



The Egyptian Legal System

Egyptian Legal System

- **Historical Development**
- **Modern Judicial System**
- **Judicial Independence**
- **Judiciary & Media**

Historical Development



Historical Development

- Ottoman reign
- French Occupation (1798-1801)
- 19th Century
- Mohammad Ali Reign
- Reorganization of the legal system
- Based on Islamic Law & French Civil Law
- British Occupation

Historical Development

- Shari' a Courts (Muslim religious court).
- Consular Courts.
- **1845** : Specialized Judicial Council.
(Legal, Administrative & Military matters).
- **1856** : Confessional Councils personal status of non-Muslims
- Capitulations system.
- **1875** : Mixed Courts-Foreign citizens.
- **1883** : National Court-Egyptian citizens.

Historical Development

- **1937** : Montero Treaty.
- National Courts – replaced Mixed Courts.
- **1956** : Dissolution of Religious Courts & Confessional Councils.

- Egyptian Judiciary unification.
- Court of Cassation established in 1931
- Judicial Authority Act NO: 166-1943

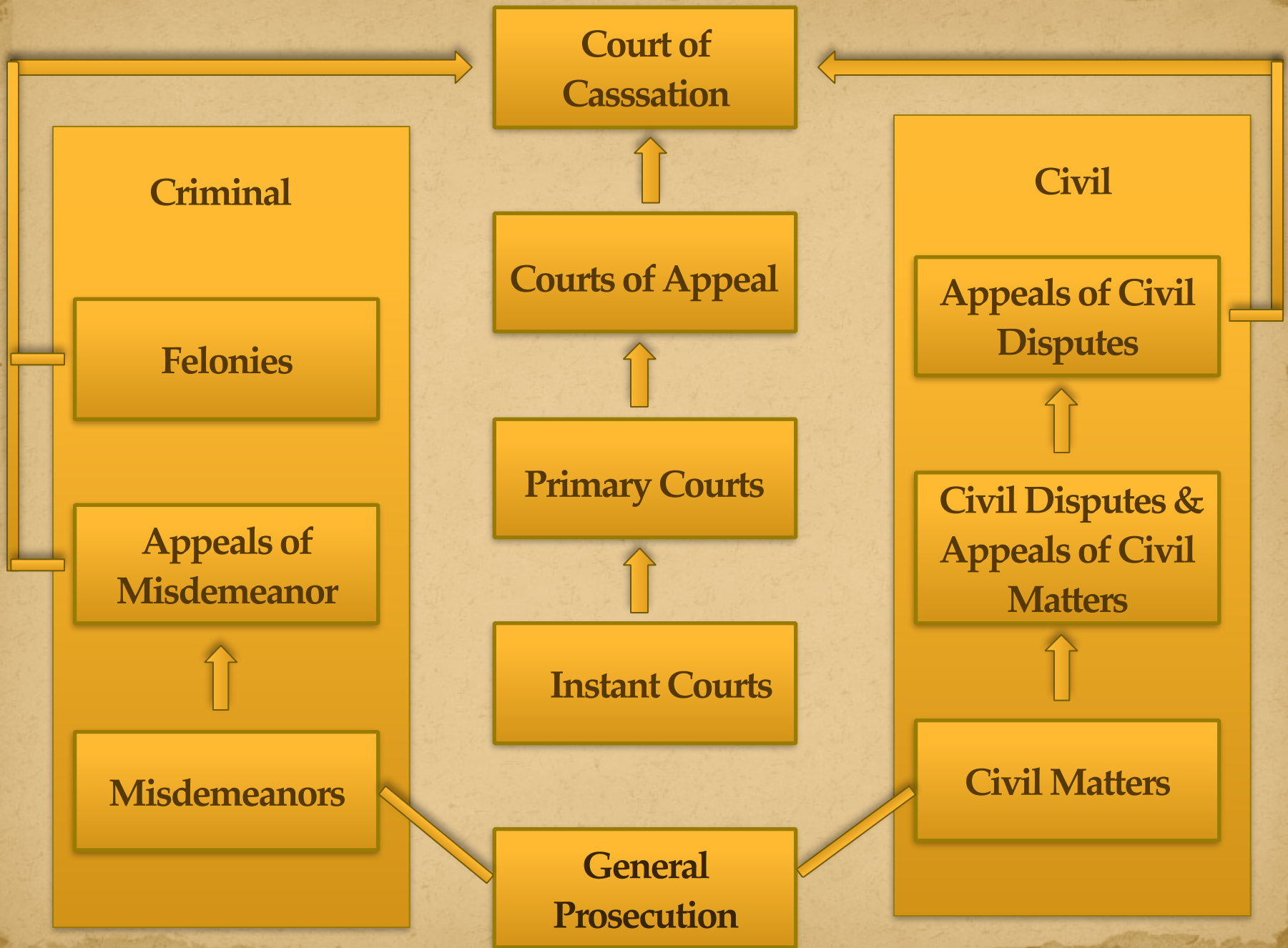
Modern Judicial System

Modern Judicial System

- **Common Courts (Ordinary Courts)**
 - Specialized Courts (Economic Court)

