



*Asesorías y Tutorías para la Investigación Científica en la Educación Puig-Salabarría S.C.
José María Pino Suárez 400-2 esq a Lerdo de Tejada, Toluca, Estado de México. 7223898475*

RFC: AT1120618V12

Revista Dilemas Contemporáneos: Educación, Política y Valores.

<http://www.dilemascontemporaneoseduccionpoliticayvalores.com/>

Año: VI

Número: Edición Especial

Artículo no.:67

Período: Agosto, 2019.

TÍTULO: Nombramiento y selección de jueces en el Reino Unido, Estados Unidos e Irán y su impacto en la independencia judicial.

AUTORES:

1. Ph.D. Gholamreza Jalali.
2. Ph.D. Seyyed Vahid Lajevardi.
3. Ph.D. Abbas Ali Heidari.

RESUMEN: En este artículo, examinaremos los métodos de evaluación y el impacto de esas prácticas en la independencia judicial de los jueces. Esta investigación se ha llevado a cabo en Irán y en dos importantes representantes de la Ley de la Commonwealth. Concluimos, que aunque la elección de los jueces federales en los Estados Unidos es un proceso político, no tiene un impacto negativo en su funcionamiento independiente debido a su aprendizaje permanente. También encontramos que las condiciones que gobiernan la elección de los jueces en la ley iraní debido al hecho de que las personas están buscando alcanzar el puesto y el puesto no lo está buscando, han logrado seguir la relación de empleo y empleo.

PALABRAS CLAVES: nombramiento de jueces, elecciones judiciales, independencia judicial.

TITLE: Appointment and selection of judges in the United Kingdom, America and Iran and its impact on judicial independence.

AUTHORS:

1. Ph.D. Gholamreza Jalali.
2. Ph.D. Seyyed Vahid Lajevardi.
3. Ph.D. Abbas Ali Heidari.

ABSTRACT: In this article, we will examine the methods of judging and the impact of those practices on the judicial independence of judges. This research has been conducted on Iran and two major representatives of the Commonwealth Law. We conclude that although the choice of federal judges in United States is a political process, it has no negative impact on their independent functioning due to their lifelong learning. We also find that conditions governing the choice of judges in Iranian law due the fact that people are looking to achieve the position and the position is not looking for them, has made it to follow the employment and employment relationship.

KEY WORDS: appointment of judges, judicial elections, judicial independence.

INTRODUCTION.

Judicial independence consists of two parts of the independence of judges and the independence of the judiciary. The independence of the judge means that the judge will, in the course of the proceedings, review and decide on the matters referred to, based on facts and without interference. On the other hand, the judiciary, with its independence in budget, will maintain its institutional independence over other forces. The second issue concerns the idea of separation of powers and the first issue requires the judge to be judged in a proper manner. Cases that do not qualify, the judiciary's prerogative decreases its independence and causes vulnerability to external influences (Ginsburg, 2009; Eivsvandi et al, 2015).

By studying the studies, we find that there is no consensus on which method is the best way to choose a judge. Countries with customary legal systems and countries with written rights have two distinct ways to do this. Existing methods such as "selection" or "appointment" each have their own disadvantages and advantages.

In unwritten nations such as the United States and the United Kingdom, judges are typically selected from among experienced lawyers and senior lawyers. But in the written law countries, this is a function of the occupational system, in which judges are elected through the factual assessment of graduates of law schools (Ginsburg, 2009; Haghshenas et al, 2015).

The importance of the topic is that as the judge chooses to choose judges based on individual competencies and capabilities with objective and measurable criteria, judges with independence can be voted and if these criteria are unconventional and ambiguous, the scope of independence will be limited to advisability.

DEVELOPMENT.

Entering the judiciary in America.

In the United States, there are judicial and administrative posts at both federal and state levels, which we will continue to examine separately:

Federal judges.

The method for choosing these judges is foreseen in the US Constitution. First, we examine this method, and then we will explain the independence of judges:

Judge Selection Method.

In this case, judges, the second part of the second principle of the US Constitution stipulates that the President, in consultation with the senators, nominates ambassadors and general ministers and consuls, Supreme Court Justices, and other officials such as district and district judges whose appointment is not otherwise provided for in this law, but their choice is in accordance with the law and Congress cannot legislate for determining the appointment, duration, age, educational or professional qualifications of judges.

