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# A Glance at Economic Corruption and the Rules for Fighting It

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**Abstract:** Corruption is not a new phenomenon and it might date back to the humans' beginning of life on earth or their commencement of living in societies. No country could be found in any epoch of the history not afflicted with a sort of corruption; of course, such a cancerous tumor has been and is being more expanded in the third world and developing countries. In Iran, as well, following the termination of the imposed war, and from the turn of 1970s, terms like embezzlement and financial corruption, with a value of 123 billion TOMANS, joined the literature domain of the country and, unfortunately, it ascended to a higher value in 1980s and finally peaked in 1990s. Meanwhile performing a pathological study of economic corruption's mushrooming, the present study analyzes the rules of fighting it and their contingent shortcomings and the required regulations pertinent to fight against corruption in legal terms in such a way that the punishments of the economic corrupts and the rules of fighting against corruption could be executed so that no corrupt can find a way of escaping the legal punishment and the branches enforcing the legal regulations could better fight economic corruption. Therefore, it is through clarification of economic regulations, observation of meritocracy, elimination of the unnecessary rules and regulations, improvement of the existing rules and decisive confrontation with the economic criminals with no political and factional considerations that, besides preventing the economic corruption from being dispersed, the social justice can be institutionalized in the society more than ever before.

**Keywords:** Corruption, Embezzlement, Fighting with Corruption, Legal Necessities, Islamic Penal Code of Law

## INTRODUCTION

Fighting with economic corruption is now being and has always been proposed as the most serious challenge of the states. Since the economic corruption is a serious impediment to the investment and economic injustice and its growth and expansion will be followed by unemployment and is the source of ominous social phenomena in every community and, in the opposite side, administrative healthiness and transparency of the regulations cause the corroboration of the production and, also, it is observed in an examination of the statistics offered by the organizations investigating administrative corruption of the countries around the globe that the administrative and financial corruption is to be considered an important danger for the communities and the mankind. The indices pertinent to Iran are reflective of the idea that our country's situation in regard of corruption control is not favorable. Thus, making efforts for the recognition of the phenomenon and offering appropriate solutions is necessary. Also, according to the important self-purging characteristics of Islamic Republic of Iran's system, it is now more than ever before necessary to confront economic corruption and its

importance has been surfaced presently and it is a generally accepted principle that of necessary preps left un contemplated for fighting the corruption, the corruption grounds will be fortified. But, despite the existence of numerous regulations in regard of this problem and also the organizations assigned with the duty of fighting the economic corruption that sometimes work in parallel, it seems that the necessities and the requirements of seriously fighting with the economic corruption have not been so far elaborated and operationalized; although the rules and regulations pertaining to corruption have been occasionally explored in financial and nonfinancial aspects, the investigation of the increasing growth of the economic corruptions in the recent decades, increasing from 123 billion TOMANs, by F. KH., in 1970s, to 3000 billion TOMANs, by M. KH., in 1980s, and 9000 billion TOMANs, by B.Z., and others in 1990s, all signify the existence of a vivid defection in confrontation with economic corruption that, as believed by the experts, should be sought in the legal necessities and solutions of fighting with it and this could have stemmed from the deficits in the revision, implementation and inefficiency of the regulations as well as the supervision malfunctioning, pitfalls in the enforcement of supervision and lack of public awareness or overlapping of some regulations and guidelines.

One should accept that corruption is a social phenomenon not related to a specific person because it affects the whole society. With such a belief and as ordered by the supreme leader, fighting with corruption is not a purely ethical matter, the administration of the country is suspended on fighting with corruption ... and fighting with economic corruption has been amongst the first program lines of Amir Al-Mo'menin Ali (PBUH) (see also Khamene'i, website, speeches of his highness regarding fighting with corruption).

It is hoped that the legal exploration of fighting with corruption can lead to the delineation and offering of solutions and requirements of full-scale fight with corruption. Therefore, investigation of the role of the specific civil institutions, pressure groups, factions, security excuses, administrative corruption and others are not intended. Limiting the domain of the statement of the problem only serves the constriction and detailing of the study scope and achievement of better applied results using legal factors, including the regulations, guidelines, the role of the supervisory organs, enactment of efficient and solving rules against the corruption and cancellation of the illogical regulations following which the required solutions for fighting the corruption could be presented. Now, the thing that can be effective in delineation of the problem more than anything else is the separation of the intended parts from one another and detailed examination of each title and applied redefinition of them. Thus, the study encompasses the time domain after the Islamic Revolution victory because the investigation of whatever the thing that has happened before the magnificent Islamic revolution in Iran and under the full domination of Shah and his royal court fellows and his assistants and followers in the then economy (disregarding the matters related to denying or justifying them) is not very much effective in this period of time. But, lack of access to transparent information on the legal and illegal vents is amongst the uncertain aspects of the research on legal mechanisms of fighting with the economic corruption because the pain cannot be treated unless it is identified in details and completely. On the other hand, the existence of the term "expediency" in contrast to "law" might be the most uncertain and most complicate element regarded as a big barrier in the present study. It seems in an investigation of what has happened so far that retelling of the ways utilized by the economic saboteurs and corrupts in their raking of huge wealth in a short period of time (some of which can be traced in the imperfectness of the law and its enforcement) can per se pave the ground for the creation of another type of corruption.

Now, aside from the firm belief in the existence of expediency in macro-level decision-making by the system, non-generalization of the term to economic corruption and economic corrupts and the necessity of codifying applied regulations and the transparency that has always been seen the speeches and words of the supreme leader illuminates the duties to some extent. The present study has been laid upon the foundation of the idea that everybody should be equal before the law.

Nowadays, administrative and financial corruption has been transformed to a global problem. The governments are well-aware that corruption causes many harms and it does not know any limit and border. Unfortunately, the extant investigations indicate that corruption has become more prevalent in poor and developing countries

more than any other country. In Islamic Republic of Iran's system, fighting with the administrative corruption and economic corruption and misuses of the facilities provided by "authority" to the individuals are amongst the principles and basics of the revolution.

