

Judicial Independence and Impartiality: From Necessity Assessment to Pragmatic Challenges

SEPIDEH BOUZARI*
SIMIN ASADZADEH
EHSAN SALIMI

ABSTRACT

In order to ensure a just legal system, impartiality and independence of the judiciary are two of the most important principles. Often, these two words are used together when discussing the principles of a fair trial. According to this principle, a judge must be able to process and issue judgments in the performance of his duties and responsibilities without reliance or partiality nor applying internal or external pressures. As a consequence, several factors contribute to the implementation of this important principle, including the observance of rules, such as the prohibition against obtaining evidence, the non-interference of judges in politics, the openness of proceedings, job security, and compliance with rules in the employment of judges. By observing these factors as closely as possible, the hope of observing this principle and realizing justice increases; however, some factors hinder its implementation. There are two categories of challenges and factors that threaten judicial independence: the legal aspects and the pragmatic aspects. When it comes to legal challenges, some approvals transgress judicial independence, and when it comes to pragmatic challenges, there are factors that threaten judicial independence. As part of this article, which discusses the independence of the judicial system, the aforementioned factors are discussed, along with the relevance of this principle to jurisprudence. It is also important to note that, in addition to being impartial, the fairness of the proceedings requires the court to be open, legal, and independent, among other things. Using a descriptive-analytical method and collecting information from a library, the present study has been conducted.

Keywords: Independence; impartiality; justice; judgment; hearing

INTRODUCTION

Throughout history, mankind has spent a great deal of money and effort to establish and maintain the concept of justice as the supreme ideal of all human societies. There have been many words and ideas raised regarding the concept of justice. Justice is defined by Hazrat Ali as the establishment of affairs in their place.¹ Allameh Tabatabaei has explained in Tafsir al-Mizan regarding justice: "Justice means giving everyone who has a right from among the powerful his right and placing him in a position that he deserves."² In another place, he expressed justice in the following manner: "It is the truth of justice to establish equality and a balance between things so that all things are equal and all have their rightful share."³ In Motahari's view, justice is the granting of rights to those who are entitled to them or refusing to violate those rights.⁴ According to all these definitions, justice entails "putting everything in its proper place" and "granting the rights of each rightful individual to him." Therefore, the judgment and proceedings are fair when each party is able to reach its true position and receive what they deserve through the ruling.

This occurs when the justice system and the person of the judge are governed by requirements and principles derived from revelation texts, infallible guidelines, or valid human experiences. "The principle of independence and impartiality of the judge" is one of these principles and requirements. As a result of the sensitivity of judicial positions, the independence of the judiciary differs fundamentally from that of other public institutions. It has been suggested that judicial independence is one of the pillars of the independence of a nation due to its importance.⁵ Hence, the principle of independence of the judge is one of the principles that will enhance the relationship between the people and the judicial system. As a result, if the public believes that the judiciary system is impartial and independent, they will accept its results and implement it easily.

JUDICIAL STRUCTURE OF THE ISLAMIC REPUBLIC OF IRAN

According to Article 57 of the Constitution of Iran, the separation of powers is accepted in Iran's

legal system. This principle stipulates: “The ruling powers in the Islamic Republic of Iran are: the legislative power, the executive power, and the judicial power, which are under the supervision of the absolute guardianship and the Imamate of the Ummah according to the future principles of this law are applied. These powers are independent of each other.” For this reason, next to the executive branch and the legislature, a third branch exists called the judicial branch that resolves complaints and lawsuits. In the judiciary, the courts are divided into high courts and primary courts. The high courts and the supreme court of the country supervise the decisions of the primary courts and basically have the right to overrule the decisions of the primary courts. The branches of the Supreme Courts are formed with a plurality of three judges, and the branches of the lower courts are generally formed with a single judge. However, in important cases, especially in criminal matters, the lower courts are also held with a plurality of judges. In branches with multiple judges, the votes of the judges are equal to each other, and one judge is recognized as the head of the court only for administrative and court management matters.

THE INDEPENDENCE OF THE JUDICIAL SYSTEM

It is the responsibility of the judicial authorities to investigate and make appropriate decisions with impartiality and independence as soon as possible in accordance with Article 3 of the Criminal Procedure Law and to prevent any actions that interfere with or prolong criminal proceedings.

In the sense of judicial independence, the judge is free from any influence or interference from those in power or litigants, which is a fundamental principle for the proper implementation of justice. The principle of equality has been accepted by Islamic rulings, international documents, and different systems throughout the world.⁶ It is undeniable that judicial independence has become a fixed and undeniable principle in the modern world.

It is essential that judges remain free and fearless when making their decisions, avoiding taking sides with litigants and obeying anyone but the law. The jury’s verdict cannot be affected by any factor, including public opinion, political influence, individual and party interests, personal emotions, etc., and they must also apply the law fairly and decide based on the evidence presented.⁷

The independence of the judicial system is a prerequisite for the judges to perform their duties correctly and not deviate from fair proceedings. For the judiciary to be independent, the separation of powers principle must be observed between it and other government institutions. As can be seen from several principles of the constitution, the separation of the judiciary from other ruling powers is the first step in achieving organizational independence for the judiciary. However, this does not imply a complete and desirable level of judicial independence. It is important to ensure the independence and impartiality of the judge in order to achieve judicial independence in the real sense. Therefore, the judges are in a position where they are only able to issue judgments based on law, justice, and fairness. Furthermore, since they have shown independent behavior, they should not fear being fired, demoted, changing their position of service, or compromising their career. In order for judicial independence to be truly comprehensive, the law must protect judges not only within the judiciary, but outside of it as well, so that no official, government institution, or even public opinion can threaten or influence them.⁸

In this respect, it should be noted that the judiciary’s work is such that the judge cannot satisfy all of the people because the nature of its work is such. The majority of the time, one party, or even both parties, are upset by the judge’s decision and attempt to influence the decision-making process in their favor by applying pressure. The independence of the judiciary serves as a powerful barrier against pressures and attempts to exert influence. For the sake of making a fair judgment and interpreting the law correctly, an independent judge does not change his mind while making a decision. Because the mentioned principle benefits citizens in general, it is not only not against democracy, but it strengthens it; for without judicial independence, citizens cannot be assured of their freedom. The pillars of a democratic society are, in fact, the impartiality of the judge, judicial independence, as well as public trust in the judiciary.⁹ Conversely, a decrease in public trust in the independence of the judiciary reveals a weakness in society’s democratic structure and threatens citizens’ rights and liberties.

