



OPTIMIZING RESOURCE ALLOCATION WITHIN THE JUDICIARY OF THE ISLAMIC REPUBLIC OF IRAN: A COMPARATIVE STUDY

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ABSTRACT

The relationship between increased budget allocations to the judiciary and improvements in judicial behavior and performance has gained prominence in recent years. However, given the limited nature of resources, extensive funding for the justice system often comes at the expense of other societal needs. Thus, optimizing resource allocation within the judiciary is essential. This optimization requires identifying challenges specific to the judicial system of the Islamic Republic of Iran and examining the experiences of other nations. This article argues that effective governance demands budget transparency, and arbitrary resource allocation—without considering medium- and long-term planning—presents significant challenges. Despite the implementation of six medium-term plans since the Islamic Revolution in 1979, a coherent link between these plans and the budgetary process remains elusive in Iran. This disconnect can be partly attributed to the influence of bargaining dynamics on budget allocation. Additional challenges include a lack of fiscal discipline, an excessive reliance on incremental budgeting, inadequate use of an efficient accounting system, and ineffective oversight by other branches of government regarding the financial performance of the judiciary. Experiences from various countries indicate that when budgeting systems resist reform, a viable solution involves identifying and strengthening components within the existing institutional framework that enhance efficiency. Given that implementing Performance Budgeting within the judiciary may be impractical, a more effective approach may involve adhering to traditional budgeting methods. Ultimately, enhancing budget transparency and facilitating public access to budgetary information can empower citizens, promote government accountability, and yield mutual benefits.

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Introduction

There is a notable dissatisfaction among judicial authorities in the Islamic Republic of Iran concerning the inadequate budget allocation to the judiciary. Many believe that addressing the financial needs of this branch is essential for its reform.¹ Despite recent increases in the judiciary's budget, authorities assert that these funds remain insufficient for effectively fulfilling its responsibilities.

Judiciaries with limited resources often struggle to provide competitive salaries, benefits, and pensions necessary to attract and retain qualified personnel, which can exacerbate the risk of corruption. Furthermore, the relationship between the judiciary's budget and its independence becomes more pronounced when external entities supplement inadequate funding. In several countries, local governments and businesses provide judges with essential resources such as office space, educational discounts for their children, transportation, and housing. In return, these benefactors may seek favorable consideration in legal matters. When a judiciary's budget fails to meet its needs, the judiciary may generate funds to augment its resources. For example, in the United States, trial courts historically faced underfunding from state and local governments. In response to resistance against increasing direct support, many jurisdictions instituted user fees, which can lead to adverse effects.² Financial obligations imposed by the criminal justice system, while intended to penalize offenders and fund system operations, disproportionately impact those from lower socioeconomic backgrounds and marginalized communities, perpetuating cycles of disadvantage and criminal justice involvement.³

Conversely, extensive resource allocation to the justice system can deprive other sectors of society. It is crucial to critically evaluate the judiciary's budget and its utilization before endorsing requests for increased funding. Experiences from other countries indicate that issues often stem not merely from overall resource scarcity but also from inefficient allocation within

1 Qazi Khorramabadi, *The Council Management of the Judiciary Gives a Sense of Independence to the Judges* (2009) 58.; Motaman, *The Current Officials Have Deviated a Bit from the Right Path* (2004) 21.

2 Office of Democracy and Governance, *Guidance for Promoting Judicial Independence and Impartiality* (2002) 25-26.

3 Gleicher and Delong, *The Cost of Justice: The Impact of Criminal Justice Financial Obligations on Individuals and Families* (2018) 1-3.



the judiciary.¹ Therefore, advocating for increased budgetary allocations is indefensible without justifying existing expenditures. Optimizing resource allocation within the judiciary is vital, not merely to save costs but to ensure that resources are utilized effectively to serve justice.

The optimization of resource allocation within the judicial system aligns with discussions in "law and economics." While these discussions primarily center on economic issues, they provide a foundation for legal reform. In the United States, findings suggest that legislators face challenges in reducing high-cost, low-return policies and reallocating savings to programs proven to reduce crime.² Many states have decriminalized minor traffic offenses,³ and Louisiana, for example, has implemented policy reforms to reduce sentences for nonviolent crimes and create early release options. These measures divert individuals convicted of less severe offenses from prison, shifting resources toward education, job skills, reentry programs, and substance abuse treatment to facilitate successful reintegration.⁴

This study examines resource allocation optimization within the judiciary of the Islamic Republic of Iran through the lens of micro-level economic analysis, influenced by the New Institutional Economics approach. This framework recognizes three levels surrounding the micro-level unit: informal institutions (norms, customs, ethics, traditions, and religion), official rules (constitutional and ordinary laws), and management institutions.⁵ Neglecting to consider these levels in conjunction may hinder achieving desired outcomes.

The research aims to identify and address challenges in optimizing resources allocated to the judiciary, focusing on the interactions between the judiciary and higher-level institutions. Employing extensive literature reviews and expert interviews, the study seeks to uncover inefficiencies within the institutional framework, including formal rules, informal constraints, and management practices throughout the budget allocation process. Additionally, it addresses the challenges related to supervising budget implementation in the judiciary. The outcome of these discussions will highlight existing challenges and provide recommendations for enhancing the budgeting system.

1. The Inefficiencies of Institutional Frameworks Governing Budget Allocation in the Judiciary of the Islamic Republic of Iran

This section aims to identify the methods of cost estimation within the judiciary of the Islamic Republic of Iran, considering existing budgeting laws, informal norms, and their implementation. Additionally, it examines the inefficiencies of these cost estimation methods and their conflicts with principles of efficiency and optimality.

1.1. Failure to Implement Program Budgeting

France has made significant strides in moving away from traditional expenditure-oriented budgets by adopting a "program budgeting" system. This approach aims to enhance transparency in public

1 Office of Democracy and Governance, Op. Cit., (2002) 26.

2 Sie, *How 4 States Cut Their Criminal Justice Budgets Without Sacrificing Safety* (2022) 1.

3 Essex, *Reducing Admissions to Jail and Prisons' (National Conference of State Legislatures (2021) 1-2.; Leachman, Chettiar and Geare, Improving Budget Analysis of State Criminal Justice Reforms: A Strategy for Better Outcomes and Saving Money* (2012) 2-6.

