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The right to health on accessibility to medicines and health services: A comparative study of Iranian Laws and international documents

Shahriar Eslamitabar¹, Seyed Mohammad Hashemi^{2*}, Abbas Kebriyaeezadeh³, Mohammad Javad Rezaiezadeh¹

ABSTRACT

Background: Right to health has always been one of the main concerns of human beings and based on international standards and documents, it is considered as an important part of human right. Today, right to health on accessibility to health-care services and medicines is believed to be the main core of the right to health and the most important base of justice in health. The purpose of this study is to investigate the status of this right in the international community and the existing patterns as well as reviewing the challenges and opportunities in enhancing the right in Iran.

Methods: To conduct the survey, some domestic and international sources, mainly on the internet, were employed, including papers, books, and reliable documents such as fact sheets, standards, interpretations, and conventions. The data were collected, summed up, and then they were analyzed and presented using a descriptive approach.

Results: Right to health, in general, and right to accessibility to health-care services and medicines, in particular, is the right of each person to the enjoyment of the highest attainable standard of physical and mental health which is identified by four basic elements including availability, accessibility, acceptability and quality. According to the international documents and standards, the accessibility contains some aspects such as non-discrimination, physical, economic, and information, which partially, they have been taken into consideration in the laws and regulations of the Islamic Republic of Iran. To achieve the goals, governments are obliged to take relevant measures such as legislative, judicial and quasi-judicial as well as executives, administrative, and budgetary ones. To evaluate the fulfillment of right of accessibility, some standards have been introduced, one of which is a set of indicators published by the United Nations, which is considered as a main reference in the world.

Conclusion: Despite some progress made in Iran in legislative and administrative aspects regarding the implementation of the right to accessibility, there are still some defects and shortcomings to reach the goals. Legal vacuum, insufficient budget, lack of enough attention to judicial and quasi-judicial practices, especially the role of inspection by ombudsman can be regarded as the main problems. Moreover, having a closer relationship with the relevant international organization is necessary. The necessity of reviewing and revising the existing laws and regulations is another tangible fact which can lead the country to resolve the problems and enhance the performance in this field.

Keywords: Right to health; Right of access to medicine and treatment; Right of access to essential drugs; Non-discrimination

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1. Introduction

"Rights" is, on the one hand, the plural of the word "right," and on the other, it refers to a set of laws, regulations, and issues related to justice. Since one of the important sources and goals in formulation and ratification of laws and regulations is supporting and protecting human rights and especially basic rights, human rights institutions have been established at national and international levels. Thus, today this issue is being more and more taken into consideration by lawmakers and executive and judicial authorities, at national and international levels. The right to health is one of the basic rights and considered as one of the main concerns and

obligations of governments, and like all other basic rights, it can be implemented in the framework of law [1].

The subject of the right to health is very important since on the one hand it is part of human rights and is considered the most important part of the public law, especially in the international arena. On the other, the subject of health as one of the foundations of sustainable development, besides other important issues such as economy and culture [2]. In addition, this important subject and its progress is followed up in the documents for middle-term perspective plans (usually 5 years) or long-term plans (usually 20 years), through laws enacted by the parliaments of different countries.

¹ Pharmaceutical Management and Economics Research Center, Tehran University of Medical Sciences, Tehran, Iran

² Department of Public Law, School of Law and Political Sciences, Science and Research Branch, Islamic Azad University, Tehran, Iran

³ Department of Pharmacoeconomics and Pharmaceutical Administration, School of Pharmacy AND Pharmaceutical Management and Economics Research Center, Tehran University of Medical Sciences, Tehran, Iran

In accordance with this, due to the forming of the great global village and the need for international cooperation in important and universal issues such as human rights, different countries have started to act by joining conventions, statutes, and international human rights agreements and making their domestic laws in line with this sublime goal. Although governments have enjoyed much power in the field of public health for a long time, today, they remarkably try to conform, rectify, and promote their domestic laws by joining international conventions [3].

Regarding the importance of the matter and the important status of hygiene and physical and mental health in the holy sharia of Islam and the efforts of this heavenly religion in the field of human rights, today, the need for special and independent attention to this issue is remarkably felt. The aim of this article is to present information about the status and aspects of the right to health and especially the right of accessibility to medicines and medical services as one of the important indicators to evaluate the implementation of the right to health in the society. It also reviews the country's status regarding this right, and the existing challenges and opportunities present in this field. At any rate, it seems that clarification in this field will prepare the necessary bed for the law and policy makers in the field of health to revise and rectify the related laws.

