

Rule of Law in the International System and Iranian Domestic Law: Challenges

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The rule of law is a foundational concept in modern legal and political order, emphasizing the primacy of general, transparent, stable, and equally enforceable norms applicable to all individuals and institutions, including the state itself. This principle is regarded as the cornerstone of legitimacy, predictability, and the restraint of power, both at the national and international levels. This article distinguishes between the concepts of “rule of law” and “rule by law” and proposes an operational framework for assessing the rule of law at the international level and within Iranian domestic law. The proposed framework is built upon four categories of indicators: normative quality (generality, transparency, and relative stability), institutional guarantees (independence and reviewability), transparency and proceduralism (reason-giving, publicity, and jurisdictional rules), and finally, compliance and effectiveness (independent monitoring and institutional capacity). The research method is analytical-comparative and institutional, relying on international normative instruments, the Constitution and ordinary laws of Iran, judicial practice, and legal doctrine. The findings indicate that at the international level, the effectiveness of the rule of law depends on the transparency of the relationship between state consent and peremptory norms, genuine access to impartial adjudication, judicial dialogue among bodies, and non-selective compliance mechanisms; whereas unilateralism, selective enforcement, and regime fragmentation undermine legal predictability. In Iranian domestic law, there are capacities such as due process guarantees in the Constitution, the Administrative Justice Court, and the possibility of annulment of regulations; however, challenges such as regulatory inflation, lengthy proceedings, and insufficient transparency in meta-structural decisions impair the indicators of predictability and procedural equality. The main recommendation of this study is the establishment of an ex-ante and ex-post impact assessment cycle and the periodic codification (consolidation) of laws accompanied by clarifying the criteria of expediency-based decisions. This approach would elevate law from a mere “appearance” to “normative reliability” and reduce the gap between right and power.

Keywords: Rule of law; International law; Iranian constitutional law; Administrative Justice Court; Judicial independence; Legislative quality; Compliance and enforcement.

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1. Introduction

T

he rule of law, in its general sense, is regarded as the cornerstone of legal and political order in modern



societies, aiming to restrain arbitrariness of power and ensure predictability in social relations and governance (Dicey, Albert, 1972; Neumann, 2018). According to this principle, not only citizens but also all governmental institutions are bound by general, transparent, and promulgated rules, the enforcement of which is guaranteed through effective mechanisms and independent institutions (Hashemi, 2013; Tabataba'i Mo'tameni, 2018). At the same time, this concept has various manifestations and challenges in different legal contexts, and a uniform approach cannot be adopted for all legal systems (Altman, 1999).

At the international level, the realization of the rule of law occurs within a specific framework of sources and actors. In this domain, norms consist of a combination of treaties, custom, general principles, and peremptory norms, and their implementation—in the absence of a centralized authority—depends primarily on state consent, the efficiency of dispute settlement bodies, and the cohesion of monitoring systems (Mirabbasi, 2018; Mousavi, 2018). On one hand, institutions such as the International Court of Justice, the International Criminal Court, and international arbitration mechanisms play a vital role in enhancing predictability and accountability; on the other hand, fragmentation of legal regimes, multiplicity of obligation systems, and selective enforcement of judgments undermine the effectiveness of the rule of law in this arena (Bassiouni, 2001; Pistor, 1999).

In Iran's domestic law, the rule of law is a concept that finds meaning within the framework of the Constitution of the Islamic Republic of Iran and the hierarchy of norms, and the text of the law provides significant capacities for its realization (Hashemi, 2011; Tabataba'i Mo'tameni, 2008). However, structural and procedural obstacles—such as poor legislative quality, overproduction of subordinate regulations, directive-centered rulemaking, jurisdictional overlaps, institutional opacity, and limited effectiveness of judicial oversight—have hindered the practical realization of this principle (Mazar'i, 2000; Sadr al-Hefazi, 1994). Although institutions such as the Administrative Justice Court and the Guardian Council play an important role in safeguarding this principle, empirical evidence shows that the gap between text and implementation remains deep, necessitating fundamental reforms in legislative

processes, regulatory frameworks, and procedural safeguards (Jafari, 2016; Najafi Tavana, 2020).

A review of the previous literature shows that a significant portion of studies have either focused exclusively on the theoretical aspects of the rule of law or have merely examined the challenges of a specific context, whether international or domestic. Consequently, the lack of a comprehensive and comparative analysis that examines the international sphere and Iranian domestic law in relation to each other and from the perspective of shared and intersecting challenges is clearly evident (Carother, 2006; Yousefi Jouybari & Khorshidi, 2018). The novelty of this study lies precisely in this approach: this article combines institutional and normative analysis to examine the rule of law at both international and national levels, analyzing the challenges of each in relation to the other—an approach rarely addressed in Persian-language literature (Najafi Tavana, 2010; Nezhandi Manesh & Bazdar, 2018).

From a methodological perspective, this study employs an analytical-comparative approach. First, the theoretical foundations of the rule of law and its criteria are identified and operationalized based on classical and contemporary sources. Then, at both international and domestic levels, the normative structure, the functioning of oversight institutions, and the challenges of effectiveness are analyzed, and finally, cross-cutting challenges are identified, with proposed reform pathways. The sources used include documents and judgments of international bodies, the Constitution and ordinary laws of Iran, judicial practices, and authoritative domestic and foreign doctrines, ensuring the comprehensiveness of the analysis (Boushehri, 2005; Hashemi Shahroudi, 2008).

This article is an attempt to present a coherent picture of the state of the rule of law in two seemingly different yet practically interrelated domains. As the analyses show, without enhancing transparency, institutional coordination, and enforcement guarantees, the rule of law at both levels is at risk. Therefore, the main focus of the article is not merely to explain theoretical foundations, but to identify the obstacles to its practical realization and to propose optimal solutions to strengthen this fundamental principle—an approach that can help foster greater convergence between

international standards and Iran's legal system and reduce the gap between "text" and "implementation."

2. Theoretical and Conceptual Foundations of the Rule of Law in International Legal Systems

2.1. Sources and Norms of the Rule of Law in International Systems

In the international legal order, the rule of law is not based on a centralized legislative process, but on a network of multilayered and intertwined sources that emerge from the combination of state consent and the superior norms of the international community (Aqaei & Maghsoudlou, 2011; Mirabbasi, 2018). Treaties, international custom, and general principles of law form the main pillars of this structure, while judicial practice and legal doctrine serve as tools for identifying and articulating these rules (Mirmohammad Sadeghi, 2013; Mousavi, 2018). In such an architecture, the rule of law becomes meaningful only when these sources operate in a coherent and predictable manner, rather than being merely produced and accumulated; because the interaction of state consent, reciprocity, and *opinio juris* must result in the formation of general and binding rules, not in the multiplication of conflicting norms (Neumann, 1994; Pistor, 1999).

Normative hierarchy plays a central role in this context. Peremptory norms and obligations *erga omnes* set limits to state will; even contractual consent cannot derogate from their content. Thus, the fundamental principle of constraining arbitrariness—the core of the concept of the rule of law at the international level—is achieved through acceptance of the supremacy of fundamental norms (Bassiouni, 2001; Boed, 2001). In this regard, decisions of the United Nations Security Council under Chapter VII of the United Nations Charter may also acquire supranational and binding character and temporarily fill enforcement gaps; however, their legitimacy must be evaluated based on criteria such as generality, proportionality, and conformity with the Charter to avoid being reduced to mere instruments of political will (Crocker, 2012; Naghibi Mofrad, 2016).

