



**International Journal of Biology, Pharmacy  
and Allied Sciences (IJBPAS)**

*'A Bridge Between Laboratory and Reader'*

[www.ijbpas.com](http://www.ijbpas.com)

---

**INVESTIGATION OF JUDGE'S INDEPENDENCE IN IRANIAN JUDICIAL SYSTEM**

**SEYED REZA MOHAGHEGH<sup>1\*</sup>, ZOHRE NIK FARJAM<sup>2</sup>**

1. Department of Rights And Jurisprudence ,College of humanism, Yadegar - e- Imam Khomeini, (RAH) shahre-rey Branch, Islamic Azad University, Tehran, Iran
2. Academic staff of Islamic azad university, Yadegar emen Khomeini branch, Shahre Rey, Iran and Department of Rights And Jurisprudence, College of humanism, Yadegar - e- Imam Khomeini, (RAH) shahre-rey Branch, Islamic Azad University, Tehran, Iran

**ABSTRACT**

Justice administration is the central and main core of justice supplier system of every country. The mentioned administration includes a number of judges who are real magistrates of the society. Therefore, they must be independent and irrespective. Judicial independence includes independence against the other branches including legislator and executive branches even independence against public thoughts. The judge also must be free minded and be able to infer the law and issues sentence and it is why selection of the judges has an important impact on preservation of the important principle of judicial independence. When someone becomes a judge after passing various stages, special position of his occupation requires him to have occupational safety. It means that, he cannot be dismissed without any proof of his guilt or his job place would not be changed without his satisfaction; but also, the mentioned actions must be occurred according to the law and regulations, and after passing some specific procedures. By this guarantee, the judge would be the just judge of his own society. Islam religion recognized the mentioned principle about 14 centuries ago and has considered a high value for that. In Iran also, the mentioned principle was entered fundamental rights and codified legal texts after the idea of going after the top of the Constitutional Law. The objective of the present study is to investigate judge's independence in Iranian judicial system.

---

**Keywords: Judicial independence, legislative and executive, safety, constitutional, fundamental rights.**

## **INTRODUCTION**

Freedom is a gift from God to be entrusted with the human body have resulted barrow creative ideas and despise the cause of his absence and breaking norms. When the release valve to look at human institutions, we see various appearances of "judicial independence" Faces of Freedom judges verdict is still someone who does not accept unconditional release, the judge must decide whether the approach to his creativity to justice and the maintenance of order, in addition to the legal rules. Justice administration is the central and main core of justice supplier system of every country. The mentioned administration includes a number of judges who are real magistrates of the society. Therefore, they must be independent and irrespective. Judicial independence includes independence against the other branches including legislator and executive branches even independence against public thoughts. The judge also must be free minded and be able to infer the law and issues sentence and it is why selection of the judges has an important impact on preservation of the important principle of judicial independence. When someone becomes a judge after passing various stages, special

position of his occupation requires him to have occupational safety. It means that, he cannot be dismissed without any proof of his guilt or his job place would not be changed without his satisfaction; but also, the mentioned actions must be occurred according to the law and regulations, and after passing some specific procedures. By this guarantee, the judge would be the just judge of his own society. Islam religion recognized the mentioned principle about 14 centuries ago and has considered a high value for that.

## **2- Goal of judicial independence**

Judicial independence is not a goal but also, is a tool to achieve the goal (Burbank, 2003).But, what is the purpose of judicial independence and its necessity? Generally, the main goal is that, the judge considers the law as criterion of pronouncement and does not notice orders of superior persons. Therefore, they must be independent and irrespective. Judicial independence includes independence against the other branches including legislator and executive branches even independence against public thoughts. The judge also must be free minded and be able to infer the law and issues sentence and

it is why selection of the judges has an important impact on preservation of the important principle of judicial independence. When someone becomes a judge after passing various stages, special position of his occupation requires him to have occupational safety.

### **3- Territory of judicial independence**

Some legal concepts such as impartiality are usually mixed by judicial independence while, impartiality is proposed also about actions of some persons such as judge, referee and etc.

#### **A) The judge's impartiality**

Principle of judge's impartiality is somewhat related to his independence. Generally, the main goal is that, the judge considers the law as criterion of pronouncement and does not notice orders of superior persons. Therefore, they must be independent and irrespective. Judicial independence includes independence against the other branches including legislator and executive branches even independence against public thoughts. The judge also must be free minded and be able to infer the law and issues sentence and it is why selection of the judges has an important impact on preservation of the important principle of judicial independence. When someone becomes a judge after passing

various stages, special position of his occupation requires him to have occupational safety.

Generally, the main goal is that, the judge considers the law as criterion of pronouncement and does not notice orders of superior persons. Therefore, they must be independent and irrespective. Judicial independence includes independence against the other branches including legislator and executive branches even independence against public thoughts. The judge also must be free minded and be able to infer the law and issues sentence and it is why selection of the judges has an important impact on preservation of the important principle of judicial independence. When someone becomes a judge after passing various stages, special position of his occupation requires him to have occupational safety.