In several documents, the United Nations has taken note of this category, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), and a resolution relating to the fundamental principles of judicial independence, and has required all

member states to implement laws ensuring judicial independence. In spite of this, domestic regulations and international documents do not define it.¹⁰

Separation of powers, as discussed in the previous parts, is the cornerstone of the judiciary's independence. The concept of separation of powers refers to the separation of specific and general government duties and the assignment of each to an independent authority. As part of the government's responsibilities, one of the most important is the settlement of disputes based on laws, and as such, an independent and distinct branch of government was established to fulfill this function. Therefore, when the judiciary in general, and judges, in particular, are independent of other government institutions, justice will be administered satisfactorily. As a result, the issue that is raised is the way in which the judicial system should be separated from other government systems. There was a time when it was believed that the three powers should be completely and absolutely separated from one another in order for their specialized duties to be performed to the best of their abilities. As time passed and experiences were gained, it became evident that absolute separation of powers is neither practical nor efficient.¹¹ It was due to the fact that they chose to refer to the separation of powers as inflexible rather than absolute. In order to explain that sometimes each of the government forces is given duties and functions outside of their specific responsibilities. It is imperative, however, that such powers are granted in a balanced manner so that a portion of the forces does not possess vast powers.¹²

THE CONCEPT OF IMPARTIALITY AND INDEPENDENCE OF JUDGES

While independence and impartiality are two different principles, they have conceptual and exemplary similarities. Even though authors often use these two principles interchangeably, a close examination of the concepts and examples of the two principles indicates that they differ from one another.

THE PRINCIPLE OF IMPARTIALITY OF THE JUDGE

An impartial individual is someone who is not prejudiced and does not take sides, and impartiality is defined as a lack of prejudice, partiality, and involvement in political categories.¹³ By interpreting the term impartiality literally, we can gain a better

understanding of what it means in reality. Since the judge's behavior during the trial is one channel in which the principle of impartiality is expressed, the judge must act impartially in his actions throughout the trial and not favor a particular party during the trial. A judge's behavior must be consistent with the procedures and must be accompanied by complete equality, and the right to impartiality is a fundamental right of the parties.¹⁴

Hence, the judge must adhere to the principles of justice when dealing with lawsuits and proceed with the utmost impartiality. There are three definitions of impartiality: first, assuring the litigant that the individual handling his case will apply the law equally to him and to the other party; second, the absence of bias towards legal opinions; third, the judge should pay attention to the opposing point of view while maintaining his own opinions, especially when there is an open case on that topic. The impartiality of the judge is based on the arguments that have been proposed and addressed in the lawsuit based on the laws, which is one of the most important results of impartiality. There is no way he can rely on information that was provided to him outside the proceedings and deny the parties the opportunity to defend themselves.¹⁵ Fair trials are characterized by the observance of the principles of impartiality and independence of the judicial authority.

It is based on this principle that judicial decisions must be rendered by competent and impartial courts. In reality, this principle refers to observing the judge's outward behavior during the trial. In other words, he should refrain from any suspicious behavior or actions which are detrimental to the right and strengthen or weaken one party's position or weaken that of the other. The right to a fair trial is now regarded as a human right, and one aspect of a fair trial is the observance of the principle of impartiality in the trial process. An impartial proceeding is a necessary but insufficient condition for a fair trial. In addition to being impartial, fair proceedings require the court to be open, legal, and independent.¹⁶

Equitable treatment should be the basis for the principle of impartiality. Thus, law and justice must protect people in the same manner, and no one is superior to the other in this regard. Equal rights are one of the examples of human rights. These rights precede and are superior to the law. For equality to be achieved, people must be treated fairly in the criminal justice system, both at the legislative and judicial levels.¹⁷

JUDGES' INDEPENDENCE

As the term implies, independence implies not relying upon others nor needing them¹⁸, having freedom, not being influenced by anything or anywhere, managing one's work without anyone's intervention.¹⁹ In a sense, it means freedom from influence and regardless of influence, and in political terms, it means immunity from influence and control by foreign powers. Essentially, the independence of the judge refers to the fact that the judge will decide on the matter raised at the hearing stage based on facts and the law without any interference, pressure, or improper influence from any government department or other source.²⁰

Neither the international human rights regulations related to fair trials nor the international criminal court regulations explicitly define the independence or impartiality of the court. In addition to what has been stated: "This is the content of the notion that civil lawsuits and criminal charges ought to be handled by independent and impartial courts or tribunals, or that judges should be independent." It can be defined generally as the absence of communication between a judge and other persons with authority, either legally or de facto, that can cause him to pause in some of his decisions. An independent person is one who does not rely on others for anything, including the ability to make decisions as well as put those decisions into practice.²¹

As a matter of fact, when speaking of independence in the context of judicial proceedings, it means that the judicial system must be immune from political and administrative influence and control and that political and executive institutions must strictly refrain from exercising control over judges and their opinions. According to this definition, independence means being free from influence and political or executive control. In order to maintain judicial independence²², the judge must maintain complete and comprehensive independence from the executive branch, the judicial branch officials, as well as public opinion. In issuing the opinion, he should adhere only to the law and conscience, not to others' wishes, and not be frightened of obstacles.²³ The method of appointing the court members and the conditions for its administration are important factors in ensuring the independence of the court; the correct application of these methods is one of the factors in coping with external pressures. Additionally, there are other factors such as job

security, adequate financial support, as well as institutional independence, the most important component of the independence of the court.

In spite of the fact that independence and impartiality are often used together, it should be highlighted that they do not have the same meaning, although violating one is equivalent to violating the other. The impartiality of the judge is necessary in order to maintain judicial independence, and recognizing the judge's independence ensures his impartiality. Judicial independence is dependent upon the independent judiciary; however, it is not the only element and its creator, and elements such as prosecutor's immunity are among the factors that ensure impartiality. If a judge is independent, he will be able to make impartial decisions by nature.²⁴

Hence, the institution of impartial judgment is essential to creating a human society in order to settle disputes and enmities between individuals. In order for a trial to be impartial, the judge must be independent, and the standards of a fair trial must be observed from the moment that the prosecution against the accused begins until the trial has been completed.