International custom, formed through general state practice accompanied by *opinio juris*, plays a role similar to ordinary law in many fields—from state responsibility and immunities to the law of the sea (Aqaei & Maghsoudlou, 2011; Mirabbasi, 2018). Its advantage lies

in its flexibility and wide coverage, yet difficulties in proving its elements and the time of its crystallization undermine normative predictability (Ivanisevic & Trahan, 2004). Judicial practice therefore plays a crucial role in clarifying the content of rules—from the International Court of Justice to international criminal tribunals, which, by defining the elements of crimes and the principles of fair trial, have strengthened the foundations of the rule of law at this level (Mirmohammad Sadeghi, 1998a, 1998b).

Alongside these "hard" sources, a layer of "soft" norms—such as declarations, guidelines, and technical standards—has gained increasing influence. These instruments can pave the way for behavioral convergence and raise the cost of non-compliance, potentially facilitating their transformation into binding rules; yet they only constrain arbitrariness when linked to effective monitoring and reporting mechanisms—otherwise, they merely contribute to the accumulation of non-binding and ineffective texts (Title, 2002; Tomanoha, 2004).

Overall, the sources of international law are not merely tools for producing rules; they provide the main structure for ensuring predictability and controlling power. Wherever normative hierarchies and the linkage between hard and soft sources are clearly defined and applied, the rule of law is strengthened; and wherever unchecked multiplicity of sources, unresolved conflicts, or selective enforcement prevail, the result is nothing more than rule **by** law at the international level (Carother, 2006; Neumann, 2018).

2.2. Institutions and Processes that Guarantee the Rule of Law

At the international level, the realization of the rule of law acquires meaning only in light of an institutional division of labor and a balance of processes—where norm-setting, executive decision-making, impartial adjudication, and compliance monitoring are situated in distinct bodies, and where rules of transparency, accountability, and equal access are guaranteed among them (Carother, 2006; Tomanoha, 2004). In this respect, the United Nations General Assembly functions as a "soft lawmaker": through issuing declarations and establishing thematic frameworks, it facilitates behavioral convergence among states. Although this function is not "hard" binding, by generating general

standards and reporting mechanisms it furnishes the foundations of predictability and reduces arbitrariness of power (Aqaei & Maghsoudlou, 2011; Mirabbasi, 2018). On the other side, the Security Council, as the executive arm of the international community, may, in situations involving threats to international peace and security, adopt decisions under Chapter VII of the United Nations Charter that are binding upon states. However, the concentration of such power aligns with the logic of the rule of law only when the Council's decisions are assessed in light of principles of proportionality, generality, and conformity with the Charter, and are accompanied by procedural transparency—so as not to devolve into instruments of unilateral political will (Crocker, 2012; Naghibi Mofrad, 2016).

The role of the International Court of Justice (ICJ) in completing the layer of impartial adjudication is also significant. With its interstate jurisdiction, the ICJ settles disputes on the basis of the principal sources of international law and, by issuing advisory opinions, clarifies normative boundaries—thereby enhancing the reliability of rules and interpretive coherence (Aqaei & Maghsoudlou, 2011; Mirabbasi, 2018). In addition, the international criminal justice system—including the ad hoc tribunals and the International Criminal Court—has institutionalized global standards on individual criminal responsibility and fair trial principles; nevertheless, its effectiveness depends on state cooperation, complementarity, and, at times, referrals by the Security Council—precisely the point at which tensions between law and politics must be managed through clear and predictable criteria (Bassiouni, 2001; Mirmohammad Sadeghi, 1998a).

Foundational processes constitute the other pillar of the rule of law. The treaty-making process—from negotiation and adoption to entry into force and the formulation of reservations—directly affects the transparency of rules and their capacity to restrain arbitrariness; the broader the participation of actors, the clearer the text, and the more explicit the dispute-settlement design, the stronger the normative authority of the rule (Pistor, 1999; Tomanoha, 2004). Alongside this, compliance and follow-up processes—such as human-rights treaty bodies, periodic reporting, and peer review mechanisms—raise the cost of breach and strengthen accountability, thereby increasing incentives to comply, particularly through data transparency and

regular reporting (Carother, 2006). Post-conflict experiences in the Balkans and Rwanda also show that national-level capacity building—from training judges and creating witness-support units to reforming rules of criminal procedure—is an indispensable component of sustainably internalizing rule-of-law standards (Barria.LA & Roper.S.D, 2007; Ivanisevic & Trahan, 2004).

Moreover, the role of the UN Secretariat and the Secretary-General in agenda-setting, normative mediation, and issuing analytical reports is not negligible. These soft instruments, by illuminating the relationship between executive decisions and rule-of-law benchmarks, reinforce horizontal accountability and increase transparency (Carother, 2006; Title, 2002). Nevertheless, the dispersion of adjudicatory fora—from the ICJ to investment arbitration and law-of-the-sea tribunals—entails risks of interpretive divergence and forum shopping; a situation that can be contained only through regular judicial dialogue and normative coherence (Pistor, 1999; Tomanoha, 2004).

2.3. *Fair Trial and Mechanisms Safeguarding Fundamental Rights*

In this study, “fair trial” is regarded as a key link connecting the rule of law to the actual restraint of power; only when general rules are coupled with precise procedural guarantees do judicial decisions become reliable and predictable (Title, 2002; Tomanoha, 2004). In the international arena, two principal tracks—interstate arbitration/adjudication and international criminal justice—have consolidated shared benchmarks: independence and impartiality of the forum, the right to be heard and to reply, equality of arms, reasoned decisions, publicity of proceedings, effective protection of witnesses and victims, safeguards against coercion, and adjudication within a reasonable time. Particularly within the European tradition, these are recognized as intrinsic measures of “procedural fairness,” demonstrating that the form of proceedings and the quality of process determine the substance of justice (Altman, 1999). In the transnational criminal domain, implementing witness-protection protocols and rigorous evidence management are preconditions for guaranteeing a genuine equality of arms; without such infrastructure, fair-trial principles become merely formal (Bassiouni, 2001; Ivanisevic & Trahan, 2004).

From a theoretical standpoint, although a “pure rule of law” may be unattainable, this very limitation underscores the necessity of clearly articulated procedural standards. Rules on jurisdiction, conditions for submitting evidence, and obligations to state reasons must be drafted with sufficient clarity so that the consequences of compliance and breach are predictable for the parties (Altman, 1999; Pistor, 1999). In comparative public law, administrative-procedure guarantees—from the right to be heard and the impartiality of the decision-maker to the prohibition of arbitrary decision-making and the duty to give reasons—are widely recognized as universal safeguards for controlling public decisions (Hashemi, 2011; Sadr al-Hefazi, 1994).

In international criminal justice, the practice of the ad hoc tribunals likewise shows that procedural standards are not decorative; they generate legitimacy. Early judgments of the Rwanda Tribunal—for example, those articulating evidentiary elements, the right to effective defense, and the obligation to render reasoned decisions—provided a practical template for other international bodies (Boed, 2001; Mirmohammad Sadeghi, 1998b). Furthermore, experience with outreach programs and active engagement by courts with local communities indicates that process transparency and the articulation of decision-making criteria enhance normative trust in outcomes and raise the cost of violating rules (Barria.L.A & Roper.S.D, 2007; Ivanisevic & Trahan, 2004).

2.4. Compliance and Effective Enforcement of Legal Rules

Any account of the rule of law is incomplete without analyzing compliance and enforcement mechanisms; the value of norms materializes only when the behavior of legal actors is predictable and violations entail tangible costs (Carother, 2006; Tomanoha, 2004). Internationally, enforcement is decentralized and rests on a combination of state responsibility, proportionate countermeasures, arbitration and judicial proceedings, and reputational sanctions. Hence, the quality of enforcement depends above all on the design of compliance regimes, reporting mechanisms, and independent monitoring systems; where behavioral standards are tied to periodic reporting and peer review,

breach costs rise and incentives to comply strengthen (Pistor, 1999; Title, 2002).