Federal judges subject to the third principle of the constitution are also made by the president in consultation with and consent of the senators, in such a way that the presidential candidate nominated

by the president will receive two-thirds of the senators and the senators will play a role in the selection of federal judges at different levels (Wheeler, 2005).

In the interpretation of the phrase "advice and consent" among the senators, there is no consensus, and some considered ceremonial unless there is a serious defect in the history of the candidate, some of whom have been consulted by the president to prevent him from being mistaken. However, the result of the qualification review, due to the sensitivity of the judicial office, the composition of the relevant court, the political relations between the senate and the president and the political climate of the template at the time of appointment (George, 2003; Nurgaliyeva et al, 2018).

The Federal Bureau of Investigation, as well as the federal police, are investigating the criminal record of the judiciary candidates, and a list of qualified candidates for referral to the American Bar Association is referred. The 12-member lawyer's committee examines the candidates' professional conditions, such as legal background and university education. After six to eight weeks, the committee informs the Ministry of Foreign Affairs of one of the following words, whether it is excellent, good, qualified or not. That ministry will submit a proposed proposal to the president, and he will also appoint the judge with the consent of the Senate (Freund, 1998; Slotnick, 1988).

The judiciary in the United States has such a position that it has been said that a judiciary should look for a person rather than a person seeking it. Therefore, in the customary countries of the plaintiff, there is a reward that a lawyer finds that he is qualified to pursue legal action in the courts (Gerhard, 2000; Pradeep et al, 2017).

The Impact of the Selection of Federal Judges on Judicial Independence.

The process of selecting a judge from the president and his approval by the Senate is a political process. The president, in collaboration with Senators, White House Advisers, the Prosecutor's Office and the Interior Ministry, are looking for people who are in line with their political, economic and social approaches. Therefore, depending on the number of absentee ballots, there is an opportunity for the president to influence the judiciary by selecting the judges who are aligned with their legal

and party views. The same can be seen in the process of validating candidates for senators. If state senators, whose candidate is supposed to work in the area, has a different political spectrum and opposes his candidacy, it is unlikely that the candidate will vote in the Senate (Burbank, 2002; Gamarra et al, 2018; Kumbhar et al, 2019).

These practices do not conflict with judicial independence. Because the President's political influence on the selection of a judicial candidate is to reduce the power of the judiciary to the fullest extent and this in the United States is based on the system of monitoring and balancing between political forces, the idea of inhibition of power by the power and extensive judicial review of US courts on the executive function. On the other hand, since the candidates are lifelong as soon as they are appointed to office and the only way to do away with them is to make a hard and timely ride on the charge and trial of the legislature, they can issue their sentences without the influence of the congress or the president and thus, the functional independence of the judge, which is the same as the freedom to issue votes, is distinguished from the structural independence of the judiciary (Rehnquist, 1996).

Selection of state-level judges.

The procedures for selecting judges according to the federal constitution are in accordance with one of the following:

1. Appointment by the governor, with the approval of legislators¹, which is fully appointed by the appointing authority (Geyh, 2008).
2. Appointment by legislators² who are fully appointed by the appointing authority (Geyh, 2008).
3. Election through a pro-presidential³ election that allows judges to assist political groups to conduct their electoral activities and compete as Republicans or Democrats in a competitive election (Ginsburg, 2009).

¹ **Gubernatorial selection and legislative approval.**

² **Legislative selection.**

³ **Partisan election.**

4. Selection through non-sympathetic ⁴or non-political choices that do not allow judges to get help from political groups (Ginsburg, 2009).

5. The selection is made through the selection of eligible ⁵employees by the state governor from among individuals whose individual and professional qualifications are reviewed by an independent commission (Wheeler, 2005).

Except in three states from fifty states, judges are elected for a limited period, and they must take part in the election to remain in office. Even judges elected by the appointment of the governor, the appointment of lawmakers, or the selection of the lawmakers should attend a judicial election called "retention⁶" to remain in office (Ginsburg, 2009).

Many people in the United States considered the appointed judges to be independent and believed that governors and legislators used judges to serve their political group. For this reason, the election was conducted to improve the response to the people's preferences and increase the independence of the judiciary by separating the judges from dependence on governors and legislators, and the move to judicial elections began (Philips, 2003).