### **4- Supporting the authorities' independence**

Although the judge's sentence is sometimes changed, he is the cutter of conflict at the first stage. The opinion of the court executors, although a judicial authority, the judge's decision to pay more to implement the decision.

#### **4-1- Limitations of judicial independence**

The judges' decision, should not be unduly influence and interference powers and forces

incompetent to be safe, either from direct involvement in political and administrative powers of the country or indirect involvement of the public and the media. It should be noted that, according to those in France, have field studies on judicial independence, the government is weak and there is judicial independence, when the coalition government, the justice system, the integrity of government, more independence (Franck, 2008).

Can the judges sentence based on their personal opinion? Or is not the independence in absolute sentence and has rationally some limitations? To answer this question, the judge can sentence, according to his logic, or the condition of the subject? It should be noted, moreover, that the jurists only on the condition of citing the judge know, Article 3 Procedure Law, the judgment of history on our rights, duties, at least on the provisions of the law is clear: if the judge is priest and believes that, the law is in conflict to the religion, he must send the case to another branch to be checked.

The mentioned cases can be a guarantee for a correct judgment. Therefore, the judge cannot issue a sentence opposite of the law due to independence, creativity or evidential reasoning. His independence is valid so it does not cause any violence to the legal

regulations and principles; otherwise, it leads to criminal prosecution or civil liability.

### **5- Fundamental articles of judicial independence in Iran**

Article 7: Another feature of the judges uphold the doctrine of judicial independence. To ensure the independence of judges should receive adequate rights, the rights should be subject to the result of the work of judges and the judicial service should be reduced.

The judges' decision, should not be unduly influence and interference powers and forces incompetent to be safe, either from direct involvement in political and administrative powers of the country or indirect involvement of the public and the media. It should be noted that, according to those in France, have field studies on judicial independence, the government is weak and there is judicial independence, when the coalition government, the justice system, the integrity of government, more independence

Article 8: According to the Universal Declaration of Human Rights, judges, like other citizens are entitled to freedom of expression, association and assembly, provided that the exercise of such rights is a way to treat the occupational status, neutrality and independence remain.

Article 9: Judges to form and join associations of judges and other

organizations to express their interests, to promote their professional training and to ensure independence are free.

Article 10: Persons selected for judicial office shall be individuals of integrity and ability to have the proper training or qualified law. Selection of judges must be protected against judicial appointments for improper motives.

The judges shall be no discrimination against a person on grounds of race, color, sex, religion, political or other opinion, national or social origin, property, birth or social status exist. The law based on which the volunteer job happens to be a citizen of the country is not considered discriminatory.

Article 12: Judges, whether appointed or elected to the age of compulsory retirement or termination of service, guaranteed jobs.

Article 13: Promotion of judges should be based on objective factors, such as competence, integrity and experience them.

Article 14: Referring to the judges at the Court of Justice is an internal affair

Article 15: Judges of the negotiations and dialogues and other confidential information during operation of public proceedings required to gain professional secrecy and should not be compelled to testify on such matters.

Article 16: Under the law, judges should personal immunity from civil actions for money damages for improper or failure of performance to be. This immunity applies umbilical disciplinary hearing about them or any right of appeal or the right of citizens of the compensation by the government.

Article 17: Any charge or complaint made against a judge in the jurisdiction of the job should be addressed promptly and impartially according to proper procedure. The judge should have the right to a fair trial at an early stage to address the issue of non-confidential unless the judge wants it.

Article 18: Only due to lack of jurisdiction or judges for conduct contrary to the job to be suspended or dismissed.

Article 20: Sentences in disciplinary action, suspension or dismissal shall be subject to examination (revised) is independent

## **6- Results of investigating the judge's independence**

The judges' decision, should not be unduly influence and interference powers and forces incompetent to be safe, either from direct involvement in political and administrative powers of the country or indirect involvement of the public and the media. It should be noted that, according to those in France, have field studies on judicial independence, the government is weak and

there is judicial independence, when the coalition government, the justice system, the integrity of government, more independence (Franck, 2008).

Can the judges sentence based on their personal opinion? Or is not the independence in absolute sentence and has rationally some limitations? To answer this question, the judge can sentence, according to his logic, or the condition of the subject? It should be noted, moreover, that the jurists only on the condition of citing the judge know, Article 3 Procedure Law, the judgment of history on our rights, duties, at least on the provisions of the law is clear: if the judge is priest and believes that, the law is in conflict to the religion, he must send the case to another branch to be checked.

