

The Independence Of The Judiciary Is A Pillar Of The Trial “A Comparative Study Between Islamic Law And The Jordanian Judicial Independence Law”

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Abstract

This study aimed to clarify the reality of the independence of the judiciary and its legal basis, and to clarify the guarantees that guarantee its continuity and the non-invasion of other authorities into it. The researcher studied these foundations in detail, based on the urgent need to clarify the foundations and characteristics that characterize the Islamic judiciary in terms of independence and achievement. The researcher presented a detailed study of these principles with an indication of the guarantees for their realization, which reflects the extent of the advancement of Islamic thought and Islamic civilization.

The researcher reached many findings and recommendations represented in the fact that the judiciary in Islam in thought, system, and mechanisms is the ideal model for achieving justice, independence, and preserving human rights. The results also showed that the judiciary has principles and guarantees that must be applied. Hence, the researcher recommends working to achieve the principles and guarantees of the judiciary in practice.

Keywords: the judiciary, the independence of the judiciary, the judge.

Introduction

Praise is to God, Lord of the worlds, and prayers and peace be upon the faithful Prophet, who was sent as a mercy to the world, our Master

Muhammad - may God bless him and grant him peace - and upon all his noble companions, and after:

The judiciary is an essential pillar of Islamic legislation and the orbit of preserving nations and societies. In it, relations are stable, and transactions take place between individuals and people. Nations must have systems that govern all areas of their lives. The Islamic civilization is distinguished by its divine origins and its human judgment. It is rightfully the ideal model for people's lives, as Islam offers the finest ruling systems that regulate all aspects of life through the principles that govern Islamic judicial thought at a time when positivist studies abound without finding who shows the truth of judicial system principles.

A fair trial has become one of the main criteria for best and rational governance, by which the extent of progress and advancement of countries is measured, not only in the field of justice but also in other vital and significant areas, such as the rule of law, respect for human rights, justice and equality between citizens, and other fields of the modern state.

since the principle of fair trials has this importance, then there is something more important than it, which are the pillars on which this principle is based, which are the standards and foundations on which the principles of this trial are promoted, the most important of which is the principle of the independence of the judiciary.

Research significance

The significance of this study lies in the fact that it deals with the most important principle on which a fair judiciary based on, which is the principle of the independence of the judiciary. This importance is summarized as follows:

First: The general principles regulating the judiciary are the basic axis on which the parts of the judiciary and all its vocabulary depend on. The study of these principles can identify the correct position of the Islamic judiciary in old and emerging issues.

Second: Studying the principle of the independence of the judiciary and explaining its history in Islamic jurisprudence is a strong response and defense of Islamic law in the face of those who accuse the judiciary in Islam of backwardness and shortcomings.

Third: This study is one of the applied models that prove the validity and comprehensiveness of the Islamic judiciary for every time and place, based on these principles and the origins of the jurists in terms of opinions and doctrines.

Research problem and questions

This study is expected to answer the following main question:

What is meant by the principle of the independence of the judiciary as a pillar of a fair trial?

The following minor questions are:

1. What is meant by the independence of the judiciary?
2. What are the guarantees of the independence of the judiciary in Islamic jurisprudence?
3. What are the foundations of the independence of the judiciary in Islamic jurisprudence?

Research aims:

This study seeks to achieve the following aims:

1. Explain what is meant by the independence of the judiciary.
2. Clarification of the most important guarantees of the independence of the judiciary in Islamic jurisprudence.
3. Explain the foundations upon which the independence of the judiciary principle is based.

Study methodology:

This study followed:

First: the inductive approach: by extrapolating the opinions of scholars through their books.

Second: The analytical approach: is based on balancing, analysis, and criticism in light of the correct scientific rules and then concluding.

Third: It adopted the method of scientific documentation followed in scientific issues, attributing Quran verses to its chapters, grading Hadith and indicating their source, verifying the opinions of scholars, and attributing their opinion to their books.