Thus, one of the most fundamental criteria underlying the right to a fair trial is the right to enjoy a trial by an impartial and independent court.²⁵

THE STATUS OF THE PRINCIPLE OF INDEPENDENCE OF THE JUDGE IN JURISPRUDENCE AND LAW AND INTERNATIONAL DOCUMENTS

The importance of judging in Islam has led to many suggestions in various verses and traditions regarding the place of judging and efforts to develop justice and fairness. In the Holy Quran, the independence of the judiciary is mentioned in some verses, which shows the importance of this vital principle. When God Almighty addresses the judges and says in Surah Nisa':

"Believers, be the guardians of justice and bear witness to God, which means to agree with God's decree. Even if it is to the disadvantage of your parents and relatives, if you bear witness for anyone, whether rich or poor, you should not favor anyone in your judgment and testimony and should not deviate from the right, for Allah is superior in the respect of their rights. Therefore, you should not follow your ego in your judgment and testimony in order to uphold justice, and if you so twist your tongue in your testimony or refrain from speaking the truth, God is aware of everything you do."²⁶

God has given the greatest support for the independence of the judiciary to be the implementation of justice and fairness and the directness of the judge's independence. In this verse, it is the duty of the judge to preserve impartiality even before enemies and opponents.²⁷

Reflection on the light verses of the Holy Quran, the traditional biographies of the Prophet and the innocent Imams (peace be upon them), and the rich Islamic culture and literature of Iran shows that no school values judgment as much as Islam.

According to the Luculent School of Islam, fair and just proceedings require accuracy in proceedings and observance of caution and impartiality. Surah Nisa, verse 58, and Surah Ma'idah, verse 42, discuss the judge's duty to render a verdict based on truth, equity, and justice, while Surah Al-Baqareh, verses 42 and 146, and Surah Al-Imran, verse 71, discusses the importance of not hiding the truth. Various examples of impartiality are found in Islamic jurisprudence, for example, the obligation to treat all litigants equally, the judge's speech and greeting and answering greetings, his openness towards them, and his listening to their statements. In addition, the narrations that forbid the judge from judging when angry, hungry, thirsty, sleepy, doing business, excessively fatigued, worried, or anxious are examples of caution and maintaining impartiality when deciding cases. In his order to Malik Ashtar after electing a judge, Hazrat Ali, who is the exponent and interpreter of the goals of holy Islamic law, emphasizes the principle of judicial independence and states:

"Give the judge an increased salary and enough to eliminate his poverty and reduce his dependency on the people, and give him a position and dignity in your domain that no one of your relatives or close ones will be able to covet, so he will not be harmed by cunning thoughts and efforts from evil thinkers at the top of that prestigious position, and evil-speakers will not have the opportunity to seduce him. Be his supporter and make him sit close to you as he signs his judgment and executes his sentence. It is His Holiness' belief that all these commands are necessary in order for religion to be revived and to be rescued from the hands of evildoers."²⁸

Thus, the meaning of judicial independence is that a judge should be guided only by the law and his conscience when making a decision, should not pay attention to the orders, opinions, and wishes of others, and should not be worried about losing his job or position, or changing his place of work and position. Iran's laws also highlight the observance

of the principle of impartiality by the judge as legal obligation. Articles 3²⁹ and 93³⁰ of the Code of Criminal Procedure, which was approved in 1392, is one of these cases.³¹

Based on Article 164 of the Iranian Constitution and Article 42 of the Principles of Judicial Organization, the executive guarantee of the independence of judges can be divided into two categories: professional immunity and criminal immunity. According to these provisions, the owners of judicial bases cannot be prosecuted without the permission of the Supreme Disciplinary Court of Judges and before the removal of judicial immunity.

According to Article 164 of the Iranian Constitution, a judge may not be temporarily or permanently dismissed from the position he holds without a trial and without proof of a crime or an offense that leads to his dismissal, nor may he change his place of service or position without his assent, except when required by the interests of society, with the decision of the head of the judiciary after consultation with the head of the Supreme Court and the Prosecutor General. The periodic transfer of judges shall also be carried out in accordance with the general rules established by law.

A judicial employee who commits a mistake or a crime, and the police prosecutor deems it reasonable for reasons and evidence to require criminal prosecution, will be punished under Article 42 of the Law on Principles of Judicial Organizations. The suspect employee is requested to be suspended from his employment until the High Disciplinary Court announces the final decision of the criminal authority. As a result, the court will issue an appropriate order after considering the reasons; and in the event that the employee is acquitted, the period of suspension will be considered part of his/her service period and his/her salary will be reimbursed.

As a matter of fact, referring to the independence principle cannot result in the issuance of arbitrary verdicts, because if a judge wishes to base his judicial justice on political and expedient considerations and non-judicial issues, this would definitely adversely affect justice and rights of individuals as well as the judicial process itself.

The principle of impartiality and independence of the judiciary is guaranteed by Article 10 of the Universal Declaration of Human Rights, paragraph 1 of Article 14 of the Covenant on Civil and Political Rights, paragraph 1 of Article 8, and Paragraph 2 of Article 27 of the American Convention on Human Rights, paragraph 1 of Article 6 of the European

Convention on Human Rights, paragraph 1 of Article 7 and Article 26 of the African Charter on Human and Peoples' Rights. However, the provisions related to the independence and impartiality of judges are not included in the documents of criminal trials, such as special courts; however, in their way of investigation, it is possible to objectively respect the principle of impartiality and independence.

Article 13 of the Statute of the Former Yugoslavian Court and Article 12 of the Rwandan Court, which deal with the selection of judges, emphasize the necessity of judges judging honorably and impartially, which emphasizes impartiality and objective independence. As mentioned in the same article, high moral qualities are among the other characteristics judges should possess. An informed conscience and a pure mind without grudges are among the most important moral qualities, which emphasize the abstract impartiality of judges as well. As far as the independence of Ad Hoc courts is concerned, we are unable to be entirely certain; because their governing body was the organization's Security Council, which will push the court in line with the goals of influential governments, and they are budgeted by the general assembly. Nevertheless, this is a different situation at the International Criminal Court, as this is stated in Article 40 of the Statute; in other words, "Judges must be independent in their duties." Moreover, he has prohibited those judges from undertaking any other position that would interfere with their ability to perform their duties in the second paragraph. In Ad Hoc criminal trials, judges' independence and impartiality are accepted as qualities, not as rights to defend the rights of the accused, but at the International Criminal Court, this issue is seen as a right to defense.³²

JUDICIAL IMPARTIALITY-ENHANCING FACTORS

As far as the independence of the judicial system is concerned, we are faced with two kinds of independence, i.e., the independence of the judiciary and the independence of the judge. The independence of the judiciary is the same concept that is mentioned in the Constitution when it talks about the existence of three independent branches: the legislative, the executive, and the judiciary, and it refers to the fact that the judiciary as a whole is independent of the other two powers.

According to these interpretations, neither the other two powers nor the judiciary may interfere in the affairs of the other powers. There is no

connection between the issue of independence and the special duties of the judicial system when it comes into contact with other authorities' concerns. In the legislative process, the Legislature approves the budget for the judicial system, and in this context, the judiciary is subordinated to the legislature, but if a bill has an absolute judicial component, only the judiciary can introduce it. There is no connection between this regulation and judicial plans and bills that may have a judicial component.

