ABSTRACT

This study discusses the requirements that should be available in the judge of grievances in Jordanian Law and Saudi Law comparatively with Islamic jurisprudence. It attempts to clarify whether the requirements which are regulated in these two laws agree or disagree with the requirements which are regulated in Islam. This study is selected because of its importance in our life. It helps the individual who is specialized in the field of judgment to know if he is competent or not competent to be a judge of grievances. It also helps the individual to know if the judge who is nominated in grievances has or does not have these requirements. This study depends on qualitative methodology where the viewpoints of jurists are collected and the legitimate bases on which their viewpoints are built. It depends also on analytic methodology by analyzing the legal articles and the collected viewpoints. Besides that, the study depends on quantitative methodology by referring to grievances courts. The conclusion of this study is that the requirements of the judge of grievances in Jordanian law are different from those which are regulated in Islamic jurisprudence. This is because Jordanian Law overlooked some requirements in Islamic jurisprudence and, at the same time, added other requirements that are not regulated in it. Meanwhile, the Saudi Law agrees absolutely with the requirements of Islamic jurisprudence.

Key words: Judge, grievances, Islamic, law.

Introduction

The requirements which should be available in the normal judge are the same requirements which should be available in the grievance judge. This is because the grievance judicature is a branch of the normal judicature. Muslim jurists discussed and explained these requirements depending on the Holy Quran, the Prophetic traditions, the consensus of companions (God bless them) and what was applied after them. These jurists agree on some requirements and disagree on others. This study aims at comparing these requirements in Jordanian Law and Saudi Law with those in Islamic jurisprudence. This comparison helps us to know who is competent to be nominated in this position in this field in these laws.

1. The requirements which Muslim jurists agree upon:

Muslim jurists agree that four requirements should be available in the judge. They are: Islam, puberty, soundness of mind and liberty (freedom). (Al-Tabary). These requirements are discussed in Islamic jurisprudence, Jordanian law and Saudi Law as follow:

1.1 Requirement of Islam:

Muslim jurists agree unanimously that the judge of Muslim people should be Muslim. This is because the judiciary is sovereignty and the non-Muslim should not have sovereignty on Muslim. This verdict is built on the holy verse which provides (And never will Allah grant to the unbelievers a way (to triumphs) over the believers). (Quran, 4:141).

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1.2 Requirement of soundness of mind:

Muslim jurists agree unanimously that the judge of Muslim people should have soundness mind. This is because the Prophet (PBUH) Said: “The Pen has been raised from three: the one who is sleeping, until he awakens; the insane person, until he returns to his senses; and the child, until he reaches puberty”.

1.3 Requirement of puberty:

Additionally, the judge of Muslim people should have arrived at the age of puberty. This is because the Prophet (PBUH) said: “The Pen has been raised from three: the one who is sleeping, until he awakens; the insane person, until he returns to his senses; and the child, until he reaches puberty”. This prophetic statement indicates that the minor is not asked about his disposal. Accordingly, how he will be a judge?

1.4 Requirement of liberty(freedom):

Muslim jurists agree unanimously that the judge of Muslim people should not be a slave. They concluded this verdict from the holy verse which provides "and get two witnesses, out of your own men" (Surah the cow, 282), and the verse which provides "and take for witness two persons from among you, endued with justice" (Quran, 65:2).

These two verses require witness and justice. The required justice requires masculinity, puberty, soundness of mind and liberty. Thus, liberty is a requirement to accept witness. The slave is not competent to provide such witness. Conclusively, the one whose witness is not accepted, his judgment is also not accepted.

1.5 Position of Law:

Jordanian Grievances Law provides that the judge of grievance should have the following requirements: puberty, soundness of mind and liberty. But this law does not provide the requirement of Islam. This sounds clearly in Article 4 (d) of this law which states "he should have legal capacity". Thus, this provision indicates that the grievances judge should have the legal capacity which, necessarily, requires soundness of mind, puberty and liberty. Meanwhile, the requirement of Islam is not required for this capacity. Accordingly, Jordanian grievances law does not agree with Islamic jurisprudence in this requirement. But it agrees with this jurisprudence in the rest requirements, i.e. puberty, soundness of mind and liberty. (Jordanian Grievances Law of 2008).

