

A Comparative Study of Administrative Corruption Identification in Islamic Sharia, International Documents and Afghanistan's Legislative Documents

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www.ijrah.com || Vol. 2 No. 5 (2022): September Issue

Date of Submission: 19-08-2022

Date of Acceptance: 08-09-2022

Date of Publication: 15-09-2022

ABSTRACT

The aim of this research is that to compare the nature of Administrative corruption in Islamic law international documents and the Afghanistan's legislative documents. To see if these legal systems have similar or different positions in this issue. If similar, what would be the reason? If different, what would be the reason? And for what reasons would be prefer one over the others?

We used library method for research and collected materials from reliable resources, after analysis, we concluded that the nature of Administrative corruption in Islamic sharia, international documents and Afghanistan's legislative documents have different definitions, the reason for which is the different conditions prevailing in different societies and the different reactions of peoples to them, because corruption is a social phenomenon and occurs in society

It was also concluded that the nature of corruption is prevalent in Islamic legal system than the other two, because its definition is broader and comprehensive than the other two. It is comprehensive because it includes public, private and mixed institutions, as well as every wrongdoing, whether it is large or small, is covered and cannot be left out. Time is of the essence, whether it is the accepted forms of corruption in today's advanced 7th century and if it becomes known in the future, it will cover all, and ultimately, the status of heads up whether it's superior or inferior.

But the definitions of the nature of corruption in international documents and in the legislative documents of Afghanistan do not have all these advantages, but by the way have the problems, about which comprehensive information is included in the research material can be read there.

Keywords- Administrative Corruption, Islamic Sharia, International Documents.

I. INTRODUCTION

Generally public is aware on this and agrees with, that corruption is like cancer has taken root in the foundations of a social system and has uprooted it, because it has exposed evils and History is still plagued by bitter experiences of its negative effects on society, sometimes in the form of state indebtedness, sometimes in the form of creating a climate of mistrust between the

people and the state. Sometimes in the form of poverty and sometimes in the form of foreign investment.

But the problem and ambiguity that exist is, that there is no such a scientific and standard definition in a specialized form, which should be defined in such a way that all aspects of corruption bring it into its own frame, Because in practice area, corruption is a social phenomenon, which occurs in a social environment, and its face with a social response, depending on the

conditions of the same social environment, considering the conditions of the same environment and given the same definition and as the scope of this social environment expands, the dimensions of the definition of corruption expands with it. These divers and changing situation leads to the fact, that there is no single and unified theory about the nature of corruption.

The aim of our research article is to find out the truth of this claim, whether the scientific nature of corruption has the same or differentiating boundaries in Islamic Sharia, international documents and Afghanistan's legislative documents?

If the definitions synonymous, then answer to the question, although corruption is defined the same in these legal systems, then why does the level of corruption in one society make an ascending graph and, in another society, descending graph?

But if it differs than the method of scientific criticism to point out a definition that is comprehensive, reliable and comprehensive in nature, which one is more comprehensive and restrictive than the other?

II. METHOD & MATERIALS

This is library research, in which we have used various other books in addition to Sharia texts, current international documents and national legal documents. In order to make our research standard, systematic and easy and interesting for the readers, the dimensions include the research summary, preface, materials and approaches, as well as the findings, debates and conclusions, so this will be interesting and useful for readers.

As our research article examines the nature of corruption in three different areas, in order to examine our public understanding and sequence, we have examined separately the research material in each of the following areas:

2.1. The definition of Administrative corruption in Islamic law

As the term Administrative corruption is a combination of two words (administration and corruption) to better understand the article, we first explain administration and then corruption: Mohammad Mahmoud Attiyah in his book (Corruption Management and Treatment in Islamic Jurisprudence) Administration is the organization and management of the human resources in accordance with the Islamic government's goal. (Atya, 2017)

Also, Dr. Issam Abdul Fattah Matar writes in his book(Al-Fisad-ul-Adari): An organization is a collective power and authority, which is given to the person in charge of an organization. (Matar, 2011)

And in the case of corruption, Imam Qurtubi, in ayah number 11 of Surah Al-baqara of the Holy Qur'an, apart from the command of Allah, which says: when it is said to them: Make not mischief in the earth, they say: indeed, we are reformers of ourselves. (Shafi, 2019)

In the interpretation, he writes: Corruption is said to be anti-correction, and in fact to go from the right path to the wrong path. (Alkortabi, 1999)

Also, Dr. Issam Abdul Fattah writes in his book Al-Fisad-ul-Adari: Corruption is defined as creating a disturbance in the Sharia that deviates from its course. (Matar, 2011)

Analyzing the nature of the above concepts, we conclude that:

In the Islamic legal system, Administrative corruption is defined as the management of Administrative affairs against the accepted principles and objectives of the organization under the rule sharia law.

