

The Principle of Judicial Independence and Monitoring the Performance of Judges

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ABSTRACT— Judgment is one of the most striking aspects of government. Talk independence of judges is one of the most important issues in the constitution that is considered. Justice noble judges, solemn responsibility Judiciary in the hostilities, restoring public rights, promoting justice and legitimate freedoms are on the covenant. The extension of justice in society depends on the independence, courage, health and empowerment judges. Judge drummer been independent and has a higher judgment than God and the law. Therefore, for the judge to be able to properly judge and should not be under the influence of a immunity and the implementation of Justice and Rights, Fear changes No job or place of work is changing. Article 164 of the constitution, which guarantees the authenticity of the hearing, an indication of the lack Uninstall or change a place of employment or the judge. Since the Uninstall or change or change of work place equipment and tools for administrative tasks is Old Band appoint and monitor the performance of judges to the attention of governments, especially the Islamic state.

KEYWORDS: Judges' Independence - Appointment and deposition of judges - Supervision on Judges' behavior

Introduction

Ironically position is valuable and for the great prophets of the Almighty been handed over and finally infallible Imams of the Prophet and the Infallible area has been assigned to qualified scholars.

In verse 26 of the Holy Qur'an sura says:

"David, we have appointed thee in the land or the caliph and his representatives, c Q for the people to righteousness Judge ..."

Islam is considered to manage the three pillars which are:

1. Leadership and governing:

The implementation of laws and policies governing community leaders and the general population, growth and development that provides individuals and society.

2. Existence Fully qualified jurist:

For excellence in Islamic society, existence of a learned person, familiar and dominant light sentences to fit the time and place of Islam and Islamic law can express is essential.

3. Existence of righteous judge:

Islamic society is necessary for the proceedings and where would be a just judge to resolve the animosity between the people and their rights. Judgment in all human societies distinguished standing, Sublime and is considered respectable in Islam The judge had a high position and enforcement provisions of Islam is the light. According to Article 156 of the constitution of the Islamic Republic of Iran to resolve the animosity, restoring public rights, justice and legitimate freedoms of the judiciary has been established that this is a great basic elements of the judiciary by the judges carried out. So; Employment absorption of judges should be carefully monitored during the service on their performance.

The first speech

The principle of judicial independence and immunity of judges

From ancient times has been the subject of judicial independence in all human societies, and given the fact that the judge considered the aspects of governance. Issue of judicial independence in the history of Islam has been considered, and no one has the right to interfere in the order of Judge.

On this occasion, said the Supreme Leader said:

"No authority should judge from the implementation of Justice and truth not prevent, judge and God alone and not a higher Board he is above the law." The importance of the principle of independence of the judge, Ayatollah Javadi Amoli sufficient strength and rigidity of thought and expression owes its independence and sanctity of the judges said: ((basic Biconditional independence of judges and other terms will be incidental; it is one away from following two conditions of God)). Noble judges that the judgment should be paying job security enjoyed independence and peace of mind to express their judicial opinions and the rights and the administration of justice and no boque are the future of your fears and probably change jobs, or change the location do not serve. Islamic judge in his judgment between the Caliph and ordinary people has no different that is not even possible the loss Khalifa banned. In a long career in the West, Meaning no discussion of judicial independence, judges installed in the Muslim

world, characters and their characteristics, as well as judicial independence is the most basic problems. In the history of Iranian law, At the beginning of constitutionalism, The principle of prohibition of Tghyyrshghl and work of judges in the Constitutional principles 81 and 82 amendments to the constitution was anticipated and was highly regarded. In Article 81 amendment to the constitution (constitutional) stated: "No Court of Justice ruling I cannot fault their jobs temporarily or permanently without trial or proof resign unless he changed." In Article 82 amendment to the constitution (constitution) states: "The mandate of the court ruling will not be possible unless he voluntarily." After the glorious victory of Islamic Revolution of Iran Article 164 of the constitution of the Islamic Republic of Iran, which is derived from principles 81 and 82 to discuss amendments to the constitution is the constitution's independence and immunity of judges. The principle of judicial immunity, indicating the lack Uninstall or change a Judge's place of work or guarantee the accuracy of the proceedings, and it is logical and rational. Because, in the shadow of impunity may provide the correct judgment. Judges, brave, legal, non-permeable independent sentences are documented and reasoned ensures the safety and security of society. This Khatrmqam leader in your statement of his eloquent speech on 04.05.1370 in the Judiciary have said: "Judiciary in a country, that country's health standards. If the judiciary can be concluded that the public and the country's situation to the justice and avoiding discrimination and oppression and extortion and Tjav the healthy human and this great sorrow. "

