

Reviews of Bribery Crime and Corruption from the Aspect of the Mental and Physical Elements in Terms of the Islamic Penal Law and Merida Convention

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Abstract: Bribery crime and corruption are interdependent. So that it can be seen as two sides of the same coin. But between these objects, there is no permanent accompaniment. Bribery is subject to an agreement between Briber and Bribee is apparent, however, in the absence of the agreement, either express or implied, to fulfill the mandate in terms of our rights or corruption Bribery Bribery crime and corruption can be a difficult. Perhaps the mass of the rsha and artasha of the oldest human on criminal offences history. The nature of bribery is just in the opposite direction with a healthy social system where healthy economic fundamentals and strong social links, And cause the spread of obscene and relations promotion of and speculation and deception is deception. To clear this defiled element from the face of the administrative system, which caused great dissatisfaction in society perhaps the first and most important step to solve this problem, is cultural solution.

Key words: Bribe and bribery • Briber and bribee • Administrative system

INTRODUCTION

The word "Bribery means something that will be given to a person to spoil right or doing something contrary to his duty or issue a ruling contrary to right and justice. Sometimes, the term bribery is meant to be used as well dirt fertilizer. [1]

The association also said bribery is literally the term, as fertilizer and dirt prepares land for the plantation, for purposes of paying bribes, bribee also preparing to Briber. [2]. Bribee also asked to pay a bribe for the purposes of preparing bribery.

Another definition of bribery also states that "bribery is the financial is given to the agent of government formal or informal administrative or administrative or judicial in order to do the work even though it is not the job of the receiver property, either directly or through another person that he received money. This person, the mediator in Figh is referred to as bribe. provider of property is called bribee and the recipient of property is called briber.

The difference between the recipient property that does not have the ability to do the work for which they have taken bribes and does not vary that thing to be done be Briber right or not. The condition for the realization of the collusion and the recipient's provider agreement and bribery on the giving and taking of bribes" [3].

No matter that the recipient of the bribe money was to be able to do the job or not. And do not care that he is the right thing to Briber to be done or not. Condition for the realization of bribery is the collusion and consent of the recipient on the giving and taking of bribes"

In the French Penal Code and Article 9-343 has been discussing a bribe. And French legislators in the definition and mention this crime has prescribed that every action by the judge or a member of the jury or any other person employed in the judicial or referee or an expert, Whether, it is the court chosen. Or consensual and Or the person who on behalf of the judicial authority for the establishment of conciliation and mediation has been set,

Based on the request or acceptance of something unfairly directly or indirectly, such as gifts and bestowment and privilege, could be considered as bribes topics can be regarded as a bribe subjects including seeking that do or not this is related to the duty [4].

In religious teachings, strongly condemns bribery and corruption and bribery is the promise

Do not falsehood each other of their property. And to eat a portion of the property to sin, it is extended to the rulers, while you know (the truth) (Surah al-Baqarah / verse 188).

Imam Sadiq (pbuh) says in this respect: bribery in judgment is blasphemy to God because when the judge takes bribes has to not respecting the rights and justice and will not hold The Truth and vote to the benefit of criminal and cruel, But choosing the falsehood and disbelief on justice and unity " has no other means.

Imam Ali (pbuh) in a part of the sermon 131, which reflects the conditions of Islamic leader states that: "Venal in his judgment cannot be Emam, because arbitration with bribery violates people's rights and do not give right to its owner." In Nahjolbalaghe in the story of the "Ashas bin Qais" we read that he in order to overcome his trial in the court of justice of Imam Ali, nightly bring a pot full of delicious pudding to Ali Imam home and called it a gift. Imam became angry and said, " mourners tear in your death. Do you come to deceive me and inhibit from the religion of truth? I swear to God, if the seven heavens and what is below is given to me to take the Barley skin from the mouth of an ant of oppression, I will not ever do that. Your world for me is less important than a leaf chewed in the mouth of a grasshoppers, what is Ali's relation with the temporal blessings and fleeting pleasures?

The importance and necessity of this research is that one of the great disasters of the oldest human plagued times and that continues today with more intensity is the issue of bribery that is The biggest obstacles to social and criminal justice. And makes the laws that are supposed to protect the interests of the poor to be used for the benefit of the powerful classes.

According to Gold News newspaper on 16 December 1391 statistics on corruption in different countries of the world that, according to the organization "Transparency International" Corruption is prevalent in different countries. In "corruption index" of the institution, the Nordic countries are the best and Afghanistan, North Korea and Somalia are the worst.

