

Research Article

# Execution of Justice and Provision of Judicial Security in Afghanistan

**Naqibullah Saqib<sup>1,\*</sup>, Barakatullah Tayeb<sup>2</sup>, Sayed Ahamd Fatimi<sup>2</sup>**

<sup>1</sup>Law and Political Science Faculty, Nangrahar University, Nangrahar, Afghanistan

<sup>2</sup>Sharia and Islamic Studies Faculty, Nangrahar University, Nangrahar, Afghanistan

## Abstract

Judicial integrity means that a person is immune from any aggression and threat to his life, property, honor, freedom, honor, prestige, job, housing, and in general all his legal and legitimate rights. It is realized when crimes and violations, fraud, and corruption and the causes of their perpetration in society are rooted out, the factors that cause financial, life, or mental damage to a person are completely eliminated, and a safe and calm environment is created so that a person can feel comfortable in it in every way. Main problem Upholding justice is a necessity and a fundamental issue in order to protect the rights of citizens. In order to ensure justice, it is necessary to provide judicial security. Importance of research. In order to maintain social and criminal justice, it is necessary to maintain the judicial security of judges because they always face problems in this field. This type of research has been conducted qualitatively with in-depth analysis. As a result, I can say that by conducting this research, if judicial security is provided, all-round justice will be provided in a good and orderly manner.

## Keyword

Providing Justice, Judicial Security, Public Security, Public Order, Judicial Immunity

## 1. Introduction

Today, the concept of security has gone beyond the formal and apparent order in the society and only means the absence of crimes and violations, and includes cases and examples from the spiritual, moral, health and economic point of view, and finally, the creation of real and reasonable stability and order in the human society, from which to Social security is defined. Judicial security is a part of national security and it is the foundation of today's civilization.

In terms of the importance of judicial security in advanced societies, its protection has been assigned to the judiciary. So that people can stand and defend their rights bravely and

firmly against aggression. It is necessary for the judges of the courts to be completely independent and impartial, and the principles of the courts guarantee the implementation of real justice, and the matter of defense, which is the inalienable right of the plaintiff and petitioner against assault and force, should be accompanied by the guarantees of effective courts. Just having the title of judge is not enough for a judge and it does not guarantee the execution of justice, but the quality of his work is the principle that gives meaning and concept to justice, and if from the point of view of freedom, the position of the judge is of special importance. And the protection of freedom has been entrusted to him for the

\*Corresponding author: [nsaqib2007@gmail.com](mailto:nsaqib2007@gmail.com) (Naqibullah Saqib)

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reason that the judge is independent and impartial in front of litigants and influential people, and he must follow this characteristic.

In this treatise, the right to execute justice and provide judicial security from the point of view of Sharia law and state laws have been examined. Of course, in the beginning, the concept of justice was briefly studied, and in the second part, the issues related to the implementation of justice and judicial security were studied, and in the third part, the issues of the implementation of justice in the Islamic Sharia were briefly studied.

### 1.1. Statement of Problem

Upholding justice is a necessity and a fundamental issue in order to protect the rights of the citizens. In order to ensure justice, it is necessary to provide judicial security, but unfortunately, in the community of Afghan people, the issue of judges' immunity is not an issue. If judicial security is provided in Afghanistan, in order to provide all-round justice.

It has been many times that Afghan judges have been targeted and threaten with different ways that diverted the judgement system and these things affected the private life of the judges.

### 1.2. Importance of Research

In order to maintain social and criminal justice, it is necessary to maintain the judicial security of judges, because judges always face problems in this field. It is very important to know the judicial security measurements and to maintain a normal and healthy trail. Furthermore, the necessity and importance of the judicial job is a core issue of a transparent and good government. Thus this research has a special importance to be studied academically.

### 1.3. Objective of Research

This research is based on some practical objectives which are as below:

- 1) To identify the importance of judicial security in the justice system.
- 2) To diagnose judicial security in providing justice.
- 3) To know the ways for ensuring judicial security.

### 1.4. Questions of Research

The research questions are stipulated as the demand of the objectives of the research which are as below:

- 1) What are the possible measures to provide justice without judicial security?
- 2) How does judicial security play a role in providing justice?
- 3) What are the ways to ensure judicial security?