- **Administrative Courts (State Council)**
- **Supreme Constitutional Court.**

Common Courts Structure (Ordinary Courts)



Ordinary Courts

- Instant Courts (District Courts)
- Courts of First Degree (Primary Court)
- Courts of Appeal
- Court of Cassation (Supreme Court)

Instant Courts (First Degree)

- Central and Locations.
- Quorum : One Judge.
- Civil and Criminal Bureaus.

- Competent to adjudicate in:
 - Penal offences and misdemeanors.
 - Civil litigations of small value.
- Sentences are appealed before the primary courts.

Primary Courts (First Degree)

- Located in The Capitals of each Governorate.
- Civil and Criminal.
- Quorum : 3 judges.

- Competent to adjudicate in:
 - First instance civil disputes not attended by the instant courts.
 - Appeals of Misdemeanor sentences.

Courts of Appeal

- Based in Cairo and Governorates.
- Quorum : 3 Judges.
- Civil and Criminal.

- Competent to adjudicate in:
 - Appeals on sentences from primary courts in civil matters.
 - Appeals of criminal matters such as felonies and some important misdemeanors.

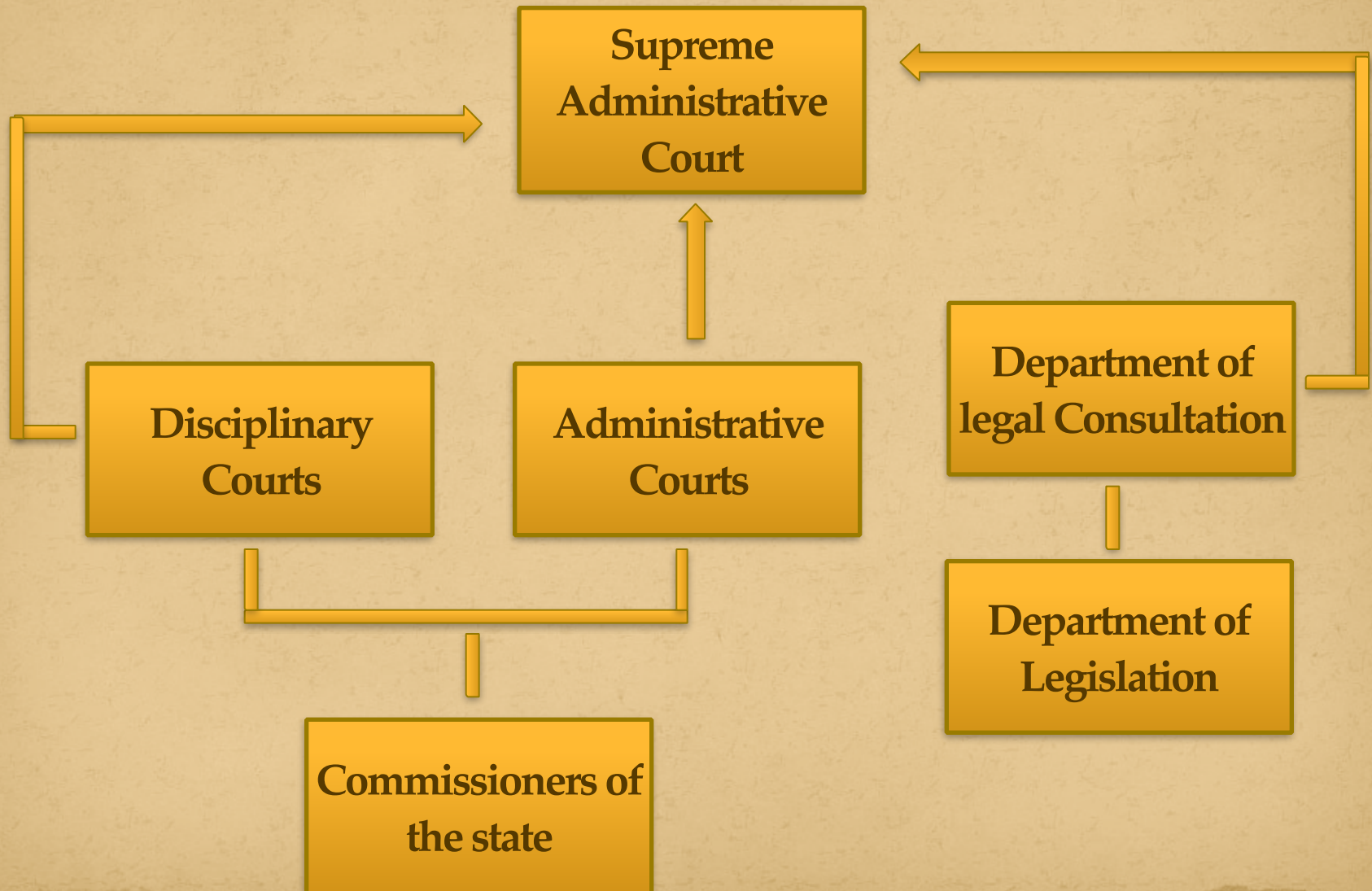
Court of Cassation

- Supreme Court of Ordinary Courts.
- One court - located in Cairo.
- Quorum - 5 judges.

- Rules on :
 - Appeals of final sentences of Courts of Appeal.
 - Appeals based on violation of principles of law.

Administrative Courts (The State Council)

Administrative Courts Structure



Administrative Courts (The State Council)

- Established - 1946 - Law 112 – 1946
- **Competent in:**
 - Administrative matters.
 - legal opinions – Government laws & regulations.
- Organization & competence - law 47-1972
- Amended by law 136-1984
- **Judiciary section - litigation:**
 - Administrative litigation.
 - Disciplinary litigation.

Administrative Courts Structure

➤ Structured - three levels of jurisdiction :

1. **1954** : Administrative Courts : competent administrative matters - first instance - appeals .
2. **1946** : Disciplinary Courts : divided into two levels (low & high)
3. **1955** : Supreme Administrative Court : judges appeals taken by both categories of disciplinary courts

The Supreme Constitutional Court



The Supreme Constitutional Court