The research limits:

The limits of this study are limited to the principle of the independence of the judiciary in Islamic jurisprudence and the law of the independence of the Jordanian judiciary, accordingly: the limits of the study and its reference are limited to this subject in particular, and the results of this study limited to this framework.

Previous studies

First: The Independence of the Judiciary, authored by Muhammad Asfour.

In this book, the author deals with the principle of the independence of the judiciary in general, confining it to the Arab and Western constitutions. In this book, the author deals with the independence of the judiciary principle of the principle in general, confining it to the Arab and Western constitutions. The researcher did not talk about the importance of the independence of the judiciary or the guarantees that guarantee its permanence, which helps the reader to consolidate this principle.

The current study differs from the previous study in that it is based on rooting the principle of the independence of the judiciary in Islamic jurisprudence, and showing its importance and guarantees that ensure its continuity.

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Second: Litigation guarantees, a comparative analytical study, by Amal Al-Fazzairi.

The researcher dealt with five judicial principles: independence, equality, free judiciary, public hearings, and freedom of defense and discussion. Her speech was brief and limited to defining these principles and referring to their endorsement by the wise legislator.

My current study differs that I will root the principle of the independence of the judiciary in a legal way, mentioning the importance of considering it as an important principle of the principles of Islamic judiciary, adding the guarantees and means of achieving it.

Research plan

This study contained an introduction, three chapters, and a conclusion.

The introduction included the importance of the study, its objectives, problems, limitations, the researcher's methodology, and previous studies.

The first topic is the reality of the independence of the judiciary.

The first requirement is the concept of the independence of the judiciary linguistically and idiomatically.

The second requirement is the legal basis for the principle of the independence of the judiciary.

The second topic is guarantees of the independence of the judiciary.

The first requirement is the administration of the judiciary.

The second requirement is the appointment of judges.

The third requirement is the installation of judges.

The fourth requirement is the impartiality of judges.

The fifth requirement is the prestige of judges.

The sixth requirement is the impact of judges' livelihoods on the independence of the judiciary.

The third topic is the foundations of the independence of the judiciary.

The first requirement is the method of appointing the judge.

The second requirement is the obligation of the judge's ruling.

The third requirement is the judge's sense of independence.

Conclusion includes the most important findings and recommendations.

The first topic: The reality of the independence of the judiciary.

This topic includes two requirements:

The first requirement is the concept of the independence of the judiciary linguistically and idiomatically.

The second requirement is the legal basis for the principle of the independence of the judiciary.

The first requirement: The concept of the independence of the judiciary linguistically and idiomatically.

First: the judiciary linguistically is whoever decides to judge. Judgment and judiciary is a common term with several meanings, one of which is judgment which means prevention. The judge is called a ruler to prevent the oppressor from oppressing him. Including their saying: the judge's ruling: that is, putting the right in his place and preventing those who do not have a right, and the judiciary is also called a ruling because of the wisdom in it that necessitates putting the thing in its place.¹

Second: Judiciary idiomatically has several definitions:

The Hanafis defined it as separating disputes and severing disputes in particular²

The Maliki defined it as informing about a legal ruling as a matter of obligation³

Shafi'i defined it as the separation of the dispute between two opponents or more by the rule of God Almighty⁴

¹ Al-Fayrouz Abadi, Majd al-Din Abu Taher Muhammad ibn Yaquob (deceased: 817 AH), Al-Qamous al-Muhit, Al-Resala Foundation for Printing, Publishing and Distribution, Beirut - Lebanon, vol.: 8, 1426 AH - 2005 AD, part 1, p. 1325.

² Ibn Abdeen, Muhammad Amin bin Omar bin Abd al-Aziz Abdeen (deceased: 1252 AH), The Confused Response to Durr Al-Mukhtar, Dar Al-Fikr-Beirut, 2nd Edition, 1412 AH - 1992 AD, Part 5, p. 352.