## 1.5. Research Methodology

This research is qualitative. The data is collected from secondary sources specifically from the library of the university. The data was analyzed manually with an in-depth analysis technique.

## 2. Execution of Justice and Provision of Judicial Security in Afghanistan

Man is a social being who has to live in society for his survival. Living in a community requires order and security. that the people who live in it should strive to ensure security and order by observing the regulations, because the people living in a community have security and the implementation of justice on top of other rights. that the government, as the highest institution of human society, has the duty of implementing justice and ensuring judicial security in a society. In this chapter, we will examine the relevant basic issues. The first topic - the right to execute justice. The right to execute justice includes two rights, one is the right to plead and the other is freedom of defense. [1].

#### 1) The right to petition

It means that a person can go to the court of jurisdiction determined by the law and request a hearing in order to assert his right. And these courts are open to all people without any discrimination and the principles of justice and its ceremonies should not be complicated and costly for clients. The law determines the limits of this right. False, baseless and unsubstantiated claims are not admissible. [16].

#### 2) Freedom of defense

It means that a person can freely defend himself in the case of the accusation that is brought against him. Freedom of defense requires:

- a) The subject of the accusation that has been attributed to a person should be officially brought to his attention by the judge or through the inclusion of the accusation in the summons document.
- b) The accused should be given enough time and necessary facilities to prepare himself for defense.
- c) If the accused wants to present a lawyer to defend himself, and if he does not have the financial ability, he can be provided with the possibility of appointing a substitute lawyer.
- d) The accused can have the opportunity to call witnesses to testify on behalf of the courts to prove his innocence.

### 2.1. General Principles Governing The Administration of Justice

In addition to what was said, today in free and advanced societies, a series of principles and rules have been accepted to ensure judicial security and the administration of justice, which we briefly explain below:

## 2.2. The Principle of the Independence of the Judiciary and the Independence of the Judge's Opinion

In freedom-loving and democratic regimes, the judiciary is independent of the executive and legislative branches. And its purpose is actually to provide impartiality in the matter of justice and to guarantee freedoms. In addition to the independence of the judiciary, to ensure the administration of justice, the judge is empowered to make independent decisions in lawsuits and express opinions without being subject to the opinion of his superiors. [15].

A judge is free from the inferences he makes from the law and is not subject to anyone's opinion, the only order he must obey is the order of the law, the judge cannot rule outside of the law or regardless of it.

A judge cannot be prosecuted and punished because of the judgment he makes and the sentence he gives, except within the limits of the material law, and his lack of responsibility in this regard is similar to the lack of responsibility and immunity that parliamentarians have when speaking and expressing opinions in democratic regimes. And this is the immunity and accessory of the job of judging.

The immunity of the judge does not prevent him from compensating for the loss caused by his fault and mistake.

## 2.3. The Principle That Judges Cannot Be Dismissed

Exercising influence on the judge and putting pressure on him can be imagined in several ways, such as the illegal removal of the judge from the judicial position, changing his mission from the judicial and administrative ranks, appointing him to other executive and administrative jobs, changing the location of the judge's mission from point to point. [8].

Considering the assumptions mentioned above, Article 164 of the amendment of the Constitution stipulates as follows: "A judge cannot be temporarily or permanently removed from the position he holds without a trial and proof of a crime or violation that causes him to be removed." or changed his place of service or his position without his consent, unless it is necessary for the interest of the society, with the decision of the head of the judiciary after consulting with the head of the Supreme Court, the periodical transfer of judges is carried out according to the general rules determined by the law. [8].

In Anglo-Saxon countries, unlike the system of Latin countries, which is also affected by the laws of the countries, the independence of the judge is ensured by other means. In these countries, judges are elected by the people for life, and because they cannot be dismissed except in cases of committing a crime, they enjoy a lot of prestige and prestige. [9].

## 2.4. The Principle of Establishing a Court with the Permission of the Law

So that people's freedom is protected from the encroachment of public authorities, and these authorities cannot form courts of their own will and ask people to join them, or arbitrarily dissolve the courts that exist legally and deprive people of their legal rights. Depriving themselves of suing and oppressing. The establishment of courts and the determination of their jurisdiction depends on the law [3].