Second Speech

Selection and recruitment of judges

One of the Islamic community needs judges worthy. The philosophy of movement and invite prophets, rights and justice in society and the judicial system provider Vdagstry justice in society. In the sixty-first constitution of the Islamic Republic of Iran stated: ((Exercise of judicial power by the courts of justice, which must be formed according to Islamic standards To resolve Disputes and Maintaining public law and Open and Justice and Divine pay)). For justice to be most important specific aspect of the judicial authority of the judge. In all countries, the judges of the index cases, chaste, flawless, courageous, independent, sober and possessed of virtue and ethical values and scientific merits has been established. Since the judgment, the province of lives, property and rights of the people. Those who are selected to judge the virtue most of the scientific community and the Shay depend, ethics, courage and independence to enjoy it. For this reason the books of jurisprudence attributes and conditions for the selection and appointment of judges is considered. Imam Ali (AS) in a letter to the governor of Egypt, Malik al-Ashtar precious Nakhaee, advice and guidance on the selection of judges and expression have said:

"Then the people choose the best person to judge for themselves, those who see a lot of them jumps, and deal with each other against him, not angry, not persisting completely wrong, go back to right after learning to he is not too hard, greed eradicate from the heart, with a little research to understand the content does not consent, the doubts of all act more cautiously in finding him most of all is the insistence and in consecutive complainants who are not tired. The discovery of the prosecution, the truth is more winning season in the hostility of all, someone who has great admiration for deceiving him, coaxing him not deviate and there are very few such people. After selecting judges, judging her as much as possible and think back, so he resolved to forgive her needs and not to the people in need, The status of revolution in his honor That close to you Influence on him not to covet what they plot to be safe with you. I look good in that of the religious orders that had been captive in the hands of criminals in the name of religion to gain Hvaprsty and your world. "Imam Khomeini (RA) maturity, wisdom, faith, justice and absolute discretion, male, purity (legitimate) and on those who are in or near precaution so the condition is known. Researcher solution (RA) in religions-Islam, maturity, perfection, wisdom, faith, justice, purity, birth, and a man of discretion to judge the condition is known. One hundred and sixty third principle is stated in the constitution: "Qualification of judges is determined by law, according to religious criteria." In implementing the principle referred to in Article 13 of the Bylaws No. 100/9968/9000 dated 28.02.1392 absorption, selection and training of the judiciary and recruiting volunteer's tenure of judges, the General Conditions volunteer's tenure of the judiciary are as follows:

1. Nationality of Iran
2. Belief and adherence to Islam, faith and justice
3. Adherence to the principle of the Velayat-e Faqih constitution of the Islamic Republic of Iran and the lack of organizational affiliation to political parties, organizations and groups illegal or those of authentication fans repentance
4. Purity
5. The physical and mental health and ability to perform judicial work under way Letter adopted by the Head of the Judiciary
6. Having completed military service or exemption cards with the provisions of the Law Concerning offering graduates of the Faculty of science for military service judicial courts in the country
7. Not having an effective criminal conviction
8. Reputation, ethics and integrity
9. Non-smoking, narcotics and psychotropic substances
10. Having a minimum of 22 and maximum of 36 years on the day of registration.

Enterprise judgment to the extent that is has value and dignity. For those who do not merit it is forbidden to the judiciary's tenure. In tales about the importance of the judgment stated:

"He who has two tangled except what Allah Almighty revealed the Research sentence disbelieved."

Imam Sadiq (as) in the case judges have said:

"Judges are four kinds: There are three types of fire and swear in heaven is a man who knows the unjust judgment does, however, this man is on fire. The man who does not know the aegis of judgment So this guy is on fire and the man who had the right to judge and knows So this guy is on fire and the man who had the right to judge and knows so the man in heaven ».