Studies Conducted in this Article Are as Follows:

- A survey the differences bribery and corruption in the new Islamic Penal Code and the Convention on Merida
- The position and importance of bribery and the Islamic penal law and Convention in Merida

And the question is to be answered is whether there is a difference between the bribery and corruption in the Iranian Penal Code and the Convention on Merida from mental element and material? Reckoning that we

considered in this study is that in terms of the mental element and the material element of the Islamic penal law and the Convention in Merida there are differences

Research methodology is in the form of a library and tools used as follows :taking notes from books, theses, articles, newspapers and magazines. And the method of analysis to be done is a descriptive analysis.

The abundance of books have been written to the topic of the bribery crime because of the importance of this issue of the social and cultural and political opinion. Including Hussein Mir Mohammad Sadeghi, crimes against public security and comfort, Mizan publishing, 1385 printed in a few subject to definition and conditions and the pillars of offense. As well as Mohammad Reza, saki, Economic criminal law, jungle publications, second edition, 2012 in addition to the concept of crime cases has been pay attention to economic crime.

As well as Mojtaba, noorzad, economic crime in criminal law of Iran, first edition, publication of the jungle, Offences such as embezzlement and money laundering, they have been investigated due to expansion and Vogue of them.

Also, Seyed Muhammad, Abbaszadegan, Administrative corruption, Neal Publications, First Edition, 1383. issue of corruption in public administration is examined.

It Should be added that in this context, theses have been written and would have defended., including Sadat M. Mortazavi, Bribery crime and corruption legislative study on domestic law and international instruments, Azad University, Central Tehran Branch, 2002,

Because the bribery and corruption should be analyzed in terms of Rashyv Bribee well written numerous articles on the subject.

In the contemporary world criminal law has been noticed The detail of the crime committed, including international conventions such as the Convention on the fight against corruption and the OECD in 1997 or Convention on Corruption Strasbourg in 1999.

In the first part has been noticed to the different elements of the crime and corruption in domestic legislation and the Convention of Merida. It consists of two chapters, In the first chapter the nature and conditions of the material element of the offence in domestic law and the Convention. In CHAPTER II of this part has been dealt with the nature of the mental element of the crime and the conditions of the realization mental element in crime domestic laws and the convention in Merida has been paid [5-7].

Investigation of the Committed Elements of Bribery and Corruption Crime in Domestic Legislation and the Convention of Merida:

Chapter 1: The nature and conditions of realization of the material elements of the corruption in internal rules and Convention in Merida.

Bribery is not only an action that leads to pay money or goods and privileges But gradually becomes a military complex in which the network of special relations and collaboration are and the result of it will Acquiring wealth overnight, achieving the position of the various political, trade and so on... So facilities and assets of the country Is available to a limited number of people that will be easily able to pass from the laws of abuses and the violation of the rights of others [8].

First Subject: Study the material element of bribery and bribery in domestic laws.

Bribery is something that has paid to cancel the true or to fix something that is wrong. In some cases bribes used to the cancellation or the passing right and reach the false. Bribery is achieving the needs of the collusion.

It should be noted that the realization of the crime although subject to practical conduct that the legislator has restricted it or refuse to clarify that it is not practical But the harmful effects or the result of this action occurs in the fulfillment of the crime is not a condition [2].

Undoubtedly, for the fulfillment of any sort of crime material element must necessarily be revealed in outside. But expressed a criminal act according to the law may be issued in the form of positive criminal behavior of person. Positive criminal behavior is to commit what the law prohibited and it known punishable the offender. Or refusing to doing something leaving it to may be fulfilled in the law, Negative criminal behavior is to refusing to carrying out the tasks given by law to certain people and not doing it, is a crime.

So "material element involves all parts of the crime except those are related to the mental state of the accused." [5].

As you know the material element consists of 3 components:

- The physical behavior that is based on the type of criminal act or omission.
- The sets of circumstances that the presence or absence of them is essential for the fulfillment of the crime.

- The result element that should be part of first relation causality with the above-mentioned. The behavior of the accused has caused the criminal result.

First Chapter: Physical Behavior: General forms of the material element of the crime should be sought in three articles matters as follows:

First, Article 3, "the intensification of punishing perpetrators of corruption and embezzlement, fraud, adopted in 1367 (about the crime of bribery)

"Each of the employees and public officials, including judicial and administrative institutions and revolutionary councils or municipalities generally three branches of government as well as the armed forces or government agencies or government-related or employees of public services, Whether formal or informal, for doing or not doing something that is related to the organization of funds or property or financial documents directly or indirectly pay or agree to submit to the verdict is Bribee. Whether, it is relevant to their duties, or that of another official of the organization. Whether it was done or not done and according to activity and duty has been or has not been, Or whether they were effective to do or not to do it have been punished as follows. .. "

