

An Analytical Look at the Principle of Institutional and Personal Independence of the Judiciary from the Perspective of Jurisprudence, Law, and International Documents

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Abstract:

Judicial independence is a prerequisite for the rule of law and a fundamental guarantee for fair trials. Therefore, every judge must strengthen and manifest judicial independence both personally and institutionally. In the Iranian legal system and Shia jurisprudence, judicial independence is primarily associated with the separation of powers, meaning the independence of the judiciary and the judge from external influences. Fundamental principles regarding the independence of the judiciary are a key legal issue, and considering that judges make crucial decisions about citizens' lives, freedoms, rights, duties, and property, the enhancement of judicial independence plays a significant role in ensuring justice and guaranteeing fundamental rights and freedoms. On the other hand, a lack of judicial independence can contribute to violations of citizens' rights and freedoms. This study explores both the institutional independence of the judiciary and the personal independence of judges and examines its boundaries from the perspectives of jurisprudence, law, and international documents.

Keywords: Judicial Independence, Judiciary Independence, Principle of Independence and Impartiality, Personal Independence, Institutional Independence

Extended Abstract

Judicial independence is widely recognized as a precondition for the rule of law and a fundamental guarantee of fair trial. The article starts from this premise and asks how the dual dimensions of judicial independence—personal (individual) and institutional (structural)—are conceptualized and protected in three normative frameworks: Shia (Imāmī) jurisprudence, the positive law of the Islamic Republic of Iran, and contemporary international human rights instruments. It also investigates the tensions that arise between independence and other values such as accountability, political oversight, and public order, and seeks to clarify the scope and limits of independence in the Iranian legal system.

Methodologically, the research adopts a descriptive-analytical and normative approach. It relies on classical and modern fiqh sources (including Nahj al-Balāgha , *Ghorar al-Hikam* ,*Toḥaf al-‘Oqūl* ,*Wasā’il al-Shī’a* ,*al-Kāfī* ,*al-Rawḍa al-Bahiyya* ,(the Qur’an and hadith, the Iranian Constitution and ordinary legislation (such as the Criminal Procedure Code, Civil Procedure Code, Judicial Security Charter, Judicial Transformation Documents, and internal judicial regulations), as well as international documents such as the UN Charter, the Universal Declaration of Human Rights ,the ICCPR, the ICESCR, the UN Basic Principles on the Independence of the Judiciary, and the Bangalore Principles of Judicial Conduct. Through textual analysis and comparison, the author reconstructs the concept, foundations, and guarantees of judicial independence in each of these frameworks and evaluates their degree of convergence.

The article first defines judicial independence as the freedom of judges and courts to decide cases exclusively on the basis of law, facts, and conscience, without improper influence, pressure, or interference from any external actor—be it governmental, political, social, or personal. It stresses the need to distinguish institutional (or structural) independence of the judiciary as a branch of government from personal independence of individual judges in decision-making. Institutional independence refers to the judiciary’s status as an autonomous branch alongside the legislative and executive powers, with sufficient guarantees regarding its organization, budget, and administration. Personal independence refers to each judge’s freedom from pressures by superiors, parties, public opinion, or political authorities, and presupposes moral virtues such as piety, courage, and self-discipline as well as legal protections such as security of tenure, immunity, and protection against arbitrary transfer.

In the Iranian constitutional order, judicial independence is framed within a system of “relative separation of powers” under the overarching concept of *velāyat-e amr* . Article 57 of the Constitution acknowledges three powers—legislative, executive, and judicial—that are independent from one another yet under the supervision of the Leader. Article 156 explicitly declares the judiciary an independent power responsible for administering justice ,securing individual and social rights, and supervising the proper implementation of laws. At the same time, Article 157 provides that the Head of the Judiciary is appointed by the Leader for a five-year term, and Article 164 protects judges against removal or transfer without their consent, except in cases of conviction or disciplinary decisions. The article interprets

these provisions as establishing a strong normative commitment to judicial independence, tempered by a constitutional model in which ultimate sovereignty is vested in divine law and represented by the Leader.

The analysis also reviews the ordinary legislation and policy documents that reinforce or qualify judicial independence. Article 3 of the 2013 Criminal Procedure Code declares that judicial authorities are independent in adjudicating crimes and disputes and that no authority has the right to interfere in their decisions. The 2012 bylaw on inspection, oversight, and evaluation of judicial conduct identifies “courage and independence” as key criteria in assessing judges. The 2020 Judicial Security Charter describes judicial independence as a cornerstone of judicial security and fair trial, and prohibits any form of undue influence on judges. The 2020 and 2024 Judicial Transformation Documents and the 2021 Instruction on Preserving the Dignity and Status of Judiciary Personnel further emphasize that no executive or administrative authority may impose opinions on judges, and that judicial managers must refrain from applying pressure in specific cases. At the same time, the article notes that certain laws—such as the 1997 Law on Judicial Competence and parts of Article 164—may potentially be used to undermine independence if not interpreted restrictively, and calls for doctrinal and legislative refinement.