**1. Concepts and Words Defines:**

Corruption: it literally means wastage, decline, distortion, bribing, alluring or bribery (see also, Anton Eliyas, 1982, under the title of the word; Dehkhoda, 1998, under the title of the word; Maloof, 1986, under the title of the word). Corruption has also been taken synonymous to wastage, decay, mutiny and rebellion, tyranny and bacchanalia, as well (see also, Amid, 2007, under the title of the word). Some lexicographers have offered two definitions for corruption: 1) bacchanalia that is more related to ethics and 2) acquiring wealth through coercion, (see also Bandar Rigi, 2014, under the title of the word; Maloof, 1986, under the title of the word).

Corruption has been defined by the legislator as any doing or leaving undone of any action by any real or legal person in an individual or collective or organizational manner purposefully and with the objective of gaining any benefit or direct or indirect privilege for one's own self or the other through violation of the country's rules and regulations as well as any harm and loss imposed onto the public properties, interests or health and security, facilities or information, making illegal cash receptions or payments, forgery, destruction or concealing of the financial and administrative documents and records (also refer to the enhancement of the administrative system health and corruption fight, 2011).

Of course, the definition has been criticized by some:

- A) According to the different meanings offered for the term "corruption", it can be concluded that any doing of an action or any leaving of an action undone does not necessarily result in corruption. It is sometimes the case that the pressure groups pave the way for the creation of corruption by the others inside organizations without leaving any trace of themselves and these groups will be never questions for their being in shadow and unidentifiable as well as for the other expedencies and the issue has not been taken into account in the abovementioned definition.
- B) The crimes incorporated by the aforesaid definition are taking advantage, gaining direct and indirect privilege, harming the public security, misusing the authority or position in an organization or such words as concealing of the documents all of which are devoid of a definite limit and boundary hence they have to be redefined;
- C) The majority of the terms inserted in the above definition speak of crimes for which specific punishments have been stipulated in the Islamic penal code of law and some have been criminalized in brief in the law on trying the administrative transgressions of the government workers. Therefore, reemphasizing them is some sort of parallel working and overlapping of the regulations that might be deemed unnecessary.

The necessity shows up important where there is a pressing need for the codification of an applied, comprehensive and preventive law on fighting with economic corruption disregarding the political and factional considerations and ethnic and tribal dependencies so that the corruption factors could be intensely and strictly confronted. Using a little scrutiny in the rules and regulations of fighting with economic corruption by some Southeast Asian countries and the use of their experiences can be somewhat resolving. But, with all the possible shortcomings of the definition, it is not fair not to know this same amount, though being codified and approved rather lately, as a turning point for more coherent and more comprehensive regulations.

Economic Corruption: it refers to the crimes that cause disordering of the country's economic system in a macro-level. It is via derailing of the relevant affairs from their proper positions and venues that the social justice is diminished and the class gaps and the public distrust of the system are augmented. The high level of limitations and the poorness of a large mass of the people as a result of the collecting of wealth by a few numbers of them provide this latter group with illegal and unethical opportunities in

misusing information rents and enjoyment of legal gaps due to their enjoyment of the illegitimate economic facilities and sometimes political power and their abilities of establishing special connections to the authorities and economic decision-making centers and rapid access to their information (see also Farahani, 2008: 34-35).

## **2. Reasons of Economic Corruption Occurrence:**

This important issue is caused by numerous reasons and followed by many outcomes as put by the economists and a lot of theoretical and empirical researches have been carried out in this regard. The followings are but some reasons giving rise to economic corruption:

- a) Economic factors of corruption
- b) Social and cultural factors
- c) Supervisory factors
- d) Legal and judicial factors
- e) Political factors

It is necessary to point to the idea that the key principle in corruption is that the aforesaid phenomenon only appears wherein there is an exclusive privilege or rent<sup>1</sup>. Therefore, rent can be recounted as the primary factor contributing to the emergence of the economic corruption or as the most important known factor although its occurrence is per se caused by various factors but personal interest has been pinpointed as the most influential factor resulting in rent.

## **3. The Effect of Economic Corruption on the Society:**

The emergence of economic corruption in a society causes the country's production system to be incurred with a lethal impact and it causes the intermediate class to become poor and the poor class to become poorer and the affluent class to become richer. But, in a general look, the existential effects of economic corruption in a society can be divided into the following sub-branches. The classification has been taken into consideration by the majority of the critics of fighting with corruption in sociological terms:

### **3.1. Destruction of the Citizens' Attention and Trust to and in the Political System:**

The emergence of the economic corruption exerts adverse effects on the public thoughts and amongst the citizens and provides for the pessimism of the society members regarding the performance of the whole system in such a way that the people find the system weak in its power of fighting the corrupts and they subsequently lose their faith and trust in the government's performance. This is while the citizens' paying of attention to the government and political system is an important and essential support for every government (see also Farahani, 2008: 174-175).

### **3.2. Economic Insecurity in Economically Corrupt Space:**

It can be acceptable to claim that the economic corruption causes reduction in investment rate and slackening of the economic growth and, finally, the non-actualization of the economic development in the country and the reduction of the tax incomes and downgrading of the quality of the economic infrastructure and public services are amongst the inauspicious consequences thereof.

Amongst the important effects of economic insecurity, one can point to the increase in the public service rate, creation of economic gap between the social classes, paling or discoloring of the role of religion and ethics (infidelism), crime-proneness of the society's psychological ground, emigration of the intellectuals and brain-drain, sickening and weakening of the social spirit and so forth. It might be due to the same reason that the person who causes economic corruption in the society or his interventions are the examples of disordering the country's economic system is tried and punished as the earth corruptor because, in a macro-level look at the issue, the person has targeted the religion and faith of the people by his personal wills and wishes.

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<sup>1</sup> It is a term used in economy predominantly in the area of politics. Rent is the exclusive delegation of the authority over facilities, opportunities and positions to real and legal persons taking place mostly based on relations (familial, factional and personal). Rent is of many types the most common of which is economic rent.