In respect of Saudi Law, this law agrees with the viewpoint of the majority of Muslim jurists. Namely, this law requires the four above mentioned requirements (Islam, soundness of mind, puberty and liberty) in the judge of grievances. This is concluded from Article 17 of Saudi Grievances Law which provides "Appointment and promotion to the ranks of Board members shall be carried out in accordance with procedures specified for appointment and promotion in the judicial cadre". (Saudi Law of Board of grievance of 1428 AH).

Accordingly, Saudi Board of grievance provides that the requirements which are required in the judiciary system are required in the judge of grievances. The judiciary system in Suadi Kingdom provides and requires the four mentioned requirements. This is mentioned in Article 31 of Saudi Law of the Judiciary which provides "He should be fully qualified to hold position of judge in accordance with the Shari’ah provisions ". (Saudi Law of the Judiciary of 1395 AH). It is submitted that the Islamic Law requires the four mentioned requirements, i.e. Islam, soundness of mind, puberty and liberty.

Accordingly, it becomes clear that the Saudi Grievances Law agrees with the Islamic jurisprudence in the all requirements of the judge of Grievances. Meanwhile, Jordanian Grievances Law agrees with Islamic jurisprudence in three of the mentioned requirements, and disagrees with the fourth one, i.e. the requirement of Islam.

2. The requirements which Muslim jurists disagree upon:

In addition to the previous requirements, some Muslim jurists provide on other requirements in the person who conducts judgment. These requirements are: he should be male, he should have and achieve justice, he should have wide knowledge that leads to conscientiousness and he should have soundness of senses. These requirements are not provided by all Muslim jurists, but by some of them. These requirements are discussed as follow:
2.1 Masculinity requirement:

Muslim jurists disagree on this requirement. Shafi'i, Maliki and Hanbali Schools provide and insist that this requirement should be available in the person who conducts the judicature. This means, the women should not conduct this task in these schools. Rather, if the magistrate authorizes her to do so, he will be unrighteous and her judgment is considered invalid.

Hanafi School permitted the woman to conduct the judicature, i.e. her judgment is valid unless the case relates to murder. This verdict is derived by analogy with the rules of the witness of the woman.

Ibn Jareer Al-Tabary and Ibn Hazm Al-Andalosy have another viewpoint. They said that the woman can absolutely conduct judicature without any limits or restrictions. (Al-Mawerdy, 1971).

2.1.1 Position of the law:

Jordanian Grievance Law does not distinguish between male and female in the grievance judge. Article 4 of this law specified all the requirements that should be available in the grievance judge. It does not mention the masculinity as a requirement. (Jordanian Grievance Law of 2008). Thus, Jordanian law agrees with the viewpoint of Ibn Jareer Al-Tabary and Ibn Hazm Al-Andalosy in this regard.

Saudi Law of the Judiciary mentions the masculinity as a requirement in the judge of grievances. Article 31(c) of this law provides "He shall be fully qualified to hold position of judge in accordance with the Shari'ah provisions". (Saudi Law of the Judiciary of 1395 AH). This Article indicates that the judge of grievances should have the complete capacity of judgment in the light of the rules of Islam and, accordingly, he should be a male.

2.2 Justice requirement:

Justice means incorruptibility.

Muslim jurists disagree on this requirement. Maliki, Shafi'i and Hanbali Schools say that this requirement should be available in the person who conducts the judicature. Thus, the punk is not competent to be a judge.

Hanafi School does not provide on this requirement. Accordingly, the punk may conduct the judicature. (Al-Mawerdy, 1971).

2.2.1 Position of the law:

Jordanian Grievances Law provides that the requirement of justice should be available in the judge. Article 4 of this law provides "E- he should have been witnessed that he has integrity and neutrality. F- He should not be convicted in a crime or a misdemeanor that breaches honor and general moral". (Jordanian Grievances Law of 2008). This Article indicates that the justice requirement should be available in the judge of grievances, i.e. Jordanian law agrees with the viewpoints of the majority of Muslim jurists (Maliki, Shafi'i and Hanbali Schools) in this regard.