Transitional-justice experience shows that the mere existence of international criminal fora does not guarantee sustained enforcement; achieving this objective requires simultaneous enhancement of national institutional infrastructures. Programs such as judicial capacity-building, drafting evidentiary guidelines, witness protection, and strengthening the links between international courts and domestic judiciaries are key components of successful implementation; without them, enforcement becomes selective or merely formal (Barria.L.A & Roper.S.D, 2007; Bassiouni, 2001). In the same vein, independent monitoring of domestic proceedings is crucial; for example, periodic oversight by regional bodies of war-crimes adjudication in the Balkans revealed that combining external supervision with procedural reforms noticeably elevates compliance with rules (Ivanisevic & Trahan, 2004).

Another layer of compliance is the socialization of norms. Experience of international criminal courts shows that outreach, educational outputs, and community engagement can increase social acceptance of judgments and prevent selective narratives of justice; otherwise, the distance between rule and society widens and sustainable enforcement is threatened (Crocker, 2012; Title, 2002). From the standpoint of normative ethics, the success of frameworks for dealing with the past depends on balancing truth-seeking, accountability, and reconciliation; any imbalance either entrenches unjustified immunities or yields unstable enforcement of rules (Crocker, 2012).

In Iran’s domestic sphere, the rule of law becomes reliable only when the enforcement chain—from transparent legislation to effective judicial control—operates without rupture. First, in public law, judicial review of executive decisions and subordinate regulations must be real, accessible, and binding. The experience of the Administrative Justice Court and the literature on administrative oversight show that whenever principles such as publicity of proceedings, the obligation to give reasons, and decisive annulment powers are respected, administrative behavior aligns more swiftly with governing rules (Mahmoudi & Ghaffari, 2001; Sadr al-Hefazi, 1994). Second, in criminal policy, substantive legality must be observed—meaning

that criminal decisions should be grounded in general, predictable rules rather than in ad hoc expediency assessments or episodic circulars; such practices signal instability and weaken incentives to comply (Najafi Tavana, 2020; Noorbaha, 1999).

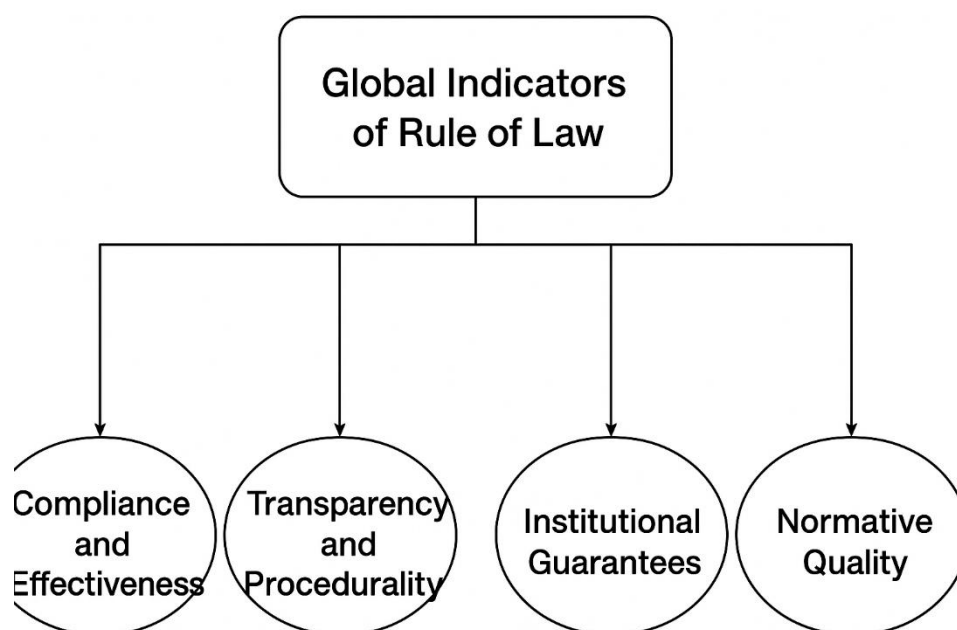
2.5. *Global Metrics and Indicators for Evaluating the Rule of Law*

For the concept of the rule of law to move beyond rhetoric and become a practical tool for assessing the

quality of governance, an analytical framework is needed—one that can clarify the distinction between the “legal form” and “law-governed content.” Drawing on classical and contemporary literature, we examine a set of indicators across four key dimensions: normative quality, institutional guarantees, transparency and procedurality, and compliance and effectiveness (Altman, 1999; Tomanoha, 2004).

Figure 1

Global Rule of Law Indicators



In the first dimension—normative quality—the focus is on the rule itself. Legal rules should satisfy criteria such as generality, promulgation and accessibility, prospectivity (non-retroactivity), clarity, non-contradiction, relative stability, and feasibility of compliance. These criteria operate as a minimal test of “legality,” playing a foundational role in predictability and normative credibility. At the international level, this translates into the quality of treaty texts, the management of reservations, and avoidance of conflict among normative regimes (Pistor, 1999; Tomanoha, 2004).

The second dimension, institutional guarantees, points to the reality that rules become reliable only when implemented by independent and accountable institutions. This dimension includes indicators such as

judicial independence, effective access to justice, reviewability of administrative decisions, and clear delineation of powers between elected and appointed bodies. In contemporary theories, the rule of law remains compatible with parliamentary democracy only if law-making tools are constrained by normative checks such as transparency and reviewability; otherwise, law is reduced to a vehicle for political will (Hashemi, 2013; Neumann, 2018).

The third dimension, transparency and procedurality, assesses the quality of legal and decision-making processes. Public hearings, duties to give reasoned judgments, clear rules on jurisdiction and evidence, and equal access to information are among the most important indicators here. Far from being decorative, these elements ground legitimacy and public trust;

comparative constitutional literature shows that wherever procedural transparency and accountability are weakened, public perceptions of justice decline and incentives to comply with rules diminish (Hashemi, 2011; Sadr al-Hefazi, 1994). In the policy domain, transparency—through public data, regular reporting, and conflict-of-interest standards—reduces the risk of selective enforcement and curbs arbitrariness (Carother, 2006; Title, 2002).

The fourth dimension, compliance and effectiveness, concerns the fitness of legal instruments to constrain arbitrariness and should not be mistaken for severity of punishment or the mere proliferation of institutions. Practical rationality in law is realized when rules can secure expectations and assure predictable behavior—meaning that citizens and the state are not only aware of the consequences of their conduct but also have effective avenues for challenge and redress. Internationally, this dimension translates into indicators such as rates of compliance with decisions of dispute-settlement bodies, the quality of periodic reporting, and interpretive convergence among judicial institutions. Efforts to promote the rule of law must avoid “checklistism”: focusing on symbols without changing incentive structures and institutional capacity only perpetuates structural problems (Carother, 2006; Tomanoha, 2004).

3. The Rule of Law in Iranian Domestic Law: Structure, Institutions, and Implementation Requirements

3.1. *The Place of the Rule of Law in the Constitution and Its Foundational Principles*

The realization of the rule of law in Iran’s domestic legal order depends, first and foremost, on the architecture of the Constitution—an architecture that must simultaneously fulfill three key functions: (i) determining the hierarchy of norms and placing general rules at the apex of the legal system; (ii) guaranteeing fundamental rights and individual liberties together with effective judicial enforceability; and (iii) designing mechanisms of accountability and inter-branch oversight to restrain power and secure normative predictability. Examining the constitutional provisions from these three angles reveals their direct relationship with rule-of-law indicators (Boushehri, 2005; Hashemi, 2011).