### **3.3. The Effect of Economic Corruption on the Social Spirit and Business:**

Undoubtedly, with its targeting of the business and economic prosperity, the economic corruption will become a full-length pattern for the ones who are looking for acquiring more wealth and interest in renting space. The existence of rent, as the origin of any economic corruption in the society, diminishes the motivations of working and endeavoring, national production, economic independence and self-adequacy and pales the religion-orientation spirit in the economic and social activities of the people.

Many of the researchers have investigated the influence that behaving based on searching for and acquiring effortless revenues has on economic growth. The majority of the theoreticians believe that under such conditions that there is a possibility of earning money via rent, the society's talents turn towards collecting easy money in lieu of resorting to innovation and creativity and generative activities and this provides for the allocation shift of the country's talents from useful activities to the activities related to searching for and acquiring rent (see also Farahani, 2008, 176).

In such a space replete with rent and corruption, the individuals having better and more dependency on the economic centers and power sources and officials enjoy a higher chance of getting wealthy. In fact, efforts and production are not considered as factors of success and affluence rather closeness to decision-making centers becomes the success factor in ill economy.

It can be stated ironically that "he who is closer in this feast to the host will receive more golden beakers".

### **3.4. The Effect of Economic Corruption on Security:**

The existence of a large deal of class corruption amongst the various social classes and bearing witness to the easy-come wealth of the individuals who have walked at one night the road that takes a hundred years to be finished, meanwhile instigating the emergence of unhealthy competition, will be accompanied by the disintegration of the social order, weakening of the ethical and religious beliefs and public discontent and non-commitment to the political system and, somehow, internal insecurity and external unsafety. Frustration and desperation causes the root of loyalty and commitment to the soil and system to be broken apart and the poor and intermediate social classes, constituting a large fraction of the society, will consider the governing system as the supporter and protector of the wealthy minority and they do not see themselves as possessor of a position, commitment and obligation in such a social and political puzzle as a result of which the social ethics, fidelity and attachment to the soil and homeland suffer.

In such a state, "the majority of the people keep their anger in their hearts so that they might one they revenge. Thus, a public hatred becomes widespread as a result of wind-brought wealth in the society and this would have very detrimental effects on the national unity and sympathy" (Farahani, 2008, 178).

Although the expansion and increase of the economic corruption and its existence in the society can be caused by other reasons and factors, anyway, it can be followed by numerous harmful and devastative effects that need to be investigated in another study considering the objective of the present study which is seeking to criminalize economic corruption and provide a succinct analysis of the regulations on fighting with corruption in an observatory manner.

## **4. Fighting with Corruption, a Transnational Issue:**

The elaboration of the importance and value of fighting with economic corruption and creation of transparency in the economic functions as well as international efforts in this area are expressive of the global commitment in the private and non-governmental sector to this long-lasting and cumbersome fight. Due to the importance of the fight with corruption, it is worthwhile to point to a list of some organizations and regulations, conventions and non-governmental organizations (NGOs) active in the creation and codification of the rules and regulations in fighting with economic corruption:

- 1) International chamber of commerce (ICC);
- 2) World Bank (pervasive programs by the world bank in fighting the economic corruption);
- 3) Anti-corruption measures of the Asian Development Bank and the economic cooperation organization;
- 4) UN's activities in fighting with corruption in private sector;
- 5) UN's declaration against corruption and bribery;
- 6) The role of organization for economic cooperation and development (OECD) in fighting with corruption;
- 7) The UN's convention on fighting with corruption (Mérida)<sup>2</sup>.

With the clarification of the devastative and structure-breaking effects of economic corruption on the body of the society, the economic corruption can be added as a parameter to the evaluation of the economic and social status of the countries. Based on the international transparency organization's data investigating the countries' statuses in terms of corruption level, it is observed that Iran's best status in the past 12 years' dates back to 2003 (see also Sepehr, news code: 511366).

It is true that the ranking by the organizations under the authority of the world imperialist powers cannot be so much relied, one should note that it is based on these same rankings that the countries are evaluated and assessed and these are at least measurements currently extant in the international system and it happens occasionally that the other countries make judgements and take measures in regard of interacting with a government or a nation based on these evaluations and their transparency status in terms of corruption; of course, unfortunately, despite the preventive efforts and strict punishments of the economic corrupts, the panoramas are not so much vivid in Iran.

#### **5. The Role and Effect of the Regulations and punishments in Regard of the Fight with Economic Corruption:**

It is evident that the principle of the legality of the criminalization and punishments has appeared and been accepted in the international documents, domestic laws and others with the description that no crime or punishment is not suable without the existence of law.

It can be found out in an observation of the legal documents that one of the fundamental principles in the criminal law is the principle of the legality of criminalization and punishments and the punishment for the untold matters is not true. This well-known criminal law has been stipulated in the Act 36 of Islamic Republic of Iran's constitution. The principle specifies the verdict that "issuing a punishment sentence and its enforcement should be only through a qualified court and by the order of the law".

The present study finds no other way except clinging to the existing regulations hence it is necessary to more critically deal with the role of the punishments and the regulations related to economic corruption in line with the elaboration of the issue and the healing solutions with no bias and away from ethical, religious and social teachings and other issues of the like.

#### **6. Regulations and Rules on the Corruption Prevention:**

##### **6.1. Eightfold Command by the Supreme Leader of the Revolution:**

During early 2001, i.e. the year which was named by the leader of the Islamic Revolution as the year of "Alavi Behavior", an eight-article command was ordered obliging the heads of the three branches and their subsidiary supervisory organs to serious and decisive fight against economic and financial corruption. In part of the message, his highness has ordered that "in fight against corruption, one should not look for the weak individuals and small transgressions instead of dealing with the roots and earth corruptors" (see also Khamene'ei, website, the speeches by his highness regarding fight against corruption).

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<sup>2</sup> Merida is the convention set by United Nations in 2003 for fighting with economic corruption. Merida is the center of autonomous region of Extremadura in Spain. Islamic Republic of Iran, as well, has joined the convention (for more information, please refer to "the law of Islamic Republic of Iran's joining of the UN's convention for fighting with corruption").