The third speech

The necessity of the need to monitor the behavior and performance of judges

Monitoring and derivatives 129 times in the Quran, the Arabic word is repeated comments from the root word means looking, up, care in execution is skill Frost is also a means. Raghib al Materia to have to look up translations and sometimes for ozone monitoring expression of contemplation and knowledge of the mapping exercise introspection and reflection is sometimes determine. The legal term monitoring measures set And It is said that the efforts of Officials and Various government agencies for review and Assessment tasks and Or ongoing Compliance with regulations and Laws to prevent and prevent potential violations occur. Philosophy supervision, control system in devices executive and a useful tool and efficient is to prevent violations and prevent the people opportunist. The main purpose and the final monitoring, Increase throughput, improving the promotion of quality and quantity to meet the shortcomings and Ensuring the health and Performance of administrative units of the country. In the Islamic system, His constant supervision of a tradition, The guarantor of justice and Was a crucial point in the life of the individual, social, and governance is of great importance and is considered essential for assessing and evaluating the actions of all people It is to the point that even the prophets also have not been immune from oversight and evaluation Almighty God says in verse 6 of Sura Araf: ((Of course, we will question the actions of peoples and of their prophets)). Reference distinguished his Shiite Grand Ayatollah Seyyed Mahmoud Hashemi Shahroudi (official website) in relation to the issue of monitoring and inspection says:

"Principle of supervision and inspection and witness of what you pass on, and the state of affairs, is a very genuine and rooted in Islamic culture is the basis of genuine and broad and has many forms is.... »

That the basic principles of Islamic government is monitoring culture was indeed a prelude to evaluate assessment results and product supervision. After that proper monitoring can be about personality Evaluation and encouraged them and Punishment contract or if they are appointed to a managerial position because, consistency popular system that is based on meritocracy and Meritocracy and selection of the fittest executive power is subject to detailed assessment. To assess not just monitoring devices and the inspection only to find weaknesses, Deficiencies, Objections and Or maybe crimes, they must to success and positive actions devices that also noted. Since one of the most important aspects and branches of government, judge between people is to the extent that the dignity of a judge is very high, and the risk of injury is too high. Therefore, monitoring the behavior and performance of judges is rational, logical and essential, and many of the offenses of judges in the performance of their lack of supervision and complete a needs basis. Judge must look the debut. (The late Secretary) Mola and pious Imam Ali (AS) on the need and the need to monitor the performance and behavior of judges Malek says:

"Most of the others on the judges and the judgments that issued them on the process and consider what actions.... »

In another part of his commands Malek says:

"To judge Fellowship of scholars, pious and benevolent actions and appoint to watch and observe his commandments and advice him in case of fault slip. »

In our beloved country, Iran, has a long history of monitoring the fundamental law as a primary law governing foundations in the sacred system of the Islamic Republic of Iran, which has no official oversight between the various devices division, which makes the device is not an exception. Officials and According to the constitution, which authorities are responsible for monitoring are from:

With quotes leadership position in accordance with Article 57, paragraphs 2 And 10 Article 110 of the constitution, the President of the Republic in accordance with the principles of 113,134 and 136 of the constitution, Ray of the judiciary in accordance with Article 142 of the constitution, the Supreme Court under Article 161 of the constitution, the Administrative Justice Court under Article 173 of the constitution, GIO according to Article 174 of the constitution, the President of Parliament to make principles 85 and 138 of the constitution, Article 90 Commission Constitution, The Supreme Audit Court On Under Article 55 of the constitution, Islamic councils Country On Under Article 100 Constitution, the Supreme Council of Provinces According to Article 101 of the constitution, the body which oversees IRIB Islamic Republic of Iran According to Article 175 of the constitution, the House leadership on the basis of Article 111 of the constitution Str leaves, the Guardian Council on the principles 85,91,94,95,96,97,98,99,4 Constitution. Moreover, each of the organs and institutions of governance in the country in addition to external monitoring must yield and the authorities' actions the following institutions have television sets. His Eminence Grand Ayatollah Seyyed Mahmoud Hashemi Shahroudi (official website) 6/10 dated 1380 in a speech this regard says: ((Should set rules and regulations that the monitoring system is operating on executive agencies, especially the part that relates to the economy and Property and Public wealth; Managers and Oversight of the Section should be concerned with making their Vpy)).