Negative Impact of Elections on Judicial Independence.

A) In judicial elections, judges, like other politicians, such as executive and legislative officials, should try to stay in a judicial position. In other words, in order to cover the cost of the campaign, it will appeal to influential political groups and people, and after they have been elected, they owe it to them and the amount of funding received by the candidates will be the best way to predict the winner (Webster, 1995; Cheek & Champagne, 2000).

B) In some states, judicial elections have become a means of punishing judges who have voted against public will, in a way that people vote negatively in future periods (Blume & Eisenberg, 1999).

⁴ **Non-partisan election.**

⁵ **Merit selection.**

⁶ **Retention election.**

In this case, judges are recruited for a limited period of time, and they must regain consent of the voters to stay in the judiciary (Rehnquist, 2005).

Positive Impact of Elections on Judicial Independence.

Judicial elections result in judicial accountability or more democratic or democratic accountability, preventing the judge from turning the political tools of other forces to suppress the freedoms of the people (Wynn & Mazur, 2003; Dubois, 1986). On the other hand, the power of judicial review in the United States requires democratic judges to ask legislators and executive directors and formulate customary law (Rottma, 2001).

Entering the judicial system in the UK.

Judgment in Ankhestan is a specialty and the choice of individuals for this position is as follows:

Judge.

(A) The supreme judge is elected by the prime minister and under the authority of the reign. He represents the judiciary and holds the title and political side, and it is not doubtful that he is one of the prime ministers who are the head of the majority party. The supreme judge is called Chancellor in the UK.

(B) The Prime Minister and the supreme Judge are directly involved in the selection and selection of judges. British judges are chosen from defense lawyers, and the philosophy of this choice is that in a democracy, which is an independent judiciary of two other powers, the selection of judges must be made in such a way as to be immune to the influence of the two other powers as far as possible. Supreme Court judges are selected from defense lawyers who have at least 15 years of legal experience and have reached the post of seniority and are not under the age of 50. These judges are elected by the order of the king and on the recommendation of the judge of the judiciary. Only district court judges are selected from lawyers who do not have ten years or more in employment (Khadem, 1344).

The independence of the judges.

One of the most basic ways in which the independence of judges is ensured is to remove their choices from the executive branch. This action is provided in the English Judicial System and the selection of judges is conducted by the supreme judge and the prime minister base on the fact that judges are elected for a branch or court for a term of office. and this does not draw the opinion of the executive branch in choosing judges who do not care about the politics of the day, and the interests of governments are not secured in this way.

District and district court judges are elected to a court or a branch for a full term of office and this tradition has made the judges of the courts first to be elderly people and according to their past experiences, they are strong people and basically, they cannot be changed either.

Almost never came the judge to change the branches and instead of someone else, they would say, except in one case and it's a case that has happened less and a district court judge will be invited, for example, with his satisfaction and desire to head the entire district court. Given the appointment of judges for a lifetime in a branch and the lack of promotion, it is certain that the arrival and departure of governments, usually 5 years old, has little effect on the appointment of judges and although the judge is often subordinate to the prime minister, he also changes with the change of government from one party to another, but the change of other judges does not usually have to do with the coming of the government, and they remain in place for a lifetime. Governments do not even have to interfere in the work of changing judges, because they face immediate opposition to public opinion.

On the other hand, when the tradition and procedural rules governing the selection of judges are based on a branch of the judiciary for a lifetime and the government cannot change them, the appointment and selection of a new judge, which should in any case be chosen from among the elderly lawyers, the prime minister and the judge will elect those who can be the judge. And thus and despite these traditions and organization, while in England judges are elected by the prime minister or the supreme judge of the cleric and the decree of the reign, nevertheless, the selection of judges does not include the harm that such a procedure normally requires (Khadem, 1344).

Entering the judiciary in Iran.

We know that the Iranian judiciary system is independent of Kamen La.

Judge.

The main types of judiciary in Iran are as follows:

(A) The head of the judiciary, the Islamic Revolutionary Justice Judge, shall be appointed directly by the Leader in accordance with Article VI, Article 110 of the Constitution of the Islamic Republic of Iran. This person may have had an executive record in the judiciary.