Human Rights: "Human rights" is an important part of the international law, something that all humans, regardless of race, religion or political beliefs, legal or economic situation, language, skin color, sex, and ethnicity should enjoy [4]. Hence, any discrimination in these rights is negated, and people and populations at health risks and possible discrimination such as women, children, the aged, the disabled and migrants, should benefit from especial support. For this reason, it is said that human rights provide the relations between governments with individuals and groups of people [5], and the duty of protecting these rights is also that of the governments [6]. At the same time, it should be noted that all forms of human rights have unique features including universality, transparency, having a universal definition, and interdependence as well as the correlation of its various aspects [7]. Obviously, as regards, one of the important and special features of the various forms of human rights, the interdependence and correlation of its aspects, the right to health is related to other rights such as having housing, food, clean water, and clean air.

The Right to Health: Before starting the discussion about legislation, designating and review of the legal frameworks of the right to health, a single and universal definition of this right should be presented. Today, in important international documents such as article 25 of the human rights, clause 12 of the convention on economic, social and cultural rights of the united nations, the international convention for elimination of all types of discrimination against women, the convention on the rights of the children, the convention on the rights of the disabled, etc. this right has been defined as "the right of each person to benefit from the highest attainable standard of physical and mental health" [8]. It should be noted that the right to health does not necessarily mean the right to be healthy, and it comprises the right to access healthcare too [9]. Undoubtedly, due to the relation of this right with other basic

rights, attention should be paid to the wider definition of health that correlates with socio-economic elements as well [10].

Accessibility to Medicines and Medical Services as an Element of the Right to Health: According to numerous human rights documents and especially the general interpretation No. 14 of the UN and the fact sheets issued by this organization's representative offices, the right to health comprises four basic elements as follows:

- Availability: Goods, services, and facilities providing health-care services should be available in sufficient amounts and numbers.
- Accessibility: Health-care products and services should be accessible for all without discrimination. This right, itself, has a fourfold dimension comprising non-discrimination, physical accessibility (people have physical access to them), economic accessibility (people can afford to pay for these services), and access to information (people can access health-related information).
- Acceptability: Health-care products, goods, and services should be available to people based on ethical principles, such as respecting people's culture and opinions, and confidentiality of private matters.
- Quality: Health-care products and services should have the necessary quality standards [10,11].

It should be mentioned that according to the international standards related to the right to health, accessibility to necessary medicines, directly and indirectly, has been one of the important elements of accessibility. This right was stated directly as a part of the eight-fold elements in 1977 in the interpretation of the right to health, which was summarized in four elements in the WHO's review in 2008, and the right to accessibility to necessary medicines was included [12].

Governments' Obligations Regarding the Right to Health: According to the above-mentioned practical definition and fact sheets issued and discussed extensively in numerous books and documents on the right to health, governments have a basic three-fold obligations toward the right to health, and thus, the right to access medicines and medical services like other basic elements of human rights, as follows:

- The obligation to respect: To refrain from any acts that directly or indirectly prevents the realization of the right to health.
- The obligation to support: To prevent actions of others meant to violate these rights.
- The obligation to implementation: To implement any measures needed to realize the right to health.

For this reason, governments should take any measures, executive, administrative, judicial, or legislative. It should be mentioned that according to fact sheets issued in this regard, not allocating sufficient budget, unfair distribution of resources, failure to introduce and evaluate related indicators, ignoring the necessary and proper gender approach according to needs, are some of the most important instances of violation of these obligations [10].

In this connection, due to its importance, sometimes medicines are separately and independently, taken into consideration in international documents and standards. Access to medicines in particular illnesses and emergency situations has a vital importance and because of that, in international statements and documents it has been

considered independently and specifically. However, despite this importance, statistics show that almost one-third of the world population does not have direct access to medicines. The problem of unequal access to necessary medicines has been presented as an important part of inequality in the field of health care, and it seems that this sinister phenomenon of discrimination and inequality may be greatly eliminated, based on some international conventions and documents such as the convention on economic, social and cultural rights of the UN and also through officially recognizing the right to health in the constitutions of different countries [12].