From the perspective of the hierarchy of norms, the Constitution establishes the authority of ordinary legislation within formal and substantive constraints. Under Articles 58 and 71, legislative competence is vested in the Islamic Consultative Assembly; at the same time, the Guardian Council’s *ex ante* review of conformity with Shari’a and the Constitution (Articles 91–96) performs a normative screening function, preventing the entry of incompatible regulations into the legal order. However, the absence of an accessible final interpreter of the Constitution and the predominance of prior over posterior review have generated serious challenges for interpretive coherence and legal predictability—issues widely reflected in Iranian constitutional scholarship. At lower levels, Article 138 limits the executive’s power to enact by-laws and regulations to “implementing laws,” while Article 170 explicitly recognizes judges’ authority to refuse to apply unlawful or un-Islamic regulations and the Administrative Justice Court’s competence to annul such regulations. From a rule-of-law perspective, these are fundamental mechanisms for constraining administrative arbitrariness (Amid Zanjani, 2008; Sadr al-Hefazi, 1994; Tabataba’i Mo’tameni, 2018).

From the standpoint of fundamental rights and procedural safeguards, Articles 32–39 of the Constitution entrench a set of criminal- and civil-procedure rights at the highest normative level, including the right to a fair trial, the prohibition of arbitrary arrest, the presumption of innocence, the principles of legality of crimes and punishments, and protection of dignity and freedom of belief. Article 34 recognizes the right to litigation as a public, inalienable right, and Article 36 provides that criminal penalties may be imposed only by a competent court and on the basis of law. These propositions directly relate to indicators of normative predictability and procedural equality and, if implemented, can reinforce citizens’ expectation security and trust in the judiciary. Articles 19 and 20 likewise emphasize equality of all persons before the protection of the law and equal enjoyment of human rights—obligations that, within the rule-of-law framework, translate into a practical duty on administrative and judicial bodies to avoid discrimination (Hashemi, 2013; Noorbaha, 2004).

Regarding mechanisms of accountability and inter-branch oversight, in addition to the supervisory role of the Guardian Council, two institutions are of particular

significance: the Administrative Justice Court (Article 173) and the Supreme Audit Court (Article 55). The Administrative Justice Court is the principal forum for judicial control of regulations and administrative decisions, enabling review of executive action; the Supreme Audit Court serves as an instrument of financial auditing and accountability for executive bodies. The effectiveness of these mechanisms depends on three key factors: effective access by individuals to the Administrative Justice Court, binding compliance by agencies with annulment judgments, and transparency of reasoning in judicial decisions. Any deficiency in these three respects directly weakens indicators of reviewability and non-selective enforcement (Mahmoudi & Ghaffari, 2001; Sadr al-Hefazi, 1994; Tabataba'i Mo'tameni, 2008).

Nonetheless, features specific to Iran's legal system—particularly the relationship between Shari'a and state law and the position of the political leadership—pose distinct challenges for realizing the rule of law. Article 4 requires that all laws and regulations conform to Islamic criteria, and interpretation of this article lies within the competence of the Guardian Council. From a rule-of-law perspective, coherence and predictability are achieved when the Council's interpretive criteria are transparent, accessible, and stable; otherwise, normative uncertainty increases and predictability weakens. Moreover, the role of the Expediency Discernment Council in resolving conflicts between expediency and general rules can, absent clear procedural and substantive standards, heighten the risk of sliding from "rule of law" to "rule by law." Iranian constitutional scholarship locates the solution in adopting explicit criteria for expediency decisions and a duty to give reasons so that the relationship between such decisions and general rules can be evaluated (Hashemi Shahrudi, 2008; Mehrpour, 1992, 1993).

3.2. *Hierarchy of Norms and Conflicts Among Laws*

A hierarchy of norms is compatible with the logic of the rule of law only when the place of each layer is clearly defined, the relationships among different levels of rules are predictable, and conflict-resolution mechanisms operate effectively and transparently. In the Iranian legal system, the apex of the normative pyramid is fixed by the Constitution, and Article 4 imposes a general constraint of "conformity with Islamic criteria" on all laws and

regulations. Accordingly, any ordinary rule or subordinate regulation must simultaneously accord with the Constitution and with Shari'a standards. If implemented with transparent interpretive criteria and disciplined procedure, this arrangement can produce certainty and normative predictability; in the absence of such clarity, however, the risks of legal uncertainty and interpretive fragmentation increase (Hashemi, 2011; Tabataba'i Mo'tameni, 2018).

At the level of ordinary legislation, legislative competence is vested in the Islamic Consultative Assembly, and enactments acquire validity after the Guardian Council's *ex ante* review. In principle, this review functions as a filter designed to prevent conflicting norms from entering the system. However, when such prior review substitutes for effective posterior mechanisms—such as continuous statutory consolidation (*tanqih*), *ex post* evaluation of regulatory performance, and direct access of individuals to a final constitutional interpreter—the accumulation of conflicts and normative inflation becomes inevitable. From a rule-of-law perspective, an efficient hierarchy requires a dynamic cycle for continuously measuring and improving legislative quality, not merely a gatekeeping control at the point of entry (Amid Zanjani, 2008; Mazar'i, 2000; Tabataba'i Mo'tameni, 2018).

Within the layer of subordinate regulations, Article 138 of the Constitution authorizes the executive to enact by-laws and decrees but limits that power to "implementing laws." This constraint means the government is not permitted to create autonomous rules and must act within the framework of ordinary statutes. Where by-laws enhance clarity by defining procedures, timelines, and operational indicators with precision, the normative hierarchy functions more effectively; but whenever such regulations become substitutes for statutes, the pyramid inverts and the rule of law slides toward rule by law. In these circumstances, the Administrative Justice Court plays a vital role in restoring hierarchical balance: by exercising its power to annul *ultra vires* or unlawful regulations, it re-establishes vertical relations and creates meaningful deterrence against administrative arbitrariness (Sadr al-Hefazi, 1994; Tabataba'i Mo'tameni, 2008).

In addition, "general policies of the system" and expediency-based decisions, as supra-structural layers, profoundly affect the hierarchy. General policies, which

set binding orientations for the three branches, can become potential sources of conflict if they lack clear criteria for translation into ordinary statutes. The optimal solution is to define a precise pathway for converting policy into law—including legislative drafting standards, mandatory impact assessment, reason-giving obligations, and avoidance of ad hoc interventions in the law-making process. Likewise, expediency decisions by the Expediency Discernment Council should remain rule-bound exceptions—narrow in subject matter, temporary in duration, and reasoned in justification—so that the principle of predictability is not impaired (Hashemi Shahrudi, 2008; Mehrpour, 1992, 1993).

