



Towards a National Strategy for Judicial Accountability: A Critical Review in Jordan

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Abstract

This paper examines the complex relationship between judicial accountability and judicial independence. In order to provide a framework for good governance in the Jordanian judiciary by identifying its main features and shortcomings in its work. The paper describes mechanisms for achieving accountability through various methods of judicial appointment and removal. But more important than these approaches, she says, is the idea of ensuring judicial accountability by insisting that judges are accountable to the law. The experience of the judiciary in Jordan over the past decades has clearly shown that the judicial administration needs a strategic vision based on efficiency, accountability, and integrity. The paper addresses in detail the challenges of judicial administration that need to be addressed through the implementation of a viable national strategy for judicial accountability

Keywords: Judicial accountability; judicial independence; exercise of arbitrary power; methods of achieving accountability; judicial appointment and removal; accountable to the law.

1- Introduction

Transparency facilitates accountability. No public institution or public functionary is exempt from accountability although the manner of enforcing accountability may vary depending upon the nature of the office and the functions discharged by the office holder. The judiciary, an essential wing of the State, is also accountable. Judicial accountability, however, is not on the same plane as the accountability of the executive or the legislature or any other public institution

The independence and impartiality of the judiciary is one of the hallmarks of the democratic system of the government. Only an impartial and independent judiciary can protect the rights of the individual and can provide equal justice without fear and favor (Kalraj M. 2013). The constitution of Jordan provides many privileges to maintain the independence of judiciary. If the Preamble to our Constitution be regarded as the reflection of the aspirations and spirit of the people, then one thing that even a layman will note is that among the various goals that the Constitution-makers intended to secure for the citizens, "JUSTICE- Social, Economic & Political" has been mentioned before the rest." No person, however high, is above the law. No institution is exempt from accountability, including the judiciary. Accountability of the judiciary in respect of its judicial functions and orders is vouchsafed by provisions for appeal, reversion and review of orders. But What is the mechanism for accountability for serious judicial misconduct, for disciplining errant judges? (Al Momany, A., Shedifat, S., 2014).

2- Need For Judicial Accountability

The accountability must be comprehensive to include not only the politicians, but also judges and everyone invested with power. Power and position in a democracy is depicted as attendant with responsibility, and every incumbent of a public office must remain constantly accountable to the people, who are the repository of political sovereignty (Al Nassour, H., 2015). The judicial system deals with the administration of justice through the agency of courts. Judges are the human stuff which presides over the courts. They are not merely visible

symbols of courts; they are actually their representatives in flesh and blood. The manners in which judges discharge their duties determine the image of courts and the creditability of judicial system itself (Thabet Al Qaissi, N., (2017). A need definitely is there to make judiciary accountable, as derogation of values in judiciary is far more dangerous than in any other wing of the government as judiciary has to act as the guardian of the constitution. Judicial accountability and answerability of the judges is not a new concept (Akkas, S., (2004). Several countries in their constitutions have already provided for ensuring accountability of judiciary. This to prevent concentration of power in the hands of a single organ of the state especially in countries where judicial activism interferes with and invades into the domain of other organs. But at the same time Judicial independence is a pre- requisite for every judge whose oath of office requires him to act without fear or favour, affection of ill-will and to uphold the constitution and laws of the country (Yusuf, K., (2013).

3- Code Of Conduct For Judges

For proper implementation of the concept of judicial accountability, it is necessary that the Judges should follow a code of conduct which may be broadly called as ethics for Judges(Kalraj M. 2013)..

3.1. Judicial decision to be honest:- It is absolutely essential that in order that the Judge's life is full of public confidence in their role in the society, the judicial decision is to be honest and fair. No judicial decision is honest unless it is decided in response to an honest opinion formed in the matrix of the judges proficient of law and fact. However, the perception of an individual judge may be wrong. But a wrong decision honestly made does not make that decision dishonest. A decision becomes dishonest if not decided on judicial conviction of fairness, honesty and neutrality (Yusuf, K., (2013).

3.2. No man can be a judge in his own cause:- The basic code of ethics is the principle that no man can be judge in his own cause. The principle confines not merely to the cause where the Judge is an actual party to a case, but also applies to a case in which he has interest. A Judge should not adjudicate in a case if he has got interest therein. Judge do require a degree of detachment and objectivity in judicial dispensation. They being duty bound by the oath of office taken by them in adjudicating the disputes brought before the court in accordance therewith, Judges must remain impartial, should be known by all people to be impartial. (Al Momany, A., Shedifat, S., 2014).

3.3. Administer justice:- Judges must not fear to administer justice .and that is should be followed as a motto by a Judge.