Although effective and considerable practical measures have been taken since the announcement of the leadership command by the three branches and the other corresponding organization, the volume of the economic corruptions and plundering and pillaging and looting of the treasury house wealth is indicative of the need for a radical Jihad-like action in this area because, as ordered by his highness, today, the country is thirsty of healthy economic activities and creation of employment for the youths and confident investment and these all need a space wherein the investor and industrialist and the active elements of agriculture and scientific innovators and job-seekers and all of the other social classes can ensure the authenticity and soundness of the governmental relations and trustworthiness and honesty of the financial and economic affairs' operators and feel security and comfort (see also, Khamene'ei, website, his highness's speech on fighting against corruption).

His Highness's emphasis on the existence of the security in economy scene is for the easing of the people's presence and, to achieve economic security, the hands of corrupts and misusers and abusers of the law and law-breakers should be tied. This is fighting with corruption (see also Khamene'ei, website, His Highness's speech in the presence of a group of officials ... at 03/20/2013).

## 6.2. Constitution:

In Islamic Republic of Iran's constitution, the issue of the fight against economic corruption and the legal solutions of counteracting it have been specified. It is evident that adopting an extensive and sensible look in the constitution at the topic of economic corruption and scrutinizing the issue via the important principles of the constitution all signify the sensitivity and abundant influence of such corruptions on the society and the necessity of full-scale fighting with them.

The Act 4 of the constitution speaks of the point that all of the rules and regulations, including civil, penal, financial and economic and others should be based on Islamic regulations and this is reflective of the idea that there is no signification onto the illicit and corruption-provoking issues in the undoubted religion of Islam and the brilliant canonical rules and this same issue has caused the codification of regulations consistent with the canonical rules so that, meanwhile preserving the society's economic health, any sort of financial chaos and corruption could be prevented from taking place.

Moreover, chapter four of the constitution pertains to discussions on financial and economic matters in addition to the fact that Paragraphs 1, 2, 3, 4, 5, 6 and 8 of the Act 43 of the constitution<sup>3</sup>, as well, speak of supplying the essential needs, creation of employment conditions and facilities for everyone and regulation of the country's economic program, barring monopolism and financial corruption.

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<sup>3</sup> Act 43 of the constitution: "in line with safeguarding the society's economic independence and uprooting of poverty and deprivation and satisfying the human needs in the course of growth, along with the preservation of his freedom, the economy of Islamic Republic of Iran is laid on the foundation of the following criteria:

- 1) Supplying of the essential needs: housing, food, clothing, treatment, education and rearing and facilities required for the formation of family by everyone;
- 2) Supplying of the conditions and facilities of work for everyone for reaching perfect employment and providing everyone capable of working and having no work tools with work tools in cooperative forms via interest-free loans or any other legitimate way that neither leads to the concentration and accumulation of wealth in the hands of certain individuals and groups nor forcing the government to become an absolute large employer. This intervention should be taken with the observance of the necessities governing the general planning of the country's economy in any development stage.
- 3) Arranging the country's economic program in such a way that the form and content and work hour be so as to provide every individual with making occupational efforts plus giving him or her enough opportunity and power for spiritual, political and social perfection as well as active participation in the country's leadership and increasing his or her skills and innovation.
- 4) Observing the freedom of job selection and not forcing the individuals to a certain work as well as prohibiting the taking of advantage in others' works
- 5) Prohibition of harming the others and monopoly and hoarding and usury and the other illegal and canonically unlawful transactions
- 6) Prevention of frugality and meagerness in all aspects of economy, including consumption, investment, production, distribution and service
- 7) ...
- 8) Prevention of the foreigners from gaining economic domination on the country
- 9) ..."

Acts 3<sup>4</sup> and 44<sup>5</sup> of the constitution know the supplying of the work conditions and facilities for everyone as one of the economic criteria of Islamic Republic of Iran's economy and emphasizes on the granting of interest-free loans or any other legitimate method of attaining this goal because the individuals, meanwhile satisfying their material needs, engage in spiritual perfection and stay away from corruption in a society wherein the needs of the individual members therein are met and the society possesses a regular and organized economic program. Furthermore, the first and ninth paragraphs of the Act 3 state that the fight against all manifestations of corruption and vice and creation of the fair facilities for everyone and removal of unjust discriminations are amongst the cases by means of which the constitution of Islamic Republic of Iran has endeavored to delineate the lines of fighting against economic corruption and their provisioning is envisaged exigent through the elimination of all economic inequalities and monopolistic governmental and pseudo-governmental rents.

Additionally, in line with fight against economic corruption, the constitution expresses the examples of economic corruption in fifth and sixth paragraphs of Act 43 and criminalizes the corruption cases, including the economic corruption, by recounting the illegitimate and hoarding transactions as being canonically prohibited. In the other acts, as well, the required mechanisms in this regard, including the formation of courts, administrative justice court, supreme court of the country, supreme audit court and others, as well as codification of the required regulations, including the Islamic penal code of law, the law on the perpetrators of embezzlement, bribery and fraud and others, have been introduced to practically extend the domain from mere reminding to the criminalization of corruption examples and the heads of the threefold force have been ordered to fight against them. For example, paragraph 5 of the act 156<sup>6</sup> reminds crime prevention (including the financial and nonfinancial) as one of the duties of the judicature.

It is evident that in cases that the judicature considers the occurrence of crimes and depravities likely in future, it is legally obliged to prevent crime occurrence through legitimate and legal ways and such an important task might be somehow a duty of the crime prevention vice chancellorship of the judicature.

### 6.3. Ordinary Rules:

In the first glance, it might come to the mind that the multiplicity of the ordinary regulations on fighting against corruption is so extreme that they cannot be analyzed and criticized in the present research paper but their shortages and pitfalls are clearly vivid in using a little scrutiny over the existing regulations and the practical procedures normally practiced because scattered talks,

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<sup>4</sup> Act 3 of the constitution: "Islamic Republic of Iran's government is obliged to use all its facilities for the following issues parallel to the achievement of the aforementioned goals:

- 1) Creation of an appropriate setting for the development of ethical virtues based on faith and piety and fighting all the manifestations of corruption and depravity
- 2) Elevation of public awareness level in all the grounds through correct use of the press and mass media and other tools
- 3) Free education and physical education for everyone in all levels and facilitation and generalization of higher education
- 4) Corroboration of the spirit of research and study and innovation in all scientific, technical, cultural and Islamic grounds via establishment of research centers and encouragement of the researchers

...