³ (Ibn Farhoun, Ibrahim bin Ali bin Muhammad, Burhan al-Din al-Yamari (deceased: 799 AH), Insight of Rulers in the Fundamentals of Cases and Methodologies of Judgments, Al-Azhar Colleges Library, 1st Edition, 1406 AH - 1986 AD, Part 1, p. 9.

⁴ Al-Sherbiny, Muhammad bin Ahmad Al-Khatib Al-Shafi'i (deceased: 977 AH), the singer of the need to know the meanings of the words of the

The Hanbalis defined it as the obligation to Islamic law and the separation of disputes⁵

These definitions include major matters, which the judiciary is information about the judgment of God Almighty. It is binding on both parties, and that it separates the dispute and ends them.

This is all in the ordinary judiciary. If the judiciary of grievances and the judiciary of Al-Hisba are added to it, then the judiciary is defined as the authority to separate the litigants and to protect rights in general by legal rulings.⁶

The independence of the judiciary means that judges and courts in the state are not subject to the authority of any other party and that their work is purely for the establishment of truth and justice, subject to what is followed by Islamic law, and conscience without any other consideration.⁷

The objective concept of the independence of the judiciary means the independence of the judiciary as an independent and parallel authority from the legislative and executive authorities, not allowing any party to give orders, instructions, or suggestions to the judicial authority related to its organization. Also, it means not prejudicing the original competence of the judiciary, which is adjudicating disputes and litigations by transferring the jurisdiction in adjudication to other parties such as exceptional courts, or legislative councils, or giving judicial powers to executive departments and others. "The judiciary is independent by the courts of all kinds and degrees and all judgments

curriculum, Dar Al-Kutub Al-Ilmiya, 1st edition, 1415 AH - 1994 AD, part 4, p. 371.

⁵ Al-Bahuti, Mansour bin Yunus bin Salah al-Din Ibn Hassan bin Idris (deceased: 1051 AH), Examination of the Mask on the Board of Persuasion, Dar Al-Kutub Al-Alami, Part 6, p. 285.

⁶ See: Al-Zuhaili, Muhammad Mustafa, Judicial Organization in Islamic Jurisprudence, Dar Al-Fikr, 1st Edition, DT, p. 63.

⁷ See: Muhammad Amin, Sardar Yassin, The Independence of the Judicial Authority between Theory and Practice, Master Thesis from the College of Law and Politics, University of Erbil, 2001, p. 73. And Sultan, Nayef bin Muhammad, the rights of the accused in the Saudi criminal procedure system, Amman, 2005, p. 228.

are handed down in accordance with the law in the name of the King".⁸

The second requirement: the legal basis for the principle of the independence of the judiciary.

The events of Islamic history abounded with the most wonderful meanings in which the principle of the independence of the judiciary was manifested since the brightness of the heavenly message (And so judge (you O Muhammad SAW) between them by what Allah has revealed) Al-Maidah: 48. After his death - peace and blessings be upon him - the judicial position was entrusted to the caliphs or those who delegated this position to them in the cities, and it became moving towards independence in the judiciary. When Omar Ibn Al-Khattab took over the judiciary during the time of the caliph Abu Bakr al-Siddiq - may God be pleased with them both - Omar said: "I'm giving you the city's judiciary."⁹

The Prophet, may God's prayers and peace be upon him, also forbade interfering in the affairs of the judiciary, saying "Whoever takes the wrongdoer's side in a dispute or supports wrongdoing, he will remain subject to the wrath of Allah until he gives it up"¹⁰

The principle of the independence of the judiciary had a great place in Islamic law and the absence of any influence from the judicial authority on the executive authority. There are many examples of this, including the standing of Imam Ali - May God honors his face - before the judiciary with the Jew in the case of the shield, and he is the caliph and guardian of authority. Caliph Omar Ibn Al-Khattab - May God be pleased with him - refused to decide for governors' and rulers'

⁸ According to the constitutional amendment published in Issue 5117 dated 1/10/2011 of the Official newspaper.