It is also important to emphasize the independence of judges as another aspect of independence in the judiciary; the independence of judges may be even more important than that of the judicial system as a whole; It is obvious that the independence of the judiciary is important in itself and should be taken into consideration, but since the primary duty of the courts that make up the judiciary is to spread justice and judicial equality, judges must be independent in their actions as judges. It is therefore prohibited for anyone, including the head of the judiciary, and a higher court, to interfere with the work of the judge issuing the decision when he intends to comment on a matter. It is extremely important that it should be guaranteed and provided from various aspects and should be done in such a manner that the judge feels completely safe and independent while performing his duties.³³

As far as the "individual independence of the judge" is concerned, there are two methods by which "independence" can be guaranteed; first, the judge should not be afraid of retaliation or the threat of retaliation, so that fear and worry do not affect his decision-making; second, the process by which judges are selected and the ethical principles they are required to follow should minimize corruption and outside interference. As it is always said, a judge should possess political or social insight and understanding, which means that he or she must have an understanding of society and its environment, as well as an understanding of judicial policy and decision-making.

As mentioned in the previous parts, the most important factor in determining whether justice has been achieved is the "independence" and impartiality of the judge. In making a decision, the judge must be in a position where he is not afraid of anything and only acts on the basis of the law and his conscience.

In terms of the factors that enhance the judge's impartiality, it should be noted that these factors generally fall into two groups. The first category is related to non-personal affairs, which includes: non-

interference in politics, the rule of not obtaining evidence, and public trial, and the second category is personal affairs, which includes job security and proper selection.

STRUCTURAL CONTROL FACTORS

In terms of the factors that enhance the enforcement of the principle of independence and impartiality of judges, there are two groups of factors. First, there are the non-personal factors, which we will explain in the following section.

Non-interference in Politics

In addition to the pressures and threats that may be exerted on judges and proceedings by influential groups of society, judges may also be subject to much subtler and far more dangerous pressures and threats. So, the judge should not be influenced by his own opinions or thoughts during the proceedings, but should only make decisions based on the statute laws, and as a result, maintain his neutrality, especially in cases involving politics. Consequently, the judge should not be used to achieve the political goals of others.

Obviously, prohibiting judges from engaging in political affairs does not mean denying them all political rights; in fact, based on Principle 8 of the Basic Principles of Judicial Independence; “under the Universal Declaration of Human Rights, judges, like other citizens, have the right to freedom of expression and opinion, association and assembly, provided that they exercise these rights in a way that preserves their professional dignity, impartiality, and independence”; but in the exercise of this right, he must always behave in a way that preserves the dignity of the judiciary and the independence and impartiality of the judiciary.³⁴

In order to maintain the independence and impartiality of judges, Article 52 of the legal bill on the principles of judicial organization and employment of judges established on 14/12/1333 sets two limitations:

1. Prohibition of participation in political parties and groups affiliated with them; the above article stipulates that judicial officers are forbidden from joining political parties or groups associated with them in order to maintain complete neutrality and respect for judicial affairs.

2. Judges are prohibited from publishing political and party magazines; therefore, they cannot advertise or publish political or party publications.

Prohibition of the Obtaining of Evidence Rule

Among the rules of the procedure resulting from the principle of impartiality is the rule of prohibiting the study of evidence³⁵; because the effective evidence of the dispute is with two parties, in this case, it requires the judge to be impartial in this field, also impartiality is a requirement of the judge’s piety in giving justice.³⁶

As a consequence of some new perspectives, this rule has been referred to as the principle of consolation; however, popular opinion holds that when the judge actively participates and obtains evidence for one party, it creates serious doubt in the mind of the other party regarding the judge’s impartiality, thus prohibiting the obtaining of evidence.³⁷

Due to the fact that judges are not angels blind to facts, this rule has been subject to modifications and adjustments in various legal systems because they are knowledgeable and research-oriented individuals who are equally sensitive to conscience and duty. The passivity of the judge should be distinguished from impartiality.

The passivity or inactivity of the judge reflects the state of the judge in relation to the requests of the parties and the issues raised by them, who have no discretion in this area and is subject to the will of the parties. What needs to be respected is the impartiality of the judge.³⁸

The Public Trial Rule

The meaning of a public trial is not to impose obstacles for people to attend the hearings; the rule of a public trial, which has universal application³⁹, has two meanings; first - the trial process and the arguments of the litigants are generally held in public and not in secret, and anyone can attend the courtroom and be informed about the proceedings; second - it is made available to the public so that people can be aware of the outcomes of the work of the judicial system and evaluate its validity and legitimacy.⁴⁰

The public trial is therefore a fundamental requirement of transparency and legality in judicial proceedings. When the proceedings are conducted in public, it is possible to determine the degree

to which the judge complied with impartiality standards, and supervision is available not only to the parties; Rather, it is also possible for the general public to be informed about the proceedings, which is considered to be a protection against the absolutism of the judiciary as well as a sign of preserving the freedom of individuals' rights and civil liberties.

A judiciary must provide the means to realize the principle of openness in order for judges to consider themselves exposed to public judgment, particularly by media representatives, while observing impartiality. All international documents related to the proceedings emphasize the importance of this principle and it is always a fundamental principle of the country's constitution. This approach formed the tradition and practice of early Islamic judges, who always chose mosques and public areas as the place of judgment.⁴¹

Public trials have become so important to Iran's legal system that Article 165 of the Constitution has made them a binding principle. If, however, the interests of society or the parties are at stake, the court session may be held in private, and the principle of openness may be ignored.⁴² Of course, these cases are extremely rare and should not be interpreted too broadly.⁴³

INDIVIDUAL STRENGTHENING FACTORS

The second factor that strengthens the implementation of the principle of independence and impartiality of judges is the individual factor.

Job Security

In order for judges to achieve actual independence in their true sense, they must have the security of their position and job, which means they cannot be subject to a change of position and job without proof of fault. Without this, a judge will always be concerned about the outcome of his decision and whether he will lose his position or be forced to change jobs.⁴⁴ In addition to job security, another factor that prevents the influence of the judge is the spirit of courage and bravery, which should not be undermined.