- Established under law No. 48 of 1979
- One court located in Cairo.

- **Rules on :**
 1. Post judicial review of the constitutionality of laws and regulations.
 2. Determination of jurisdictional conflicts between jurisdictions.
 3. Conflicts arising from end contradictory judgments.

Specialized Courts (Economic Court)

Economic Courts

➤ Established by law No.120 - 2008

➤ Goal :

- To support foreign investments.
 - To deal with obstacles facing economic development.
- Members of the quorum are selected from judges of primary courts and Courts of Appeal by the Minister of Justice on the approval of the Supreme Judicial Council.

Economic Courts

➤ Rules on:

• Civil and criminal disputes (misdemeanors and felonies) concerning :

- Stock market
- Investments guarantees
- The funding of real estate
- Intellectual Property Protection ...etc
- The Central Bank
- Bankruptcy
- Monopolization

➤ In addition to the Criminal Code concerning economic crimes

Judicial Independence

- **Constitutional Texts**
- **Supreme judicial council**
- **Independence of Judges**
- **The Judiciary Budget**

Constitutional Texts

Constitution (1923)

➤ Articles 124 Stipulates that:

Judges shall be independent, subject to no other authority but the law. No authority in the government may intervene in judiciary cases.

➤ Article 127 mentioned that the status of judges:

Shall be irrevocable, and transferred according to the law.

➤ Constitutions : 1930 – 1956 – 1958 – 1964 all state the same principles of the independence of judiciary.

Constitution (1971)

- The independence and immunity of the judiciary are two basic guarantees to safeguard rights and liberties (**Art 165**).
- Judges shall be independent, subject to no other authority but the law. No authority may intervene in judiciary cases or in the affairs of justice (**Art 166**).
- The law shall determine the organization and jurisdiction of the judiciary, organize appropriate training and prescribe conditions for the appointment and transferring of its members (**Art 167**).
- The status of judges shall be irrevocable. The law shall regulate the disciplinary actions with regard to them (**Art 168**).