## 2.5. The Principle of Public Trials

It has been proven by experience that the presence of people in court sessions is the best way to monitor justice matters, secret justices are out of the control of public opinion, and they significantly distort the administration of justice [14].

The publicity of justice and the presence of Tamash Chi in the trial sessions guarantee the correct execution of justice. According to the principles of criminal trial and court investigations, except in limited cases related to issues of public modesty, good morals, and public security, it should be held publicly. [8].

## 2.6. The Principle of Innocence

According to a rational and Shariah ruling, the principle is based on acquittal, that is, no one is recognized as guilty by law unless his crime is proven in a competent and impartial court.

The principle of acquittal is a general ruling and it is not only in criminal law but also in all matters including legal and tax issues. Wherever the legal texts are ambiguous, the matter should be interpreted in favor of the individual, and extensive interpretation should be avoided. [18].

## 2.7. The Principle of Reasoned and Justified Court Verdict

For the court verdict not to be issued arbitrarily, according to the constitution, the court rulings must be substantiated and documented by the articles of the law and the principles based on which the verdict was issued. According to the principles of the trial, the documents and arguments of the lawsuit must be recorded in the court order. [3].

## 2.8. The Principle of the Right to Have a Lawyer in Lawsuits

The accused can get a lawyer to effectively defend himself in court or court in all stages of justice and investigation, and this is an indisputable right known to him.

For the government not to be able to deprive anyone of this privilege, this right has been recorded as the main one in the constitutional laws of countries including Afghanistan. [4].

From a legal point of view, judicial files that proceed

without the presence of a lawyer and his defense and final opinion are considered a violation of the file and will be subject to retrial [15].

## 2.9. The Principle of Limiting the Conditions for Retrial

According to an indisputable legal principle, when a defendant acquits himself from the trial due to an accusation, he cannot be prosecuted and punished again for the same accusation. Restoring justice is allowed when after the finality of the court's verdict, there are strong reasons for the innocence of the accused. The principles of justice are precisely defined in the Law of Judicial Principles. [5].

## 2.10. The Principle of Legality of Crime and Punishment

For people's lives, property, and dignity not to be violated, justice rules that no act is considered a crime unless it has already been considered a crime by law and its punishment has been determined. And this is the well-known rule of the legality of crime and punishment, which is also stated in the Constitution and the Penal Code. Other principles that are important here in terms of the justice of providing judicial security, one is the personal nature of the punishment and the other is the proportionality of the punishment to the crime, both of which are divine decrees and have religious and legal bases. [1]. The Principle of Annulment of Confession, Information, Testimony, or Oath by Torture.

Acquiring confession, information, testimony, and oath must be done in complete security and according to personal will, confession, information, testimony or oath obtained through coercion and torture have no legal validity and the courts are required not to act accordingly [13]. The Principle of Equality Before the Courts.

All persons who live or reside in a country, whether they are nationals of that country or foreigners, are subject to the country's courts and are equal before the courts, and no one should have special privileges. [10].

## 3. Principle of Appeal to Public Courts

Most countries have accepted that for justice to be established and for everyone to be able to get their rights through a trial. Establish a competent legal forum for the public in all places where the population gathers. Despite the acceptance of this principle in all countries, special authorities are also foreseen [17].

### 3.1. The Principle of Revising Ability of Judgments

Because judges are also human, they may make mistakes in

the proceedings and deviate from the law, and for example, the owner of the right may be convicted or the innocent be punished. The basic laws of the countries, they have provided ways to compensate for the mistake. One of these ways is to compensate for the damage suffered and one of the most important ways is to establish the Supreme Court of the country which is in charge of ruling and overturning the illegal opinion and realizing the unity of the judicial procedure in the country. [14].

### 3.2. The Principle of Free Consideration of Legal Authorities

In different countries, the issue of the cost of justice is discussed and disagreed. Most of the people who refer to the court believe that they have been violated and that they have to file a lawsuit to claim their rights, and that the governing body should remove the injustice. It is meaningless to charge for this. They say that one of the primary duties of the government is to create judicial security and no one should pay money for it. On the other hand, some believe that if the cost is not received, there will be more false lawsuits. In addition, judgment is also a type and for every service, it is a cost that the recipient of the service must pay. The laws of the countries are different in this regard. In some countries, ways have been proposed so that if someone is unable to pay the cost of justice, he can raise his claim without paying. Or they provide exemptions in the law for small claims [1].