4 Sie, Op. Cit., 1-2.

5 Williamson, *The New Institutional Economics: Taking Stock, Looking Ahead* (2000) 5-8.



finances and grant departments greater autonomy and accountability for their expenditures. The new organic budget law, enacted in 2001, categorizes expenditures for the justice sector into five major programs: administration of justice (civil and criminal), prison administration, judicial protection of youth, access to law and justice (legal aid), and the management of justice policies and related institutions. Each program is associated with specific policy and performance objectives.¹

In the Islamic Republic of Iran, the Plan and Budget Law, approved in 1972, mandates that budgets be prepared programmatically, aligning with annual plans based on medium-term strategies. However, despite the existence of six medium-term plans since the Islamic Revolution in 1979, a coherent relationship between these plans and the budget has never materialized. Consequently, the provisions of the Plan and Budget Law have not been fully realized.²

The Iranian judiciary has established medium-term plans, such as "the legal and judicial dimension of Iran's economic, social, and cultural development programs," "judicial development programs," and "the judicial transformation document." Nonetheless, there is a lack of effective coordination between these plans and the judiciary's budget. The legal and judicial aspects of Iran's development programs consist of general articles that do not include specific guidelines for budget allocation. To integrate program-oriented budgeting into the judiciary, it is essential to delineate specific programs and establish corresponding budgetary chapters and lines.³

For instance, the Fourth Program of Judicial Development outlines numerous initiatives in broad terms but lacks detailed implementation strategies. One proposed prevention strategy focuses on the re-education and retraining of offenders, yet the plans surrounding this strategy are vague, emphasizing the roles of amnesty, sentence reduction, and parole without clear guidelines for implementation. This lack of precision complicates adherence to these plans at the execution level.

Although the judicial transformation document outlines more specific responsibilities for the judiciary and suggests solutions for their execution, it still lacks clarity regarding the budgetary chapters and lines responsible for each duty. Moreover, mechanisms to monitor the alignment of the judiciary's budget with proposed plans are notably absent.

Certain procedural obstacles further hinder the alignment of the budget with plans. Previously, the General Department of Budget and Credit Allocation of the judiciary operated under the Strategic Deputy, responsible for setting plans and estimating budgets based on information from various departments. This structure facilitated program-oriented budgeting. However, recent organizational changes have placed the General Department of Budget and Credit Allocation under the Financial, Support, and Construction Deputy, severing the connection between budgeting and planning. This shift has elevated bargaining as a key factor in budget allocation.

Additionally, all funds collected by the judiciary from the public are deposited into the Treasury of the Islamic Republic of Iran. Some of these funds are refundable, as specified in Article 30 of the Public Accounts Law. Since 1999, the Treasury has deposited certain refundable

1 Webber, *Good Budgeting, Better Justice: Modern Budget Practices for the Judicial Sector 3 Law and Development Working Paper Series* (2009) 21-24.

2 Hassanabadi and Najjar Sarraf, *A Total Model for Performance Based Budgeting Diamond Model* (2010) 291.

3 The office of Budget and Planning, *Budgeting in Iran (Problems & Challenges)* (Majlis Research Center 2002) 186.



funds into centralized accounts designated for the judiciary, which cannot be withdrawn. The Chief Justice utilizes the profits from these accounts to supplement the approved budget when necessary. However, these unsupervised revenues pose challenges for implementing program budgeting due to their lack of oversight and reliance on individual discretion.¹

Another significant impediment to implementing certain programs is the Iranian budget's reliance on oil revenues. The protracted process of oil sales often results in a portion of the appropriated funds entering the judicial system in the final months of the fiscal year. This timing leads to hasty and inefficient spending, as unused appropriations are typically canceled at year-end due to the annual nature of the appropriations.

In contrast, nearly all member countries of the Organization for Economic Co-operation and Development (OECD) allow for the transfer of unused appropriations at the end of the fiscal year under specific conditions, highlighting a potential area for reform in Iran's budgeting practices.

1.2. The Inefficiency of the Traditional Budgeting System

The UK government has adopted a performance-oriented approach to budgeting and public expenditure management, aiming to provide Parliament, the government, and the public with "world-class performance measurement and reporting systems." Similarly, the New Zealand government has developed performance budgeting concepts since significant public-sector and financial management reforms were initiated in the late 1980s.²

In the Islamic Republic of Iran, while the implementation of program budgeting has not been fully realized, the pursuit of performance budgeting has been on the agenda of Iran's Management and Planning Organization since 1999.³ Performance budgeting was first introduced in the 2003 budget law for the entire country and subsequently integrated into other legislation, including the Fourth Development Plan Law.⁴ However, the successful implementation of this approach requires substantial groundwork across various domains, including financial, administrative, employment, and budgeting laws. Regrettably, comprehensive action in these areas has not been taken.⁵ According to the 2020 budget liquidation report, 1,052 executive organizations remain without an integrated performance budgeting system.⁶

In Iran, the primary principle guiding budget allocation to organizations, including the judiciary, is the preservation of their existence rather than the magnitude of their administrative operations. Social pressures also heavily influence budgetary direction. Consequently, there is often a failure to accurately assess the volume of administrative operations, the correlation between these operations and allocated resources, and the evaluation of management and organizational efficiency.⁷ This oversight results in budgeting practices that remain entrenched in tradition.⁸

1 Momeni, *Political Economy Course of Budgeting in Turbulent Conditions* (2021) 1.

2 Webber, *Op. Cit.*, (2009) 8, 29.

3 Hassanabadi and Najjar Sarraf, *Op. Cit.*, (2010) 204.

4 Amirkabiri, Almasi and Mahmoudi, *Performance Budgeting: A Tool for Clarifying the Relationship between Consumed Resources and the Results Obtained in the Organization* (2014) 12, 21.