2.2. The definition of corruption in international documents:

As mentioned before, corruption is a deadly social phenomenon like cancer, it knows no boundaries, it has chosen the world as a village in this all-encompassing era of the 21 century Corruption has threatened this advanced international community and has eroded its influence, and in response has attracted the attention of various international communities and eminent scholars, taking different positions on the nature of this phenomenon, Gallup's institution defines corruption as: They are illegal actions, by which people bribe government officials to obtain licenses for wrong actions to contract agreements or escape from the imposition of punishment.(Hasani & adil, 2019)

In 2000 ad UN organization appoints joint committee to draft and regulate corruption, then in 2003, they were able to draft a law on corruption, and on October 31 of that year, a resolution was passed by the General Assembly of the UN organization, which defined corruption as such. Which:

Performing all those actions, which constitute improper performance of duties.

However, the definition of corruption removed from the text of the bill, which was included in the agenda of the assembly, was removed from the text of the bill and its definition was submitted to the legislative documents in each member state's home. The member states' domestic legal systems and the level of perpetration of the incident and the severity of the social reaction were staggering. (Ahmadi, 2013)

Also, the International Anti-Corruption Agency, known as Transparency International, had prepared a report on global corruption in the 2007, which the administration Corruption is defined as:

Misuse of trusted power for personal gain, whether in the private sector or in the public sector it is known as Administrative corruption (Hasani & adil, 2019)

According to the report, the definition of self-interest includes material and non-material privileges, such as the pursuit of political aspirations and interests. (Ahmadi, 2013)

In addition to the above definitions, the International Monetary Fund (IMF) in 1996 report

defined corruption as: abuse of public power for personal gain, even if it is small. And if major corruption is identified. (Hasani & adil, 2019)

2.3. The definition of Corruption in Afghanistan's Legislative Documents:

In addition, with other duties the supreme national charter (Constitutional Law) of the national legal documents of Afghanistan has assigned to the government the task of eradicating Administrative (Constitutional law of Afghanistan article (75) (3), 2003)

Corruption, on 11th October 2004 A.D, the legislative documents on No 838 (The law on combating bribery and Administrative corruption) was enacted. In this legal document, the nature of Administrative corruption is defined as below:

- Embezzlement and treason.
- Stealing documents.
- Loss of official documents and documents.
- Exceeding the limits of legal authority.
- Utilizing government facilities and official hours in private affairs.
- Dismissal and appeal without legal excuse.
- Hiding the truth.
- Document forgery.
- Demonstrate the power to execute or restrain affairs, which is not the duty of a public servant.
- Receiving any kind of gift for the performance of work in related matters.
- Unreasonable delay in the performance of assigned tasks.
- Misconduct of public servants by the public.
- Enticement, recommendation, illegal solicitation and mediation.
- Consider ethnic, regional, religious, linguistic, party, sexual and personal considerations in elections and recruitment. (Anti-Graft and Corruption law of Afghanistan article (3) (3), 2004)

III. RESULTS

If we compare and analyze the above information on the nature of corruption in Islamic Sharia, international documents and Afghanistan legislative documents, the following conclusions can be drawn:

The Islamic legal system, international documents and the Afghanistan legal system do not have a single view on the scientific nature of corruption, but each holds a different position.

Regarding the nature of corruption, the Islamic legal system refers to the status and rule of law, international documents and Afghan legislative documents, in the sense that in terms of the definition of corruption, the limits of the system are more than the other two. You are very broad and adapt to the conditions of any time and place, because every institution includes whether it is a public institution, whether private or mixed, as well as every misconduct whether it is big or

small. In addition, it is responsive to all times, whether it is the accepted forms of corruption in today's advanced 7th century and whether it will be known in the future. Includes, and ultimately, that corresponds to every kind of position whether it is superior or subordinate.

IV. DISCUSSION

Considering the findings of this study, it can be argued that:

The reason why Islamic law, international law and the Afghanistan legislature do not have a unified position on the nature of corruption is, that the corruption is a social phenomenon, which occurs in the social environment and the same social environment. Depending on the circumstances, there is a social reaction, the same definition is given according to the conditions of the environment, and as the fortress of that social environment expands, so does the definition of corruption. This diverse and variable situation has led to the fact that there is no single theory on the nature of corruption. The best proof of this claim is the deletion of the definition of corruption from the text of the draft of the committee appointed by the UN General Assembly on October 31, 2003. In contrast, it is decided that corruption should be defined in the legal systems of each country's home, taking into account the severity of its social conditions and reactions.