⁹ Al-Masoudi, Abu Al-Hassan Ali Bin Al-Hussein Bin Ali (deceased: 346 AH), Al-Tanbih and Al-Ishrafa, Dar Al-Sawy - Cairo, ed., DT., Part 1, p. 254.

¹⁰ Narrated by Ibn Majah, Abu Abdullah Muhammad bin Yazid Al-Qazwini (deceased: 273 AH), Sunan Ibn Majah, investigation: Muhammad Fouad Abdul-Baqi, House of Revival of Arabic Books - Faisal Issa Al-Babi Al-Halabi, ed. 2320, Chapter: Whoever claims what he does not have and disputes about it. Al-Albani's verdict: True. See: Al-Albani, Muhammad Nasir al-Din, (deceased: 1420 AH), Sahih al-Jami al-Saghir and its additions, The Islamic Office, ed., ed., vol. 2, p. 1045.

immunity from the judiciary.¹¹ This is evidence of Islamic law's respect for the principle of judicial independence.

The Basic Principles on the Independence of the Judiciary issued by the United Nations in 1985 AD are considered the international reference on the independence of the judiciary. The text came in the first item under the title of the independence of the judiciary: "The state guarantees the independence of the judiciary and is stipulated in the country's constitution or laws, and it is the duty of all governmental and other institutions to respect and observe the independence of the judiciary"¹²

Thus, the principle of the independence of the judiciary has become an important international principle that constitutes an obligation on all states, and this is confirmed by the Universal Declaration of Human Rights, which considers that:

"The first institutional guarantee for a fair trial is that judgments are not issued by political institutions, but by independent, impartial courts formed by law"¹³

The second topic: guarantees of the independence of the judiciary.

Among the most important issues that must exist to achieve the principle of the independence of the judiciary and the survival of its stability are those guarantees that ensure its permanence and continuity with the correct approach, and among the most important of these guarantees is what is contained in the demands of this topic.

The first requirement: administration of the judiciary.

The guarantee of the independence of the judiciary principle from the administrative point of view is divided into two important parts:

The first part: self-management

The self-management of the judiciary is achieved when the judiciary in the state is managed by a committee or a judicial council, not by

¹¹ See: Al-Masoudi, Al-Tanbih and Al-Ishraaf, previous reference, Part 1, pg. 259.

¹² Adopted by the Seventh United Nations Congress on Crime Prevention, Offenders, held in Milan from August 26 to December 1985. By resolution of the United Nations General Assembly.

¹³ Amnesty International, Fair Trials Guide, Amnesty International Publications, 1998, p. 74.

the government, through one of the ministries, which is often the Ministry of Justice. Experience has shown that the judicial power in countries whose administration is linked to a judicial body is more independent than the judicial power whose administration is linked to the executive power in other countries.

The second part: financial independence.

This means an independent budget should be allocated to the judicial authority in the state, and it is stipulated in a special item in the state budget. Also, this budget should be determined on the recommendation of the supreme judicial body that supervises the judicial system in the country.¹⁴

The second requirement: appointing and removing judges:

The judge is appointed based on competence and righteousness. The one who is in charge of the affairs of the Muslims must choose the most suitable and fittest one. Imam al-Sana'ani may God have mercy on him - said: "The imam must search for the most pleasing and best of people, and he will appoint him"¹⁵ When al-Hakim and al-Bayhaqi reported that the Prophet - may God's prayers and peace be upon him - said: "Whoever uses a man for a gang, and in that gang, there is someone who is more pleasing to God Almighty than him, then he has betrayed God, His Messenger, and the group of Muslims"¹⁶

It was reported on the authority of Caliph Omar Ibn Al-Khattab - may God be pleased with him -: "The one who employs an immoral person

¹⁴ It was stated in Item First / of the recommendations of the First Arab Conference on Justice that was held in Beirut in July / 1999 that: "The state must guarantee an independent budget for the judiciary, including all its branches and institutions, and include this budget as an independent item in the state budget, and it is determined based on the advice of judicial councils supreme in the judicial bodies.