5 Rezaei, *Performance Budgeting Requirements in Iran* (2016) 55, 65.

6 The Supreme Audit Court, '2020 Budget Liquidation Report for The Entire Country' 21.

7 Mehnatfar and Jafari Samimi, *Fundamentals of Budget Planning in Iran* (2013) 217.

8 Babaei, *Government Budgeting in Iran (from theory to policy)* (2000) 2-3.



The first large-scale experience with performance budgeting occurred in the United States in 1949, following the recommendations of the Hoover Commission. This initiative emphasized total cost measurement, workload evaluation, and unit costs. However, the experiment was deemed a failure, leading to its abandonment shortly thereafter, although some lessons learned were incorporated into budget reforms in the 1990s.¹

In Asia, experiences with program and performance budgeting in countries such as India, Malaysia, and Sri Lanka yielded uneven results, falling far short of the initial ambitions of proponents from the 1960s. Similar challenges were observed in Latin America.²

Within the traditional budgeting system, expenditures are categorized by organization and item (line-item budgeting), providing information on the type and nature of expenditures.³ However, this method complicates the identification of specific goals or programs related to each expenditure and the corresponding results achieved. The focus remains primarily on financial and accounting aspects, such as receipts and payments. Consequently, Parliament's responsibility is limited to overseeing government expenditures within approved allocations, ensuring that no expenses exceed designated amounts and that each expense is allocated appropriately.⁴ However, Parliament does not monitor organizational performance, efficiency, or outcomes. For instance, if one Rial is spent on purchasing goods outside established financial and accounting standards, the issue is reported to the Supreme Audit Court only if the acquired assets are deemed excessive.⁵

The traditional line-item budgeting approach serves primarily to control expenditures.⁶ However, scholars have noted that when traditional budgeting is combined with an input-oriented approach in budget formulation and detailed expenditure controls, it hinders performance and program prioritization.⁷ In the judiciary of the Islamic Republic of Iran, strict and detailed expenditure controls exist, yet transfers between certain appropriations approved by Parliament are permitted. Article 79 of the Act of Adjustment of a Part of Financial Regulation of the State, approved in 2001, allows for the transfer of approximately 30% of total current and construction expenditures. In some instances, salaries and wages are paid from construction funds.⁸

While increased flexibility in budgeting is desirable, granting greater authority to managers becomes problematic without corresponding accountability for outputs and without a standard for measuring their performance in achieving established plans. This lack of accountability can lead to financial corruption,⁹ further undermining the integrity and efficacy of the judicial budgeting process.

1.3. The Effect of Questionable Budgeting Practices on the Inefficiency of Resource Allocation

A country's budgeting system typically employs multiple methods rather than adhering to a single approach.¹⁰ In the traditional budgeting system of the Islamic Republic of Iran, questionable

1 Schiavo-Campo and Tommasi, *Managing Government Expenditure* (1999) 86.

2 Ibid, 87.

3 Farajvand, *The Process of Formulation to Budget Control* (2006) 159.

4 Farzib, *Governmental Budgeting in Iran* (1996) 365.

5 Farajvand, Op. Cit., (2006) 199-200.

6 Ibid, 159.

7 Schiavo-Campo and Tommasi, Op. Cit., (1999) 133, 164.

8 Ghasemi et al., *Budgeting in Iran, Budget and Budget Makers (Survey)* (2008) 33.

9 Hassanabadi and Najjar Sarraf, Op. Cit., (2010) 204.

10 Mehnatfar and Jafari Samimi, Op. Cit., (2013) 80.



practices such as "excessive bargaining" and "incremental budgeting" significantly impact the estimation of organizational costs.¹

In preparing the judiciary's budget, financial needs are initially estimated based on information collected from various branches of the judiciary. Following this, the judiciary engages in negotiations with the Plan and Budget Organization to discuss income, expenses, and resource allocation. A mutual agreement is reached, establishing the budget framework for the judiciary, which is then incorporated into the budget bill. During these negotiations, expenditures are estimated primarily through "incremental budgeting," relying heavily on the previous year's budget. Conducting comprehensive annual evaluations of programs or implementing a "zero-based" budgeting exercise is often impractical and costly. However, depending solely on incremental budgeting limits discussions to reviewing last year's budget items and negotiating minor adjustments. This approach emphasizes inputs while neglecting results, effectiveness, efficiency, and priorities. More effective tools for controlling expenditures exist beyond incremental budgeting.²

While an "apolitical" budgeting process may seem ideal, the reality is that bargaining will always be part of budget preparation due to the need to balance conflicting interests. However, when bargaining becomes the dominant force in the process, it often results in inefficient resource allocation. Decisions may then be based more on the political influence of various actors rather than on factual assessments or desired outcomes. This can lead to false compromises and a lack of transparency in budget appropriations, creating opportunities for evasion and the exclusion of critical programs from the budget.³

The budget preparation process for the judiciary, as well as Iran's overall budget, heavily relies on political bargaining, resulting in a lack of transparency and clarity in the judiciary's budget. Analyzing the judiciary's budget lines over the past decade reveals a trend toward broader and more general allocations.

To effectively plan, evaluate performance, and optimize budget preparation, accurate accounting information and an efficient accounting system are essential. However, the aforementioned questionable budgeting practices have marginalized the role of accounting information in the budgeting process, undermining the need for appropriate accounting systems.⁴

Even after the budget bill is submitted to the Islamic Parliament of Iran, further bargaining can occur. Ideally, parliamentarians should refrain from altering budget figures established by experts. However, due to time constraints and a lack of technical expertise, most parliamentarians are ill-equipped to scrutinize the budget in detail.⁵ Article 75 of the Iranian Constitution limits parliamentarians' powers to modify budget figures.⁶ Their primary responsibilities include examining government plans, assessing various scenarios for achieving those plans, and evaluating resource allocation to prioritize development initiatives. Unfortunately, parliament

1 Etebarian, Emadzadeh and Rouhani, *Investigating the Role of Accounting Information in Budget and Budgeting* (2013) 13-14.

2 Schiavo-Campo and Tommasi, *Op. Cit.*, (1999) 126.

3 *Ibid*, 127.

4 Etebarian, Emadzadeh, and Rouhani, *Op. Cit.*, (2013) 1-3.

5 Ghasemi et al. *Op. Cit.*, (2008) 69.

6 Jalali and Tangestani, *Examining Article 75 of the Constitution with an Emphasis on the Opinions of the Guardian Council Regarding the Approvals of the Islamic Parliament up to the Eighth Period* (2015) 69, 73.