According to article 164 of the Constitution, a judge may not be temporarily or permanently dismissed from the position he occupies without a trial and without proof of a crime or violation leading to dismissal, nor may he change his place of service or position without his agreement; except when required by the interest of society,

with the decision of the head of the judiciary after consultation with the head of the Supreme Court and the Prosecutor General. The periodic transfer of judges is carried out according to the general rules of the law. In addition, in order to maintain job security, according to Article 39 of the Law on Supervision of the Conduct of Judges, which was approved in 2012, if the holder of the judicial base is under suspicion while working in the judiciary, special procedures must be carried out as described in the aforementioned articles. First, the issue has been reviewed by the Judicial Disciplinary Court, and if the Judicial Disciplinary Prosecutor has sufficient grounds and evidence to charge the accused, he should request the suspension of the judge from the Judicial Disciplinary Court; and if this request is prescribed, the Supreme Court will issue a decision to suspend the judge from his job.⁴⁵

Selecting Judges

The recruitment of judges involves several steps, including an entrance examination, an interview, a selection process, and a probationary period. According to Article 7 of the Implementing Regulations of the Law on Selection and Employment of Judges, the Department for Selection and Employment of Judges shall take appropriate measures to determine the qualifications of candidates by interviewing and selecting those who pass the examination and by verifying their academic qualifications.

All these steps are followed by a three-year trial period, and if the final qualifications are approved by the institutions named in the judges' employment laws, the judges are officially appointed.⁴⁶

CHALLENGES TO JUDICIAL INDEPENDENCE

Despite the fact that power and independence are two important and definite principles in the Islamic judicial system, there are also controlling principles and restrictions on the judge in conflict with these two principles.

For instance, contrary to the principle of judicial independence, Ijtihad, science, and necessary judicial expertise are certain requirements that moderate and control the independence of the judge and protect him to some extent from mistakes; and contrary to the principle of the power of the judge and the judicial system, the principles of justice, piety, and disregard for worldly wealth and status and not having the slightest greed and lust for

secular decorations are the basic requirements that moderate and control the principle of his power and freedom. All the principles and conditions of justice are the same and are connected with each other like the links of a chain, and all of them should be counted together, not each one independently and separately. So these things must be balanced and proportionate to each other, and like the two scales of a balance, they must be the same and equal, and if the judge's knowledge is not at the level of Ijtihad; his independence should also be limited, various legal levers and controls should be installed, and his decision should be reviewed and revised; and if there is no justice and piety, he should not sit in the position of the infallible Prophets and Imams, and if he has a little degree of justice and piety, his power should be limited in parallel.

The sanction of independence is one of the concerns of judges in the area of judgment, which is accompanied by the fear of loss of employment or position, despite their independence in issuing judgments. In accordance with the guarantees provided for independence, it can be stated that; whenever powers seek to influence and influence the court or judges to influence their verdicts and decisions, and the courts and judges lack the necessary tools and guarantees to remain independent of such influences, they will not be independent. Generally, a trial is fair and just when the judge renders an opinion and verdict without being pressured or coerced.⁴⁷

It is possible to analyze the challenges and factors threatening judicial independence in two different categories: legal and practical.

LEGAL CHALLENGES

A) Legal direction: There are provisions in the existing laws that clearly attack and threaten the independence of the judiciary. In order to clarify this issue, the following regulations can be cited:

1. Article 156 of the Iranian Constitution emphasizes the independence of the judiciary. Also, according to Article 166, the duty of judges to issue reasoned judgments based on the law mandates their independence and warns them against any illegal influence. In order to support the judges in this way, Article 164⁴⁸ of the Constitution also stipulates the limits for the transfer, dismissal, and appointment of judges. Some believe that although the

Constitution emphasizes the independence of the judiciary, it does not clearly specify who the guarantor of this independence is, and somehow, the existence of the provisions of the last part of Article 164 is a clear violation of the independence of the judiciary.⁴⁹ Also, in addition to creating Article 171 of the Constitution and recognizing the material and moral responsibility of judges, judges have been subjected to an important responsibility, which is Article 171 of the Constitution as follows:

2. If a material or moral damage is caused to any person due to the fault or error of the judge in the matter or in the decision or in the implementation of the decision in a particular case, the guilty person is the guarantor in the case of fault according to Islamic standards; otherwise, the damage shall be compensated by the government, and in any case, the defendant's reputation shall be restored.
3. Criminal Procedure Code: For the first time, Article 3 of the Code of Criminal Procedure mentions the independence of the judiciary as one of the basic principles of a fair trial. It is noteworthy that this article mentions impartiality before independence, which seems incorrect from a legal and technical point of view since independence is the basis of impartiality and its establishment. It would have been better for the legislator to mention the word 'independence' before 'impartiality' because until independence is secured, impartiality will not be achieved.⁵⁰
4. Among the laws that create challenges and are obstacles to the independence of the judiciary, we can mention the law for the establishment of the High Disciplinary Court of Judges, which was approved by the Expediency Council in 1370. This law was temporary and the deadline for its implementation has passed.
5. Another law that affects judicial independence is the law on monitoring the behavior of judges approved in 1390, which deals with the violations of judges and predicting the guarantee of execution for them. According to paragraph 4 of article 17 of this law, "departure of judges from judicial neutrality" is foreseen as a

violation, and the penalty of temporary or permanent dismissal is considered for it. Although this issue is desirable on the surface and binds judges to justice, it is clearly an interference in the judge's work, especially since there is no clear objective rule for impartiality. For example, any judge who, based on the research he conducted in a case, decided to convict a party of the case may be condemned with the general title of departure from judicial neutrality.

According to Article 5 of the Judges' Qualification Law, the decisions of the High Disciplinary Court of Judges are final. Why is the verdict of the Supreme Court of Judges final? In this case, why can't the convicted person enjoy his legitimate and indisputable right, which is his right to defend himself and his human right?

More importantly, if the committed act has a criminal aspect and for this cause, the judge is disqualified and then the criminal court acquits him of the crime committed, this acquittal has no effect on the judgment of the disciplinary court; And without a doubt, this method is contrary to the alphabet of judicial procedure and the spirit of criminal justice, and without a doubt, this article of the law can be considered as one of the clear examples of laws that threaten the independence of the judiciary; Because, on the one hand, the concept of Shari'a and jurisdiction mentioned in the text of the law is very general and includes all directions and has a wide scope of implementation; and on the other hand, it is used by some people who are decision-makers in the law, but they do not have professional and judicial immunity and most of them have executive and judicial positions. As stated above, Article 164 of the Constitution clearly states: 'A judge cannot be temporarily or permanently dismissed from the position he holds without a trial and without proof of a crime or violation that causes the dismissal...' However, this article of the law states that a judge can be dismissed without a trial.⁵¹

There is another fact about the Judge of Execution of Criminal Sentences in Iran that; he does not have the right to act independently in any of the correctional, reconciliation, and rehabilitation institutions such as parole, suspension of punishment, and other mitigating and encouraging institutions and this judge is only a "proposing judge" and the final decision rests with the sentencing court. Nevertheless, not giving sufficient powers to the judge

in charge of the execution of criminal sentences and subjecting his substantive decisions to the approval of the sentencing court is contrary to the principle of judicial independence and individualization of punishment. While the execution judge may be independent from a structural point of view and in relation to the executive branch and pressures from outside the judiciary, this is not the case from an internal organizational point of view.⁵²

EXECUTIVE CHALLENGES

In spite of the fact that legal challenges make it difficult to implement the judiciary, there are some executive challenges in between, which, although they are not tangible and visible, pose a great obstacle to the implementation of the judiciary and affect the independence of judges.