¹⁵ Al-Sanaani, Muhammad bin Ismail bin Salah bin Muhammad Al-Hassani, (deceased: 1182 AH), Subul Al-Salam, Dar Al-Hadith, vol. 2, p. 567.

¹⁶ Narrated by Al-Bayhaqi, Ahmed bin Al-Hussein bin Ali bin Musa (deceased: 458 AH), Al-Sunan Al-Kubra, Dar Al-Kutub Al-Ilmiya, Beirut - Labanat, vol. 3, 1424 AH - 2003 AD, vol. 10, p. 201. Hadith No.: 20364. Al-Albani's ruling: Weak. See, Al-Albani, Da'eef Al-Jami Al-Saghir and its additions, The Islamic Office, ed., ed., vol. 1, pg. 779.

knowing that he is an immoral person, so he is like him”¹⁷ Ibn Taymiyyah - may God have mercy on him - said: “The most knowledgeable, the most pious, the most efficient shall be given precedence in the jurisdiction of the judiciary.”¹⁸

As for the dismissal of judges, there is a close link between the dismissal of judges and the independence of the judiciary. If it was possible to dismiss the judge without reason, that would be a constant threat to their position, prestige, and livelihood, and even have the greatest impact on the rulings they issued. As for the reasons that necessitate the dismissal of judges, such as taking bribes and other reasons that necessitate dismissal, there is no difference of opinion among the jurists regarding them. Imam al-Mawardi - may God have mercy on him - said: “And if the imam sees a judge transferring an act, it is permissible, and it is not permissible for him to dismiss him unless his condition changes or he finds someone more worthy than him.”¹⁹

The third requirement: the neutrality of judges.

The main motive that drives people to the judiciary is that it is a neutral body, which does not belong to anyone, and does not favor one party over the other. If individuals differ among themselves, they resort to the judiciary as a neutral body that is sufficient to build a fair, independent and fair judiciary in its rulings.

For the judiciary to enjoy impartiality, it must be separated from politics and independent of other state authorities. So that he does not lose the elements of his independence, and so that he does not become a vehicle for political whims, he must be independent, far from suspicion.

The judiciary is separated from politics when all individuals residing in the state are subject to one independent judicial authority that

¹⁷ Al-Hindi, Alaa al-Din Ali bin Hussam al-Din Ibn Qazi Khan al-Qadri (deceased: 975 AH), *The treasure of workers in Sunan al-Aqliwat wa'l-Afmal*, Al-Risala Foundation, 5th edition, 1401 AH / 1981 CE, vol. 5, p. 761.

¹⁸ Ibn Taymiyyah, Taqi al-Din Abu al-Abbas Ahmad ibn Abd al-Halim (deceased: 728 AH), *Majmoo' al-Fatawa*, King Fahd Complex for the Printing of the Noble Qur'an, the Prophet's City, Saudi Arabia, vol. 28, p. 258.

¹⁹ (Al-Mawardi, Abu al-Hasan Ali bin Muhammad bin Muhammad bin Habib (deceased: 450 AH), *persuasion in Shafi'i jurisprudence*, den, d.t., vol. 1, p. 196.

guarantees equality, equal opportunities, enjoyment of fair trials, and the emergence of just rulings that provide stability in the state.

The establishment of special courts is considered the greatest undermining of the elements of the independence of the judiciary, which applies to specific individuals or specializes in a certain type of case. As these courts give exceptional powers under laws that exceed the guarantees related to the trial, in addition to their bias towards one of the parties to the conflict.

In Jordan, the Jordanian Constitution of 1952 stipulated the types of courts and stipulated the existence of special courts, as it states: "Courts are of three types:

1. Regular courts.
2. Religious courts.
3. Special Courts.

The Jordanian constitution stated that the regular courts exercise the right to judge all persons except what was taken from them; the special courts were given the power to judge in certain articles according to the constitution, or any other legislation. Article (102) states: "The regular courts in the Hashemite Kingdom of Jordan exercise the right to judge all persons in all civil and penal matters, including lawsuits instituted by the government, or instituted against them, with the exception of cases in which the right to judge is delegated to religious courts, or special courts under the provisions of this Constitution or any legislation in force.