7 Hosseini, Fatehizadeh and Tehrani, *Article 75 of the Constitution and Judiciary's Powers in Budgeting* (2012) 133.



often becomes embroiled in secondary budget issues, interfering with institutions' budgets and making adjustments to their funding.¹ The influence of parliamentarians on budget figures arises not only from official rules but also from unwritten constraints shaped by frequent interactions among various actors.

In this context, judicial officials engage in negotiations and consultations with parliamentarians to secure increases in the judiciary's budget. There have been instances where parliamentarians significantly raised the judiciary's budget. Over time, the judiciary's budget has gradually increased from 1% of the country's total budget to 1.93% in 2017.

Additionally, the approval of a clause in the Consolidation Commission of the Sixth Economic, Social, and Cultural Development Program mandated that the government allocate a specific percentage of the budget to the judiciary each year. Initially proposed at 3.2% of the public budget, this percentage required approval. Ultimately, in accordance with Article 119 of the Law of the Sixth Development Program, passed on April 3, 2017, the government was obligated to allocate at least 2.9% of the budget to the judiciary. However, this article has yet to be implemented. In 2021, approximately 2.13% of the public budget was allocated to the judiciary, with around 2.37% allocated in 1402.

The judiciary's budget is standardized as a percentage of the nominal Gross Domestic Product (GDP). In the Islamic Republic of Iran, from 2021 to 2022, approximately 3.8% to 4.2% of GDP was allocated to the judiciary.

Table 1 illustrates the judicial system's budget (including court budgets, prosecution services, and legal aid) as a percentage of GDP in European countries for 2020.

Table 1- Judicial System Budget of European Countries as a Percent of GDP in 2020²

States	As % of GDP
Albania (ALB)	0.33%
Andorra (AND)	0.44%
Armenia (ARM)	0.28%
Austria (AUT)	0.32%
Azerbaijan (AZE)	0.28%
Belgium (BEL)	0.22%
Bosnia and Herzegovina (BIH)	0.73%
Bulgaria (BGR)	0.61%
Croatia (HRV)	0.53%
Cyprus (CYP)	0.27%
Czech Republic (CZE)	0.32%
Denmark (DNK)	0.17%
Estonia (EST)	0.26%
Finland (FIN)	0.19%
France (FRA)	0.21%
Georgia (GEO)	0.23%
Germany (DEU)	0.35%
Greece (GRC)	0.29%

¹ Ghasemi et al., Op. Cit., (2008) 70, 73.

² European Judicial Systems CEPEJ Evaluation Report (2022) Evaluation Cycle. Part 1: Tables, Graphs and Analyses, Council of Europe, 20.



States	As % of GDP
Hungary (HUN)	0/40%
Iceland (ISL)	0.62%
Ireland (IRL)	NA ¹
Italy (ITA)	0.30%
Latvia (LVA)	0.37%
Lithuania (LTU)	0.27%
Luxembourg (LUX)	0.17%
Malta (MLT)	0.26%
Republic of Moldova (MDA)	0.41%
Monaco (MCO)	0.29%
Montenegro (MNE)	0.80%
Netherlands (NLD)	0.27%
North Macedonia (MKD)	0.37%
Norway (NOR)	0.13%
Poland (POL)	NA
Portugal (PRT)	NA
Romania (ROU)	0.44%
Serbia (SRB)	0.66%
Slovak Republic (SVK)	0.43%
Slovenia (SVN)	0.45%
Spain (ESP)	0.37%
Sweden (SWE)	0.27%
Switzerland (CHE)	0.29%
Turkiye (TUR)	0.21%
Ukraine (UKR)	NA
UK-England and Wales (UK:ENG&WAL)	NA
UK-Northern Ireland (UK:NIR)	0.39%
UK-Scotland (UK:SCO)	0.27%

Bosnia and Herzegovina (0.73%) and Montenegro (0.80%) have significantly higher budget percentages of GDP within European judicial systems. Although the budget allocated to the judicial system depends on many factors, the budget of Iran's Judiciary is significantly higher compared to the budget of European judicial systems.

However, judicial officials continue to consult to further increase the Judiciary's share. Clause 2 of Article 113 of the Seventh Development Plan Law mentions that the judicial branch's share of the public budget will increase by 30% in the first year of the program's implementation.

The determination of these percentages is based on factors other than accurate assessments and needs calculations. Furthermore, some researchers argue that assigning a fixed percentage of the entire budget to the judicial system may undermine transparency and efficiency in practice, as the judiciary is not obligated to justify or explain its actions or how it utilizes its allocated budget².

¹ NA: No reliable information Available

² Office of Democracy and Governance, Op. Cit., (2002) 26.



1.4. The Resistance of Iran's Budgeting System to Reforms

Given the complexities outlined above, understanding the budgeting realities and the implementation of budgets in practice cannot be achieved solely by studying formal rules. It is insufficient to examine formal regulations in isolation. The intricacies arise from the fact that different laws adopt varying approaches, and budgeting is implemented in diverse ways. This phenomenon is not unique to Iran; it is also evident in many developed countries. As North points out, formal rules are a significant part, but not the entirety, of the overall constraints. The decision-making process and its outcomes are shaped by a combination of informal constraints, formal rules, and management methods. Relying exclusively on formal rules would lead to an incomplete understanding of the situation. Even in societies with similar formal laws, outcomes can differ significantly due to the influence of informal constraints. Therefore, substantial changes in institutions necessitate modifications to both formal laws and informal constraints, as well as the methods of their implementation.

Unfortunately, there is a tendency to replace new formal laws with informal restrictions, often disregarding the deeply ingrained cultural heritage that underpins many informal constraints.¹ Consequently, reorganizing Iran's budgeting system cannot be achieved merely through the enactment of the Plan and Budget Act or the introduction of performance budgeting in economic, social, and cultural development programs. Without considering the informal constraints that have shaped actions over the years, inconsistencies arise between formal and informal norms, leading to a disconnect between the budgeting process and existing laws.