As regards providing the right of access to medicine, governments usually act in line with public interests and by signing documents such as Doha declaration, that has been designed for flexibility in order to minimize support of intellectual property rights, especially the exclusive right of invention for the owners of this right, they may increase access to medicines and especially to necessary medicines for public health. Although this proclamation does not address the right to health, has especially stressed to support member countries for public health to promote access to medicines as basic element in the realization of the right to health [13].

Judicial and Quasi-judicial Measures in Cases of Violation of the Right to Health: As mentioned before, governments have a basic three-fold commitment and to guarantee their implementation, they should put secondary commitments such as implementing judicial and quasi-judicial measures, on their agenda. Regarding the right to health, two approaches for legal support is proposed that includes support of the patient's rights against negligence, mistakes, and shortcomings of the health-care specialists in charge of health care, and supporting citizens against those actions or lack of due actions by the government that might endanger the right to health of the citizens.

In these instances, the people are in the right and health professionals in charge of health care and governments are the obligated ones. Especially in the second instance, since the government is in charge of public health and obligated in the face of legal international documents, it is better for the nongovernmental organizations (NGOs) to take action and to follow-up the cases of rights violation. During the past two decades, these organizations in some countries have been active to draw up some cases related to violation of access to medicines and medical services and to send them to the courts to be dealt with, which in many instances per order of the authorized courts, they finally resulted in adjudication. An example of these cases in Columbia, Argentina, South Africa about special Patients, especially AIDS patients, can be mentioned, although in some instances these cases did not necessarily succeed [14]. It should be mentioned that in cases related to violation of the rights of citizens due to legal voids and unsuitable laws to patient's needs, judicial organizations or ombudsmen have usually played the role of providing guidance and not investigating and issuing the needed judicial decrees.

The courts of developing countries are not much inclined to investigate cases with the subject of policy making and budgeting in the field of human rights, such as the right to health, and the main subject of the cases presented in these countries, concerns decisions on compensations for the violations. Undoubtedly, these legal decrees can be used as

tools to implement, promote and amend human rights and pave the way for continuous supervision of and participation of people's representatives in these issues, so that the government may properly fulfill its obligations towards this important part of its citizen's basic rights [15].

In general, in cases regarding violation of the citizen's right to health, two issues are followed up which include lack of attention to public health, and nonfulfillment of the demands of the patients to centers providing health care services, due to existing wrong approaches and strategies [16]. Another basic issue is whether the subject of such cases should be categorized in the field of civil or criminal. Although violation of the basic human rights is in general considered an important violation and part of penal crimes and crimes against humanity, government's duty toward its citizens, taken from the context of the said international documents, is considered more of a civil responsibility than a criminal one, which is called violation of human rights. Of course, if a government deliberately prevents a certain segment of the population access to destroy them, this will be followed up in the department of justice as a criminal responsibility and crimes against humanity. For example, if people are directly violated, (such as military attacks on civilians and preventing food, medicines, and medical supplies to reach them), it can be prosecuted from the aspect of crimes against humanity. In this regard, the direct role of judicial authorities is interpreting and implementing the law, so that the strongest legal support is practiced in these contexts such as the right to live, the right to health, and respecting the dignity of human beings. Thus, the subject of violation of the right to health or infraction of this right which is obligatory according to international standards, including article 12 of the convention on economic, social and cultural rights, will be considered as crimes against humanity, if they are related to preventing access to medicines and medical services or related information [17].

It should be mentioned that each case of the violation of the right to health, may be completely different from the other, and problems such as the possibility of conflict and interference of the three forces, inaccurate diagnosis, and emergency treatments, as well as lack of budget, may also be present in the correct implementation of judicial and quasi-judicial proceedings [18].

At any rate, judicial review of these cases has numerous benefits, some of which are listed as follows:

- Promoting public rights through investigating individual files (individual rights)
 - Better access to vital medicines
- Access to necessary essential medicines will be taken into consideration as one of the aspects of the right to health
- Challenging government policies in the realization of the right to health in courts
- Governments have special obligations toward the poor and at-risk groups [19].

Alongside problems and benefits of judicial and quasijudicial examination, there are numerous factors that cause the success and finalizing cases related to violation of the citizen's right to health by the governments. In general, these factors are:

 Related articles contained in the constitution in support of the right to health and attention to international conventions above all the laws of the country

- Attention to human rights' conventions and giving priority to the relevant laws in the context of the constitution
- Connecting the right to health to the right to live for cases of patients who face a risk of death
- Legal, financial and ethical support of the NGOs that follow-up (these cases) in the public interest
- Non-discrimination which indicates the right of equal access to medical cares
- Non-discrimination in the field of economic access (affordability), especially the government's obligations towards the poor

Taking care of citizens' right in terms of the continuation of medical cares [19].