At the level of ordinary legislation, consolidation and conflict-resolution are as important as Shari'a and constitutional review. The accumulation of conflicting or obsolete statutes, the proliferation of topic-specific regulations, and the absence of ex post legislative evaluation weaken citizens' expectation security and raise the costs of compliance. The legislative-reform literature emphasizes the need for continuous consolidation, reduction of scattered cross-references, and standardization of drafting techniques so that Fuller-type criteria—generality, clarity, promulgation, and relative stability—are observed in ordinary laws as well (Boushehri, 2005; Noorbaha, 1999; Tabataba'i Mo'tameni, 2008). From a comparative perspective, a normative pyramid functions well when the boundaries of delegated legislation are specified, effective judicial control is exercised, and public promulgation of regulations is guaranteed (Tabataba'i Mo'tameni, 2018). Regulatory powers of bodies outside the executive—such as high councils or specialized authorities—pose another significant challenge. The more these powers are dispersed, and the blurrier the line between policymaking and law-making, the greater the risks of duplication and conflict with ordinary statutes. A sound response is to subject regulation-making powers to clear legal warrants, to define precise limits of authority, and to establish unified judicial oversight over all generally applicable regulations. Comparative experience shows that systems providing a binding pathway for registration, publication, and judicial annulment of cross-sectoral regulations perform better on indicators of normative predictability and procedural equality (Pistor, 1999; Sadr al-Hefazi, 1994; Tabataba'i Mo'tameni, 2018).

Finally, with respect to international law, the place of treaties in the hierarchy of norms must be defined transparently in a way that both preserves the principle of state consent and secures the implementation of international obligations. The clearer the domestic pathways for accession, approval, publication, and implementation of treaties—and the clearer their relationship to conflicting statutes—the lower the normative incongruity and the stronger the reliance interests of actors (Aqaei & Maghsoudlou, 2011; Mirabbasi, 2018).

3.3. *Judicial Independence and the Guarantee of a Fair Trial*

Judicial independence acquires meaning within the rule-of-law framework only when institutional, functional, and personal layers are strengthened simultaneously and when the quality of adjudication reflects the output of this system. At the institutional layer, the separation of functions, methods of judicial appointment and promotion, security of tenure, and an independent budget must be designed to minimize the structural dependence of the judiciary on political organs. Comparative public-law experience shows that the more transparent and rule-bound the processes for judicial appointment and discipline, the higher the public trust in adjudication and the greater the reliability of judgments (Hashemi, 2011; Sadr al-Hefazi, 1994).

At the functional layer, judicial independence entails immunity of the judge from personal liability for the content of judgments—except in cases of clear disciplinary violations. Such immunity safeguards impartial decision-making and is regarded in comparative law as the core of procedural fairness. In parallel, the personal layer of independence depends on continuous judicial training, an effective conflict-of-interest regime, and financial transparency—components that enable judicial mental independence and the issuance of reasoned decisions grounded in legal principle (Altman, 1999; Hashemi, 2013).

In criminal proceedings, realizing indicators of independence and impartiality requires guaranteeing defense rights from the outset to the conclusion of the case: the right to prompt notification of the charge, effective access to counsel at all stages, equality of arms, and the ability to confront the opposing evidence. The Iranian fair-trial literature emphasizes that without

these guarantees, the “form of trial” can never yield a reliable outcome. Correspondingly, clear rules concerning the legality of evidence, prohibitions on coercion, and assessment of probative value are essential so that judicial decisions rest on transparent legal grounds rather than external pressures (Noorbaha, 2004; Taha & Ashrafi, 2007; Tahmasbi, 2017).

Time is also foundational to independence and adjudicative quality. Undue delay—by eroding evidentiary memory, raising access costs, and weakening defense rights—threatens justice; accordingly, establishing standards of reasonable time and active case management in procedural codes is necessary. Likewise, a transparent regime governing security measures and pre-trial detention must honor the presumption of innocence, and any liberty-restricting decision should meet requirements of necessity, proportionality, and effective appeal (Noorbaha, 2004; Tahmasbi, 2017).

Structurally, unification of judicial precedent and high-level judicial oversight play pivotal roles in safeguarding impartiality. The more transparently unifying decisions are adopted—with sufficient reasoning and timely publication—the more interpretive dispersion declines and citizens’ legal expectations are secured; otherwise, conflicts of decisions make judicial independence resemble outcome arbitrariness. In administrative law, effective judicial control over administrative decisions and a duty to give reasons prevent “administrative discretion” from devolving into executive arbitrariness (Hashemi, 2011; Sadr al-Hefazi, 1994).

Another dimension of judicial independence concerns the quality of reasoning in judgments and epistemic accountability. A reasoned decision not only justifies the outcome but also provides a binding framework for analogous cases—especially when the reasoning clarifies the relationships among peremptory norms, constitutional principles, and ordinary legislation. The philosophy of law literature shows that the clearer the relationship among practical rationality, normative ethics, and judicial reasoning, the stronger normative predictability becomes and the farther adjudication moves from the charge of arbitrariness (Altman, 1999; Neumann, 2018).

From a criminal-policy perspective, judicial independence does not end with court structures; criminal-justice policy must also align with rule-of-law

principles. When subordinate regulations and ad hoc circulars continuously alter procedural pathways, judges face contradictory signals and the practical independence of decision-making is weakened. Critical research on Iranian criminal policy emphasizes that overreliance on episodic and leniency-based tools, absent general and predictable frameworks, leads to heterogeneous outcomes and unstable expectations (Najafi Tavana, 2020; Noorbaha, 1999).

In restorative justice, judicial independence remains compatible with restorative aims only when criteria for case admission, the informed consent of victims, and judicial control over agreements are transparent and rule-bound; otherwise, the mechanism can be misused to bypass defense guarantees. Similarly, in state and official civil liability, clarity in the standards of fault and compensation both sends a deterrent signal to the executive and strengthens public confidence in judicial impartiality (Farajiha, 2017; Hashemi, 2013).

3.4. *Legislative Quality and the Necessity of Regulatory Impact Assessment*

Legislative quality acquires meaning within the rule-of-law framework only when the entire cycle of producing and reviewing rules follows a systematic, rule-bound logic. This cycle comprises precisely defining the problem, evaluating policy alternatives, assessing impacts and consequences, drafting clear text, and periodically consolidating (tanqih) statutes. At the first step, clarifying the aim of legislation is fundamental; wherever the objective is set ambiguously or in overly general terms, the result is inflation of legal instruments, conflicts among norms, and unnecessary complexity in the legislative system (Mehrpour, 1993). Next, option-generation requires a serious comparison between legal and non-legal solutions so that “law” is treated as the last instrument—adopted only if it is practically superior to other alternatives; otherwise, the legislative system succumbs to “legalism,” and implementation capacity declines (Hashemi, 2013; Tabataba'i Mo'tameni, 2018).

Regulatory impact assessment is the next key step. At this stage, the fiscal, operational, and even human-rights dimensions of statutes should be anticipated to prevent unintended conflicts or uncontrollable side effects. Comparative experience shows that whenever drafting is coupled with analysis of budgetary burdens and institutional capacity, textual clarity, structural

coherence, and the feasibility of effective implementation increase (Pistor, 1999; Tomanoha, 2004). In addition, statutory drafting should follow standardized formal guidelines: concepts must be defined precisely, scattered and ambiguous cross-references reduced, and provisions arranged in an orderly, logical fashion. Comparative public-law research indicates that observing these drafting rules strengthens predictability and the adjudicative usability of statutes (Hashemi, 2011; Sadr al-Hefazi, 1994).

However, legislative quality is not limited to “making law”; it also depends on “post-enactment life.” Continuous consolidation and pruning of statutes, integration of scattered regulations, and explicit identification and proclamation of repeals are tools that clarify horizontal relations among norms and resolve conflicts. The absence of such periodic reviews leads to the accumulation of incompatible laws and the erosion of legal certainty (Boushehri, 2005; Noorbaha, 1999). In parallel, ex post impact evaluation should occur at defined intervals so that potential inefficiencies are detected and targeted reforms can be undertaken; neglecting these evaluations stalls the legislative learning cycle (Altman, 1999; Tomanoha, 2004).