Transforming informal constraints can be a protracted process, often taking centuries.² These norms have gradually emerged from the generalization of past laws, becoming embedded in traditions, customs, principles, and behavioral norms, while demonstrating remarkable resilience.³ Institutional changes, encompassing both formal and informal constraints,⁴ occur gradually due to the enduring nature of informal constraints, which contribute to the persistence of institutions and the connection between the past, present, and future. As a result, choices made today and tomorrow are influenced by historical contexts.⁵

Analyzing Iran's income and expenditure situation prior to the Islamic Revolution and the Constitutionalism Movement reveals that authorities frequently exploited the country's financial challenges to prioritize personal interests, establishing rentier relationships. Although some attempts were made to streamline Iran's finances over time, there has consistently been strong resistance to well-considered policies. For example, Amir Kabir (1807-1852) made significant efforts to improve Iran's revenue and expenditure management before the Constitutionalism Movement, but these attempts were thwarted by opposition from the monarch's inner circle and supporters of foreign policy.

Following the Constitutionalism Movement in 1906, Iran's budget improved to some extent, with initiatives to regulate courtiers' salaries. Indeed, one of the constitutionalists' primary demands was to reform the income and expenditure situation. The push for financial

1 North, *Institutions, Institutional Change and Economic Performance* (1990) 24, 69-70, 93, 146.

2 Williamson, *Op. Cit.*, (2000) 7.

3 North, *Op. Cit.* (1990) 24, 146.

4 Momenipour, *Economic Analysis of the Petroleum Ownership in the Light of Efficient Property Rights* (2015) 56.

5 North, *Op. Cit.*, (1990) 13.



reform, which threatened the interests of courtiers, was a major factor behind the bombardment of the first parliament in 1908. A second parliament was established after the constitutionalists regained control of the capital. In 1910, Sani-al-Dawla Hedayat (1856-1911), then Minister of Finance, prepared Iran's first budget under new principles of budget formulation, but he was assassinated while presenting it to Parliament.¹ In May 1911, American financial expert William Morgan Shuster was invited to Iran to organize the country's finances. However, he was forced to leave after eight months due to political crises and an ultimatum from the Russian government,² leading to the dissolution of the second parliament amid budgetary sensitivities.

The financial situation improved in 1931, and by 1940, the budget underwent significant reforms, only to collapse again with the dismissal of Reza Shah in 1941. During Dr. Mohammad Mossadegh's premiership in 1950, the budget was balanced, but after the 1953 coup, rentier relationships reemerged.

Following the Islamic Revolution, calls for budgeting reforms intensified. While the country's economic situation stabilized in the early years post-revolution and during the Iran-Iraq War, rentier relationships gradually intensified in subsequent years.³ This aligns with North's proposition that after revolutions, many characteristics and institutions of societies persist,⁴ complicating the path to effective reform and resource allocation in the judiciary and beyond.

1.5. Institutional Resistance to Reform in Iran's Budgeting System

Institutions and formal laws are often not designed with social efficiency in mind. Instead, they are created to serve the interests of those wielding the bargaining power to propose new laws. As long as weak institutions benefit individuals with this bargaining power, significant institutional changes are unlikely to occur.⁵ However, despite the gradual nature of such changes, it is possible to expedite the reform process by establishing socially efficient formal institutions and enhancing transparency. This is particularly feasible in societies where political entities demonstrate the will and strong motivation to implement efficient reforms.⁶

Some countries have successfully developed relatively efficient institutions when the personal objectives of those with the power to negotiate institutional changes align with socially beneficial solutions. This alignment helps explain the resistance of Iran's budgeting system to reform.

In a broader context, institutional frameworks serve as the "rules of the game," while organizations act as the players. The constraints imposed by these frameworks define the range of opportunities available and the types of organizations that can emerge. Organizations develop the skills and knowledge necessary for survival and success within competitive environments. The types of skills that yield benefits depend on the incentive structures inherent in the institutional matrix.⁷ Consequently, the institutional framework shapes the knowledge required for effective operation.

1 Ebrahimejad, *The Principle of Budget Preparation, Formulation and Control* (2008) 46.

2 Gholizadeh, *Budgeting System in Iran (Theory and Practice)* (2012) 38.

3 Ghasemi, *The Historical Locks of Iran's Budgeting System: Past, Present, and Prospects* (2021) 1.

4 North, *Op. Cit.*, (1990) 70.

5 *Ibid.*, 39, 115.

6 Momenipour, *Op. Cit.*, (2015) 56.

7 North, *Institutional Change: A Framework of Analysis* (1994) 3.



Within the budgetary structure of the judiciary in the Islamic Republic of Iran, the prevailing rules involve the neglect of programmatic approaches, excessive bargaining, and a lack of transparency and financial discipline. Within such a framework, it is unrealistic to expect the judiciary to fulfill its role optimally and efficiently, as this contradicts the established rules of the game. In this institutional context, the production and dissemination of knowledge regarding budgeting and planning are regarded as unimportant, and expert opinions carry little weight in decision-making.

As a result, organizations that develop under these institutional conditions become adept at navigating rentier relationships, to the extent that the budget transforms into a superficial and non-functional facade. This detachment from effective budgeting practices further entrenches inefficiencies and undermines the potential for meaningful reform within the judiciary and broader governance structures in Iran.

2. Lack of Appropriate Mechanisms to Supervise Budget Implementation in the Judiciary of the Islamic Republic of Iran

This section explores several factors that complicate the supervision of the judiciary's budget implementation in Iran.

2.1. The Impact of the Judiciary's Maximum Institutional Independence on Non-Interaction with the Executive Branch

Before the Islamic Revolution, the judicial system in Iran was heavily dependent on the executive power. Given the historical context and the authoritarian nature of the regime, there was widespread skepticism regarding the executive's influence. Consequently, after the revolution, some members of the Assembly for the Final Review of the Constitution argued that this dependence posed risks, prompting calls for a more independent judiciary.¹

The Constitution of the Islamic Republic of Iran established a highly independent judicial system, emphasizing a clear separation from the executive branch.² This shift significantly diminished the role of the Minister of Justice, who is part of the executive.³

Certain members of the Assembly advocated for the judiciary's budget to be prepared solely by judiciary officials, thereby insulating it from potential interference, reductions, or objections from the executive branch. While Article 144 of the draft constitution addressed the financial independence of the judiciary, it was ultimately not approved due to opposition from the majority in Parliament, who deemed it impractical.⁴

Despite this constitutional independence, the executive branch retains influence over the judiciary through its authority in drafting the annual national budget. However, to prevent executive interference in judicial performance, interactions between the President and the Chief

¹ Annotated version of the deliberations of the Assembly for the Final Review of the Constitution of the Islamic Republic of Iran (1979) 1594.