Comment on the texts of the Constitution of 1971

- Differs between the independence of the judiciary as an institution, and the independence of judges while practicing their work in courts.
- Standardization among judges and prosecutors in their immunities and guarantees.
- People shall contribute in maintaining justice.
- The constitutional Declaration after the revolution of 25 January 2011:
- State the same principle of the Judiciary independent in Articles(46 , 47)

Supreme judicial council



Historical Overview

- First mentioned in the Judiciary Independence Law No 166 of 1943 (articles 34-39).
- **Headed by:** The President of the Court of Cassation.
- **Membership** of the permanent under secretary of the Ministry of Justice and the Presidents of the Court of Appeal and the Primary Court of Cairo.
- The majority of the Council's powers were exclusively consultative: it has the power of recommending and is not empowered to issue decisions.

Historical Overview

- During the July revolution referred to the Supreme Judicial Council and to the amendment made to its membership by the exclusion of the permanent Under Secretary of the Ministry of Justice (Law 43 of 1965).
- **1969:** The Council was later dissolved due to the "Judges' carnage" arising from the crisis between the executive authority and the judiciary.
- Law No 82 of 1969 replaced the Supreme Judicial Council by the Higher Council of Judicial Organizations(HCJO) which is formed by judges but also by representatives of a number of legal professions classified as judicial organizations.

Historical Overview

- The formation of (HCJO) violates the independence of the judiciary by involving members who are not judges.
- Judges called for the dissolution of the (HCJO).
- 1971 constitution keep (HCJO), stipulating a provision to give it a constitutional immunity.
- Law No 25 of 1984 restored the Supreme Judicial Council.

Composition of Supreme Judicial Council

➤ Chaired by the President of the Court of Cassation.

➤ **Members:**

- The President of the Cairo Court of Appeal.
- The General Prosecutor.
- Two most senior vice presidents of the Court of Cassation.
- The two most senior presidents of the other appeals courts.

➤ Law no 35 / 1984 . Art 77 bis

Competence of The Supreme Judicial Council

- The SJC currently present is formed by judges only.
- The council enjoys general power over all judicial affairs due to the last amendment.
- SJC approval became imperative in all cases submitted to it (article 1). Its approval is imperative for the appointments of all members of the judiciary.
- Approval for: promotion, transfer, Discipline.

Competence and Powers

- The SJC competence, after 2006 amendment, represents a positive progress towards achieving the institutional independence of the judiciary in Egypt.
- The interference of the executive authority in judicial affairs is still noticed.
- The representation of courts' general assemblies is still deficient, contrary to what was the case in the Judiciary Independence Law No 66 of 1943.

Independence of Judges



Independence of Judges

- The Obligations of judges.
- Judicial Immunity.
- Crimes against Justice and Influence on Judges.
- Irrevocability of Judges.
- Prohibition of Judges' Work in Politics.
- Rules for the Transfer of Judges.
- Disciplinary measures.

The Obligations of judges

- Article 72 determined the obligations of judges:
 1. Judges are prohibited from undertaking any trading business and any activities that contradict the independence and dignity of the judiciary.
 2. Judges are prohibited from working in politics.
 3. The courts are prohibited from declaring political views.
 4. Judges are not supposed to disclose confidential deliberations.

Judicial Immunity

- Guarantees the judiciary independence and the judges' impartiality.
- Granted for judges and prosecution members.
- Judges cannot be arrested and put in preventive detention unless caught in flagrante delicto without the authorization of the Supreme Judicial Council.
- No investigation procedures, no criminal action shall be moved against him for misdemeanor or felony, unless authorized by the council and upon the request of the public prosecutor.

Crimes against Justice and Influence on Judges

- Many Texts of the Penal Law aim at safeguarding justice and protecting the judge from external influence.
- whoever publishes or makes public, through any means, information that might influence judges responsible for deciding in an action submitted to any judicial authority.
- judge or prosecution members or other officials delegated to undertake investigation, or influence witnesses. (Article 187)

Irrevocability of Judges

- Corner stone of the judiciary independence principle.
- Egyptian constitutions since the 1923 stated this principle.
- All of them left to the regular laws the determination of the principle limits, scope and implementation mechanism.
- Protect from influence by the executive authority.
- The judiciary independence law No 66 of 1943.
- Same conditions persisted in all judicial laws.

Appointment of judges

- By presidential decree with the approval of the Supreme Judicial Council (art. 44 - 1984).
- **Qualification:**
 - Education-B.A LAW- equivalent foreign degree.
 - Good reputation & Personal skills.
- **Age Factor: the candidate should be at least:**
 - 30 years: Court of First instance.
 - 38 years: Court of Appeal.
 - 41 years: Court of Cassation.