16) Aligning the country's foreign policy with Islam scales, brotherly commitment to the entire Muslims and unsparing support of the world's wronged individuals"

<sup>5</sup> Act 44 of the constitution: "Islamic Republic of Iran's economic system is based on three governmental, cooperative and private sectors through organized and correct planning.

The governmental sector includes all the large industries, mother industries, foreign commerce, large mines, banking, insurance, workforce supply, dams and large water piping systems, radio and television, post and telegraph and telephone, aviation, shipping and navigation, railroad and others of the like that are held in the form of public ownership by the government; the cooperative section includes the cooperative production and distribution companies and institutions formed in cities and villages in compliance to the Islamic criteria; the private sector includes those parts of agriculture, ranching, industry, business and service that supplement the governmental and cooperative companies' activities. The ownership in these three sections is supported by the laws of Islamic Republic of Iran as long as they are in compliance with the other principles in this chapter and do not contradict the Islam's rules and cause economic growth and development of the country and do not mean harm to the society. The details of the criteria and realm and conditions of all three sectors are specifiable only by the law".

<sup>6</sup> Paragraph 5 of act 156 of the constitution: "... 5) taking proper measures for the prevention of crime and correction of the criminals"



overlap, lack of revising the intended regulations, lack of precise pathological study of the economic corruption, lack of taking the intra-organizational or extra-organizational pressure groups into account, lack of identifying the corruption bottlenecks and others are amongst the cases that need to be attended to in codification of efficient regulations. A limited number of the existent rules and a short criticism of them will be presented in the forthcoming section.

#### **6.3.1. The Law on General Calculations of the Country:**

Inspection of the governmental institutions earnings and expenditures by an account holder and in line with article 31 of the law on the general calculations<sup>7</sup> in terms of ensuring the accuracy of the accounts and financial and computational affairs of the governmental and public organs have all been included in this law.

Therefore, the governmental organs' proctors have no choice other than obeying this law in line with keeping their financial affairs transparent and the account holder is required to enforce article 91<sup>8</sup> in case of their insistence on exiting the predicted framework of financial changes in budget rows otherwise the account holder will be legally indicted.

#### **6.3.2. Plans and Budget Laws:**

These regulations that are parallel to the country's law on the general computations evaluate the financial supervision and the orders of receiving and paying by the organs so that the contingent corruptions could be prevented.

The imperfections of the regulations on programs and budget can be easily understood in a look at them because the type of writing and codifying the yearly budget is something that has been inherited traditionally from the era before the Islamic Revolution although a wide and long organization named the organization for programs and budget (later on changed of its name to organization for the country's management and planning) was established due to perceiving the importance of enforcing the regulations on plans and budget to be able to specify the strategies and policies and enforcement method parallel to the achievement of the objectives; however, it has been dissolved by one president and revived by another due to a sort of traditional look at the economic status and its officials' lack of obedience to the heads of the governments in various periods. Now, how can keep up the hope in the enforcement of the regulations in the distressed situation of an organization in charge of the program and budget? These are the regulations that can set the ground for corruption reduction and eventually corruption removal through continuous supervision and self-purging if they are enforced in their right place and their shortcomings are corrected in the later plans and bills and if they are codified corresponding to the necessities of the society and the growing economy; of course, one should not disregard the idea that lack of paying careful attention to the planning of the absorption of credits in the law on plans and budgets causes the accumulation of them in the end of the year and the executive managers would

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<sup>7</sup> Amongst the formal government servants featuring the required qualifications for exercising inspection and safeguarding the verdict, the ministry of economic affairs and finance is the agent that based on article 31 of the law on the general calculations: "is installed as an comptroller to make the necessary coordination in the enforcement of the financial and computational regulations in the governmental ministries and institutions and companies and the local executive organs and the nongovernmental public institutions and foundations and it is assigned with the performing of the other duties and tasks explained as follow: 1) supervising the financial and computational affairs and maintaining and arranging accounts based on the law and the related criteria and regulations and their accuracy and soundness; 2) supervising the keeping of the financial documents and books; 3) ...".

<sup>8</sup> Article 91 of the general calculations law: "in case that the comptroller finds an expenditure entry against the law and regulations, s/he reports the case along with the mentioning of the corresponding legal documents in written form to the authority issuing the expenditure order. After receiving the comptroller's report, the authority issuing the order declares it to the comptroller if s/he has made the order corresponding to the regulations and rules and that if s/he shoulders the responsibility of his or her order in written form via mentioning the legal document. The comptroller is obliged to report the sum of the related expenditure document after attaching it to the written order along with indicating the acceptance of the expenditure responsibility as well as the other related legal documents to the ministry of economic affairs and finance and send a copy thereof to the country's audit court. In case of finding it against the law, the ministry of economic affairs and finance will announce it to the country's court of audit for taking the required legal measures".

be engaged, instead of in the quality of the project, in the quantity of the executive projects and the infiltration of corruption in such an atmosphere is undoubtedly undeniable.

**6.3.3. The Law on Holding More Than One Job, Passed in 01/11/1994:**

It is worth mentioning that the law on the prohibition of holding more than one job, approved in 1994, is rooted in the note 29 to the budget law of 1965<sup>9</sup> stipulating the prohibition of receiving money from more than one governmental fund.

However, in order to avoid parallel and simultaneous payments to one individual from the public treasury house, the issue was objectified in Act 141 of constitution<sup>10</sup> after the magnificent Islamic Revolution in 1978. Based thereon, the president, his deputies, ministers and government workers cannot have more than a governmental job; although it is imagined that this important constitutional act has been neglected in some of the governments. But, the issue reveals the system authorities' intentions for fighting and confronting corruption.