The fourth requirement: the authority of judges.

Judges throughout the ages, from the era of the Messenger - may God bless him and grant him peace - to the present day, have had a prominent and prominent position, as the judge is chosen, as we mentioned above, on firm foundations of knowledge, morals, piety, and religion, and the most daring to establish truth and justice.

The examples testify that no one, even if he was the head of the state, could harm them, and the rulings they issued were effective against any person, regardless of his status, and in the case of the Makhzum woman who was stolen, the best evidence of that is. 'A'isha said Quraish were anxious about the Makhzumi woman who had committed theft and asked, "Who will speak to God's Messenger

about her?" Then they said, "Who will be bold enough for it but Usama b. Zaid, God's Messenger's friend?" So Usama spoke to him and God's Messenger said, "Are you interceding regarding one of the punishments prescribed by God?" He then got up and gave an address, saying, "What destroyed your predecessors was just that when a person of rank among them committed a theft they left him alone, but when a weak one of their number committed a theft they inflicted the prescribed punishment on him. I swear by God that if Fatima daughter of Muhammad should steal I would have her hand cut off."²⁰

Ibn Hajar Al-Asqalani said: "Allah's blessings and peace be upon him singled out his daughter Fatimah for mention because she is the dearest of his family to him and because there were no daughters left at that time other than her, so he wanted to exaggerate in proving the execution of prescribed penalties on every taxpayer and leaving favoritism in that"

Because the judiciary is one of the highest ranks, and the highest positions, it is necessary for the judge to attain majesty and dignity, so that he does not joke with an honorable person who descends from his prestige, or a mean one who dares him.²¹

Ibn Farhoun - may God have mercy on him - said: "...and he should strive to be beautiful in appearance, outwardly pompous, dignified in gait, in sitting, well-pronounced and silent, guarding in his speech from extravagance and what is not needed, as if he counts his letters apart from himself, for his words are preserved and his slips are noticeable in that." And let him reduce when he speaks, pointing with his hand and turning to his face, for that is the work of the pretentious and the work of the undisciplined. In opposing that, there is degradation and humiliation, and good silence, tranquility, and dignity must be what preserves his chivalry, so that determination tends towards him, and he enlarges the hearts of the opponents to boldness against him without arrogance that he shows or admiration that he

²⁰ Narrated by Al-Bukhari, Al-Jami' Al-Musnad Al-Sahih Al-Sahih Abridged from the affairs of the Messenger of God, may God's prayers and peace be upon him, his Sunnah and his days = Sahih Al-Bukhari, Muhammad bin Ismail Abu Abdullah Al-Bukhari Al-Jaafi, Dar Touk Al-Najat, 1st edition, 1422 AH, Part 5, p. 151, Hadith No.: 4304.

²¹ Al-Asqalani, Ahmed bin Ali bin Hajar Abu Al-Fadl, Fath Al-Bari Explanation of Sahih Al-Bukhari, Dar Al-Maarifa - Beirut, 1379, Part 12, p. 95.

feels, for both of them are disgraceful in religion and a defect in the morals of the believers.²²

Society must work to elevate the position of the judge, preserve his chivalry and loftiness, preserve his prestige, guarantee his integrity, and magnify his awe because he deserves to be looked at and emulated, for he is the leader of justice and truth.

The fifth requirement: the impact of judges' livelihoods on the independence of the judiciary.

One of the guarantees of the judiciary's independence and prestige is providing for the judge's needs and allocating his livelihood. The state must provide them with health insurance, housing, and transportation and guarantee and help them to do so. To achieve the private interest that accrues to judges and their families and the public interest that keeps them away from bribes and accepting gifts and prevents them from looking at what is in the hands of people.