Second, Article 592 of the eleventh chapter of the fifth book "deterrent sanctions and punishments" enacted 1997 (the bribery crime)

"Whoever knowingly to act or refuse to do something that is the responsibility of persons referred to in Article 3 of the intensification law to punish perpetrators of bribery, embezzlement, fraud, enacted in the Expediency Council 15.09.1989. Funds, money or financial documents payment submitted to directly or indirectly r in Briber's ruling. "

Third, Article 590 of the eleventh chapter of the fifth book "deterrent sanctions and punishments" enacted 1997 (the explanation of the meaning of Bribes)

"If bribes is not in cash but financial grants or the amount of the price cheaper than usual egregious or apparently normal price and the amount of really decisively less of the price to government servants, Both judiciary and administrative, directly or indirectly transferred. Or to the financial purposes a egregious amount more expensive than the price to employees, directly or indirectly bought, the employees and officers of the Bribee and the transaction is Briber. »,

As it is clear from the text of the above, the physical action required for the fulfillment of a material element of the crime and corruption Bribery is "give" or "agree" or give money or property or payment document property (the first physical action is Bribery and the second in charge of the physical act of bribery) and to "deal" with unrealistic money. Therefore, committing the crime stipulated by Article 592 briber "a way to pay or give money or financial document directly or indirectly." Commits failing to do its duty to the government or other official functions in the organization to accept Funds or property, or document a financial payment, And in other words to obtain a benefit. Bribery is up debt can also be an employee when the employee, it will take up debt, corruption has been done in practice As can be seen, Article 3 of the law to intensification of punishment for perpetrators of corruption. .. the "not acceptable "could be a example than" getting money "is. Debt forgiveness of employees can also lead bribery and when the employee accepts the forgiveness of debt, in fact, bribery action has been done. As can be seen, the mean of Article 3 of the law to intensification of punishment for perpetrators of corruption. .. of the "Agreed it " Can be a sample other than "getting money" ..

Another example is noteworthy in structuring transactions the subject of Article 590 Islamic Penal Code enacted in 1392 apparently done a deal, but inwardly taking bribes is covered the transaction. Only acceptable method of payment has changed. The above article is known the transactions in unrealistic costs as well as the giving or receiving of money or property Unreal. The thing that Should be noted of the article is that in Most transactions for tax evasion in notary offices, Usually mention price much less than the price agreed. In this regard, it should be considered the actual amount exchanged and whether the intention of the parties was in fact a formal deal or not. The point that Should be noted of the word "accept" in Article 3 of the law of the escalation is that due to the appearance of the above and considering that article 592 Referring to Article 3 of "giving" money or property or document Is spoken, There is no doubt that the purpose of Article 3 of the "accept" means that the mentioned employee is obtained Cash or property document. So just because he accept the "suggested" of the client to the money or his property or documents the crime of bribery will not be achieved.

The second chapter: the terms and conditions necessary for crime

The second part of the material element means the set of conditions and circumstances that exist or not they are essential for the realization of the crime can point out several conditions:

First Paragraph: the Perpetrator: According to Article 592, the law suspended in 1997, "Whoever knowingly. .. ruled as Briber, so Briber can be anyone and do not need to be public servants. Briber, under the provisions of the international documents can be real or legal person. But in our law practically legal person is not known as briber. Only the manager or employees because of the actions that have done personally, as a real person, can be pursued as Briber [7].

So in bribery crime, there is no need for a special responsibility for the crime of bribery to commit a crime and everyone, whether ordinary people or government employees, etc. can be commit it. Even military personnel are also subject to this provision. Because crimes in the Penal Code of the armed forces, only has been attempted to the criminalization of bribery in Article 118 and, Bribery criminalization has not been attempted. [8]

Iranian lawmakers, though contrary to some jurists realize bribery and judicial corruption is not limited to, but not gone as far as for receiving and giving bribes to employees of the private sector distinguish as criminal.

The second condition for the realization of the two objects discussed in Iranian law is the financial aspect of what has given and taken.

Third Chapter: the Criminal Outcome: Bribery is an absolute crime. In other words, the legislator only the act of crime that is the payment or proof of payment or financial to agent of the government Knows enough to realize the crime. [7].

Bribery is also an absolute crime. That is not bound to a particular result. Therefore, in the definition of bribery has come, it is a receiving money or privilege to act or omission, whether or not these things be fulfilled. Therefore, bribery and corruption are both an absolute crime. And implementing those is not subject to a specific result. And the realization of a crime is not related to the employee has done it or not.

Article 3 of the law of the escalation, If briber has given the payment such as the cheque to bribe, After receiving the cheque by bribee mass is located. Although the cheque certificate is impossible. and non-payment is exported. Bribery crime of the article of 590 - 592-593 is an absolute, simple, instantaneous crime.