² Aghaeitouq, *Examining the Budget of the Judiciary in the Light of the Articles of the Constitution* in *Judicial Research 1* (2016) 20.

³ Annotated Report of the Deliberations of the Assembly for Revising the Constitution of the Islamic Republic of Iran (1989) 322, 351, 731, 885-889.; Mehrpour, *A Concise of the Constitutional Law of the Islamic Republic of Iran* (2014) 354-355.

⁴ Annotated version of the deliberations of the Assembly for the Final Review of the Constitution of the Islamic Republic of Iran, Op. Cit., 1417-1419, 1594-1597.



Justice are limited.¹ Historical skepticism towards the executive has fostered efforts to minimize its role in the system of checks and balances.²

It is crucial to understand the nature of judicial independence in Iran. As Warren articulates, judicial independence is not absolute; it is a limited independence, characterized by freedom from improper influence rather than all influence.³ In managing the judiciary's current affairs, there is an inherent dependence on Parliament for budget approval and on the government, as the Minister of Justice oversees this branch.⁴ While maximizing independence for the judiciary may seem beneficial, it can paradoxically hinder transparency and accountability. Enhancing financial performance while minimizing undue executive interference can be achieved through increased transparency and a strengthened system of checks and balances.

Historically, judicial branches lacked the responsibilities of budget preparation and administration. Instead, executive agencies assessed the courts' financial needs, submitted these needs to the legislature, negotiated funding, and managed the allocated resources. Although this process involved consultation with judicial officials, it still allowed for the potential denial of financial support to courts or specific judges who issued decisions contrary to executive interests.⁵

In 1939, judicial branches began to develop their own budget estimates, presenting them directly to the legislature or executive for incorporation into a comprehensive government budget without alteration. The judiciary also defended its budget requests before the legislature and administered the granted funds. However, current judicial budgeting procedures still expose the judiciary to oversight and some degree of control by other branches. The executive may influence judicial funding levels through its recommendations to Congress on fiscal policy.⁶

While U.S. judges enjoy a fair measure of independence, this independence is not absolute. Studies of judicial decision-making indicate that the judiciary remains attentive to the attitudes of Congress and the President,⁷ highlighting the complexities inherent in balancing judicial independence with effective budget supervision.

2.2. Challenges of Financial Supervision by the Islamic Parliament of the Islamic Republic of Iran over the Judiciary

Some members of the Assembly for Revising the Constitution of the Islamic Republic of Iran emphasized the need for accountability of the head of the judiciary. Asadollah Bayat, a member of the Assembly, articulated the concern:

"It is dangerous if the head of the Judiciary is not held accountable. While we respect the judicial system, we do not consider them to be immune from responsibility. Now that all responsibilities of the Judiciary are assigned to one person, we must establish a form of accountability and oversight."⁸

1 Hashemi, *The Constitutional Law of the Islamic Republic of Iran* vol 2 (2007) 307.

2 Rasekh, *Checks and Balance*, (2009) 151.

3 Warren, *The Importance of Judicial Independence and Accountability* (2003) 3.

4 Turpin, 'Pouvoir Judiciaire' in *Constitution et Justice* (1995) 10.

5 Gur-Arie and Wheeler, *Judicial Independence in the United States: Current Issues and Relevant Background Information* (2001) 133, 136.

6 Ibid.

7 Cross, *Thoughts on Goldilocks and Judicial Independence* (2003) 195-196.

8 Annotated Report of the Deliberations of the Assembly for Revising the Constitution of the Islamic Republic of Iran, Op. Cit., 331.



However, to ensure judiciary independence, the Chief Justice has no obligations to other branches, aside from implementing laws and coordinating the budget.¹ According to Article 57 and Clause 6 of Article 110 of the Constitution, the Supreme Leader oversees the head of the judiciary, but a specific supervisory mechanism for this oversight has not been established. Furthermore, neither the Constitution nor other relevant statutes provide a framework for holding high-ranking judicial officials accountable.²

The Islamic Consultative Assembly (ICA) employs mechanisms such as "financial supervision," "questioning and impeachment," and "investigation" to oversee the financial performance of organizations.³ However, these mechanisms encounter significant challenges when applied to the judiciary, as its leadership is not directly accountable to Parliament.⁴

The Supreme Audit Court of Iran is tasked with financial supervision on behalf of Parliament.⁵ However, this institution can only oversee the implementation of the budget allocated to the judiciary. Since the Chief Justice is not held accountable, the Supreme Audit Court's ability to effectively monitor the financial affairs of the judiciary is limited.

Moreover, the inability to impeach the head and senior officials of the judiciary⁶ forces parliamentarians to direct their inquiries to the Minister of Justice regarding all judiciary-related matters, as stipulated in Article 4 of the Act on the Implementation of a Part of Article 160 of the Constitution (approved in 2015). Judicial officials are required to provide the Minister with necessary information and documents to address parliamentary inquiries (Article 5 of the same law). However, a note in Article 5 allows the Chief Justice to prevent the submission of documents related to the judiciary if he deems it a violation of judicial independence or against government interests.⁷ This broad provision undermines effective supervision, as it permits generalized claims about violations of judicial independence or government interests. Furthermore, the political repercussions of questioning the Minister of Justice are limited to warnings or, in extreme cases, a vote of no confidence; thus, the head and senior managers of the judiciary bear no responsibility, rendering such questioning largely ineffective.

Article 76 of the Iranian Constitution grants the Parliament the right to "investigate" "all affairs of the country." However, Note 7 of Article 212 of the Act of Internal Regulations of the Parliament (approved in 2020) restricts this authority, stating that investigations do not cover judicial cases and that permission from the Supreme Leader is required for inquiries into other matters concerning the judiciary, including financial and administrative affairs.

