, unity and territorial integrity. When this RBWS is established, the economic, social, cultural, political and military dependence on foreign and international institutions and powers will decrease. Iran has experienced a number of these challenges in the period of sanctions. Therefore, it is clear that in such unfavorable conditions of the country, due to the abuse of some powers inside and outside the country, disturbing the internal order and inciting dissatisfaction of some groups, races and or important people, the path of getting to a RBS has been longer.

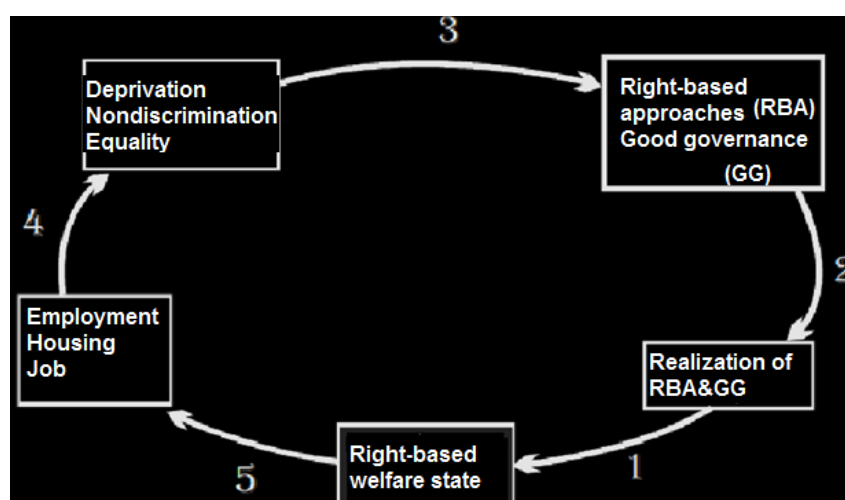


Figure 1. Outline chart for the welfare state.

Minimum Living Standards in a RBWS and Structure defined in this Research

In reviewing this research, according to the issues described in previous chapters, to achieve a RBWS, must be a communication between three conditions: 1. providing employment, housing and insurance, 2. deprivation, non-discrimination and equality, and 3. right-based approaches and good governance. This communication should be in such a way that the gradual realization of right-based approaches and good governance lead to a RBWS. The following three conditions (a, b, and c) are separately interpreted, and then the relationship between them is plotted as shown in **Figure 1**.

1. *Condition (a):* In order for he can have food, clothing and healthy drinking water, energy for cooking or heating and lighting, medical care, necessary social services and the right to participate in various aspects of life, and provide security and well-being for himself or his family". This is a right that all countries, especially Iran, recognize it. Only in these circumstances the right to dignity of an individual is protected by the authorities of a government, and that government can claim that have fulfilled condition (b) [deprivation, non-discrimination and equality], the condition which I describe below, and has paved the way for the gradual realization of the welfare state.
2. *Condition (b):* Non-discrimination and equality require equal treatment of an individual or group or ethnicity, regardless of "age, color, nationality, appearance, race, religion, sexual identity, culture, disability, ethnicity, gender and sexual or social orientation." Applying such inappropriate behaviors may systematically deprive people with these characteristics in a society of many material benefits for a short or long period of time. Subsequently, by imposing such irreparable harms (such as, directly or indirectly unfair job and employment practices with various excuses and scenarios, failure to provide health care, insurance and education at an

appropriate age, lack of social security) for these people and their families the grounds for the formation of poverty are provided.

3. *Condition (c)*: Right-based rights or human rights-based approaches are a series of approaches based on international human rights standards designed to support individuals and groups of different languages and races in a society to meet condition (b) above (i.e., deprivation, non-discrimination, and equality). Therefore, these approaches should be acted upon (by respecting and responding appropriately and timely to the priorities of these individuals) by legislators, executives and officials so that rights holder's achieve their rights by participating in the affairs of society. In implementing and then analyzing social and political policies, these right-based approaches and criteria for a long-term vision the transparency must be conducted using new technologies in a method that the authorities are aware of the injustice that has occurred to an individual or a group in a timely manner. In an e-government, which today in most countries, as such in Iran, have been established for the welfare of citizens, smartening government actions and to achieve the goals of the welfare state, these new technologies have demonstrated their great advantage. Therefore, legal observers should be more aware of the weaknesses and possible breaches of this type of welfare state, whose main goal is for the gradual realization of RBS.

Possible Vulnerabilities in a Right-based Welfare or Modern State

Potential vulnerabilities in a right-based welfare or modern state, which has often relied on e-government in the last decade, may cause the tampering or erasing of the personal information of individuals or groups. Typically, these types of infringement tactics and procedures may be due to the negligence of the authorities in handling the archived files in the system (apart from the discussion of targeted malware or hacker attacks, which is less obvious here), weakness or lack of timely access to electronic systems, etc. In this regard, due to the possibility of free access of these middle-class authorities to the most sensitive information of individuals and the treatment of these individuals in a favorable manner, the field of discrimination and injustice flourishes and the gradual realization of RBS's goals becomes more difficult.