In Iran’s national context, legislative quality is directly tied to the indicator of “substantive legality.” The clearer and more impersonal the aims and decision criteria are stated in criminal and administrative statutes, the narrower the scope for discretionary interpretation—and the smaller the gap between the “form of law” and its “reliability.” The absence of impact assessment and overreliance on subordinate instruments—such as by-laws and circulars—have produced heterogeneous outcomes and heightened expectation instability (Najafi Tavana, 2020; Noorbaha, 1999). By contrast, embedding impact-assessment mechanisms in the legislative process and obligating the legislator to give reasons—especially in sensitive domains like criminal and administrative law—enhances predictability and accountability (Carother, 2006; Hashemi, 2013).

3.5. *Guaranteeing Institutions and the Role of Checks and Balances in Realizing the Rule of Law in Iran*

Checks and balances align with the logic of the “rule of law” only when a network of guaranteeing institutions is designed to enable mutual restraint and continuous review, preventing the concentration of political will at a

single point. In Iran’s legal system, in addition to the three classical branches, bodies such as the Guardian Council, the Administrative Justice Court, the Supreme Audit Court, and oversight institutions within the judiciary and the executive play distinct guaranteeing roles. This network is effective only when competences are clear, procedures are predictable, and institutional accountability mechanisms are well defined (Amid Zanjani, 2008; Tabataba’i Mo’tameni, 2008).

Theoretically, the edifice of the “Rechtsstaat” rests on the premise that any expansion of powers must be accompanied by heightened requirements of transparency and review; otherwise, instruments such as “general policies” or “expediency decisions” become pathways for evading general rules and undermining legal security. Iranian public-law scholarship emphasizes the need to define the subject-matter scope, temporal limits, and reasoning obligations for such decisions so that normative predictability is not impaired (Hashemi Shahroudi, 2008; Mehrpour, 1992). Simultaneously, institutionalizing ex post evaluation and requiring the public publication of reasons for supra-structural decisions are essential—an approach that clarifies the relationship between such decisions and general rules and prevents the conversion of exceptions into the rule (Boushehri, 2005; Hashemi, 2013).

From a comparative perspective, successful systems of checks and balances show that cross-sectoral regulators must follow specified pathways such as registration and public promulgation of decisions, stakeholder consultation, and susceptibility to judicial annulment. Such design strengthens institutional trust and improves predictability indicators (Carother, 2006; Title, 2002). In Iran’s national setting, it is necessary to regularize the relationship of the Guardian Council and the Expediency Discernment Council with the legislative process—meaning that expediency decisions should be reduced to temporary, limited exceptions and that avenues for judicial or parliamentary review should be provided within clear frameworks (Hashemi, 2011; Mehrpour, 1993).

3.6. *The Relationship Between Shari’a and Statute in Iran’s Legal System*

The relationship between “Shari’a” and “statute” in Iranian constitutional law is a pivotal point in evaluating realization of the rule of law. Article 4 of the Constitution

stipulates that all laws and regulations must be drafted and enforced in accordance with Islamic criteria. From a rule-of-law standpoint, this constraint is compatible with normative predictability, generality of rules, and procedural equality only if the process of translating Shari'a standards into general rules is transparent and assessable.

Domestic legal scholarship proposes three foundational axes to achieve such compatibility: first, adopting clear and accessible interpretive criteria for assessing conformity of statutes with Islamic standards, so that shifting or unpredictable interpretations do not generate normative uncertainty (Hashemi Shahroudi, 2008; Hashemi, 2013). Second, confining hukm-e hokūmatī (governmental decrees) to exceptional, reasoned, and time-bound cases; unlimited expansion of such decrees destabilizes the normative hierarchy and turns law into a cover for political will (Amid Zanjani, 2008; Namazi Far, 2000). Third, requiring the conversion of case-specific expedencies into general rules through a transparent, public legislative process, so that "expediency" remains a rule-governed exception and can be evaluated within the framework of general norms (Boushehri, 2005; Hashemi, 2011).

In the realm of criminal policy, a precise distinction between primary and secondary rulings and clear criteria for invoking valid expedencies are of heightened importance. Alignment with the rule of law is achieved when both judge and citizen can foresee the consequences of decisions and, where necessary, have effective avenues of challenge (Noorbaha, 2004; Taha & Ashrafi, 2007).

Thus, the relationship between Shari'a and statute is not inherently a source of structural conflict but rather a test of rule-governing of exceptions. Whenever such exceptions are applied outside the framework of general rules, the outcome is a slide from the rule of law to rule by law—a state in which the legal façade is preserved but the constraining and equalizing content of the rule is weakened (Altman, 1999; Neumann, 2018).

4. Challenges to Realizing the Rule of Law: A Comparative Approach between the International Level and Iran

4.1. Structural and Normative Challenges at the International Level

The challenges of realizing the rule of law at the international level can be grouped under three key axes: rule production, executive decision-making, and dispute settlement; each axis has its own vulnerability which, if disrupted, tilts the legal order toward "rule by law."

In the axis of rule production, the strong dependence of norms on state consent, alongside the existence of superior normative tiers such as peremptory norms, creates a fundamental tension. The more clearly the contours of these superior norms are defined and their relationship to contractual obligations is clarified, the greater the legal predictability; otherwise, great powers can, through selective interpretations, weaken the function of general rules (Nezhandi Manesh & Bazdar, 2018). This challenge also appears in international criminal law: while accountability for international crimes presupposes acceptance of superior norms, the absence of complementary mechanisms at the national level renders their enforcement fragile (Bassiouni, 2001).

In the axis of executive decision-making, the concentration of power in the United Nations Security Council enables swift reaction but heightens the risk of selective enforcement—particularly when a security-driven logic overrides principles of proportionality, generality, and interpretive transparency (Carother, 2006; Title, 2002). In addition, the proliferation of unilateral coercive measures outside the United Nations framework undermines normative legitimacy, generates unbalanced human-rights consequences, and fuels institutional distrust among states (Mousavi, 2018; Naghibi Mofrad, 2016).

In the axis of dispute settlement, the extensive reliance on consent-based jurisdiction and the limited direct access of individuals to international fora reduce the capacity for reviewability. Although the International Court of Justice plays an essential role in clarifying content and promoting interpretive coherence, the lack of centralized enforcement often leaves compliance with judgments to the political calculations of states (Aqaei & Maghsoudlou, 2011).

Concurrently, regime pluralism and the expansion of arbitral and quasi-judicial bodies—in fields such as investment, human rights, and the law of the sea—without coherent judicial dialogue, produce divergent

interpretations and forum shopping; in such a setting, powerful parties may secure outcomes that are predictable yet unjust by selecting a favorable forum (Pistor, 1999; Tomanoha, 2004). Moreover, conditionality policies, though potentially useful for steering state behavior, risk politicizing justice in the absence of general and non-selective criteria (Carother, 2006).

A similar duality appears in international criminal justice: the institutionalization of mechanisms to prosecute international crimes and the development of shared fair-trial standards have, on one hand, advanced individual accountability; on the other hand, the system's dependence on state cooperation and Security Council referrals poses serious challenges to effective enforcement of judgments (Bassiouni, 2001; Ivanisevic & Trahan, 2004). The lack of national capacity-building and of independent monitoring slows and weakens justice; likewise, developing transitional-justice mechanisms without a careful balance among truth-seeking, accountability, and reconciliation invites selective or merely symbolic enforcement (Crocker, 2012).