Likewise, Saudi Law provides on this requirement. Article 31 of Saudi Law of the Judiciary provides "he should have the entire capacity for judiciary which is regulated in Islamic Law". (Saudi Law of the Judiciary of 1395 AH). Thus, this Article requires entire capacity for judiciary according to the rules of Islam, and this requirement spontaneously imposes existence of justice. This conclusion is supported by the provision of section "b" of the same Article (i.e. Article 31) which provides "He should not be convicted in a crime that breaches honor or belief, and he should not have received disciplinary decision cauased termination for his official job even if he is rehabilitated". (Saudi Law of the Judiciary of 1395 AH).

Accordingly, Saudi Law agrees with Jordanian Law and both of them agree with the viewpoint of the majority of Muslim jurists (Maliki, Shafi'i and Hanbali Schools) who require the justice requirement.

2.3 The requirement of having wide knowledge that leads to conscientiousness:

Muslim jurists disagree on this requirement. Majority of them (Maliki, Shafi'i and Hanbali Schools) say that it is important requirement and it should be available in the judge. Or else, the judgment will be void. Meanwhile, Hanafi School is not interested in this requirement, i.e. the person who does not have this knowledge can be nominated to be a judge. (Al-Mawerdy, 1971).

3.3.1 Position of the law:

It seems that Jordanian law imposes that the judge should have knowledge in the judgment. But this law does not provide that this knowledge should be wide to the level that leads to conscientiousness. This is mentioned indirectly in Article 4 (b) of grievance law which provides "He should, at least, have the first
university degree". (Jordanian Grievance Law of 2008). Accordingly, Jordanian Grievances Law agrees with Hanafi School when both of them do not require high level of knowledge that leads to conscientiousness.

Likewise, Saudi Grievances Law requires the same level of knowledge which is required in Jordanian Law and Hanafi School. This sounds clearly in Article 31 (d) of Saudi Law of the Judiciary which provides "He should hold the degree of one of the Shari’ah colleges in the Kingdom of Saudi Arabia or any equivalent certificate, provided that, in latter case, he should pass a special examination to be prepared by the highest judiciary board". (Saudi Law of the Judiciary of 1395 AH). Thereby, this Article shows obviously that Saudi grievances law adopted the same rule which is adopted by Al-Hanafi School in this regard.

Thus, Jordanian Law and Saudi Law agree on this requirement, and both of them agree with Al-Hanafi School which does not require the level of knowledge that leads to conscientiousness.

2.4 The requirement of soundness of senses:

Muslim jurists disagree on the requirements of soundness of senses (sense of hearing, vision and pronunciation). The majority of them (Hanafi, Maliki, Shafi’I and most of Hanbali jurists) say that the person who conducts judicature should fulfill this requirement. Meanwhile, some Maliki and Hanbali jurists say that sense of hearing and pronunciation should be available in the person who conducts judicature. But vision is not required. (Al-Mawerdy, 1971).

2.4.1 Position of the law:

Jordanian Grievances Law does not regulate this requirement. Article 4 of this Law which regulated the requirements of the judge of grievances does not deal with this point. Meanwhile, Saudi Law mentions this requirement indirectly in Article 31 (c ) which provides "He should be fully qualified to hold position of judge in accordance with the Shari’ah provisions". (Saudi Law of the Judiciary of 1395 AH). Thus, this Article refers to Islamic law which provides on this requirement, i.e. this requirement should be available in the judge in the Saudi Law.

Thus, it can be concluded that Jordanian Grievances Law is not interested in the requirement of soundness of senses. This means, this law is close to the second viewpoint of Muslim jurists which is mentioned above. But Saudi Grievance Law agrees with the viewpoint of the majority of Muslim jurists who insist on this requirement. This shows that Saudi Law is closer to Shari’ah than Jordanian Law in this point.

Conclusion:

This comparative study shows that Jordanian Grievances Law, in respect of the requirements of the judge of grievances, does not provide on the requirements which are provided and regulated in Islamic jurisprudence.Nevertheless, some requirements agree with this jurisprudence. Meanwhile, Saudi Grievances Law adopts the rules of the Shari’ah in this respect, i.e. Saudi law referred entirely to Islamic Law to regulate this issue.Besides that, the study shows that the requirements of the judge of grievances in Islam are wider and more accurate than those in Jordanian Law.

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