Heavy Workload of the Judge

The ideal theme of independence can be realized in practice when the judge himself demands it. If the circumstances are such that the judge, for a reason such as a heavy workload, asks for help from people outside the court to speed up the proceedings, it is clear that judicial independence is not important to him in the first place. In fact, the judicial independence of judges diminishes regardless of the density of cases that a judge has to deal with in a working day, to the extent that in some cases judges may be willing to assign cases to others, including colleagues, judicial interns or lawyers, etc.

Subsistence Economic Status of the Judge

In principle, no matter how ascetic and morally upright people are, if they are not provided with a minimum subsistence, they cannot possibly serve society as they should. If the economic and living conditions of judges are endangered, there is a greater fear that they will deviate from the path of justice and fail to meet the requirements of a fair trial. What may justify the judges' slipping in the court of conscience is not only the unfavorable living situation but also the income gap between them and the parties involved in the case, particularly the lawyers, who are somehow considered colleagues and companions of the judges in the course of a case. When judges compare their role with that of lawyers, they run the risk of being tempted to deviate from the path of justice.

Value-Moral Discontinuity of Those around the Judge

The social life of the judge and his interactions with the people around him, including relatives, friends, and neighbors, lead directly or indirectly to the influence of the judge on them. In many cases, the persons around the judge have expectations from him that are not in accordance with the matters of the judgment and the requirements of the public proceedings, so he is faced with prohibition and rejection from the judge. However, if these expectations become numerous as a consequence of the moral values of the people around the judge, the judge, no matter how healthy he may be, may be influenced by the people around him and their expectations.

CONCLUSION

In order to ensure the fairness of a trial and the establishment of justice, fundamental principles and rules must be strictly observed. Respecting the principle of independence and impartiality of the judge as one of these important principles has a special place in the implementation of this principle. Since the jurisprudence has also dealt with this issue and emphasized the impartiality and the procedure without the judge favoring the parties and without exerting any pressure, it seems that the position of this principle is not well explained in the domestic legislations and there are no comprehensive and complete regulations in this regard. However, the manifestation of this principle begins at the stage of selection and employment of judges, and especially in the continuation of the service, it has a special effect. Due to the high number of cases, the lack of financial resources for judges, the fact that judges are under pressure and influence in the cases of companies and prominent people or famous economic enterprises, etc.; all these are among the factors that may pose a risk to the observance of the principle and to a healthy process. Undoubtedly, anything that creates a sense of injustice in the minds of people in society is very dangerous, therefore, the lack of independence of the judge or that he is told to obey based on opinions and benefits or interests; Undoubtedly, it will create a sense of injustice in someone who suffers in this way, and the repetition of such a situation between different people is very dangerous, and it should be noted that the problems of the judicial branch are never limited to this branch and extend to all state affairs.

There are a number of harmful consequences that can result from violating or limiting the independence of judges, including “the supremacy of relationships over regulations,” “weakening the rule of law,” “lowering the validity of the law to the level of a slogan,” “promoting influence on judges,” “increasing the number of crimes and legal disputes in society,” “weakening judicial security and, as a result, economic and social security,” “the spread of financial violations in the direction of violating the rights of the people and the State Treasury,” “the tendency to assert personal rights instead of going to court,” and ultimately “fundamental damage to the security of the country and the people.”

Essentially, citizens desire justice in a literal sense, as well as health. This health should be such that people feel healthy within the judicial system; Society needs all of these to achieve development. A competent and efficient judiciary can contribute to the development of a country, aid in the fight against corruption, and provide a solid platform for fighting corruption effectively. With the formulation of adequate regulations and the application of occupational and financial policies by the judiciary and the responsible institutions, it is hoped that the principle of neutrality and independence of the judge can be maintained and that the task of ensuring justice in the judicial system can be efficiently accomplished.

NOTES

- ¹ M. Sharif al-Razi (tr by S. Shahidi), *Nahj al-Balagha*, Islamic Revolution Publishing and Education Organization, Tehran, 2nd Edition, 1998, p 437; [“Justice puts things in their proper place.”]
- ² M. Tabatabai, *Tafsir al-Mizan*, Islamic Publications Office, Qom, Volume 1, 2019, p 371.
- ³ M. Tabatabai, *Tafsir al-Mizan*, p 353.
- ⁴ M. Motahari, *Overview of the Basics of Islamic Economy*, Hekmat Publishing House, Tehran, First Edition, 1982, p 16.
- ⁵ M. Hashemi, *Fundamental Rights of the Islamic Republic of Iran, Sovereignty and Political Institutions*, Mizan Publications, Tehran, Volume 2, 32nd Edition, 2021, p 237.
- ⁶ M. Habibzadeh, G. Keramat, and M. Shahbazinia, ‘Judicial independence in Iran legal system with a comparative study’, (2011) 14(4) *Comparative Law Research*, p 23.
- ⁷ M. Habibzadeh et al., ‘Judicial independence in Iran legal system with a comparative study’, p 23.
- ⁸ M. Salmi Sibni, ‘The study of judicial independence in Iran with a view to the judicial system of the United States of America’, (2016) 2 *Public Law Essays*, p 180.
- ⁹ S. Deif Allah, *Integrity of Elections and Independence of the Judiciary*, CIHRS, Cairo, 2005, p 7.
- ¹⁰ M. Habibzadeh et al., ‘Judicial independence in Iran legal system with a comparative study’, p 25.