**6.3.4. The Law on the Prohibition of Receiving Percent in Foreign Transactions, Passed in 07/27/1993:**

The root of the enactment of this law has to be sought in the intentions of the government representatives wishing to transact with the foreign parties because it is feared that the government representative might ignore the interests of the whole country by acquiring gifts, percentages and other tips as well as valuing his own personal interests at the cost of wasting the public treasury rights in the foreign transactions.

**6.4. The Regulations of Fighting Against Corruption Before the Islamic Revolution:**

Some of the regulations on fighting against corruption pertain to the period before the Islamic Revolution and they are briefly mentioned below due to their being in effect and not being explicitly or implicitly revoked. It is possible that the aforementioned regulations have overlaps or implicit conflict with the codification and enactment of Islamic penal code of law, the law on the punishment of the perpetrators of embezzlement, bribery and fraud and the other regulations approved after the revolution but it is necessary to mention them herein for their importance:

- a) The law on the government's prohibition from negotiating and signing contracts on granting oil monopolies to the foreigners passed in 12/11/1944;
- b) The law on the prevention of the board of ministers and representatives of the two congresses and the employees from intervening in the governmental and country transactions passed in 01/02/1958;
- c) The law on inspecting the assets owned by the ministers and the government workers, including from the statesmen and military men and municipalities and institutions associated with them, passed in 05/19/1958
- d) The law on collusion in governmental transactions passed in 05/19/1969
- e) The other regulations that might exist in civil regulations, business laws (especially in regard of the companies' affairs and the tenure of the members to board of managers) and so forth.

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<sup>9</sup> Note 29 of 1965's budget law: "government workers and the government-associated institutions are prohibited from receiving cash sums as salary or any other benefits from general or specific governmental funds or from government-affiliated institution, except from one ministry and/or institution. The government is obliged to prepare the required guidelines within three months since the enactment of this law for special cases that the payment of a sum for cultural or technical services and others of the like in another organ is necessary and enforce it in a timely manner after its being approved by the joint finance commission of the two congresses. As long as this aforesaid guideline has not been enacted, the current regulations are enforceable. The total sum of the receivables by each of the governmental officials and the government-affiliated institutions under any title, as well, is corresponding to the procedures passed by the board of ministers; the current regulations are enforceable as long as the foresaid guideline has not been enacted".

<sup>10</sup> Act 141 of the constitution: "president, his deputies, ministers and government employees cannot have more than one governmental job and holding any other tenure in institutions, the whole or part of their capitals belong to the government or public institutions, as well as Islamic Assembly agency and court advocacy and legal consultation and the presidency or general management or membership in the board of directors of various types of private companies, except the cooperative companies of the administrative organizations and institutions, is prohibited for them. The educational positions in the universities and research institutions are excluded from this verdict".

It can be concluded in using a little scrutiny that the former regulations incorporate the collection of rules all of which are in line with prevention of financial and economic corruption. Thus, in case that it is seen that the corruption cases occur and are left undiscovered using the extant laws, there is a need for more coherent punitive rules because prevention is not sufficient in some of the cases due to the weaknesses in the religious and ethical beliefs of the individuals and the temptations by the worldly matters and corporeal wishes and the inspection by the supervisory organs including the comptrollers, court of audit, organs' security guards, intelligence organization, the country's general inspection organization and others will not be effective. Therefore, there is no way other than resorting to a solid law for punishing the perpetrators of the economic and financial corruption so that they might become lessons for the others, prevention of wastage of public treasury rights, returning of the illegitimately accumulated properties and cash sums and so on.

It is necessary to express some of the regulations on fighting against financial corruption after the occurrence of corruption:

#### **6.4.1. Islamic Penal Code of Law:**

Islamic penal code of law is the general and overall law governing the crimes and it has specified various punishments for different crimes. The most important principles of fighting economic corruption therein are articles 592, 598, 600 and 601.

Article 592 stipulates that "should anyone, knowingly and intentionally, receive a cash sum or a property or, directly or indirectly, receive a payment deed for a cash sum or a property in exchange for performing or not performing any action considered as his or her duty as specified in article 3 of the law on the intensification of the punishments for the perpetrators of bribery, embezzlement and fraud<sup>11</sup>, passed in 1988, by the National Exigency Council, s/he will be considered as a bribee who will be consequently sentenced, besides confiscation of properties attained through bribery, to incarceration between 6 months to three years or whipping for 74 strokes.

It can be understood from the use of the term "anyone" in article 592 that the article encompasses the real and legal persons and the substantiation to article 3 of the law on the intensification of the punishment is more of an exemplary not statistical aspect because some cases might happen to be excluded from the above definition scope. This is while article 598 of the Islamic penal code of law does not embrace the illegal occupier and the topic of delegation based on the individual's legal duties is the prerequisite to the actualization of infringement.

It has to be mentioned regarding article 600 of the abovementioned law that the article somehow speaks of penalizing the transgressor who has violated his or her legal duties and it has benefited from doing so at the cost of the people and the government. In fact, the people will be kept immune of the abuses by the governmental agents by this article and since even reception of an additional sum from the clients can be considered a source of corruption, the legislator has expressed some of its examples and prohibits the governmental agents from doing so.

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<sup>11</sup> Article 3 of the law on the intensification of the punishment for the perpetrators of bribery, embezzlement and fraud passed in 1988: "each of the government servants and agents, including the military and administrative working in councils or municipalities or revolutionary institutions, and, in general, all the workforce of the threefold branch as well as the armed forces or the governmental companies or the governmental organizations associated with the government and/or the agents assigned to public services, including formal or informal, is considered as a bribee for performing or not performing an action pertaining to the aforementioned organizations in exchange for a cash sum or a property or receiving cash payment deed or a property, directly or indirectly, and it does not differ if the requested action is amongst the duties of the requested person or amongst the duties of another person in that organization and also it makes no difference if the person is found having performed or not performed the action and also if it has been based on rights and duties or not and if the person has been effective or not effective in getting it done. The punishments will be as specified below ....".

