

**ADMINISTRATION OF JUSTICE:
THE CIVIL ACCOUNTABILITY OF THE INVESTIGATIVE JUDGE IN SAUDI
AND INTERNATIONAL LAWS**

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ABSTRACT

The orderliness, harmony and peaceful existence witnessed in a country depend on the effectiveness of the country's judicial system. Judge is shouldered with the responsibility of ensuring that rights of individuals is not only protected rather seen also is protected in the country. Rights of ordinary citizens are secured and not infringed upon or arbitrarily abused is a challenge of the day. The success or otherwise of the judicial system depends on the independence and immunity of the judge. Thus this paper aims to research and sets out to explore the concept of civil immunity of judge, investigate civil immunity provisions in the context of Saudi Arabia and international law. Its scope as well includes to comparing both conventional ones with Islamic laws. It was found out that civil immunity of judge is guaranteed in Saudi laws with certain restrictions. In international laws, there are so many provisions and charters that affirm and establish civil immunity of judge. In comparing contemporary laws with Islamic laws on the subject matter, it was found that the latter is more comprehensive and holistic than the former, though both guaranteed civil immunity of the judges.

Keywords: Judiciary, Investigation District, Investigating Judge, Civil accountability, Independence of Investigating Judge

INTRODUCTION

Peaceful existence and orderliness witnessed in a country depend on the effectiveness of judicial system of that particular country in maintaining the law of the state. The judicial system is shouldered with the responsibility of ensuring that rights of individuals in the country are secured and not infringed upon or arbitrarily abused.

The judicial system can only perform excellently if they are independent and not subjected to intimidation or unwarranted influence from any quarter. Investigative judges need to be protected through law otherwise; there will face challenges in the course of executing their duties.

The investigative judges need to be protected and granted immunity in their cause of action and in the judgement made after they have followed all normal procedures and considered the position of laws. The immunity of investigative judges is necessary for several reasons. First, the civil accountability of the judges to the litigants in the case of a damage caused by the judge's wrongful act is necessary. Thus, the independence of the investigative judge needs to be protected. This can only be done by ensuring that investigative judges are granted civil immunity in the cause of delivering their civil accountability.

Secondly, despite the fact that investigative judges need to be protected, yet, disciplinary accountability of the judges for their wrongful acts caused by their breach of their duties or engaging in fraudulent act is also equally important. The latter is quite different from former. The former wrongful acts are not precipitated rather it is unconditional whereas the latter acts are influenced by undue favour or factor. The independence of the investigative judge in the latter will be checked through certain disciplinary measures.

The immunity of investigative judges is protected in different countries with different measures and laws. This paper focuses on civil accountability of the investigative judge in Saudi Arabia and international laws. The researcher tries to investigate and analyze the means and tools that the Saudi Arabia put in place to ensure independence and immunity of the investigative judge. The researcher will also compare measures provided by Saudi Arabia and international laws to ensure immunity of investigative judge with Islamic laws provision.

The civil accountability of the judges in terms of any complaint raised by one of the parties to the dispute against the investigative judge for a damage caused by the judge's wrongful act is still an unexplored discourse. How should the judge be treated when the the litigants feel unconducive with the ruling of the judge or felt that the judge decision is influenced or acts under duress? Will the investigative judge be put under to the legal rule which says "Any wrongful act that causes damage makes the one who commits it liable for compensation? Or be treated differently?

There is controversy on whether an investigative judge be subjected to compensation lawsuits due to case brought against him by the litigants and the convicted who have no doubt that they are victims to the wrongful acts of the investigative judge. If the investigative judge is to be tried for this, does this show that a judge is independent in his rulings? If investigative judges are to be held responsible for their ruling, it means a judge would be preoccupied with defending himself against claims raised by the litigants. Would this not lead to his failure of judge in carrying out his duty? Will this not disrupt the judiciary work?

In contrary, if the investigative judge is absolved of all wrongful acts and granted absolute independence, would this not lead to absolute power and later affect judicial impartiality. Based on these unreconciled issues, there is a need for special rules which will highlight the civil accountability of the investigative judge in his cause of discharging his duty. Which law governs the independence of investigative judge as well as his immunity?