### 3.3. The Principle of Presence of the Jury

In some laws, the presence of the jury in the courts has been emphasized. However, there is a difference in whether the presence of the jury is used in all criminal courts or whether it is only reserved for press crimes and political crimes. Sometimes a jury is necessary for criminal trials. The purpose of the participation of the jury in all or some of the trials is to get the opinion of society regarding the issue, and for this reason, the composition of the jury should be such that it is felt by all the representatives of the society. [5].

### 3.4. The Principle of Compensation for Damage Caused by the Fault and Mistake of the Judge

In the past, the government was not responsible for the misbehavior of the judiciary, and if someone was convicted due to the fault or mistake of the judge, and it was later proven that he was innocent, he did not have any rights or claims against the government. The fact that it is in line with the government's rule was considered a great loss for individual freedoms.

Accepting the government's responsibility due to judicial actions is a justice-seeking idea. This idea is based on the fact that if it is proven by the retrial of another criminal case that



the convicted person was innocent, he should be compensated for the damages caused to his freedom, and the government is responsible for paying it. take over This issue is a kind of guarantee for the judicial security of individuals and restoring their dignity. [13].

### 3.5. Punishment of Those Who Disturb the Administration of Justice

The law gives the right and authority to the judge to punish and punish those who interfere in the process of work break or influence or obstruct the administration of justice by misbehavior and abuse of freedom. This authority given to the judge is not only to maintain the judicial system, but also to protect the lawyers of the litigants and the witnesses of the case, and it creates a task for everyone, especially the press. [11].

The laws that provide such powers for the judge and also the method of implementing these laws should be such that it strikes a balance between preserving the judicial system against illegal attacks on the one hand and preserving the people's right to freedom of expression on the other hand. The methods of disrupting the administration of justice or insulting the court are as follows:

### 3.6. Contempt in Court

The judge can take immediate and exclusive court action against those who have personally insulted, it is exclusively within the jurisdiction of the judge. And he is both a witness and a judge. [18].

Insult in person includes disregarding the judge's decision and order in the court. As a witness, refraining from testifying and not answering the question is also considered contempt of court. [12].

### 3.7. Publishing and Publishing Materials That Disturb the Court in a Criminal Case

Newspapers do not have the right to interview the witnesses of the cases and publish their statements [15].

### 3.8. Publishing and Publishing Materials That Disturb the Court in the Lawsuit

Civil lawsuits, like criminal lawsuits, must be fair and free of bias. Civil court submissions, even though they are related to public affairs, should be published taking into account the rights of litigation and observing caution. In cases where a large-scale lawsuit against a company or an institution is filed in court, the public media should turn to the private press to publish its content. When the claimant does not have enough wealth or influence. Rights are subjected to predictions or restraints and instructions to stop fighting or compromise and not to expose themselves to more losses and failures. [17]

Sometimes, on the contrary, they enter into a fight with the influential party, and in any case, they appear impartial in court. It is that some countries have provided regulations for the publication of civil judgments. [18]

### 3.9. Written Insult to the Court

Criticizing the court or the courts in such a way that the public trust of the judicial system is undermined, insulting the character of the judge, and claiming without reason that he has exceeded the path of fairness and impartiality in the performance of his duties, is an insult to the court. However, criticism of judicial rulings and court decisions, which is documented, is useful in improving the work of the courts, and society benefits from it. [1].

### 3.10. Disrupting the Administration of Justice by Non-judicial Authorities

The head of the prison who refuses to hand over the prisoner's letter or petition to his judicial authorities, any official and any person who harasses the witness to give testimony in judicial authorities or harasses him for testifying in judicial authorities to give or to punish for the testimony he has in court or to prevent him from testifying in all these cases he will be punished for obstructing the administration of justice. [3]. The Authority to Deal with the Violations of Those Who Interfere with the Administration of Justice.

The investigation and decision-making in many of the violations mentioned above is related to the court and the judge. However, the judge should not use these powers for the sake of showing power, rather the purpose of giving this power is to administer justice and prevent disturbances in the administration of justice [2].