It can be argued that the provisions of Islamic Sharia in relation to the nature of corruption are more relevant to international and Afghan legislative documents than:

In this case, the position of Islamic Sharia is more important than the definition given by the Galof Foundation in international documents because the definition given by the Galof Foundation is flawed, because it is only a component of corruption that is bribery. He, in turn, covers and excludes other forms of embezzlement, such as embezzlement and treason, concealment of facts, violation of legal authority, use of state resources and official time in private affairs, and so on. Also, the definition in the draft prepared by the committee appointed by the United Nations in international documents is contradictory because the definition mentioned in the draft has only a historical basis. That the definition was not adopted by the UN General Assembly but was dropped from the draft, meaning that the documents drafted by the appointed committee had the validity of the draft except for the definition of corruption and that's it Also, if we come to the definition of corruption reflected in Transparency International's report prepared in the 2007, it is not without its flaws, that is, the administrator may be pursuing self-interest. Rather, he misuses and manipulates the power entrusted to him for the benefit of another person, so can't such an act be called corruption?

Of course, the answer is no!

Also, if we come to the report prepared by the World Bank in the 1996 A.D, it is criticized from two sides of the accepted definition, from one side, that this definition also includes the element of self-interest, which While it is permissible for a responsible administrator to misuse his or her duties in favor of another person, private and mixed institutions, and from another side, private and mixed organizations remain outside from the boundaries of this definition.

Also, the reason for its preference over the Law on combating bribery and Administrative corruption. In Afghanistan's legislative documents is that there is no explicit mention in the Afghan legislative documents on the nature of corruption. So it will be seen that the disability is due to the fact that there are many types of corruption in the above nature, but why there is no type of bribery in it, despite the fact that bribery is not included in the law. Separate from corruption is a term coined as a special term, the nature of which is also not stated here but is referred to the Afghan Penal Code 1976 article (254-276) and their bribery is counted as a crime against the public interest, from which this concept It is clear that bribery against the public interest is only a crime against the public interest, but if it is against the personal interest, as in private institutions, then the bribe is not recognized, on the other hand. The name of the law (The Law on combating Bribery and Administrative Corruption) makes it clear that the legislature distinguishes between bribery and corruption.

Fortunately, a new legislative document called the Afghanistan Penal Code was enacted in 2017 and its final article (Article 916, paragraph 2, clause 1, 2, 3) was enacted in 1976. The Penal Code and its appendices have been repealed at various times and new amendments have been introduced. One of these amendments is that in this Penal Code, a separate chapter has been devoted to corruption. And has accepted bribery as the first type of corruption in it, in addition to accepting some of the types of corruption covered in the (Anti-Corruption and Anti-Corruption Act) and vice versa. Predict the punishment and ignore it a bit and add a bit of freshness to it.

V. CONCLUSION

The following findings and subsequent debates suggest that:

In the case of corruption, the Islamic legal system, international documents and Afghan law do not share a common view, but have different positions. There are differing reactions of peoples in terms of humiliation and severity, as well as the most prevalent views on the nature of corruption in the Islamic legal system compared to the other two, the root cause of which is the scope and scope of this definition. Expansion and adaptation to any time and place.

REFERENCES

- [1] Alkortabi, M.A. A (1999) Aljami-u-lahkam-u-quran:1staddition, al-arabic book store. berout.
- [2] Ahmadi, Q.A.S (2013) Adari fasad da Islam lah leedlori: Academic magazine, 3rd addition, nomani book store, Kabul/Afghanistan.
- [3] Atya Moayera, M.M (2017) Al- fasad-ul- adari fil piqh-ul-islami.
- [4] Hasani, Frof.R. And Frof.G.S.A (2019) Mobaiza alihe fasad adari:1st addition, stare book stor, Kabul/Afghanistan.
- [5] Matar, A. A (2011) Al-pasad-ul-adari, alsekadnri, Dar-ul-Jami-ul- jaded.
- [6] Official Gazette (2003) Constitutional law of Afghanistan.
- [7] Official Gazette (2004) Anti-Graft and Corruption law of Afghanistan.
- [8] Official Gazette (1976) Penal Code of Afghanistan.
- [9] Official Gazette (2017) Penal Code of Afghanistan.
- [10] Rhmani. Prof. M. S (2011) Islami syasat pohani,6th addition. Jalal Abad/Afghanistan.
- [11] Shafi, M. M (2019) Tarsier marifulquran, Fisal book store, Peshawar/Pakistan.