As for the article 601 of the Islamic penal code of law that is also utilized by courts in elaborating and criminalizing corruption cases, it has to be reminded that the aforesaid article stated in the fifth book (TA'AZIRAT LAW) of the collection of the Islamic penal code of law has been inflicted with some sort of duality in expressing the transgression and its punishment. In fact, the article is so difficult to understand and intangible that it seems as if the article has been a translation of an imperfect copy of a non-native article because the article implies some sort of cash withdrawal neither registered in the governmental records nor paid to a hireling by a debtor that can be somehow an example of taking possession of the governmental cash sums and disordering the economic system and creation of pessimism towards the government workers. Thus, criminalization of economic vices as perceived from article 601 of the Islamic penal code of law (apart from the existent writing faults) is not devoid of formalities.

**6.4.2. The Law on the Intensification of the Perpetrators of Bribery, Embezzlement and Fraud Passed in 1988:**

This law is consisted of 8 articles and 14 notes and it was approved in 1988 by the National Exigencies Council and the present study solely suffices to the most important article therein, to wit article 4<sup>12</sup>. Based thereon, in case that the aforesaid individuals perform actions in mob form and be examples of earth corruptors, their punishments will be those issued for the earth corruptors.

It is important to pay sufficient attention to the point that death penalty inserted in article 286 of the Islamic penal code of law<sup>13</sup> pertains to the law on the punishment of the perpetrators of embezzlement and bribery and fraud

**6.4.3. The Law on Punishing the Disruptors of the Economic System Passed in 1990:**

In regard of criticizing the law on the punishment of the saboteurs in the economic system, passed in 1990, it can be stated that the majority of the countries have conducted most of the criminalization of the economic infringements and the other changes in the economic criminal laws under the influence of their economic conditions. Iran, as well, is no exception to this law. The most distinct examples of such legislations are the law on the intensification of the punishment for the perpetrators of bribery, embezzlement and fraud and the law on the intensification of the punishments for hoarding and arbitrage (selling in higher prices) passed in 1988. The investigation of the law is suggestive of the idea that the legislator has been seeking to enforce the most severe punishments for the disruptors of the country's economic system via his enactment of this law and insertion some crimes like currency smuggling, forging of money bills, coinage and minting of coins, disruption in the country's production system and public's essential needs and so forth and its specification of imprisonment and death penalty. The aforementioned law that was codified in the political space influenced by the imposed war that had adversely affected the economy and public needs of the people, like the other rules and regulations, has been prone to fault. This law

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<sup>12</sup> Article 4 of the law on the intensification of the punishments for perpetrators of bribery, embezzlement and fraud passed in 1988: "the individuals who form or lead networks composed of several individuals to engage in bribery, embezzlement and fraud, besides being confiscated of the entire movable or immovable properties they have accumulated through bribery to the benefit of the government and the returning of the aforementioned properties in regard of embezzlement and fraud and giving it to the government or individuals in a case-specific manner, will be sentenced to pecuniary punishments equivalent to the sum of all the properties and permanent detachment from the governmental services and incarceration from 15 years to eternity and in case that they are found as examples of earth corruptors, their punishments will be those issued for the earth corruptors".

<sup>13</sup> Article 286 of the Islamic penal code of law: "should anyone commit crimes against the physical integrity of the individuals, crimes against internal or external security of the country, disperse defamatory falsehood, disorder the economic system of the country, set places on fire and destroy properties, release poisonous and microbial and dangerous materials or found centers of prostitution and corruption or be an apprenticeship in them in an extensive manner in such a manner that they cause severe disruption of the country's public order, insecurity or imposition of substantial damage to the total integrity of the individuals or public and private properties or cause the promulgation of corruption or prostitution in an extensive manner, s/he will be considered as an earth corruptor and sentenced to death. Note- ....".

aimed at organizing the distressed economy of the post-war period and creating barriers on the way of some individuals' avarice and establishing a relative economic stability but the idea that to what extent this law has been able to satisfy the requirements intended by the legislator can be easily figured out in a look at the ascending trend of the embezzlements following the codification of the aforementioned law and the surfacing of its defects both in legislation and enforcement aspects because how can the enactment of such a precious law helps succeeding the confrontation with the claiming greedy persons without codifying the trial procedure and implementation mechanism exacerbated by the absence of the specialized and experienced judges?

#### **6.4.4. The Court Subject of the Act 49 of the Constitution:**

As for the act 49 of the constitution and why it has been enacted, certain points have to be mentioned. The foresaid act stipulates that "the government is obliged to return the wealth it has earned from usury, usurpation, bribery, embezzlement, robbery, gambling, misuse of the endowments, misuse of contracting works and governmental transactions, selling of the barren lands and the major properties and lands owned by no one, founding of corruption centers and other illegitimate cases to the owners of rights and to the public treasury in case of their being anonymous. The verdict has to be enforced through investigation and research based on canonical substantiation by the government".

It has to be considered that the determination of the status of the properties belonging to the former tyrannical regime's associates and the other individuals who had somehow been involved in plundering of the public properties during the tyrannical period of Shah's kingship and the returning of the people's rights to the public treasury are undeniably necessity with the victory of the Islamic Revolution and specialized and expert individuals should be assigned to the investigation about these properties and issuing verdicts following the canonical substantiation (corresponding to what has been stated in the act 49 of the constitution).

In this regard, the law on requiring the government for preparing a bill on implementing the act 49 of the constitution within four months was enacted and announced in 1981<sup>14</sup> but, due to the existing defects, the law on the method of implementing the act 49 of Islamic Republic of Iran's constitution was again enacted and announced in 1984<sup>15</sup>. Meanwhile defining the special concepts and regulations, this law elaborates and classifies various kinds of usury, abandoned lands, major unowned properties, misuse of the endowments as well as the orders of general investigation and regulations, the statuses of the dissolved SAVAK, the representatives of the national councils and former senate and the other holders of the military and governmental positions in the tyrannical power, owners of gambling houses and prostitution houses, owners of movie theatres, shareholders, companies and others and the situation and status of the survivors of the tyrannical kingship regime and the properties they had gathered illegitimately were also determined and, according to the importance of the issue, the law on extending the respite specified in the note to article 4 of the law on the implementation method of act 49<sup>16</sup> was enacted in

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<sup>14</sup> The law on requiring the government for the preparation of a bill on the implementation method of the act 49 of the constitution within four months: "the government of the Islamic Republic of Iran is obliged to prepare the required legal bill for the implementation of the act 49 of the constitution within four months after the enactment of this legal article and present it to the Islamic Consultative Assembly for final approval".