2. Methods

To conduct the survey, some domestic and international sources, mainly on the internet, were employed, including papers, books, and reliable documents such as fact sheets, standards, interpretations, and conventions. The data were collected, summed up, and then they were analyzed and presented using a descriptive approach.

Evaluation, Implementation, and Realization of Human Rights based on International Documents and Standards: Regarding the evaluation of the right to health, unfortunately, there are many indicators for the factors influencing health, and many opinions exist. Some, in general, connect the factors influencing health to the health-care system, individual behavior (lifestyle), environmental factors, and human biology, and their most important evaluation indicator is life expectancy and the mortality rate of specific groups such as babies and mothers [2]. However, what is studied in this research is the guide table of the Office of the High Commissioner for Human Rights (OHCHR).

To control and manage the process of implementation and realization of the human rights, OHCHR has published a table in cooperation with WHO aimed at evaluating the implementation and realization of the right to health. It includes some evaluation indicators at a national level, the value of which have been studied and confirmed by various experts, including experts of the panels of human rights conventions and conventions that follow-up the process of these rights' implementation and realization. These indicators have all necessary specifications for the evaluation of validation, such as transparency, comprehensiveness, validity, acceptability, and connectivity. For authentication and to decrease deviations resulting from pre-conception and bias, the numbers and statistics for evaluation are taken from information and data in various sources. In fact, sources based on human rights abuse cases, sources obtained from administrative and executive offices of a country such as ministries, and economic and social sources such as NGOs, researches and opinions of knowledgeable experts are all used to carry out these evaluations [20].

Regarding the relation between the evaluation and legal frameworks, laws and regulations related to the right to health, which appears on the first vertical row of the table like other elements of human rights, some structural indicators connected to the comparative study of legal frameworks in a country with international standards are taken into consideration.

These include the constitution and other important laws and policies. In the structural indicators, existing international conventions related to the right to health that have been signed by the country, the date of the implementation of the support coverage of the right to health in higher laws including the constitution, and the date of the implementation of the national laws in support of the right to health have been taken into consideration.

3. Findings

The Right to Health in the Constitution of the Islamic Republic of Iran

After the glorious victory of the Islamic revolution (1979), Iran has achieved significant success in the field of social, economic and cultural rights, including the right to health. Since justice has been the most important policy of the authorities, and the most important place for the manifestation of justice is the constitution, the necessary legal articles were formulated and included in it. Other laws and regulations on a lower level have followed this macro policy and the constitution and have addressed it in turn.

In this regard, the most important article of the constitution related to health, is article 29 [20], according to which enjoying health and medical care have been officially recognized in the form of insurance as a public right. In addition, per clause 12 of article three of the constitution, the government is obligated to use all its facilities to eliminate deprivation in the fields of nutrition, housing, and health and to provide insurance. This clause targets fairness and especially in heath field, since as it was pointed out before, the subjects of nutrition and housing also influence health. Furthermore, the right of women to health as a vulnerable group has been emphasized independently and especially stressed on by article 21 of the constitution, and the government has been obligated to provide special insurance for widowed, orphaned, and aged women. Article 50 is another articles related to the right to health that has stressed environmental protection and the need for a healthy and safe living environment. According to this article, those economic activities resulting in environmental pollution and destruction

Based on these strategic laws and policies, Iran has in the recent years made impressive achievements in lowering the mortality rate of mothers and babies, providing humanitarian medical aid, and especially emergency services [21]. The process of efficient plans for health, such as the plan for the establishment of health clinics in villages, state joined health plan (Peyvast), plan for the transition of the health system, etc., have all come into operation due to these laws. However, Iran has a long way to go to achieve its lofty goals and complete the realization of citizen rights [22].

Aspects of the Right to Access in the Laws and Regulations of the Islamic Republic of Iran

Iranian legislation has formulated and adopted laws and regulations in various fields based on the needs and taking into account the cultural-social background of the country. In this connection, it should be mentioned that none of the dimensions of the right to access have been overlooked by the lawmakers. These legal and judicial dimensions are as follows:

Non-discrimination: In general, discrimination based on sex, race, ethnicity, and skin color is expressly prohibited in the lofty culture of Islam, thus the Iranian lawmakers, unlike countries such as the USA and France, where the tendency for apartheid exists, do not have to ratify laws to prevent this disagreeable trait. But wherever necessary, in making services available, words such as "non-discriminatory," "for everyone" and such have been used.