It was narrated that Abu Bakr - may God be pleased with him - when he was appointed caliph, "took the cubit and went out to the market, and it was said to him, 'You cannot afford this,' so he said: I would not let my family waste for your sake, so they imposed two dirhams on him every day, and Omar - may God be pleased with him - sent to Kufa Ammar bin Yasser as governor, Ibn Masoud as a judge, and Othman bin Hanif as a surveyor, and he assigned to them every day a sheep, half of which was for Ammar, and the other half between Abdullah and Othman.²³

The third topic: The foundations of the independence of the judiciary

It contains three requirements:

The first requirement: the method of appointing the judge.

The second requirement: the obligation of the judge's ruling.

The third requirement: the judge's sense of independence.

The first requirement: the method of appointing the judge.

²² Ibn Farhoun, *The Insight of Rulers into the Fundamentals of Judiciary and Methodologies of Judgments*, previous reference, Part 1, p. 32.

²³ Ibn Qudamah, *Abu Muhammad Muwaffaq al-Din Abdullah bin Ahmad* (deceased: 620 AH), *Al-Kafi fi the jurisprudence of Imam Ahmad*, Dar Al-Kutub Al-Ilmiya, 1st edition, 1414 AH - 1994 AD, Part 1, p. 135.

We mentioned earlier that the basis for appointing judges is parity and preference. Therefore, the method of appointing judges is based on valuable scientific and ethical principles so that judges have a high degree of scientific competence and professional ethics. This is achieved by qualifying judges from two aspects: the scientific and professional aspect and the professional ethical aspect necessary for the profession of judges.

Academically and professionally: The principle of equal opportunities must be taken into account, and the field opened on an equal footing for all those wishing to engage in judicial work and allowing them to apply for the position of judges without discrimination because of religion, race, color, language, sect, or economic or social status, then taking into account the required conditions available in the applicant and the points he scored in the competitive exam among the applicants, and after acceptance, judges must be qualified with training courses in private institutes run by qualified persons in the legal and judicial fields.²⁴

In terms of professional ethics and necessary personal qualities:

In terms of professional ethics and the necessary personal characteristics: special regulations and instructions must be issued that specify precisely and in detail: the tasks of judges, and the personal and social qualities that they must possess, such as avoiding dishonest behavior, not appearing inappropriate appearances in public places, and not being weak in front of money and other temptations, and to stay away from the cases that are presented to them when their judgment affects them directly or indirectly on their interests, whether positive or negative.²⁵

²⁴ Principle No. (5) of the United Nations Basic Principles on the Independence of the Judiciary in this regard states that: "Those selected for judicial office shall be individuals of integrity and competence, with appropriate training or qualifications in law, any method of selecting judges include guarantees against appointment to judicial positions for improper motives, and that no one may be discriminated against on the basis of race, color, gender, religion, political or other opinions, or national or social origin, in the selection of judges. However, it is not considered to be discriminatory that a candidate for a judicial position be required to be a national of the concerned country.

²⁵ See: Darwish, Muhammad Fahim, *The Art of Judgment*, Al-Zahra Press for Arab Media, Cairo, 1st edition, 2007 AD, p. 17.

The second requirement: the obligation of the judge's ruling.

The Islamic judiciary witnessed the most wonderful pictures of the obligation and enforcement of the judge's ruling. The judge's ruling is a duty of respect, and it is obligatory to implement it on whoever passed it, even if it was the caliph himself, the governor, or the commander of the army, otherwise his ruling is subject to veto and annulment according to opinions and whims.

In the Islamic state, matters were based on the implementation of judges' rulings, except in rare cases when the caliph or the governor might refuse to implement the judge's ruling.

If this happens and the governor or the sultan is not satisfied with his ruling, the judge has no choice but to withdraw from ruling or retire. Examples of this: what happened with al-Ezz bin Abd al-Salam - may God have mercy on him - when he was a judge in Egypt, and he ruled to invalidate the actions of those who reached the rank of emirate among the Mamluks, so he invalidated their contracts of sale or purchase; Because it was proven to him that slavery remains in their right, and when this was discussed, he insisted on his opinion, except that they be called upon and sold, and their price is placed in the treasury, and thus each of them obtains his freedom and becomes eligible for contracting. They were amazed at that, especially since these princes enjoyed a prominent position in the structure of the executive authority.