B) The President of the Supreme Court and the Prosecutor General of the State are directly elected by the head of the judiciary.

(C) Anyone who requests a judicial post must attend pre-examination tests, including written, oral, specialist recruitment with scientific interviews. In fact, everyone crosses the scientific channel, and after qualification, conscientiousness, psychology and selection are made in accordance with Article 163 of the documentary, the jurisprudential conditions are carried out, which increases the suitability of the judges. Individuals with a history of qualifications are included in the special interest that are exempted from academic tests but have other selective stages.

Of course, all these processes are in accordance with Article 158 of the duties of the head of the judiciary to appoint fair judges.

Judicial independence.

In fact, apart from the first case where a person's prosecution is sought, in other cases, the judge is based on the type of employment and all of them are elected judges and start working at an early stage of criminal justice and, with increasing judicial records, go to interrogation, court proceedings, the head of the court, the accused, the chair of the appellate court, the judiciary in the Administrative Justice Court, the Supreme Court judgment, and so on.

It should be noted that, contrary to the common law, judges are initially selected or appointed for specific judicial positions, or, in other words, there are various positions for judicial appointment from the beginning, and judges work in the same direction as they originally entered. But in Iran, other than the head of the judiciary, the head of the Supreme Court and the Attorney General, the rest of the judges are hired in the same way, and their work record during their judicial activity will be the promotion of their occupational groups or their place of work. In addition, some of these promotions, which have been seen most in the working groups, require a higher ranking, which can only be a stand-off for the independence of the judiciary.

Of course, the subject of the application for promotion of the career group was removed in accordance with the regulations for the appointment of the occupational groups and the criteria related to the promotion of the group and the change of the judiciary officials approved by the head of the judiciary in 2017 but the promotion of this system continues to be a major disadvantage, as some writers believe that everywhere they can be promoted, it will also be possible to quit the independence of the vote (Khadem, 1344).

On the other hand, the judiciary in Iran is not like the United States for life. But the more fundamental problem is that judicial recruitment in Iran, like other employment, is conditional, and individuals enter the formal and definitive stage after the trial period, which can be a factor in their intellectual dispositions.

CONCLUSIONS.

The importance of the work of judges and the necessity of their independence is a longer term than the emergence of the judiciary. However, after the emergence of the principle of separation of powers, the necessity of the independence of the judiciary and judges from the other two powers as well as from the people was emphasized. Therefore, the separation or separation of the judiciary from other powers has always been a necessary factor for the establishment and rule of law.

The authorities of the judiciary seek to defend the proper functioning of the system, and the people of a society only trust the functioning of the judiciary if it is to be seen fairly and fairly. Fair trials should include all stages of the proceedings, and the principle of "independence" of judicial authorities is one of the important components of this type of procedure. The purpose of this principle is to win the trust of the majority of the people in society towards the justice system. One of the most controversial issues in this regard is the way people go to the judiciary and the judiciary. As the influence of this stage is lower, the scope of independence will be greater. On the other hand, the recruitment definitely creates a reassurance that there is no conditional employment.

By examining the processes of entering the judiciary system in Iran, the United Kingdom and the United States, we conclude that all legal systems seek to find the best way of recruiting judges and the best practice for all of them is to maintain the independence of their judges and each of them has strong reasons for the way they are implementing, which can be determined by the social characteristics of those societies and the relation of governing relationships among their sovereignty. On the other hand, countries are divided into two categories in terms of promotion of judges.

The groups of countries under the jurisdiction of the Latin judicial system generally follow the promotional process. Judges are usually selected from among educated young people after graduation after passing the internship, they will be judged on a regular basis and will be promoted to a higher rank according to a special table and spend certain periods of time and this is one of the differences between the Latin system and the common law group system that there is no promotion in this system.

BIBLIOGRAPHIC REFERENCES.

1. Blume, J., & Eisenberg, T. (1998). Judicial politics, death penalty appeals, and case selection: An empirical study. *S. Cal. L. Rev.*, 72, 465.
2. Burbank, S. (2002). Politics, privilege and power: the separate role in appointment of federal judge. *86 judicature*.