Therefore, the aim of this paper is to explore the details behind the problem since this field still remains unexplored especially in the context of Saudi Arabia. This paper explores the civil immunity of the investigative judge in Saudi Arabia as well as in the international laws. Both laws are compared with Islamic law in order to have holistic understanding of the discourse.

LITERATURE REVIEW

In the study of Mohammed bin Ahmed Al-Maqsudi, the researcher used comparative study method to investigate disciplinary systems applicable to the members of the judiciary. He carefully analyzed the concept and elements of discipline and how disciplinary responsibility is applied to the members of the judiciary. He also identified the disciplinary penalties that the judges could expect in different cases in the light of the old laws, namely the old Law of the Investigation and Prosecution issued in 1989, and the old Regulations for the Members and Staff of the Bureau of Investigation and Public Prosecution issued in 1989.

Despite the primacy of the study, it did not explore how the disciplinary systems affect the independence of the Investigative Judge in the Saudi laws in performing their duties. The study also failed to address the limits of the independence and the restrictions that had been imposed on it. Moreover, the study left another aspect which ought to be investigated and that is difficulties and challenges facing the independence of judge under the new judicial laws.

The new judicial law recently issued such as the Judicial Law issued in 2008, the Law of the Bureau of Investigation and Public Prosecution issued in 2015, The Regulations for the Members and Staff of the Bureau of Investigation and Public Prosecution issued in 2016, the Code of Criminal Procedure of 2014, and the Law of legal Pleadings issued in 2014 and other laws relating to the topic of study in the Kingdom of Saudi Arabia were not included in the study. More importantly, the study did not approach the topic in a comparative manner. The researcher failed to compare the investigative discipline laws with the neither Islamic provisions nor international laws.

The study of Nathan Brown conducted in 2000 also explored the judicial review in the Arab world. The study investigated judicial rulings in the Arab countries. The study reviewed the legal status in the Arab countries. The researcher extended the scope of the study to explore the relationship of legal status in those countries with the independence of the judiciary.

However, the study failed to address the independence of the investigative judiciary and its officials in kingdom of Saudi Arabia. Based on this gap, this current study will explore the independence and immunity of judge in kingdom of Saudi Arabia. This topic will be studied by using comparative approach in which provisions for immunity of judges in Islamic law will be compared with that of international laws.

In similar vein, the study of Ansary and Abdullah adopted descriptive approach to explore main regulations regarding judiciary system in Kingdom of Saudi Arabia. However, the researcher did not extend the scope of the topic to include independence of judges in Kingdom of Saudi Arabia. This study therefore tries to fill this gap by exploring independence of judges in the country and compare it with Islamic laws and international convention.

The literature review shows that there are some studies conducted on the independence of judiciary in Arab world generally and Kingdom of Saudi Arabia particularly but there are still gap regarding investigation of the laws granting independence of the investigative judiciary and its members in the kingdom of Saudi Arabia.

Regarding methodology, studies focusing judiciary system only deal with procedural aspect and no study has tried to compare the independence of investigative judge in Islamic law with international laws. Based on this, this present study is paramount as it adopts comparative approach to explore and compare independence of the investigative judiciary in Saudi Arabia with international laws.

Principle of Civil Accountability

Principle of Civil Accountability states that investigative Judges are not accountable for their acts, i.e., they may not be criminally or civilly accountable for the orders or rulings issued during the investigation. They are not to be held accountable even if such rulings cause harm to the accused. As an example, a judge may detain the accused but then appeared that the accused had no nothing to do with the crime. The accused may suffer from many physical and moral damages. The Investigative Judge does not have any civil accountability in such matter. This is in accordance with the principle of the freedom of judges to investigate, which requires that the investigative judges are not accountable for their acts according to the general rules of civil accountability.