## 4. Conclusion

Many of those who wanted to answer the problems related to divine justice in terms of discriminations, differences, and evils, instead of raising the issue from the point of view of justice and order, proposed it in terms of proportionality and incommensurability, and they were satisfied with the fact that all these discriminations, differences and evils from the point of view of the overall system The world is necessary and necessary. The discussion of justice means proportionality, versus disproportion, from the point of view of the whole and totality of the world system, but the discussion of justice versus oppression, from the point of view of each individual and each part is separate from the other parts. The issue of the right of the individual is raised, so the troublemaker returns and says: I do not deny the principle of proportionality in the whole world, but I say that compliance with this proportionality, whether we like it or not, requires some discriminations. "Justice" is one of the most important human values that humans have

brought to humanity and the fundamentals of individual, family, social, and political life.

While the Qur'an has set the goal of the heavenly mission of all prophets as "justice among people", God Almighty says:

Verily, we sent our messengers with clear reasons and sent down with their books and scales so that the people would act fairly and justly.

Nothing can clarify the role and importance of installments and justice as much as the Almighty God has set it as the first goal of sending prophets and heavenly books.

## 5. Discussion

Because justice is necessary for social life, social order is necessary for the well-being and development of society.

According to this, it is not possible to undermine justice without considering public security and providing judicial security, but only judicial security does not cause injustice, but other factors also cause injustice, but it does not have much effect. The judiciary is a basic and certain principle.

## 6. Recommendations

- 1) To provide real justice, the immunity of judges should be considered.
- 2) Judges should be appointed based on their qualifications and work experience.
- 3) Judicial security should be taken into account for accurate judgment.
- 4) The independence of the judiciary must be maintained.
- 5) Prevention of interference in judicial affairs must be strictly observed.

## Abbreviations

GPAJ	General Principles Governing the Administration of Justice
PAPC	Principle of Appeal to Public Courts
DTAJ	Disturb the adMinistration of Justice

## Conflicts of Interest

The authors declare no conflicts of interest.

## References

- [1] Akbar Ali, Iqbal Dehkhoda, Dictionary of Dehkhoda, Volume 10 (Tehran: University of Tehran, 2018).
- [2] Hameed Nasser, A step towards justice, volume 2. 2018.
- [3] Sultan Hashmi, public administration and human rights Nehran, Tehran University Press, 2009.
- [4] Sayed Ahmad Asadi, Principles of Fundamental Rights, Tehran: Baysdar Publications, 2001.
- [5] Jafar Bushehri, Basic Human Rights and Fundamentals Rights Issues Tehran, 1998.
- [6] Nizam al-Siyasi fi al-Islam, compiled by: Dr. Muhammad Abdul Qadir Abufars, 2008.
- [7] The Constitution of Afghanistan, approved in 2004.
- [8] Ali Akbar Dehkhoda, Dictionary of Dehkhoda, volume 10 (Tehran: University of Tehran, 1998).
- [9] Abdul Hossein Saeed Yan, Big Encyclopaedia, Volume 7 (Iran: Aram Bagh, 2006).
- [10] Nasser Katouzian, A step towards justice, volume 2.2018.
- [11] Tafsir Safi - authored by: Mohammad Mohsen al-Shahralfaiz al-Kashani. (Publisher: Dar al-Mortaza Lanshar, Press: Saeed Mashhad, 2011).
- [12] Nizam al-Siyasi fi al-Islam, compiled by: Dr. Muhammad Abdul Qadir Abu Fars, 2008.
- [13] Manouchehr Motmani, Public Freedoms and Human Rights Nehran: Tehran University Press, 1996.
- [14] Seyyed Jalaluddin Madani, Principles of Fundamental Rights Tehran: Baysdar, Publications, 1997.
- [15] Jafar Bushehri, Basic Rights Issues Tehran: Nashardadgostar, 1997.
- [16] Sheikh Mahmoud - Shaltut, Islam and Life Rituals, Translated by: Abdul Aziz, Salimi, Tehran: Neshra Rahsan, 2007.
- [17] Wiley, Philosophy of Law, Volume 1: Meanings and Objectives of Law, Publications: Ehsan Publishing House 2004.
- [18] Farhang Dehkhoda, Vol. 13-p. 20052-Publisher: Publishing and Printing Institute of Tehran University, 1998.
- [19] Biography of Umar bin Abdul Aziz by Imam ibn Juzi, 2001.