The mentioned cases can be a guarantee for a correct judgment. Therefore, the judge cannot issue a sentence opposite of the law due to independence, creativity or evidential reasoning. His independence is valid so it does not cause any violence to the legal regulations and principles; otherwise, it leads to criminal prosecution or civil liability. To answer this question, the judge can sentence, according to his logic, or the condition of the subject? It should be noted, moreover, that the jurists only on the condition of citing the judge know, Article 3 Procedure Law, the

judgment of history on our rights, duties, at least on the provisions of the law is clear: if the judge is priest and believes that, the law is in conflict to the religion, he must send the case to another branch to be checked. It should be noted, moreover, that the jurists only on the condition of citing the judge know, Article 3 Procedure Law, the judgment of history on our rights, duties, at least on the provisions of the law is clear.

#### **7- View of the constitution about the independence of judges**

In Article 156 of the Constitution provides that the judiciary is independent swans that support individual and social rights and the fulfillment of justice. Activating the service or change, unless the interest of the decision by the head of the judiciary, after consultation with the chief Justice and Attorney General. Periodic transfers of judges according to the general rules laid down by law is carried out. However, the part of the principle that says "unless the interest of society ..." conflicts that are not in the scope of this discussion. In accordance with the principle of immunity in the general rule is stated first ban prohibits the dismissal of judges and the judges of the transfer. Generally, the purpose of judicial immunity as an independent judge referred, immunization is not in his favor. According to

Article 42 of the Act amending some of the principles of justice and appointed judges, prosecution, judge, before he was suspended by the Supreme Court, law enforcement is not possible. Because the judge is no immunity from prosecution, immunity does not work and can easily be infringed his independence. However, the criteria should be consistent with a single entity, in violation of the judicial proceedings. Parallel and similar institutions, the judge can permanently dismissed from service, and Reich, in some cases, be decisive, contrary to judicial independence. Therefore, in a judicial system that is easy to disqualify judges are distorted concept of judicial independence is hard.

### **CONCLUSION**

Usually, judges are prohibited from participating in the political circles. In an independent judiciary is essential that judges, individually and in their implementation of the independent authority of the judiciary is independent. The two independent publicly linked together; if there is no institutional independence of such a body would be the assumption of independence of the judiciary as an independent structure consists of independent judges as described. The two independent publicly linked together; if there is no institutional independence of such a

body would be the assumption of independence of the judiciary as an independent structure consists of independent judges as described.

### **REFERENCES**

1. Rajabi, A. A. and Karimian, E. 2010. Judicial independence. *Legal Journal*, 1<sup>st</sup> year, no. 1: 73-93.
2. Habibzadeh, M. J. and Asadi, F. 2008. Judicial safety of judges and clients in legal system of Iran. *Journal of Law, Journal of Faculty of Law and Political Sciences*. 38(4): 161-183.
3. Saket, M. H. 2003. *Judgment in Islamic law*. 1<sup>st</sup> edition, Tehran, Mizan.
4. Sanglji, M. 1968. *Jurisprudence in Islam*. 2<sup>nd</sup> edition, Tehran, Tehran University Press.
5. Shams, A. A. 2008. *Civil judgment procedure*. Vol.1, 19<sup>th</sup> edition, Tehran. Deraak.
6. Qamami, M. and Mohseni, H. 2007. *Transnational civil procedure*. 1<sup>st</sup> edition, Tehran, Mizaan.
7. Qaazi, A. A. 1999. *Fundamental law and political organizations*. Vol. 1, 1<sup>st</sup> edition, Tehran University Press.

8. Katuzian, N. 2008. Necessities out of contract. Vol.1, 8<sup>th</sup> edition, Tehran University Press.
9. Journal of Fundamental Law. 2006. 4<sup>th</sup> year, No.6,7.
10. Judicial independence and safety in Islam. Journal of Clients, Association. 25<sup>th</sup> year, No.122.
11. Factors affecting the judges' personality. Journal of Clients, Association. 21<sup>st</sup> year, No. 109-114.
12. Barak, Aharon (2006), the Judge in a Democracy, Princeton: Princeton University Press.
13. Burbank, Stephen B. (2003), "What do we meant by Judicial Independence", Ohio State Law Journal, vol. 64: 323.
14. Foster, Steven (2006), the judiciary Civil Liberties and Human Rights, Edinburgh: Edinburgh University Press Ltd.
15. Franck, Raphael (2008), "Judicial Independence under a divided Polity: A Study of Rulings of French Constitutional Court, 1959-2006" The Journal of Law, Economics & Organization, vol. 25, no. 1, 262-284.
16. Linton, Suzannah (2006), "Safeguarding the Independence and Impartiality of the Cambodian Extraordinary Chambers", Journal of International Criminal Justice, no. 4, 327-341.
17. Redfern, Alan, Hunter, Martin (2003), Law and Practice of International Commercial Arbitration, London: Sweet & Maxwell.
18. Scott Donahey, M (2001), the UDRP and the Appearance of Partiality: Panelist Impaired on the Horn of Dilemma Paper, Tomlinson Zisko Morosoli & Maser LLP.