- ¹¹ To learn more about the separation of powers, agreements, oppositions, and its history, see A. Ghazi, *Essential Rights*, Mizan Publications, Tehran, 2017, p 160-174.
- ¹² M. Salmani Sibni, 'The study of judicial independence in Iran with a view to the judicial system of the United States of America', p 184.
- ¹³ M. Moein, *Moein One-volume Persian Dictionary*, 4th Edition, 2008, p 629.
- ¹⁴ A. Haji Mohammadi, G. Eftekhari Jahromi, L. Joneydi, and M. Shahla, 'Principle of neutrality of judge and rules of proceeding resulting from it', (2018) 14(1(35)) *Journal of Law and Politics*, p 35.
- ¹⁵ B. Shamloo and S. Mohammadi, 'Violation of impartiality and lack of independence of the judge; A manifestation of an act that disrupts fair proceedings', (2011) 14(108) *Legal Research Quarterly*, p 98.
- ¹⁶ M. Najji, 'Impartiality in Criminal Proceedings', (2006) 70(56) *The Judiciary Law Journal*, p 30.
- ¹⁷ M. Najji, 'Impartiality in Criminal Proceedings', p 34
- ¹⁸ M. Fazaeli, *Fair trial: International criminal proceedings*, 2nd Edition, Mizan Publications, Tehran, 2008, p 180.
- ¹⁹ H. Amid, *Amid Persian Dictionary*, Amirkabir Publication, Tehran, 18th Edition, 2000, p 131.
- ²⁰ B. Shamloo and S. Mohammadi, 'Violation of impartiality and lack of independence of the judge; A manifestation of an act that disrupts fair proceedings', p 93.
- ²¹ K. Janipour, A., Janipour, and T. Dalki, 'Examining the independence of the judge from the perspective of jurisprudence and law', (2020) 6(2) *Journal of Jurisprudence & History of Civilization*, p 2.
- ²² M. Fazaeli, *Fair trial: International criminal proceedings*, p 180.
- ²³ M. Akhundi, *The regulations of penal prosecution: generalities and suits resulting from offences*, Ministry of Culture and Islamic Guidance Directorate Printing and Publishing Organization, Tehran, Volume 1, 14th Edition, 2009, p 300.
- ²⁴ M. Najji, 'Impartiality in Criminal Proceedings', p 51-49.
- ²⁵ M. Jalali and S. Zilabi, 'Principle of Judicial Independence at the International Criminal Court', (2014) 18(2) *Comparative Law Research Quarterly*, p 25.
- ²⁶ *The Holy Quran*, Surah An-Nisa, v. 135.
- ²⁷ M. Amiri and M. Vijeh, 'Basic Principles Governing Judicial Independence in Iran's Legal System with an Eye to France's Legal system', (2014) 18(3) *Comparative Law Research Quarterly*, p 1.
- ²⁸ M. Sharif al-Razi (tr), *Nahj al-Balagha*, 1998, Letter 53.
- ²⁹ Article 3: "The judicial authorities shall undertake investigations and take appropriate decisions in the shortest possible time, with impartiality and complete independence, and shall avoid any action that may disrupt or prolong the criminal proceedings."
- ³⁰ Article 93: "The investigator shall perform the investigation with complete impartiality and within the bounds of legal authority, and shall not discriminate in discovering circumstances that benefit or harm the accused."
- ³¹ P. Shahin Far, 'The principle of judge's impartiality from a psychological perspective' (2018) 136 *Jurisprudence*, p 20.
- ³² M. Fazaeli, *Fair trial: International criminal proceedings*, p 199-208.
- ³³ A. Jazaieri and F. Ali Asgharzadeh, 'The method of selecting judges and its effect on judicial independence in Iranian criminal law', (2021) 6(17) *Journal of Legal Studies*, p 181.
- ³⁴ M. Salmani Sibni, 'The study of judicial independence in Iran with a view to the judicial system of the United States of America', p 208.
- ³⁵ A. Matin-Daftari, *Civic and Commercial Procedure*, Majd Publications, Tehran, Volume 2, First Edition, 1999, p 349.
- ³⁶ N. Katouzian, *Proof and Reasoning for Proof*, Mizan Publications, Tehran, Volume 1, 6th Edition, 2008, p 42.
- ³⁷ A. Shams, *Civil Procedure*, Derak Publications, Tehran, Volume 3, First Edition, 2005, p 115.
- ³⁸ A. Haji Mohammadi et al., 'Principle of neutrality of judge and rules of proceeding resulting from it', p 39.
- ³⁹ M. Yousefzadeh, *Civil Procedure*, Sahami Enteshar Publications, Tehran, First Edition, 2011, p 130.
- ⁴⁰ M. Ghamami and H. Mohseni, *Transnational Civil Procedure*, Mizan Publications, Tehran, First Edition, 2010, p 74.
- ⁴¹ J. Tahmasabi, *Precis of the Criminal Procedure (basic and general concepts)*, Mizan Legal Foundation, Tehran, First Edition, 2017, p 43.
- ⁴² Article 352 of the Code of Criminal Procedure, for instance, stipulates that Trials are open to the public, except in the case of crimes that can be forgiven when the parties or the plaintiff request that the trial be closed. In addition, the court, upon the opinion of the public prosecutor, shall order that the courts shall not be open to the public in the following cases: Family issues and crimes against modesty or good morals; and being public, disturbing public security, or religious or ethnic sentiments.
- ⁴³ A. Haji Mohammadi et al., 'Principle of neutrality of judge and rules of proceeding resulting from it', p 43.
- ⁴⁴ A. Dehghani, 'The Independence of Judges under the Iranian Judiciary System', (2008) 8(15) *Journal of Legal Research*, p 91.
- ⁴⁵ Article 39 of the Law on the Supervision of Judges' Conduct: "If a judge is suspected of committing an intentional crime, the public prosecutor shall investigate the matter, and if the reasons and evidence indicate that the accusation should be taken into consideration, he/she shall be suspended from the judicial position until the final decision is issued by the competent authority and its implementation is requested from the Supreme Court. After considering the grounds, the Court is expected to make an appropriate decision."
- ⁴⁶ M. Salmani Sibni, 'The study of judicial independence in Iran with a view to the judicial system of the United States of America', p 217.
- ⁴⁷ M. Fazaeli, *Fair trial: International criminal proceedings*, p 180.
- ⁴⁸ A judge may not be temporarily or permanently dismissed from the position he holds without a trial and proof of the crime or offense that causes the dismissal, nor may he change his place of service or position without his consent; except when required by the interests of society, with the decision of the Head of the Judiciary after consultation with the Head of the Supreme Court and the Prosecutor General. The periodic transfer of judges shall also be carried out in accordance with the general rules established by law.
- ⁴⁹ Y. Roostaei Hosseinabadi and A. Alinezhad, 'Judicial independence as a prerequisite for a fair trial (a comparative study of the Iranian and French constitutions)', (2016) 11 *Journal of Islamic Human Rights*, p 15.