In 2004, an investigation into the judiciary's performance included financial inquiries. Despite the explicit authority granted to Parliament by Article 76 and the interpretive opinion of the Guardian Council, which affirmed Parliament's investigative rights, the judiciary refused to cooperate. The head of the judiciary expressed doubts about this authority and suggested that Parliament could only investigate the performance of the administrative and financial deputy of

1 Hashemi, Op. Cit. (2007) 370.

2 Mohammad Ghasem Tangestani, *Independence and Responsibility of Judiciary* (Mizan Publication 2018) 330.

3 Mohammad Hedayati Zafarghandi, 'The Role and Function of the Supreme Audit Court in Financial Supervision' (2017) 18 *International Journal of Nations Research* 45, 52-53.

4 Jalali & Tangestani, Op. Cit. (2015) 329.

5 Hashemi, Op. Cit. (2007) 205.

6 Ibid, 370.

7 Jalali & Tangestani, Op. Cit. (2015) 321.



the judiciary, excluding the judicial organization of the armed forces. Although the head of the judiciary allowed Parliament to investigate the organizational and financial performance of this branch, no satisfactory responses were provided even after several months.

In 2018, several parliamentarians requested an investigation into the funds deposited by the judiciary, the profits generated, and the areas of expenditure. Although the Economic Commission of Parliament communicated with the judiciary multiple times, it received no response. Following a change in the head of the judiciary in 2019, the Parliamentary Counselor of the Judiciary provided some explanations, but many parliamentarians remained unconvinced, and no further action was taken.

Even if an investigation uncovers violations or crimes within the judiciary, Parliament cannot take direct action. Instead, it can refer the case to appropriate authorities and notify the head of the judiciary, allowing him to take discretionary administrative measures. Additionally, the matter can be brought to the attention of the Supreme Leader.¹

The institutional framework governing budgeting in Iran's judiciary, as previously described, presents significant challenges to supervision, often undermining it. The inefficiencies of the non-independent judicial system before the Islamic Revolution, combined with the strong emphasis on judicial independence by the Constitution's founder, reinforce this framework and enable judicial authorities to evade accountability and obstruct supervisory mechanisms. Consequently, non-transparency within the judicial system is heightened compared to other systems, creating a critical obstacle to efficient resource allocation.

In contrast, U.S. judicial branches have primary responsibility for their administration. However, the legislature retains authority over public funding for the courts, including directing expenditures within broad categories. Furthermore, the legislature often holds constitutional power to change court organization and jurisdiction, thereby creating a legislative oversight role that promotes public accountability.²

Conclusion

To gain a comprehensive understanding of the efficiency or inefficiency of resource allocation and management within the judiciary, it is essential to examine the institutional framework governing this branch and the challenges it faces. This framework includes formal laws, informal constraints, and managerial practices; focusing solely on formal rules would lead to an incomplete understanding.

In Iran, the predominant budgeting method introduced by the Plan and Budget Law is program budgeting. However, the implementation of budgeting practices largely adheres to traditional methods, despite proposals for operational budgeting following the Fourth Development Program. The judiciary has not successfully established medium-term programs based on accurate statistics and scientific principles. Certain procedural challenges, such as non-supervisory incomes and an overreliance on oil revenues, further complicate the development of medium-term budgeting plans. As a result, the budgeting process is often haphazard and lacks alignment with strategic priorities.

¹ Ibid, 319.

² Gur-Arie and Wheeler, Op. Cit. (2001) 144.



While traditional budgeting can offer some level of cost control, it has proven ineffective within Iran's judicial system. Fiscal discipline alone cannot sustainably address issues stemming from arbitrary resource allocation and inefficient operations. Additionally, the performance of organizations within this traditional structure is not adequately supervised or evaluated from an efficiency perspective.

The extensive use of unprincipled procedures, such as incremental budgeting and political bargaining, has compromised the integrity of the budgeting process, detaching it from reliable accounting information. It is crucial to establish a robust accounting system within the judiciary. The inclusion of bargaining in decision-making diminishes the focus on factual outcomes and program implementation, allowing political power dynamics to dictate budgetary decisions.

In summary, a thorough examination of the institutional framework governing the judiciary is necessary to assess resource allocation and management efficiency. The current reliance on traditional budgeting methods and the lack of proper accounting systems present significant challenges that must be addressed. Furthermore, the extreme interpretation of judicial independence has resulted in inadequate mechanisms for overseeing the financial performance of judicial authorities. Judicial officials often invoke judicial independence as a shield to evade accountability, undermining the effectiveness of existing regulatory mechanisms and highlighting the pressing need for greater transparency.

These challenges, which pertain to optimizing resources allocated to Iran's judiciary, shape the institutional framework governing the budgeting process. An organization operating within such a framework is inevitably influenced by its constraints and operates accordingly. As such, it is unrealistic to expect the judiciary to function optimally within this structure.

To improve this framework, all its dimensions—including legal restrictions and behavioral norms—must change. However, institutional changes are typically gradual due to the enduring nature of informal constraints. Significant changes will only occur when those with bargaining power find it advantageous to promote effective institutional frameworks. Therefore, improvements in institutional frameworks will emerge when influential individuals and entities are motivated to initiate change.

Institutional frameworks can either enhance or hinder productivity. While institutional changes create opportunities for both productive and unproductive activities, in a rentier structure like Iran's, these opportunities often facilitate activities that conflict with optimization and efficiency. This research aims to identify and strengthen aspects of the existing institutional framework that enhance efficiency rather than pursue fundamental changes.

Given the current state of Iran's budgeting system, its resistance to reform, and lessons from other countries, implementing performance budgeting in the judiciary appears impractical. Maintaining the traditional budgeting system during the reform process is more prudent. Nevertheless, in reforming the budgeting structure of the judicial system, lessons from performance budgeting can be valuable.