3.4. Equal opportunity:- Parties to the dispute be treated equally and in accordance with the principles of law and equity. A judge does not belong to any person or section or division or group. He is the judge of all people. In the courts of law there cannot be double standard-one for the highly and another for the rest. A Judge should not have any concern with personalities who are parties to the case but only with merits. He must treat the parties to the dispute equally, giving them an equal opportunity during the trial. The Rt.Hon.Lord Hewart of Bury, Lord Chief Justice of England, said that it is "essential to the proper administration of justice that every party should have an opportunity of being heard, so that he may put forward his own views and support them by argument and answer the views put forward by his opponents".The Supreme Court said in the celebrated case "No man's right should be affected without an opportunity to ventilate his views".In classical language of metaphor, the God of Justice sits on a golden throne, but at his feet sit two lions-'law and equity'. A Judge will fail to discharge his duty if he disregards their presence and participation(Thabet Al Qaissi, N., (2017).

3.5. Maintenance of distance from relatives:- Since judging is not a profession but a way of life, the judge must distance himself from the parties to the dispute and their lawyers during the conduct of the trial. One can notice now a days the growth of a new caste in legal profession who thrive not by intellectual or professional capabilities but by utilizing their close connection with the judges. The growth of this suspicious trend can be checked if practicing lawyers and sitting judges avoid meeting frequently in private. Persons who occupy high public offices must take care to see that those who claim to be close to them are not allowed to exploit that closeness, alleged or real(Akkas, S., 2004).

3.6. Too much of activity and participation in social functions be avoided:-It is often said that as a result of a very considerable amount of ordinary social activity, a Judge may become identified with people and points of view, and litigants may think they may not get fair trial. To repel that feeling, a Judge should avoid too much of social activity. Again, Judges should be very selective in attending social functions. Judges in England and USA generally decline such participation. If they attend even a private function, they ask for the list of invites (Chandra, K., Cyrus, D., 2005).

3.7. Media Publicity be avoided:-As far as possible a Judge should keep off the media. He should refrain from expressing his views in media on matters either pending before him or likely to appear for judicial consideration. Else he may be accused of prejudging the issue and his neutrality may be questioned thereby.

Lord Widgery, Lord Chief Justice of England since 1971 to 1980, said that “the best judge is the man who should not court publicity and should work in such a way that they don’t catch the eyes of the newsmen”. Lord Hailsham said that the “best judges are those who do not find their names in the *The Daily Mail* and still, who abhor it” (Al Nassour, H., 2015).

4- Weak of judicial accountability in Jordan

The Constitution established high courts as regulatory institutions independent of the executive and legislative branches, not only for the establishment of justice, but also to ensure that the executive and legislative branches do not exceed the authority vested in them by the Constitution. Thus, the judiciary has been given the power to interpret laws and the Constitution and to repeal administrative decisions that violate the rights of citizens (Chandra, K., Cyrus, D., 2005).

Through all this, the Judicial Council, with the exception of the appointment of the President of the Judicial Council and the President of the Constitutional Court and its members through the executive branch, is empowered to appoint judges. There is no system to choose judges or heads of courts and there is no transparency in the system. But the instructions to choose the judicial leaders who have been adopted in Jordan are fragile and weak and can not be achieved by achieving fairness, fairness and transparency. Moreover, the appointment of the head of the Judicial Council through the executive authority is unacceptable, creating an environment that enables the government to intervene in the judicial work. (Thabet Al Qaissi, N., (2017).

The Judiciary Council in Jordan enjoys wide authority over the administration of the judiciary. Under these circumstances, it is very important that judges in the Judicial Council be responsible for their performance and behavior - whether because of corruption or ignoring the rights of judges. Unfortunately, neither the Constitution nor any other law created any institution or system to examine the performance of the Judicial Council or to consider complaints against them. Members of the Judicial Council can be isolated only through the Council itself. (Yusuf, K., (2013).

5- Judicial Accountability And Discipline

The judiciary needs to be independent of outside influence, particularly of political and economic entities such as government agencies or industry associations. But judicial independence does not mean that judges and court officials should have free rein to behave as they please. Indeed, judicial independence is founded on public trust and, to maintain it, judges must uphold the highest standards of integrity and be held accountable to them. Where judges or court personnel are suspected of breaching the public’s trust, fair measures must be in place to detect, investigate and sanction corrupt practices. (Thabet Al Qaissi, N., (2017).

5 .1. Accountability to whom and for what?