- ⁵⁰ F. Fallah Nejad, 'Judicial Independence and Impartiality is a Manifestation of Fair Trial in Order to Protect the Rights of Citizens; the Legal System of the Islamic Republic of Iran Compared to the People's Republic of China', (2021) 13(2) *Comparative Law Review*, p 742.
- ⁵¹ M. Arafī, *A review of the independence of the judge in the judicial system of Afghanistan and Iran*, MA Thesis, Private Law Department, Faculty of Law and Political Science, Ahlul Bayt International University, 2017, p 4.
- ⁵² H. Moazen Zadegan and B. Jahani, 'The Structure of the Execution of Iranian Criminal Sentences in the Light of the Principle of Judicial Independence', (2022) 9(18) *Journal of Criminal Law and Criminology*, p 51.
- Hashemi, M. 2021. *Fundamental Rights of the Islamic Republic of Iran, Sovereignty and Political Institutions*. Volume 2, 32nd edition. Tehran: Mizan Publications.
- Jalali, M. & Zeilabi, S. 2013. Principle of judicial independence at the international criminal court. *Comparative Law Research Quarterly* 18(2): 23-48.
- Janipour, K., Janipour, A., & Dalki, T. 2019. Examining the independence of the judge from the perspective of jurisprudence and law. *Journal of Jurisprudence & History of Civilization* 6(2): 1-12.
- Jazaieri, A. & Ali Asgharzadeh, F. 2021. The method of selecting judges and its effect on judicial independence in Iranian criminal law. *Journal of Legal Studies* 6(17): 181-200.
- Katouzian, N. 2008. *Proof and Reasoning for Proof*. Volume 1, Sixth Edition. Tehran: Mizan Legal Foundation.
- Matin Daftari, A. 1999. *Civic and Commercial Procedure*. Volume 2, First Edition. Tehran: Majd Publications.
- Moazen Zadegan, H. & Jahani, B. 2022. The structure of the execution of Iranian criminal sentences in the light of the principle of judicial independence. *Journal of Criminal Law and Criminology* 9(18): 31-55.
- Moein, M. 2008. *Moein One-volume Persian Dictionary*. 4th edition. Tehran: Zarin Publications.
- Motahari, M. 1982. *Overview of the Basics of Islamic Economy*. First Edition. Tehran: Hekmat Publishing House.
- Muhammad Ishaq Arafī, 2017. A review of the independence of the judge in the judicial system of Afghanistan and Iran. MA Thesis, Private Law Department, Faculty of Law and Political Science, Ahlul Bayt International University.
- Roostaei Hosseinabadi, Y. & Alinejad, A. 2015. Judicial independence as a prerequisite for a fair trial (a comparative study of the Iranian and French constitutions). *Journal of Islamic Human Rights* 11: 9-32.
- Salmani Sibni, M. 2016. The study of judicial independence in Iran with a view to the judicial system of the United States of America. *Public Law Essays* 2: 180-225.
- Shahinfar, P. 2018. The principle of judge's impartiality from a psychological perspective. *Jurisdiction* 136: 19-26.
- Shamlou, B. & Mohammadi, S. 2011. Violation of impartiality and lack of independence of the judge: A manifestation of an act that disrupts fair proceedings. *Legal Research Quarterly* 14(108): 93-136.
- Shams, A. 2005. *Civil Procedure*. Volume 3, First Edition. Tehran: Derak Publications.
- Sharif al-Razi, M. (tr Shahidi, S.) 1998. *Nahj al-Balagha*. 2nd edition. Tehran: Islamic Revolution Publishing and Education Organization.
- Tabatabai, M. 2019. *Tafsir al-Mizan*. Volume 1. Qom: Islamic Publications Office.

REFERENCES

The Holy Quran.

Akhundi, M. 2009. *The regulations of Penal Prosecution: Generalities and Suits Resulting from Offences*.

Volume 1, 14th Edition. Tehran: Ministry of Culture and Islamic Guidance Directorate Printing and Publishing Organization.

Amid, H. 2000. *Amid Persian Dictionary*. 18th Edition. Tehran: Amirkabir Publications.

Amiri, A. 2012. The importance of judgment and judge independence in Islamic Law. *Habl ol Matin Quarterly* 3 & 4: 93-107.

Amiri, M. & Vijeħ, M. 2014. Basic principles governing judicial independence in Iran's legal system with an eye to France's legal system. *Comparative Law Research Quarterly* 18(3):1-26.

Dehghani, A. 2008. The independence of judges under the Iranian judiciary system. *Journal of Legal Research* 8(15): 83-102.

Deif Allah, S. 2005. *Integrity of Elections and Independence of the Judiciary*, Cairo: Cairo Institute for Human Rights Studies (CIHRS).

Fallahnejad, F. 2021. Judicial independence and impartiality as a manifestation of fair trial in order to protect the rights of citizens: The legal system of the Islamic Republic of Iran compared to the People's Republic of China. *Comparative Law Review* 13(2): 775-737.

Fazaeli, M. 2008. *Fair Trial: International Criminal Proceedings*. 2nd edition. Tehran: Mizan Publications.

Ghamami, M. & Mohseni, H. 2010. *Transnational Civil Procedure*. First Edition. Tehran: Mizan Publications.

Ghazi, A. 2017. *Essential Rights*. 54th edition. Tehran: Mizan Publications.

Habibzadeh, M., Keramat, G., & Shahbazinia, M. 2011. Judicial independence in Iran legal system with a comparative study. *Comparative Law Research* 14(4): 23-51.

Haji Mohammadi, A., Eftekhari Jahromi, G., Joneydi, L., & Shahla, M. 2018. Principle of neutrality of judge and rules of proceeding resulting from it. *Journal of Law and Politics* 14(1(35)): 33-48.

Tahmasebi, J. 2017. *Precis of the Criminal Procedure (basic and general concepts)*. First Edition. Tehran: Mizan Legal Foundation.

Yusefzadeh, M. 2011. *Civil Procedure*. First Edition. Tehran: Sahami Enteshar Publications.

Sepideh Bouzari* (corresponding author)

Assistant Professor

Department of Law

Faculty of Humanities

Maragheh University, East Aarbajian, Maragheh, Iran.

Email: bozari.sepide@yahoo.com

Simin Asadzadeh

Department of law,

Kermanshah branch

Islamic azad university

Kermanshah, Iran.

Email: asadzadeh.simin@yahoo.com

Ehsan Salimi

Assistant Professor

Department of Law

Faculty of Humanities

Maragheh University

East Aarbajian, Maragheh, Iran.

Email: e.salimi@maragheh.ac.ir