New budgeting methods should prioritize the judiciary's policies. Meaningful reforms require a review of financially burdensome policies that yield minimal benefits, such as those related to criminal justice. Detailed and actionable plans should then be developed based



on these new policies, paying close attention to implementation mechanisms and available financial resources. A series of plans and reforms should be forecasted and evaluated concerning economic costs and social effects. Using cost-benefit analysis, the most suitable solutions can be identified. By defining detailed plans, there is potential to improve the budget's commitment to programs and enhance the cost control system.

Additionally, Parliament should oversee the alignment of the budget with strategic plans. The budget liquidation report is crucial for shedding light on the financial performance of organizations, including the judiciary. This report can identify inefficient laws, evaluate organizational performance, and expose budgetary misuse. It must be submitted to Parliament in a timely manner and scrutinized in public sessions, ensuring that it is considered during the approval process for the judiciary's budget. This would increase the judiciary's accountability for delivering results.

It is also advisable to modify the resource distribution structure among various parts of the judicial system and determine the optimal allocation for each section. This requires establishing priorities for the judicial system and developing performance indicators to guide resource distribution. Such indicators will support rational adjustments to budget allocation and provide vital information during negotiations regarding the overall judicial budget.

Finally, it would be beneficial to establish a percentage range for the minimum and maximum budget allocations for the judiciary. This range would encourage the Plan and Budget Organization and Parliament to consider the judiciary's performance and output when reviewing and approving the annual budget.



References

Books and Articles

- Aghaeitouq M, 'Examining the Budget of the Judiciary in the Light of the Articles of the Constitution' in *Judicial Research* 1 (Judiciary Press and Publishing Center 2016). [In Persian]
- Amirkabiri A R, Almasi H, and Mahmoudi H, 'Performance Budgeting: A Tool for Clarifying the Relationship between Consumed Resources and the Results Obtained in the Organization' (2014) 174 *Work and Society Monthly* 12. [In Persian]
- Babaei H, *Government Budgeting in Iran (from Theory to Policy)* (Commercial Print and Publications Company 2000). [In Persian]
- Cross F B, 'Thoughts on Goldilocks and Judicial Independence' (2003) 64 *Ohio State Law Journal* 195.
- Ebrahiminejad M, *The Principle of Budget Preparation, Formulation and Control* (Shahid Bahonar University of Kerman 2008). [In Persian]
- Essex A, 'Reducing Admissions to Jail and Prisons' (National Conference of State Legislatures (NCSL) 2021).
- Etebarian A, Emadzadeh M, and Rouhani A, 'Investigating the Role of Accounting Information in Budget and Budgeting' (2013) 10 *Journal of Accounting Research* 1. [In Persian]
- Farajvand E, *The Process of Formulation to Budget Control* (Forouzes Press 2006). [In Persian]
- Farzib A R, *Governmental Budgeting in Iran* (Governmental Management Training Center 1996). [In Persian]
- Ghasemi H R, 'The Historical Locks of Iran's Budgeting System: Past, Present, and Prospects' (2021) Institute of Religion and Economic Studies. [In Persian]
- Gholizadeh R Gh, *Budgeting System in Iran (Theory and Practice)* (Chaparpub 2012). [In Persian]
- Hashemi M, *The Constitutional Law of the Islamic Republic of Iran 2* (Mizan Publication 2007). [In Persian]
- Hassanabadi M, Najjar Sarraf A R, *A Total Model for Performance Based Budgeting Diamond Model* (Industrial Research & Training Center of Iran 2010). [In Persian]
- Hedayati Zafarghandi M, 'The Role and Function of the Supreme Audit Court in Financial Supervision' (2017) 18 *International Journal of Nations Research* 45. [In Persian]
- Hosseini M R, Fatehizadeh M, and Tehrani I, 'Article 75 of the Constitution and Judiciary's Powers in Budgeting' (2012) 70 *Scientific Quarterly Journal of Majlis & Rahbord* 133. [In Persian]
- Jalali M and Tangestani M Gh, 'Examining Article 75 of the Constitution with an Emphasis on the Opinions of the Guardian Council Regarding the Approvals of the Islamic Parliament up to the Eighth Period' (2015) 10 *Quarterly Journal of Public Law Knowledge* 69. [In Persian]
- Khorrabadi Q, 'The Council Management of the Judiciary Gives a Sense of Independence to the Judges' (2009) 58 *Judiciary Monthly* 54. [In Persian]
- Leachman M, Chettiar I, and Geare B, 'Improving Budget Analysis of State Criminal Justice Reforms: A Strategy for Better Outcomes and Saving Money' (2012) Center on Budget and Policy Priorities, American Civil Liberties Union.
- Lienert I, 'The Legal Framework for Budget Systems (An International Comparison)' (2004) 4 (3) *OECD Journal on Budgeting* (Special Issue).
- Mehrpour H, *A Concise of the Constitutional Law of the Islamic Republic of Iran* (Dadgostar Publication 2014). [In Persian]
- Office of Democracy and Governance, *Guidance for Promoting Judicial Independence and Impartiality* (U.S. Agency for International Development 2002).
- Rezaei M, 'Performance Budgeting Requirements in Iran' (2016) 51 *Journal of Public Law Research* 55. [In Persian]
- Sie J, 'How 4 States Cut Their Criminal Justice Budgets Without Sacrificing Safety' (2022) National Conference of State Legislatures.
- Tangestani M Gh, *Independence and Responsibility of Judiciary* (Mizan Publication 2018). [In Persian]
- The Office of Budget and Planning, *Budgeting in Iran (Problems & Challenges)* (Majlis Research Center 2002). [In Persian]
- Webber D, 'Good Budgeting, Better Justice: Modern Budget Practices for the Judicial Sector' 3 *Law and Development Working Paper Series*, Legal Vice Presidency, The World Bank, USA.

Laws, Regulations, and Agreements

- Annotated Report of the Deliberations of the Assembly for Revising the Constitution of the Islamic Republic of Iran (1989). [In Persian]
- Annotated version of the deliberations of the Assembly for the Final Review of the Constitution of the Islamic Republic of Iran (1979). [In Persian]

Theses and Dissertations

- Momenipour E, 'Economic Analysis of the Petroleum Ownership in the Light of Efficient Property Rights' (MA Thesis, Shahid Beheshti University 2015). [In Persian]