The Civil Immunity of the Investigative Judge in Saudi Law

Saudi law grants immunity to the investigative judge. There are no regulations, procedures, or rules regarding filling lawsuits against the judges. This is undoubtedly way of maintaining efficiency of the judicial system. It is not legal to subject the procedures of the general civil accountability to lawsuits filed by individuals against the decisions, rulings and judicial action of the judges. This is because it will in turn breach essential provisions provided for the independence of the judiciary in general. Moreover, it is a threat to the judges for suing them for any case in which they may make a decision. This consequently may disrupt the process of making punishment sentences and serve as threats to the judges' independence. (Sorour, p. 134; Al-Marsafawi, p.58; Wali, p.169)

It is necessary to draft a special regulation that will detail investigative judge's civil accountability in Saudi law. This can be done by considering general legal rules, and selected opinions of well-known jurists and the law commentators. The draft has been suggested to take the form of a number of organizational rules that can be taken as a basis for that draft.

The principle of non-accountability covers all actions of the investigative judge, whether decisions, orders or state procedures, as well as the preparatory work based on a general reason of justification. The decisions of the investigative judge and his orders are not subjected to administrative judiciary control; compensation or cancellation judiciary, as it is

regarded as a judicial action that enjoys the guarantee of being not subjected to the control of the state.

Restrictions on the Principle of Civil Accountability

The non-accountability of the investigative judge is not absolute, but is restricted by two factors:

Restriction I: The wrongful act is not based on serious professional wrongful act: the investigating judge shall not be exempted from his serious professional wrongful act even if made it in good faith.

Restriction II: The investigative judge may commit the wrongful act in good faith. If the judge did that wrongful act in bad faith, or while being driven by fraud or a bribe from one of the litigants, or issued an order or decision contrary to justice due to his favouritism or hatred or personal interest, or treachery such as imposing or taking fines which are not due.

If the investigative judge falls in either of the two, he must be criminally prosecuted and may be required to compensate the damaged party . This is necessary because of the importance of the work of the investigative judge. Also, there is a difference between committing such offenses by the investigative judge and by others. The processes of filling suit against investigative judge are:

First: Civil Accountability lawsuit against the investigative judge is filed according to a request signed by the applicant, his agent or his heirs and submitted to the Bureau of Investigation. The request should include a statement of the aspects and evidence of the accountability of the judge.

Secondly: The Board of Bureau of Investigation shall decide whether to accept the lawsuit in no more than three months from the date of its submission to the Board.

Thirdly: If the case is accepted, the Board of the Bureau shall constitute a committee from three of its members whose ranks and seniority are not inferior to the concerned judge to decide the case and set a date for its parties.

Fourthly: The three members shall issue their judgment in the case based on majority decision. However, if there is no consensus, the Board of the Bureau shall decide to adjudicate the case.

Fifthly: The judgment issued shall be either nullification of any of the procedures or decisions of the investigative judge, or of compensation or both.

Finally: The provisions of the Committee shall be subject to appeal before the Board of the Bureau under the usual rules of appeal.

The Civil Immunity of the Investigative Judge in International Law

Civil immunity of the investigative judges is also taken care at the international level. Civil immunity of Judges is guaranteed and maintained in different number of charters and conventions in international laws. For the Independence of the Judiciary, the seventh

Principle of the International law states that "Judges shall be personally protected against civil actions in the event of material damage resulting from any of their decisions".

Principle 16 of the UN Basic Principles also pronounces the Independence of the Judiciary. The principle states that "Without prejudice to any disciplinary procedure or to any right of appeal or to compensation from the State, in accordance with national law. Judges should enjoy personal immunity from civil suits for monetary damages due to improper acts or omissions in the exercise of their judicial functions".

In conjunction to the above, the Principles of the Berg Council on the Independence of the International Judiciary assert in Article 5 that : " Judges shall enjoy immunities equivalent to full diplomatic immunities, and in particular shall enjoy immunities from all claims arising from the exercise of their judicial function ".

Similarly, European Charter affirms the Independence of the Judiciary. In Article 5, clause 2 of the charter, it is stated that: "The State shall pay damages resulting from the improper actions of the judge or the unlawful exercise of his functions while serving as a judge. This means that the State is the guarantor of the payment of compensation in each case to the injured party; it must cover the damage resulting from the wrongful act of the judge or the unlawful exercise of his or her functions. The Charter does not necessarily indicate the improper or unlawful nature of the judge's conduct or the exercise of his functions, which is important in light of concerns about the judge's losing his independence because of the accountability system ".