Furthermore, issues of memory and narrative in post-conflict societies deeply affect the social acceptance of rules. Wherever official reports and quasi-judicial mechanisms are designed without stakeholder participation and narrative rigor, one-dimensional accounts emerge and the normative legitimacy of rules is weakened. Conversely, active participation by regional institutions and civil society in implementation increases the cost of violation and strengthens incentives to comply (Barria.L.A & Roper.S.D, 2007; Ivanisevic & Trahan, 2004).

4.2. Challenges to Realizing the Rule of Law in Iran

4.2.1. Circular-Driven Governance and the Inflation of Subordinate Regulations

The gradual substitution of subordinate regulations for ordinary legislation is one of the most significant challenges to realizing the rule of law in Iran and is a direct consequence of weaknesses in the "considered legislation—continuous consolidation—ex post review" cycle. When by-laws and circulars, instead of performing their natural role of implementing enacted statutes, become instruments for setting public policy, the hierarchy of norms is inverted. In such circumstances,

variable and low-stability rules erode the predictability of administrative behavior and deprive judges of reliance on general, clear norms (Mazar'i, 2000).

Another consequence is horizontal inequality among persons subject to the same statute: each administrative body acts pursuant to its internal circulars, and a uniform interpretation of the statute fails to emerge. This leads to multiple administrative practices, diminished institutional trust, and increased compliance costs for citizens (Tabataba'i Mo'tameni, 2018).

To remedy this problem and return circulars to their proper place as instruments for implementing the law, three complementary measures are proposed:

(a) **Narrowing the scope of regulation-making:** executive bodies' authority to enact regulations must be explicitly confined to the clear boundaries of ordinary statutes and their stated aims. This requires strengthening review of ultra vires enactments and preventing regulations that defeat statutory purposes.

(b) **Publication and public consultation:** generally applicable regulations should, prior to enforcement, be subject to transparent publication and public consultation. This process enhances accountability and bolsters the legitimacy and social acceptance of such regulations.

(c) **Effective access to annulment of regulations:** the Administrative Justice Court should reinforce its role in annulling unlawful or ultra vires regulations through transparent, public, and low-cost procedures; issuing bodies must also be required to provide clear, written reasons defending their enactments.

Implementing these three interlocking steps repositions the circular from a "source of rule-production" to its proper role as an "instrument of execution," thereby improving indicators of normative predictability and procedural equality (Mazar'i, 2000; Sadr al-Hefazi, 1994; Tabataba'i Mo'tameni, 2008).

4.2.2. Overlapping Competences and Ambiguity of Powers

The dispersion of legislative and regulation-making competences across bodies such as high councils, specialized authorities, and the executive—absent clear criteria distinguishing "policymaking" from "lawmaking"—constitutes a serious challenge to the rule of law in Iran. This dispersion has a dual impact: first, institutional conflict and duplication in drafting

regulations; second, regulatory selectivity, wherein bodies choose among conflicting rules those parts most aligned with their interests (Najafi Asfad & Mohseni, 2007).

Under these conditions, citizens struggle to identify accountability pathways and to know which body is responsible for the regulations that affect their lives and rights. Judges, simultaneously, face a mass of overlapping or conflicting rules, which reduces normative coherence and undermines legal predictability (Tabataba'i Mo'tameni, 2008).

The solution lies in designing a “single pathway” for every generally applicable norm—one that incorporates four essential components:

1. **Explicit statutory warrant:** every regulation must be clearly grounded in an ordinary statute and must not be enacted ultra vires.
2. **Public consultation process:** drafting generally applicable regulations should involve stakeholders and expert bodies to enhance transparency and legitimacy.
3. **Official registration and publication:** timely promulgation and open access to all regulations are prerequisites for reducing duplication and creating normative coherence.
4. **Judicial annulment before a single forum:** to avoid conflicts of competence, a single judicial body—such as the Administrative Justice Court—should have exclusive jurisdiction to annul unlawful regulations (Boushehri, 2005; Hashemi Shahroudi, 2008).

In addition, preparing a “competence map” is necessary—one that clearly identifies the scope of each body’s powers and its relationship to ordinary statutes. Such recalibration reduces institutional duplication, clarifies accountability pathways, and increases the expectation security of citizens and institutions. In the absence of these reforms, even the best statutes will prove ineffective in practice due to institutional conflicts (Hashemi, 2011; Tabataba'i Mo'tameni, 2018).

4.2.3. *Protracted Proceedings and Inefficiencies in the Adjudicatory System*

Protracted proceedings not only reduce the efficiency of the judiciary but also directly weaken rule-of-law indicators, because they affect both the probative value of evidence and the right to defense. On the one hand,

long intervals between the emergence of a dispute and adjudication erode the evidentiary value of proof; on the other, lengthening of the process increases the financial and psychological costs borne by the parties and diminishes incentives to pursue legal remedies. This vicious cycle ultimately undermines public trust in judicial justice (Tahmasbi, 2017).

The roots of this problem are primarily managerial and procedural. The absence of binding adjudication calendars is one of the principal drivers of delay; without a set timetable for hearings and issuance of judgments, parties remain in limbo and face serial postponements. In addition, non-standardized disclosure of evidence and inconsistencies in formal requirements place heavier burdens of proof on litigants and extend the time needed to complete case files. Frequent changes in procedures and administrative/judicial circulars—especially in the absence of unified systems for accessing applicable rules—further produce implementation mismatches and widen interpretive divergence (Hashemi, 2011, 2013).

Moreover, the widespread use of pre-trial detention without careful adherence to necessity and proportionality criteria not only increases the judiciary’s workload but also violates the presumption of innocence and weakens defendants’ defense rights. This, in turn, generates derivative cases and fresh complaints, exacerbating the cycle of delay (Noorbaha, 2004; Taha & Ashrafi, 2007).

The exit strategies from this cycle lie in procedural and managerial reforms:

1. **Case management with firm calendars:** oblige adjudicatory bodies to adopt scheduled timetables for hearings and for issuing judgments.
2. **Restricting pre-trial detention:** set clear criteria for detention, accompanied by effective judicial control and immediate avenues of appeal.
3. **Standardizing evidence disclosure:** establish unified procedures for access to and exchange of evidence between parties and the court.
4. **Developing alternative dispute-resolution mechanisms:** employ mediation, conciliation, and expedited proceedings for lower-value civil or minor criminal cases, so that judicial resources can concentrate on core matters

(Hashemi, 2011; Noorbaha, 2004; Tahmasbi, 2017).

The ultimate aim of these reforms is to enhance the efficiency of adjudication and to convert the “form of trial” into a reliable capacity for dispute resolution—one that both increases the predictability of outcomes and strengthens public confidence in justice.

4.2.4. *Governmental Decrees and the Challenge of Legal Transparency*

In Iran’s legal system, governmental decrees and expediency-based enactments, as supra-structural decisions, must remain limited and rule-bound exceptions; the logic of the rule of law requires that their subject matter, duration, and reasoning be clearly circumscribed, otherwise the boundary between “general rule” and “exception” is blurred and normative predictability is severely weakened (Hashemi Shahrudi, 2008; Mehrpour, 1992). The core problem at present is the lack of promulgated criteria for determining the “necessity” and “limits” of such decisions, allowing them—without clear standards—to restrict or suspend general rules while the decision-maker, absent a duty to provide transparent reasons, remains insufficiently accountable and citizens and courts cannot foresee the legal consequences of these measures (Hashemi, 2013).