3. Cheek, K., & Champagne, A. (2000). Money in Texas Supreme Court Elections-1980-1998. *Judicature*, 84, 20.
4. Dubois, P. L. (1986). Accountability, independence, and the selection of state judges: The role of popular judicial elections. *SW LJ*, 40, 31.
5. Eisvandi, M., Gorji, Y., & Niknejadi, F. (2015). Effectiveness of Emotional Intelligence on Increasing the Psychological Dimension of Quality of Life of Mothers of Educable Mentally Retarded Children in Esfahan in. *UCT Journal of Social Sciences and Humanities Research*, 3(1), 29-31.
6. Freund, P. (1998). Federal appointment, tenure and independence. *Harvard Law Review*, 101, 1146-1163.
7. Gamarra, M., Zurek, E., & San-Juan, H. (2018). Addendum for: A Study of Image Analysis Algorithms for Segmentation, Feature Extraction and Classification of Cells. *Journal of Information Systems Engineering & Management*, 3(1), 05.
8. Gehhard, M. (2000). *The federal appointment process*. Durham, Duke University Press, 76.
9. George, T. E. (2003). Judicial Independence and the Ambiguity of Article III Protections. *Ohio St. LJ*, 64, 221.
10. Geyh, C. G. (2008). Methods of judicial selection & their impact on judicial independence. *Daedalus*, 137(4), 86-101.
11. Ginsburg, T. (2009). Judicial appointment and judicial independence. papers series for U.S institute for peace. Paper available at <http://sssm.com>
12. Haghshenas, S., Irvani, M. R., & Nasrabadi, H. A. B. (2015). Study of effective factors on job satisfaction of Omid Hospital Staff in Isfahan city. *UCT Journal of Management and Accounting Studies*, 3(1), 15-17.
13. Khadem, A. (1344). Justice in the UK (second part - Judges). *Journal of the Bar Association*, Feb. and March, 100.

14. Kumbhar, M., Bagde, S., Karpe, M., Kadam, V. (2019). HPLC Method Development and Validation for Estimation of Eperisone Hydrochloride from Bulk and Marketed Formulation. *International Journal of Pharmacy Research & Technology*, 9 (1), 6-14.
15. M. Pradeep, R. Abinya S. Sathya Anandhi and S. Soundarya (2017). Dynamic Smart Alert Service for Women Safety System. *International Journal of Communication and Computer Technologies*, 5 (2), 58-66.
16. Nurgaliyeva, S., Zeynolla, S., Tulenova, U., Zulkarnayeva, Z., & Yespolova, G. (2018). Features of institutional autonomy of the Kazakhstan's universities. *Opción*, 34(85-2), 302-336.
17. Phillips, T. R. (2003). Keynote Address: Electoral Accountability and Judicial Independence. *Ohio St. LJ*, 64, 137.
18. Rehnquist, W. (1996). Remarks of the chief justice, Washington college of law, continental celebration plenary academic panel. the future of the federal courts. (speech).
19. Rehnquist, W. (2005). Structural foundation of judicial independence. *California Law Review*, 72.
20. Rottman, D., & Schotlland, R. (2001). What makes judicial election unique.
21. Slotnick, E. E. (1988). Federal judicial recruitment and selection research: A review essay. *Judicature*, 71, 317.
22. Webster, P. D. (1995). Selection and retention of judges: is there one Best Method. *Fla. St. UL Rev.*, 23, 1.
23. Wheeler, R. (2005). Judicial independence in united states: current issues and relevant background. *Colombia Law Review*, 37(5).
24. Wynn Jr, J. A., & Mazur, E. P. (2003). Judicial diversity: Where independence and accountability meet. *Alb. L. Rev.*, 67, 775.

DATA OF THE AUTHORS.

1. Gholamreza Jalali. Ph.D. in Civil Law. Department of Civil Law, Arak Branch, Islamic Azad University, Arak, Iran jalali.iranlaw@gmail.com

2. Seyyed Vahid Lajevardi. Ph.D, in Private Law. Assistant Professor, Department of Private Law, Arak Branch, Islamic Azad University, Arak, Iran.

3. Abbas Ali Heidari. Ph.D. in Philosophy and Fundamentals of Law. Assistant Professor, Department of Philosophy and Fundamentals of Law, Arak Branch, Islamic Azad University, Arak, Iran.

RECIBIDO: 9 de julio del 2019.

APROBADO: 22 de julio del 2019.