The founder of the Islamic Republic of Iran Imam Khomeini (ra) in his eloquent speech on 29.04.59 on the need for monitoring the performance of judges in the Supreme Judicial Council says:

"Top judicial authorities shall have full control of the institutions and prevent corruption in the judiciary and clerics who have been assigned the highest responsibility and diversion know that in any way and with whom they expected strict the »

In another part of his eloquent speech on 01.12.1360 on the minimal expression of the offending judges said:

"I Apart from the Chief Justice and the Attorney General and the revolution and the Supreme Judicial Council Want delegations composed of persons of the world, faithful and committed form to the competent courts and lay judges and prosecutors deal with the country's deflected aside and if all the wealth and dignity of persons have aggressively prosecute. » Judges landscape with figures in the history of religious scholars, the righteous and pure known Therefore, respecting the customs, ethics and Sharia law is a judge of the necessity of life and justice. So should continuously the actions, behavior and performance of judges that Iranian Revolutionary Guards justice and protect the lives, property and honor of the people Nmvd.syb care of, apply preventive measures and Enhanced performance monitoring, Health and Health will be the judiciary. Given that the final aim of monitoring tract of healthy society, the judiciary should be monitored firstly by Adoption Necessary measures and Regulatory measures and Abuse prevention in any way in the judicial system, crime and Or corruption is not the overt and covert surveillance was careful to skirt pure and holy in the presence of unhealthy and criminal justice system is not infected. Secondly, healthy and noble judges in the judiciary sense of security and job security in jeopardy starts walking and judges and staff and possibly unhealthy problem, they feel insecure. Third, all measures must a door the health and Improving the judiciary and ultimately increase public trust in the judiciary be done. Now approved in accordance with Article 11 of the law regulating judicial conduct inspection and supervision on the performance of judges 17/07/1390, evaluation and research they conduct inconsistent with the dignity of justice with respect for their privacy as well as the proposed relocation of judges head of the judiciary disciplinary Court of judges is responsible for the implementation of Article 164 of the constitution.

Fourth Speech

Removal of judges

The position of judge, exalted position and with due process and legal that when a person was appointed as a judge he has no right to dismiss any authority to assume the critical, but as it happens, he has been smooth and the conditions necessary lose those qualities helped solidify the authority of the judge. In Article 164 of the constitution of the Islamic Republic of Iran stated:

"You cannot judge from his position without being tried and proven crimes and offenses that the dismissal is temporarily or permanently be removed or changed without his consent unless fire or poison serve the interests of society with the decision of chief executive justice after consultation with the chief justice and the Attorney General. Transfer of judges in accordance with the provisions of that law is generally carried out. "Therefore, the removal of judges is not to judge but if the suspect or the deliberate crime against the dignity of judicial actions against the concept derived from Article 164 of the constitution, if it can be proved with the standards and regulations his law be dismissed from judicial office. Currently, if a judge under the Sharia and law raised by officials in Article 44 of the Constitution Act of 17.7.1390 questioned judges is monitoring the behavior of one of Article 45 of the law was the subject of the first to be documented and reasonable doubt as to qualification Commission of judges, composed of: 1. judicial deputy head of the judiciary 2. Legal and Parliamentary Affairs Ministry deputy Supreme Court president Justice 3. Judicial Deputy Prosecutor 4. Judges are announced. Article 45 of the law against the commission examined the issue as soon as possible and after hearing statements and defender judge who questioned his competence, and if you have lack of qualified judges check result to the maximum within ten calendar days the Supreme court is the judicial authority of the report. The Supreme Court is competent in accordance with Article 46 of the law states judges will hear the case and after reviewing the report of the Commission on the qualification of judges and judge hearing the testimony and the defense been cast into doubt his competence, which a judge his competence of the established If the tenure judicial not as the case may be sentenced her to one of the following penalties:

1. The Office and the military judges into the judicial abolition of the notification and restore service units
2. Redeemed
- 3- Pension eligibility for legal permanent expulsion of the Judiciary
4. Permanent dismissal from government service.