In addition to the above, Article 32 of the Beijing Principles affirm the independence of the Judiciary, it therefore establishes that "Judges should enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions".

Finally, in examining position of international law on the civil immunity of judges, it is found out that Article 10 of Universal Charter of the Judges categorically reinstate that civil immunity should be granted to judges. The article goes thus: States whose laws allow civil action against the judge shall not be allowed to carry out such proceedings except under conditions ensuring that the independence of the judge is not affected".

Comparison of the Civil Immunity of the Investigative Judge between Saudi, International Laws and Islamic Law

Having examined civil immunity of the judges from Saudi Arabia and international laws, this study will compare the position of both laws with the Islamic law. Going by the two major source of Islamic Sharia, it could be deduced that civil immunity of judge is also granted in Islamic law. The judges are not accountable for their actions during the process of discharging their duties.

In the hadith reported by Al-Bukhari, on the authority of 'Amr ibn al-'As (RA) , he said: The Messenger of Allah (peace be upon him) said: 'If a judge passes a judgment having exerted himself to arrive at what is correct, and he is indeed correct, he will have two rewards. If he passes judgment having exerted him to arrive at what is correct, but it is incorrect, he will have one reward".

Based on this hadith, Islamic scholars ruled that the judge shall not be accountable for his incorrect ruling. On the contrary, he will be rewarded for his efforts, diligence in the consideration of evidence and the process of making the ruling.

Moreover, investigative judge shall not be subjected to any compensation claims. It was narrated by al-Tabarani that; "Khalid Ibn al-Waleed (RA) killed people from Bani Jadhimah who could not say that there were Muslim." Instead they said: We have changed our religion. Khalid killed them. The Prophet (peace be upon him) was grieved and said O Allah! I am innocent of what Khalid has done," twice. He immediately sent 'Ali bin Abi Talib who paid the blood-money to their families".

The latter hadeeth shows how the Prophet (peace be upon him) tried to save Khalid from being held accountable for the incidence, instead, he ordered the state party to pay the blood-money from the exchequer on behalf of Khalid (may Allah be pleased with him). The implication therefore is that Khalid was not held accountable because he was an employee for the state and he committed his action when carrying out his state duty.

Therefore, if the judge of a state made a ruling in one of the cases and the ruling was executed, in case there is need for compensation, then the state will be responsible for the compensation. The reason for this is that the judge is acting on behalf of the state. By implication, the judge is employees of the state and appointed by the ruler to act on behalf of the state, therefore, the exchequer is the one who provides for the compensation.

In comparing the immunity and non-accountability of the investigative judge between Saudi, international laws and Islamic law, it is clear that Islamic law superseded all contemporary laws. It does not only make the judge unaccountable for his wrongful act done with sincerity rather, it stated that the judge will be appreciated for his effort, observation and consideration, discretion, diligence and impartial ruling, though the final judgement or ruling later was incorrect. The concept of reward for incorrect ruling is still missing in international or contemporary laws.

RESULTS AND DISCUSSIONS

Judicial system is undoubtedly a foundational pillar of the state. Peace, development and stability of the state are all dependent upon it. This is because justice is a determinant factor of peaceful coexistence. The success or otherwise of the judicial system is based on the independence and immunity of the judge. This research sets out to explore the concept of civil immunity of judge and investigative judge civil immunity provisions in Saudi Arabia and international laws. Beside the above this paper has successfully undertaken a comparison as well between both the laws-conventional vis-a-vis with Islamic laws.

It is found out that civil immunity of judge is guaranteed in Saudi laws with certain restrictions. Among another finding include the provision in the international laws. In the later case there are so many provisions and charters that affirm and establish civil immunity of judge. In comparing contemporary laws with Islamic laws on the subject matter, it is again found that the latter is more comprehensive and holistic than the former though both guaranteed civil immunity of the judges.

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