<sup>15</sup> Based on note 1 to the law on the determination of a legal respite for the implementation of the act 123 of the constitution, the law on the implementation method of act 49 of Islamic Republic of Iran's constitution was enacted in a session held at 08/17/1984 by the Islamic Consultative Assembly and it was announced at 09/12/1984 by the respected Guardians Council to the prime ministry. The aforesaid law is composed of 15 articles and 5 notes.

<sup>16</sup> The note to article 4 of the law on the implementation method of the act 49 of the constitution: "in respect to the cases before the victory of the Islamic revolution (02/22/1978), the abovementioned organs are obliged to prepare complaints, pleas and/or reports at most within a year after the enactment of the law and present them to the qualified courts".

1984 and the procedures of investigating the file subjects of act 49 of the constitution<sup>17</sup> were codified and announced in 2000. It can be daringly stated that the aforementioned procedures are amongst the most valuable executive procedures of a law enacted till that time.

One point has to be also taken into account that the goal in enacting and enforcing the act 49 is making decision about the public and illegitimate properties collected by the holders of state and military tenures and Pahlavi family and their affiliates and also in consideration of the lawsuits still being filed to certain Act 49 courts after 40 years and this does not fit an Islamic system and if these courts were to continue trying the files of accumulation of illegitimate wealth after the revolution, it was necessary to assign such an important duty to a special law and a specified organization with sophisticated proctors following the passing of certain legal stages and in a coherent structure.

Therefore, meanwhile expressing gratitude for the performed interventions in fighting the economic corruption, it has to be confessed that the thing that has occurred in the formation of the regulations on the fight economic corruption signifies the vivid defect of the related rules and procedures and it is better to perform a comparative study of the extant regulations on the fight against economic corruption and make use of the experiences acquired by the leading countries in this regard, like Malaysia, China, Vietnam and other European countries to codify rules and specify the most intense punishments so that this expanding crime could be deterred.

### **Conclusion and Suggestions:**

It has to be honestly asserted that the developing countries have a greater chance for corruption but the punishment of the economic corrupts and the regulations of fight against it should be in such a way that no corrupt could escape the legal punishment and the regulations should specify punishments instigating the maximum deterrence. On the other hand, the forces supervising and enforcing the legal regulations can play an important role in fight against economic corruption. The organization for the overall country inspection, the country's court of audit, the security guards of the executive organs and intelligence ministry are the eyes watching the performance of the organs and, meanwhile inspecting, discovering and neutralizing the economic conspiracies, they can take important and effective steps in the entire stages of the formation of such illegal activities so that the performing of illegitimate activities and the gathering of wind-brought wealth could be combatted. Considering the idea that the majority of the macro-level economic corruptions occur under the cover of business entities, the immediate revision of the business law the preliminary interventions and draft of which have been prepared many years ago as well as the creation and formation of a special and legal group aiming at the performing of periodical inspections in these companies are absolutely necessary.

Evidently, the presence of the inspectors in the intended business entities and doing of their inspections under perpetual support of these companies' management is a strategic error that has unfortunately occurred in the business law.

It can be clearly seen that important steps have been taken in this regard such as the formation of a special public prosecutor office for fighting the economic crimes but they do not seem to be enough because, despite the existence of such public prosecutor offices and the regulations of fighting against economic corruption, the mushrooming of the economic corruption is well indicative of the partial and general defectiveness of the

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<sup>17</sup> "The procedures of the method of investigating the file subjects of article 49 of the constitution (06/10/2000) in enforcing the paragraph 5 of the verdict, issued at 05/03/2000, by the supreme leader (may Allah lengthen his shade) (annexed by a verdict issued by the head of judicature at 06/10/2000) indicating the determination of part of the examples of the properties belonging to the Jurisprudent Guardianship Position and the authorities of the trying courts have been codified based on the commands and instructions announced by His Highness Imam Khomeini (may Allah consecrate the soil of his tomb) and the supreme leader and the current regulations, as indispensable criteria to be executed by the committee of supervising and pursuing the file subjects of the act 49, and they are to be indispensably enforced after declaration by the head of the judicature.

corresponding regulations and the necessity of noble and sophisticated judicial upbringing and a specific trial procedure in line with preventing this ominous phenomenon from expanding because the economic corruption tramples down the regulations and, additionally, causes the deprivation of a group of people from their rights, imposition of inflation on the weak class of the society, diminishing of the economic opportunities and prevention of social justice development, social and national insecurity, inability in making generative investment and so forth.

Furthermore, sufficing to the numbers of the articles and principles of the constitution in the codification of the regulations on the fight against economic corruption cannot be effective. It is suggested that a work group should deal with the elucidation and enforcement of each of the assigned principles and acts as well as the other domestic laws in regard of any act in the constitution counteracting the economic corruption and its branches. Therefore, creation of transparency in the economic regulations, meritocracy and omission of the unnecessary rules and regulations and decisive confrontation with the economic criminals without political, factional and familial considerations along with the other elements can, besides preventing the expansion of the economic corruption, pave the way for the institutionalization of social justice in the society more than before. In addition, the reformation of the rules and regulations, enforcement of the freedom law with no consideration of the expediency, information transparency and codification of executive procedures and exact and organized supervision of the method of implementing them, correction of the behaviors of the administrative system that are the origins of the corruption and, more importantly, revision of the meritocracy system in a correct manner and performing selections of the most qualified individuals for recruitment and in a systematic manner, encouragement and punishment of the executive officers corresponding to the efficient rules and correct execution of the privatization of the government-owned sectors parallel to downsizing the government as well as creation of the spirit of commitment and attachment to the system and country amongst the statesmen and, finally, proper and uncompromised implementation of the regulations on “from where you have obtained this much of wealth”, implementation of the real property cadaster plan and confrontation with the renters in any situation, each of which was analyzed in its right place, can contribute to corruption reduction.

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