Physical accessibility: Regarding human rights documents and standards, including the "Evaluation Guide for the Right to Health" published by OHCHR, relating to the realization of article 25 of the universal declaration of human rights, physical accessibility to medicines and medical services is possible by proper distribution of financial and non-financial facilities and also access to emergency services. Regarding the budget for the health department, about 7% of the gross domestic product of the country has been allocated for this, which compared to developed countries where the rate is usually over 10% (e.g.,, in France it is around 11.6%), it can be realized that enough attention has not been given to this important issue. However, regarding the distribution of centers for health care, all necessary standards have been anticipated independently for pharmacies, emergency service centers, hospitals and other centers providing health care services by the laws. For example, in the establishment and distribution of pharmacies, besides demographic needs, the presence of other centers providing treatment services such as hospitals, medical emergency centers, physician offices and even the distance between the pharmacies have been taken into consideration. As an example, in the bylaws of pharmacies, the permit to establish one is issued if some considerations such as one active physician office and public medical clinic and the population residing in the urban and rural areas are taken. In addition, the existence of a 24 hours pharmacy is very important when it comes to providing accessibility, so in article 30 of the bylaws, it is mentioned and even mentioned in case none exists, pharmacies that are open only during the day, are obliged to fulfill patients' medical service through overnight staff on duty [23].

Regarding the distribution and accessibility to medicines, special consideration has been paid to this important issue in the context of the laws of the Islamic Republic of Iran. According to the law, the committee on medicines and medical services is obligated to promote the quality and quantity of medicines and medical services, including distribution of medicines [24]. Regarding the import of medicines in the country's laws, the centers for singleprescriptions have been appointed as the main issuers of permits to import medicines from outside the country and for such medicines a limit of 10% profit has been adopted by the law [25]. As regards special medicines, in the context of laws it has been stipulated that only by presenting a specialist's prescription and with a maximum. 30% profit, these should be made available [1,4,5,8,10]. In addition to these two groups of medicines, some others entitled "emergencies medicines" have been marked for market adjustment and answering the needs of patients and preventing disruptions in making vital medicines available the laws, and an action center comprised of the representatives of the organizations in charge of supervising it. It should be mentioned that classification of medicine into three groups of regular, on alert (medicine that the possibility of disruptions in their availability exists in the near future), and urgent medicines (those that face severe shortage or may not be available in the market), has been done and rationing and distribution of medicine on this sensible and logical basis is followed up earnestly [2,4,5].

In terms of non-financial resources, the distribution of professional and expert workforce has also a special priority. Although before the revolution it was addressed by the lawmakers by enacting legislations for making concessions to specialist health professionals serving in deprived areas after the revolution, due to intensification and development of this policy and also accommodating the personnel in hospital centers, it has had a significant increase [26].

In fact, the most important issue in the field of access may be the medical emergency services, which has been considered in the main laws of the Islamic Republic of Iran. In the Islamic Republic of Iran, the location for establishment of emergency services, communication and messaging centers between cities, and even the number and type of required ambulances have been specified and in the 5 years development plans [1], even the time required to get the patients has consistently been reduced [2]. Regarding emergency services, two characteristics including having access to rural areas and free of charge have been stressed by the lawmakers [8].

Economic accessibility: With regard to the Evaluation Table for Realization of the Right to Health by OHCHR, having health insurance, price control, and fighting illegal high prices are considered as important factors that help the economic accessibility to medicines and medical services. In this regard, social justice and in particular justice in access to health as an element of the foundation of sustainable development, and insurance coverage of all citizens has been under consideration by the authorities from the beginning. Although was introduced in the 90th, due to lack of sufficient budget, its implementation actually started with delay in 2014 through ratification of the transition plan for the health system. Of course, the implementation of this public health insurance plan had already started, with an emphasis on insuring lowerincome groups especially in deprived areas [11]. On the other hand, the price of medicines and medical services can help accessibility to them for all people and especially lower income groups. In this regard, a special law exists within the subject of control of the prices of medicine that stresses: "medicine should be made available at the official price to the consumer and violators will face heavy cash penalties and even the closing down of their pharmacy for 1 year" [16]. It should be mentioned that in addition to legal punishments that governs all goods and products, this law has been ratified specifically for medicines as vital goods.