In everyday terms, accountability is simply the ability to hold an individual or institution responsible for its actions. The question for the judiciary is accountability to whom and for what? Broadly speaking, the judiciary must be accountable to the law, in the sense that the decisions made are in accordance with the law and are not arbitrary. Like other branches of government, it must also be accountable to the general public it serves.

5 .2. How to achieve judicial accountability?

Fostering a culture of independence, impartiality and accountability among judges is a vital step towards ensuring the overall integrity of the judiciary. This is particularly the case in countries where there is a lack of accountability in other branches of government. Developing codes of judicial conduct can also provide an important means of fostering judicial accountability, since they serve as both a guide to and a measure of judicial conduct. Strong and independent judges associations, meanwhile, can provide a safe point of reference for judges, allowing them to interact with the state in an accountable, yet robustly independent manner. Ultimately, though, the judiciary must be responsible to the citizens of a country, and civil society actors, including the media and NGOs, must play an enhanced role in demanding judicial accountability. (Al Momany, A., Shedifat, S., 2014).

5 .3. Detecting corruption in judicial systems

Judges are expected to take decisions about breaches of law by individuals, governments and companies, but what happens if it is the judge who breaks the law? While judicial independence requires that judges have some limited measure of immunity and that they should be protected from trivial or vexatious complaints, mechanisms must be in place to ensure that corruption by judges or court personnel is detected, investigated and properly sanctioned. Incorporating whistleblower protection or anti-corruption telephone hotlines as part of judicial systems can help improve detection of corruption in the judiciary. It is often courageous members of the public or individuals of integrity within the judicial system itself who speak out against specific instances of corruption. Such action can be encouraged by developing a confidential and rigorous formal complaints procedure so that

lawyers, court users, prosecutors, police, media and civil society organisations can report suspected or actual corruption in a judicial system.

5.4. Ensuring effective judicial discipline

There are different models for judicial discipline, though all models tend to operate at two levels: first, a disciplinary system that can admonish, fine or suspend judges for misdemeanours; and, second, a system of removal of judges for serious misconduct, including corruption. It is essential that any disciplinary mechanism is independent, fair and rigorous. In particular, a judge has the right to a fair hearing, legal representation and an appeal in any disciplinary matter. In some instances The Judicial Council may have disciplinary functions. In other cases, high court judges may be responsible for disciplining lower court judges, while we do not know who will hold the judges of the Judicial Council accountable. All types of procedures should be balanced to, on the one hand, protect judicial independence and, on the other, provide accountability to command public confidence. Importantly, mechanisms for judges' removal from office must be fair, transparent and take the principle of security of judicial tenure into account. (Thabet Al Qaissi, N., (2017).

5.5. Key recommendations

Limited immunity for actions relating to judicial duties should be in place. This allows judges to make their decisions free from fear of civil suit; though immunity should not apply in corruption (or other criminal) cases.

Disciplinary rules should ensure that the judiciary carries out initial rigorous investigations of all allegations. An independent body must investigate complaints against judges and give reasons for its decisions. Strict and exacting standards should apply to the removal of a judge. Removal mechanisms for judges of all levels must be clear, transparent and fair, and reasons need to be given for decisions. If there is a finding of corruption, a judge is liable to prosecution. A judge should have the right to a fair hearing, legal representation and an appeal in any disciplinary matter.

A code of judicial conduct serves as a guide to and measure of judicial conduct, and should be developed and implemented by the judiciary. Breaches of the code must be investigated and sanctioned by a judicial body. A confidential and rigorous formal complaints procedure is vital so that lawyers, court users, prosecutors, police, media and civil society organisations can report suspected or actual breaches of the code of conduct, or corruption by judges, or lawyers.. It should be accessible to all judges; support individual judges on ethical matters; and provide a safe point of reference for judges who fear that they may have been compromised in some way.

6. Conclusion

Among the most challenging responsibilities facing the Judicial Council in Jordan is to study the causes of cases of judicial corruption and to activate the standards of governance in the judiciary¹. The need to develop a national strategy for judicial accountability or what may be termed judicial governance has become urgent based on the following principles:

- 1- the judicial Council must demonstrate skill in developing and monitoring its policies, in Principles of Judicial Independence,
- 2- Encourage a Collaborative, Strategic Partnership Between judges Staff in the courts and Judicial Council
- 3- Promote Participation and Consensus Building within the Organization
- 4- the judicial Council must demonstrate skill in the principles of fiscal responsibility and procedural justice.
- 5- the judicial Council must demonstrate skill in developing and monitoring its policies to Adheres to the highest ethical standards of the justice system.
- 6- the judicial Council must demonstrate skill in developing and monitoring its policies, in Fosters positive morale among court judges

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