So the matter referred to sultan Saleh Ayoub, so the Sultan sent to al-Ezz ibn Abd al-Salam, but he did not retract his judgment, but the Sultan spoke harshly to him. The judge became angry and completed his needs leaving Cairo for the Levant. This resulted in a great crisis, and as soon as he left Cairo, the majority of Muslims, especially scholars, and merchants caught up with him. When the news reached the Sultan, he rode himself, followed him, appeased him, and was kind to him, but based on respecting the judiciary and implementing its rulings.²⁶

The third requirement: the judge's sense of independence

²⁶ See: Al-Kindi, Abu Omar Muhammad bin Yusuf bin Yaqoub Al-Kindi Al-Masry (deceased: after 355 AH), *The Book of Rulers and the Book of Judges*, Dar Al-Kutub Al-Ilmiyyah, Beirut - Lebanon, vol.: 1, 1424 AH - 2003 AD, p. 260.

To achieve the principle of the independence of the judiciary, the judge must feel his independence from any pressure or influence from any authority whatsoever, so no one can influence him, whether it is the caliph or the governor, because if the governor interferes in the judge's ruling or his affairs, then the judge has to retire for the reason for this interference.

Islam and its judicial system do not allow any person, regardless of his status, to interfere in a matter of the judges' affairs, such as issuing a specific ruling or adjusting a person who is not known for his justice. The Caliph or Emir in this field has nothing but advice and guidance if the matter requires.

There is no immunity for the ruler towards judges in Islam, and this enhances the judge's sense of independence in his judicial work, and no one dares to do that. If a complaint is submitted against the caliph or the ruler, the judge summons the caliph or the governor to his council so that his trial takes place in the presence of his opponent, and on an equal footing between them. The judge is obliged to resolve the dispute between the opponents without exception or favoritism.

An example of this is Masimah Umar ibn al-Khattab - may God be pleased with him - during his caliphate with one of his subjects on a mare he rode to test, but it became damaged, so they disputed with Shuraih al-Qadi. Likewise, what happened with Ali - may God honor his face - during his caliphate of a quarrel with a Jew, so the judge ruled against the caliph and in favor of the Jew regarding the shield that Ali lost on the night of Siffin. During the reign of the Umayyads, Abd al-Malik bin Marwan came to quarrel with his cousin at the judge Khair bin Naim, so the prince sat on the judge's bed and said to him: Get up with your cousin, so the prince got up from the judge's council.²⁷

Conclusion

It includes the most important results, including:

- The independence of the judiciary is one of the main pillars of good and rational governance, in a way that it has become a major criterion for evaluating the systems of government in different countries.

²⁷ See: Al-Kindi, *The Book of Rulers and the Book of Rulers*, previous reference, p. 356.

- The independence of the judiciary is closely linked to the issue of fair trials between people, as there are no fair criminal trials under a non-independent judicial authority. Accordingly, the independence of the judiciary is a basic condition and requirement for fair trials.
- The independence of the judiciary is not achieved by merely stipulating it in constitutions and laws, but rather it requires a set of steps. Some are related to the judiciary as a whole and as an apparatus of the state. Others relate to judges as individuals working in the field of judges and the guarantees that ensure the permanence and continuity of the principle of the independence of the judiciary. Among these steps is that the judicial authority should be independent of other authorities and that judges are not subject to the influence of any other authority in their work.
- The researcher can find, by referring to Islamic history, how such pillars have borne fruit in the various Islamic eras and how the penal trials were conducted in a fair manner to fulfill God's law regarding the servants and preserve the human rights that God Almighty bestowed upon all human beings without discrimination on the grounds of race or ethnicity, gender, economic or social status among them.

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