To align these decisions with the rule-of-law logic, a binding framework is necessary that encompasses both formal and substantive requirements: formally, public disclosure of reasons, setting a temporal horizon for the validity of expediency decisions, and a duty to convert “necessity” into ordinary legislation at the first legislative opportunity; substantively, confining governmental decrees to truly exceptional cases so that ad hoc expedencies cannot displace general rules, while also establishing ex post evaluation mechanisms to assess their effects. Implementing such reforms ensures that governmental decrees and expediency measures are managed within the orbit of general rules, keeps exceptions narrow and trackable, strengthens normative predictability, and shifts these tools away from a “rule-by-law” function toward realizing the rule of law (Amid Zanjani, 2008; Boushehri, 2005; Hashemi, 2011).

4.2.5. *The Data Gap and the Lack of Transparency in Institutional Performance*

The rule of law cannot be sustained without public access to reliable, verifiable data, because informational transparency undergirds social oversight, reduces conflicting interpretations, and strengthens institutional trust. Currently, the absence of centralized platforms for publishing unifying precedents, plenary decisions, Administrative Justice Court judgments, and generally applicable regulations produces three negative outcomes: diminished social oversight, increased litigation cost and time, and the spread of inconsistent interpretations that intensify conflicts of practice. Public-law studies show that institutional transparency and reporting constrain selective enforcement and raise the cost of administrative arbitrariness (Naghbi Mofrad, 2016; Title, 2002). Practical experience likewise indicates that without public repositories of regulations and decisions, judges confront heterogeneous statutory interpretations, citizens cannot identify proper avenues for claims or appeals, and executive bodies can selectively invoke rules (Boushehri, 2005; Hashemi, 2013).

Three key steps are proposed to remedy this deficiency: creating a single online platform for registering and publishing all generally applicable regulations and authoritative decisions; imposing a duty to give reasons in impactful administrative and judicial decisions and conditioning their legitimacy on public dissemination; and establishing public-feedback mechanisms prior to adopting sensitive regulations to gauge effects and prevent hasty enactments. Realizing these reforms strengthens three foundational rule-of-law indicators—reviewability of decisions, normative predictability, and non-selective enforcement—whereas informational opacity fosters exception-driven governance and erodes institutional trust (Carother, 2006; Hashemi, 2011). The unified publication of performance data and authoritative decisions clarifies the accountability map for both citizen and judge and, ultimately, promotes convergence of practice.

4.3. *Cross-Cutting Challenges between Domestic and International Levels*

4.3.1. *Implementing Treaty Obligations Domestically*

Implementing treaty obligations at the domestic level faces multiple challenges, the most important of which is ambiguity regarding the normative rank of treaties vis-à-vis ordinary statutes. The absence of clear specification leaves judges uncertain about which rule to apply and prevents private actors from predicting legal consequences. Ideally, the accession statute should specify its exact relationship to existing laws, expressly determine a conflict-resolution mechanism, and guarantee official publication of the authentic treaty text (Aqaei & Maghsoudlou, 2011; Mirabbasi, 2018). Another challenge is the lack of unified judicial practice in invoking treaty provisions; courts should, where domestic statutes postdate treaties, employ “consistent interpretation,” and where a clear conflict exists, activate tools such as constitutional or administrative review to remove the incompatibility. Without such a chain, consequences proliferate: reduced normative predictability for citizens and economic actors, heightened conflict among executive and judicial bodies, and increased risk of international responsibility—particularly in areas such as human rights and foreign investment where individuals’ ability to rely on treaty obligations is vital (Hashemi, 2013; Mirmoosavi, 2005).

4.3.2. *The Principle of Equality of Citizens and States in Engagement with Supranational Regimes*

The intersection of the two logics—“equality of states” and “equality of citizens”—especially in applying human-rights treaties or state civil liability, poses a major challenge for the domestic legal order. On the one hand, compliance with obligations arising from the equality of states is necessary; on the other, one must not depart from the foundational value of citizens’ equality before the law. Theoretical literature suggests the solution lies in strengthening intermediary institutions—-independent courts and accountable regulators capable of translating international rules into transparent, enforceable standards for individuals and preventing those rules from being reduced to instruments of “rule by law” (Krygier, 2001; Neumann, 2018).

In Iran’s legal context, achieving this aim requires three key preconditions: first, clarifying the relationship

among Shari’a, statute, and international obligations through explicit interpretive criteria; second, creating coherent judicial practice for consistent reliance on treaty provisions in domestic decisions; and third, designing institutional mechanisms to ensure accountability for executive decisions premised on supranational commitments (Mirmohammad Sadeghi, 2013; Nezhandi Manesh & Bazdar, 2018). Absent these preconditions, adverse outcomes follow: internationally, the credibility of Iran’s commitments declines and friction with oversight regimes intensifies; domestically, practical inequality in access to treaty-based rights increases. Transitional-justice experience further highlights this tension, because applying transnational accountability rules without internal judicial and administrative capacity-building both weakens public trust in procedural equality and reduces implementation of international obligations to formalism (Title, 2002).

5. Conclusion

After analyzing the rule of law at both national and international levels, several key findings emerged:

At the international level, the results indicated that the effectiveness of the rule of law depends on clarifying the relationship between state consent and higher-order norms, ensuring meaningful access to impartial adjudication, fostering regular judicial dialogue among institutions, and designing non-selective compliance mechanisms. Wherever these prerequisites are strengthened, normative predictability and trust increase; and wherever unilateralism, selective enforcement, or regime pluralism prevail, the system slides toward “rule by law,” even if a body of legal texts exists.

In Iran’s domestic legal system, significant capacities were observed in the text of the Constitution and within oversight institutions: procedural guarantees, the jurisdiction of the Administrative Justice Court to annul subordinate regulations, and the possibility of non-application of regulations contrary to law. However, several structural and procedural bottlenecks were found to weaken rule-of-law indicators: circular-driven governance and the inflation of subordinate regulation instead of legislation, overlapping competences and institutional duplication, protracted proceedings and unstable procedural standards, poor legislative quality and the absence of impact assessment and periodic

consolidation, and finally, ambiguity in the criteria for supra-structural (expediency-based) decisions and the domestic incorporation of treaty obligations. Collectively, these issues reduce predictability, erode procedural equality, and raise the costs of compliance.

A reform pathway aligned with the assessment framework can be outlined as a “cohesive package”:

- (1) establishing a legislative cycle based on ex ante/ex post impact assessment and periodic consolidation, alongside a duty to state the reasons for legislation;
- (2) restricting subordinate regulation-making to “implementing law,” mandating public consultation and formal publication for every generally applicable regulation, and strengthening enforcement of compliance with annulment rulings of the Administrative Justice Court;
- (3) recalibrating the competence map and creating a unified pathway for registration, publication, and judicial annulment of all general regulations;
- (4) reinforcing procedural guarantees through early access to counsel, case management, and judicial control of pre-trial detention based on necessity/proportionality;
- (5) clarifying the criteria and temporal scope of expediency decisions and converting them into ordinary legislation at the first legislative opportunity;
- (6) creating a unified online platform for authoritative decisions and regulations and requiring periodic performance reporting; and
- (7) clarifying the normative status of treaties and strengthening the practice of “consistent interpretation” in domestic adjudicatory bodies.

To monitor progress, it is recommended to develop a “Rule of Law Scorecard” based on the same four clusters: text indicators (clarity, consistency, stability), institutional indicators (independence and reviewability), procedural indicators (publicity, reasoning, jurisdiction/evidence rules), and enforcement indicators (compliance rates with judgments/annulments, adjudication time, access and cost). Pilot implementation of this scorecard in selected domains—such as economic regulation and criminal procedure—can provide an empirical picture of the gap between the current situation and the desired standard and guide subsequent reforms in a targeted way.

Authors’ Contributions

Authors contributed equally to this article.

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

Transparency Statement

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