In such cases, the laws of information security should be enforced by the courts with the advice of lawyers to determine the cause of weakness, poverty, backwardness of some individuals or groups compared to their peers at the same time. For example, if a ministry or company (governmental or non-governmental) has had a negligent in recruiting, selecting, hiring or providing welfare should face large government fines, court costs, e-discovery costs, legal fees, notification fees, and brand devaluation fees, via executors or legislators of those governmental or non-governmental organizations. Although in most cases the abolition of the basic rights (mentioned in the condition a) of an individual is irreparable in comparison with his peers, but the development of these injustices can reverse the path of the RBWS. For example, a person who is currently receiving a subsidy in Iran or has not benefited from insurance and employment benefits for a long time will certainly face irreparable salary deficiencies. If the current trend of supporting these people (for example, receiving a subsidy of 45,500 tomans (nearly 1.3 USD) per member in each month in 2021, due to high inflation in the country) continues, we should not expect the conditions for the gradual realization of a welfare state, even if this trend of cash or commodity support is strengthened as a gradual step. Unless a strong legal and regulatory team is formed to analyze the lack of access to the minimum living requirements of these people and compensate for in a short-time period so that these individuals or their families and subsequently their children benefit of a healthy life in the not-too-distant future at the same time as their peers.

The appropriate and timely time in this study is that [two people of two different "color, nationality, appearance, race, religion, language, sexual identity, culture, disability, ethnicity, gender, sexual or social orientation" characteristics, probably in Iran the characteristics of culture, ethnicity, language and religion be more distinct and discussable, simultaneously apply for the minimum living requirements (condition a: housing, job and insurance). Among these two individuals, despite having

the same privileges, only the congenial and arbitrary person is selected and called and the other person for years with different excuses and scenarios is deprived of his right. Instead the person selected does not have moral-scientific or moral-political or moral-social or moral-artistic competencies. As a result, time when unselected person (lost property, invalidated, humiliated, with older information, for example, in graduates who are now competing with new graduates and whose competition has become more difficult due to dropping out of school for a long term and getting older) should be included in the list of people in need of government, with attention to current methods of government support it is no longer completely reparable]. This process of government support for its citizens (especially those with high capabilities), which is completely contrary to human rights standards, makes the gradual realization of the RBS's goals far-fetched for years for domestic and international observers. As long as such injustices and ambiguities are evident in a society, larger crimes against these people become so common that their touch may be difficult for many.

Possible Strategies to Deal with Potential Vulnerabilities in a RBWS

In Iran, good strategies have been taken to develop the goals of a RBWS in order to provide the grounds for the gradual realization of the right-based approaches by fulfilling the three conditions (a, b and c) presented in the discussion and results (6-2). In this study, based on our studies and experiences, we concluded that a strong legal advisory team should be formed so that in the face of such injustices:

1. Investigate what kinds of rights of individuals, when and where have been violated.
2. The result of the report should be presented to the independent supervisory authorities and after reviewing the completeness of the information, it should be sent to the judicial authorities.
3. Judicial authorities must seek suspicious activities in related organizations as soon as possible to prevent irreparable damages in order to investigate the cause of the damages in the individual or group. Because most of the time, an individual or a group, with the cooperation of a number of responsible people in some important domestic bodies, seeks to create schism and repress some people inside the country via a third country in order to fully support their supporters in that country. It happens time when the power in third country has bipolar aspect. Especially in e-government, as well as in the era of international sanctions, these harms have been remotely facilitated by new technologies.
4. The judicial result to the Court of Justice must be submitted to announce the immediate methods of helping these people to the relevant organizations (housing and urban development sector, the country's employment sector and the insurance sector). These supportive methods must benefit the vulnerable person in the shortest possible time from the minimum subsistence requirements.
5. At this stage, the legal team should communicate directly with the vulnerable parties and announce the result of the support provided to the judicial authorities.

The Gradual Realization of SECR Obligations in a RBWS

In Iran has been good and continuous support from the government for the effective implementation of social, economic and cultural rights through the gradual realization of relevant issues. The comprehensive system of welfare services in Iran, like Latin America, Turkey, China and India, includes subsidized public health services, health insurance plans, pensions and other social security benefits that the government is obliged to provide for its citizens, although it should be attended the claims of Mohammad Javad Mohaghegh (2005) [19]. The researcher also noted that the Islamic Republic's constitution does not imply broad duties of the government in the field of economic activities or planning, and that the government, as the compiler of appropriate laws, provides the necessary platform to realize its goals in the society. That is, according to Article 43 (paragraphs 3 and 9) of the Constitution, the government must regulate the economic program of the country (within a specific framework). In this mission, government oversees guidance planning and is fully dependent on the [participation sector [20] in order to eradicate poverty and implement justice to prevent the accumulation of wealth in the hands of certain groups or individuals. Therefore, the

programming must be in line with gradual realization of human rights to be considered a RBS from the viewpoint of observers.

