

The Influence of Immunity on the Behavior and Dignity of Judges

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Abstract : Immunity of judges from liability represents a departure from the principle that all are equal under the law, and that victims may be granted compensation from their offenders. The purpose of the study is to determine if judicial immunity coincides with the need to ensure the existence of highly independent and incorruptible judiciary. Judges are immune from civil and criminal liability for their judicial acts. Judicial immunity is justified by the need to maintain complete independence and discretion of the judiciary. Scholars and judges believe that absolute immunity is needed to shield judges from pressures, threats, or outside interference. It is commonly accepted, that judges should be free to perform their judicial role in accordance with their assessment of the fact and their understanding of the law, without any restrictions, influences, inducements or interferences. In most countries, immunity applies when judges act in excess of jurisdiction. In some countries, it applies even when they act maliciously or corruptly. The only exception to absolute immunity applicable in all judicial systems is when judges act without jurisdiction over the subject matter. The Israeli Supreme Court recently decided to embrace absolute immunity and strike off a lawsuit of a refugee, who was unlawfully incarcerated. The Court ruled that the plaintiff cannot sue the State or the judge for damages. The questions of malice, dignity, and public scrutiny were not discussed. This paper, based on comparative analysis of many cases, aims to determine if immunity affects the dignity and behavior of judges. It demonstrates that most judges maintain their dignity and ethical code of behavior, but sometimes do not hesitate to act consciously in excess of jurisdiction, and in rare cases even corruptly. Therefore, in order to maintain independent and incorruptible judiciary, immunity should not be applied where judges act consciously in excess of jurisdiction or with malicious incentives.

Keywords : incorruptible judiciary, immunity, independent, judicial, judges, jurisdiction

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