Article 48 states the law, Supreme Court judges investigating authority within one month from the date of notification renewable Comment on Supreme Court review Maturity is the discretion of judges.

Article 33 of the Executive Regulations to monitor the behavior of judges, approved 02.30.92 verdict in the case of permanent dismissal or disciplining of judges disqualified by the Supreme Court or the Supreme Court is competent judges, dismissed or disqualified judge until a definitive through the ordinance. Expiration date or a ruling by the Supreme Court to reconsider Judges of Supreme Court judges in terms of qualifications, continue to be denied justice.

Conclusion

1. Article 164 of the constitution of the Islamic Republic of Iran refers to the fact that the principle of non-removal or change of work place but if the judge or the judge is liable to a deliberate crime against the dignity of judicial or the actions against the implied from the concept of 164 of the constitution, if it can be proved with the standards and legal regulations ousted him from judicial office.

2. Article 164 of the constitution accuracy clay guaranteed and the Indicates that Judges are independent in judgment and None but God and a higher law.

3 for the judge to be able to judge and people actually not under the influence and sentences documentary and Solid guarantee Health and community safety should be stripped of immunity and justice right, is not afraid or changing service location. The principle of judicial immunity rational and It is rational; In the shadow of impunity allows judgment to be correct.

4 For justice, restoring public rights and legitimate freedoms of the judge should not have any affiliation to a particular sect or political groups. Because; Judge depend on the policies, groups and special parties can represent and Symbol of justice.

5. The judiciary is the guarantor of public health. To have a strong judiciary, strong and healthy, we must:

1-5- In employment, Selection and training of judges and accuracy of index cases, virtuous, chaste, flawless, courageous, independent, weighty, the original family Known and possessed of virtue and ethical values and scientific merits are attracted to the judiciary.

2-5- brave judges, Impermeable, Independent with full impartiality and in accordance with religious rules and Legal rights can be backed up with further encouragement and without any concern for the law to carry out their tasks.

3-5 - Monitoring the basic principles and the rule Islamic culture the guarantor of justice, to assess and Assessing the actions of all people, especially judges and a Reasonable and The dynamic, Reinforcement, Improving the quantity and quality of the activities. Health and Health will be the judiciary. So; in order to Monitoring and enforcement Behavior that judges should be responsible for the monitoring devices are strengthened.

4-5- In the monitoring of faithful, pious, believes, sympathetic, brave judges which has a sense of justice and high academic ability and have of virtue and moral values should be used.

5-5- The introduction of monitoring is to assess the need to continually forces, and Preventive and in such a way that no misconduct in the judiciary, crime and or corruption be made and the monitoring revealed and hidden careful to skirt pure and holy in the presence of unhealthy and criminal justice system is not infected.

6-5- Regulatory measures should be done in a way that is healthy and noble judges in the judiciary feel safe and in other words, their job security threatened and judges unhealthy any eye problem, they feel insecure.

7-5- In order to encourage a better understanding of people, Note, Punishment and Suggest managerial positions and ... It is necessary Monitoring devices formed in the database that contains detailed information function judges.

8-5- To assess and Measuring the force field, Monitoring devices and the inspection should only seek imperfections, weak points , objections and or simply crimes, they must successes in inspections and operation positive and also consideration a door end solution needed to improve affairs and deficiencies should be provided.

9-5- Since the consistency of the population to the meritocracy is based system for organizing judiciary is trying to force a managerial position value, pious, modest, with Islamic ethics, honest, director and resourceful, experienced, sympathetic, familiar things, has the science and practical commitment to Islam and the light sentences believing and sacred system of the Islamic Republic of Iran is committed to.

10-5- In order to increase operational efficiency and prevention of offenses, should be in every collection managers with careful planning during the day, part of your furnaces monitor and inspect and monitor health led to the collection and treatment of violations are sensitive.

1-5-1- All regulatory measures of building community health and ultimately increase public confidence in the judiciary is judiciary.

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