Assessment of the Gradual Non-realization of SECR Obligations in a RBWS

Inadequate access to health care and social services, inability to present in some partnerships, non-payment of insurance even at older ages, poor social assistance and education leading to socio-economic rights claims, as well as different understandings of Iranian politicians in official political institutions as a dilemma in society can sometimes lead to violated human rights commitments and raise major political concerns. In addition, the causes of poverty and lack of access to the minimum basic necessities may be (1) purely political, not addressed for a long time by important domestic authorities, or (2) due to a lack of domestic funding and widespread universal recession. In case (1), poor or impoverished people with political goals, in spite of their endeavor through all lawful options to achieve the minimum basic needs, do not succeed due to the strict laws set against the individual. Furthermore, in case (1) all dominant groups consider this need of poor people as non-political and may attribute the problem to the personality and behavioral characteristics of these poor people and not to the provisions laid down against the ESCR of these poor people, which its comprehension is hard. In case (1) the government considers the process of obedience for a limited number of people, while many are completely free to enjoy ESCR, and these people may not attend this kind of freedom and obedience (usually non- absolute) in their society. In such society, government is no longer able to gradually achieve the goals of RBS.

However, despite the constraints imposed, domestic observers, with new interpretations of Iranian legal provisions and the implementation of enforceable laws, can fuel evolving policies, diminish the gap between restrictions (not interpretable macro-cultural restrictions) and freedom (freedom for some, rightful access to the basic necessities of life) and provide the best justification for their desired results. In spite of all them, sometimes some inequalities may not be related to political and social justice issues defined through higher authorities, and this deprivation, dependence, and poor status may be related to incompetent local issues, technology, etc. (especially in some Middle Eastern countries). In both cases, the process of interpreting and applying ESCR with right-based approaches must be established and then implemented in order to defend those whose rights have been violated so that these individuals as their peers timely benefit from opportunities, dignity and rewards in appropriate age. In fact, these are the privileges and benefits that these wronged individuals should have received at a younger age (like other their dominant peer groups), but given to them after enduring the worst living conditions that have not been commensurate with their dignity and literacy, something that is really visible in some cases in Iran. As a result, one should not expect the formation of a RBS in such societies very quickly. Because the fulfilled obligations are not in line with right-based approaches of human rights, and in major decision-making those dominant groups have formed a bipolar process in society. In addition, the main decision-makers in political discourses may see the causes of poverty and deprivation of vulnerable groups as nonpolitical and special agencies and the three branches of government in Iran may seek different and irrelevant interpretations for the politicized needs of the protesters.

CONCLUSION

With the revelation of multiple links between economic corruption and human rights violations, corruption can be increasingly noticed in the judicial procedure of Iranian courts. In fact, the courts should recognize the shortcomings of some provisions such as the provisions related to fair trial and freedom of speech in these reviews and apply them again as new provisions in the following periods throughout the country after their legal reforms. Such judicial actions can help the independence of the judiciary in the following governments and play an effective role in the implementation of rulings and approaches to the right-based welfare state. But the following legal problems have remained.

Courts and Realization of the Minimum Basic Standards in a Right-based Welfare State

Courts must take steps to review the policies in Iran to remove the complexity of the rules previously enacted. As a result, it is better with the participation of those who take advantage of these

problems, a series of effective steps to be taken by government for sustainable development of society for the benefit of the poor individuals and for gradual realization of human rights, so that be considered a RBS from the viewpoint of observers and supervisors.

The Current Position of RBWS in Iran

To answer the question of "whether or not the RBWS has been established in Iran or whether there have been any changes" can be seen in the discussion and results above and in the conclusion section. Despite these growing programs, there is still a long way for actualizing these programs of RBS in Iran. Dealing with the issue of administrative capacities is one of the biggest legal constraints of higher authorities in Iran, which has fueled administrative corruption and incurred huge costs for the government. No effective efforts have been made to identify effective human resources and administrative changes.

In addition, in Iran, inefficiency of inspection and monitoring in administrative systems (especially financial), inefficiency of managers, operational compression and defect in monitoring work, unwillingness of the monitoring system to announce and inform about discoveries, lack of fair analysis of violations by monitoring systems and other issues lead to the failure of right-based approaches in RBWS. In cases where the content of the provisions has been well established on right-based approaches, have been consider so significant and actions have been taken for their enforcement, it has not been carefully thought out in practice. Therefore, discrimination has prevented the realization of the goals of a RBWS in Iran.

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