Rules for the Transfer of Judges

- the Supreme Judicial Council approval, and not only opinion, are henceforth required with regard to the promotion, transfer and assignment of judges.
- Judges are promoted by presidential decree (art. 44 of the law of 1984).
- The reassignment of judges from the primary jurisdiction to other judicial institutions or to the Ministry of Justice is decided by the Minister of Justice, with the approval of the High Judicial Council (art. 55 - 64).

Disciplinary measures

- The Judicial Inspection Committee is attached to the Ministry of Justice.
- Disciplinary action against the judges of all degrees is within the jurisdiction of a disciplinary council (Art 98)
- Formation of disciplinary council :
The President of the Court of Cassation, the most senior Presidents of the Court of Appeal and the most senior vice presidents of the Court of Cassation.

Disciplinary measures

- Despite the improvements made through the 2006 reform, the Executive branch still largely controls the disciplinary actions within the magistracy.
- Article 94 of the law of 1972 empowered the Minister of Justice to address warnings to the presidents and judges of the primary jurisdictions.
- transfers this authority to the President of the Committee of the Judicial Inspection, responsible for disciplinary procedures to investigate the conduct of the judges.

The Judiciary Budget

The Judiciary Budget

- The judicial authority law No 46 of 1972 did not include, before its latest amendment, special texts on the judiciary budget.
- 2006 Amendment remedied this deficiency and stipulated the addition of article 77 in bis 5 for an independent annual budget in Egypt in concordance with the state fiscal year beginning and expiration.
- The judiciary achieved now noticeable and palpable steps towards the judiciary institutional independence.

Media Coverage of Judicial Proceedings

Key Issues

- The privilege granted by law for the media to record court proceedings.
- Whether such privilege limit or restrict the power, authority or responsibility of the judge to control the court proceedings.
- The judge discretion to prohibit the recording of court proceeding.
- The impact of a media drawn criticism on serving justice.

The Judiciary Independence

- The Charter of the United Nations the people of the world affirm, inter alia , their determination to establish conditions under which justice can be maintained.
- The Universal Declaration of Human Rights enshrines in particular the principles of equality before the law, of the presumption of innocence and of the right to a fair and public hearing by a competent, independent and impartial tribunal established by law.
- Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

Rights and Responsibilities of the Media

- Should be granted access, as “the eyes and ears of the public”, to public proceedings, provided such access does not affect the judiciary independence.
- Should not publish information obtained through unlawful means, impede the orderly conduct of the judiciary proceedings or diminish the dignity of the court.
- Should not reflect on the categories of publicity to either the strength of the state's case or the guilt of the accused and must adhere to a Code of Professional Responsibility.

The Egyptian Law

- Court sessions, in principle, are to be made in public, unless a competent court decides to make them in camera, based on considerations of public order or morality. However, in all cases, judgments shall be pronounced in public sessions. (Article 52 of the Constitutional Declaration)
- Moreover, Article 101 of Law of Civil Proceedings and article 268 of the Criminal Procedural Law, reaffirm this principle, whereas publicity of court sessions is explicitly emphasized.
- In addition, Article 23 of the Press Law prohibits press dissemination of trial or pre-trial proceedings in a way disrupting the proceedings or prejudicing the interests of justice.
- Article 191 of the Penal Code penalizes dissemination of secret deliberations, or dishonesty in publishing public court proceedings.

The Egyptian Supreme Judiciary Council declarations

- The Egyptian Supreme Judiciary Council issued a statement, in April 4th, 2010, banning any form of broadcasting court proceedings in criminal trials, or any media coverage of pre-trial or trial proceedings in a way disrupting the proceedings or prejudicing the interests of justice in a way directing public opinion or having a negative impact on witnesses.
- The Supreme Judiciary Council inspired by the principles of openness and transparency in the administration of justice adopted an opposite approach by issuing a statement, in July 12th, 2011, permitting electronic media coverage and broadcasting of court proceedings in cases related to the killing of demonstrators and corruption cases against former regime leaders.

Conclusion

- The legislations governing the media coverage of court proceedings, should be supplé to apply on a case-by-case basis, whereas each case should be considered and decided on its own merit.
- The judge power, authority and responsibility to control the court proceedings should not be limited or restricted.
- The paramount consideration, in permitting media coverage of court proceedings, must inspired by the right to a fair trial, objectivity and impartiality of the proceedings.
- The media should step up to its professional responsibility and all the key participants should collaborate in favor of assisting the application of justice.

THANK YOU