Information accessibility: Access to information includes any types of health related information, which in this study it is divided based on patient rights into medical service centers and pharmacies. While in developed countries patient's rights to access health-related information is in the form of binding laws, in the Islamic Republic of Iran it is followed more in the form of the charter of patients' rights in medical service centers and pharmacies - Thus aspect of clarification dominates its judicial follow-up. In medical service centers the

patient has the right to be informed - within his/her understanding- of the location of hospitalization, the physician or treatment team, various stages of diagnosis, treatment and his/her illness' development, possible side effects, and application of other treatment methods [27]. In addition, about the issue of increasing the public awareness in fighting diseases and health risks, and also teaching what to do in medical emergencies, some responsible organizations such as medical faculties and TV and radio systems have been taken into account by the law [1].

Regarding information about medicines, the charter of patients' rights in pharmacies relates to the right to ask and receive answers regarding the effectiveness, harms, and benefits of the medicines, drug interactions, indications, dose, manner of use and possible warnings. In addition, the placing labels containing information according to specified standards has been emphasized by the law and in cases of violation, the violators will be given heavy cash punishments. Moreover, medical brochures must include information about medical effects, indications, cautions, contraindications, dosage in cases of pregnancy and lactating mothers, medicinal interactions, etc. [7].

The Islamic Republic of Iran and its Obligations Resulting from Signing the Human Rights Documents about the Right to Health

The Islamic Republic of Iran, due to the structure and interests of its system, has signed some conventions related to the right to health and not signed some others, yet. The WHO statutes (1945), the convention on economic, social and cultural rights (1966), and the convention on the elimination of all forms of discrimination based on race (1965) are some signed ones. It has also signed the convention on the rights of the child (1989) conditionally and has announced its willingness to join important conventions such as the convention on the rights of the disabled, the convention on the support of the rights of all migrants, workers, and their family members. Joining convention on the rights of children has gone through on the condition that it will not conflict domestic laws and the sharia of Islam and this issue is more connected to contradictions in the subject of the definition of Islam and international human rights laws about children. However, regarding the convention on the elimination of all forms of discrimination against women, although it has some contents about the right to health, because of the contradiction of some of its contents and the holy sharia of Islam and the laws of the Islamic Republic of Iran, it has not been approved. In this regard, disagreements on some issues about the right to health for women in the convention is related to the right to independence and freedom of women in choosing abortions and pregnancy and such decisions is at odds with the nature of some Islamic laws due to the importance of the institution of the family.

4. Discussion

Nowadays, right to health is regarded as one of the main concerns of human beings and based on international standards and documents; it is considered as an important part of human right. The right to health is usually identified by its four basic elements including availability, accessibility,

acceptability and the quality. Accessibility to medicines and medical services is known as an important component of the right to health. This right also burdens the government with three basic obligations, including the obligation to respect, support, and to implement. In fact, the right to health on accessibility to health-care services and medicines is believed to be the main core of the right to health and the most important base of justice in this area. In this regards, to achieve the goals, governments are obliged to take relevant measures such as legislative, judicial and quasi-judicial as well as executive, administrative, and budgetary ones. Over the last few decades, Iran has managed to make some progress through taking some measures such as joining to some international conventions, adding some relevant clauses in the constitution, passing a few regulations related to the role of NGOs in monitoring and inspection, implementing some national plans such as "Electronic Health Plan" and "Generic Medicines Plan," monitoring the market and distribution, price control and allocation of fund to the sector. Despite the achievements to promote the relevant standards, there are still some defects and shortcomings to reach the goals. The main relevant challenges include some legal vacuum, lack of sufficient budget, lack of integrated information system, indecent distribution system, and lack of comprehensive monitoring system conducted by NGOs and procrastination in joining some more international conventions like the rights of disabled. Moreover, having a closer relationship with the relevant international organizations and entities is necessary. In addition, to evaluate the fulfillment of right of accessibility, some standards have been introduced, one of which is a set of indicators published by the United Nations, which is considered as a main reference in the world and it is required to be considered in Iran. Therefore, the necessity of reviewing and revising the existing laws and regulations is a tangible fact which can lead the country to resolve the problems and enhance the performance in this field.

5. Conflict of Interests

Authors have no conflict of interests.

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