From the perspective of Shia jurisprudence, the article shows that although the modern term “judicial independence” is not used in classical *fiqh*, its substantive content is deeply embedded in the doctrines governing the office of judge) *qāḍī* .(Two main *fiqh* conceptions are identified. According to the first, judging is a form of *wilāya* (delegated authority) over disputes; whoever is vested with *wilāya* must be shielded from interference by others, because only the *walī* possesses the mandate to decide. According to the second, judging is an indispensable means to achieve justice; therefore any interference that obstructs access to justice must be prohibited. In both conceptions, the judge must be insulated from external pressure, and any directive that would compel him to deviate from his understanding of law and evidence is illegitimate.

The article then examines a series of foundational narrations and historical examples that illustrate the expected independence and impartiality of judges. Imam ‘Alī’s letter to Mālik al-Ashtar, as reported in *Nahj al-Balāgha*, instructs the ruler to select judges who cannot be manipulated by litigants, are not dependent on others in their livelihood, and are the most firm when the truth becomes clear. Numerous hadiths, compiled in *Wasā’il al-Shī’a*, *Kanz al-‘Ommāl*, and *Mizān al-Hekma*, demand

equal treatment of litigants in greeting, seating, gaze, and tone of voice, and condemn any form of favoritism. The Prophet's refusal to accept intercession in the case of the noblewoman from Banu Makhzūm, and his declaration that even if his own daughter Fāṭima stole he would apply the penalty, is presented as a paradigmatic assertion of judicial impartiality. Stories of Imam 'Alī's litigation before his own appointed judge, Shurayḥ, and his objection to being addressed by his honorific "Abu al-Hasan" in front of the opponent, serve to underline the symbolic and practical dimensions of equality before the court.

Classical jurists, including Shahīd Thānī, Ibn Idrīs, and later Imām Khomeini, are cited as requiring the judge to equalize between litigants in all outward forms of respect and interaction, while recognizing that inner inclinations of the heart are not subject to legal duty. They also emphasize that the judge must not coach either party on how to argue or how to prevail over the opponent. Contemporary religious authorities further deepen this line: Imām Khomeini repeatedly insisted that judges are independent and that no recommendation, even from his own office, should influence their decisions; he forbade judges from acting on unjust recommendations and demanded that they "throw such letters on the wall." The Supreme Leader likewise has stressed in speeches that no one, including the Leader himself, has the right to interfere in judicial decisions, and that judges must be able to adjudicate freely without media or political pressure.

On the international plane, the article reviews the incorporation of judicial independence in major human rights instruments. Article 10 of the UDHR and Article 14(1) of the ICCPR guarantee the right to a fair and public hearing by a competent, independent, and impartial tribunal established by law; the ICESCR and UN Charter are also invoked as part of the broader normative context. Particular attention is given to the 1985 UN Basic Principles on the Independence of the Judiciary, which set out 20 principles addressing the independence of courts, adequate resources, conditions of service, appointment and tenure of judges, and freedom of expression and association. The Bangalore Principles of Judicial Conduct are discussed as a more detailed ethical elaboration, structuring judicial conduct around values such as independence, impartiality, integrity, propriety, equality, and competence. The article argues that these instruments largely align with the core fiqh and constitutional requirements identified earlier, especially regarding independence from external influence, equality of parties, and fair trial

guarantees, although there are differences in institutional design and in the relationship between judiciary and supreme political authority.

In its evaluative part, the article concludes that there is a broad normative convergence between Shia jurisprudence, Iranian constitutional and statutory law, and international human rights standards on the essential content of judicial independence. All three frameworks insist that judges must decide freely, without improper interference, and that courts must be protected as institutions from domination by other branches. However, gaps remain at the level of implementation and institutional design. The judiciary's financial and administrative dependence on other state organs, the central role of political authorities in appointing high-level judicial officials, possible misuse of disciplinary mechanisms, and social or media pressure on judges are identified as persistent challenges. There is also a risk that an overly hierarchical internal culture within the judiciary may replace external interference with internal pressure from superiors.

The article recommends a set of reforms aimed at strengthening both institutional and personal independence. These include enhancing budgetary autonomy of the judiciary; increasing transparency and merit-based criteria in appointment, promotion, and discipline of judges; refining laws that could be used to arbitrarily relocate or remove judges; fully operationalizing the guarantees contained in the Judicial Security Charter and Judicial Transformation Documents; and integrating the ethical content of fiqh narratives and international standards into judicial training. It also stresses that legal guarantees, while necessary, are insufficient without an inner, ethical independence: judges must cultivate resistance to personal desires, fear, and worldly temptations—*nafs*, *shayṭān*, and love of status or wealth—which are highlighted in religious teachings as the main internal threats to independent judgment.

Overall, the study argues that a robust concept of judicial independence in Iran must be built on three mutually reinforcing pillars: the *fiqhī* conception of the judge as a trustee of justice under divine law; the constitutional and statutory guarantees of structural and personal independence; and the universal language of human rights and fair trial as embodied in international instruments. Strengthening the coherence among these pillars can help consolidate public trust, protect rights and freedoms, and move the Iranian judiciary closer to an ideal in which both institutional structures and individual judges are capable of administering justice without fear or favor.

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