Second Topic: Evaluating the Material Element of Bribery and Corruption in Mérida Convention:

Considering the above, the material element of Iran's Penal Code on the material element in the Merida Convention should say that the Article 15 of the Convention states as follows:

Each State Party will be adopted Legal proceedings and other measures when the following committed intentionally, they are considered as criminal offenses:

A: promise, offering or giving irrelevant privilege to a public official, directly or indirectly, for himself or any other person or authority to make official to perform his official duties, Or avoid doing it.

B: asking or accepting irrelevant privilege from a public official, directly or indirectly, for himself or any other person or authority to make official to perform his official duties, Or avoid doing it.

In Merida Convention receiving money or object in order property, in a way that was described the material element in the law of Iran is bribery. The difference is that, corruption is not limited to these materials and demand and acceptance of bribes promised commitment also is a material element for the realization of corruption (Articles 15, 16 and 21 of the Convention). It is likely that this material also includes mass start. Without wanting to include the title at the top of the material.

In this case, it is accordance with the Article 549 AH. D that starting to corruption is known as a crime.

But based on the above-mentioned materials to bribe is a crime in the Convention. Though on the Rights of the Iranian criminal offense that is limited only to taking bribes. [6]

As previously mentioned this bribery crime in Iran accordance with articles 590 and 592 and Article 3 material, escalation Must be pecuniary... and the amount of it can be measured with money

But Merida Convention on the use of the term "any irrelevant privilege" has extended bribes to anything that was going to give it that value (Article 15 Merida Convention). It should be noted in this regard that the issue of corruption can be an illegitimate issue.

in the implementation of Bribery crime and corruption the ownership over financial is not a requirement and if Briber has given stolen property as a bribe to confirmed examples of such bribery. In Article 3 as well as the Article 15 of the Convention. .. have been referred to this type as causality.

The nature and terms of implementation of the mental element corruption and bribery in domestic laws and the Convention of Merida

For Bribery crime and corruption, as well as other crimes, be achieved inevitably there is a psychological element. In addition to general situations for all crimes, the deliberately in action, there should be specific plans. Therefore, Briber should know the Bribee and to have paid bribes for his certain work. Must also be conscious of the public official and has received the amount of the action as agreed with Briber.

Review the psychological element of bribery and corruption in internal rules.

For the realization of mental element of the crime general ill will be necessary This means that Briber does payment or proof of payment or financial action. Article 592 (the sanctions) has established: Everyone has the intentionally knowingly (the intention) to issue or refuse to do so by a governmental authority, to give him money or financial. However the specific intent that the employee intends to work for Briber or refrain from doing it is necessary. [7]

The Supreme Court in several votes, obtaining spiritual element considered Essential for the realization of corruption [8],Therefore, the amount put in the absence of a government employee without the consent and knowledge and collaborate with him in his desk drawer, due to the lack of spiritual element to the offense, cannot be a crime.

"If the defendant claims that funds that has received to do the work outside office hours, the court must examine the reasons".

Giving The amount of money to the employee as the tip while the government employee While the employee is not in any kind of intervention(No request or refuse to do something that is of his duties) is not considered bribes and is not included other penal regulations.

Where the mental element of the crime should be considered include:

- Briber and Bribee were aware of the Bribery as the government employees. Otherwise, If without their knowledge was issued the government notification for the receiver of money, Like Bribee already been dismissed from government service and restore to service, but they are not aware of the new mandate.

But the mere fact that the offender is ignorant of the law of himself, for example, he does not know that municipalities employees are also include laws on corruption can not escape from his criminal responsibility.

- Commit (employee) must know that the money or property or document Is given to do or not to do something of his duties or his colleagues or the

organization. Example: If a person thinks that property as the repayment or loan is given to him (accept money or financial) will not be responsible for the criminal act of bribery, his action will not include bribery.

In The vote No. 1854 - 10/23/29 on the mental element of corruption is stated that "Only to discover funds of the alleged accused of taking bribes, is not the reason of the crime. It means that Bribee consent and collusion with Briber constituent elements of the crime of bribery, But Bribee satisfaction in getting funds and colluding with Briber are the constituent elements of the crime of bribery. obtaining bribery intention is not necessary on that in contrast to what is expected to do and what the Briber wanted to do. Even if the employee does not want to do the expected work. The mere fact that property is receiving under the pretext is sufficient.. But if money is taken under the pretext of another reason, is not Bribery.

However, if someone not with intent to accomplish a task but merely to entrap the officer or employee referred to him and agent with a real treat to see the person's officer request to obtain the money or wealth, Or not the proposed payment or money accepted the offer and the obtaining funds or financial. Is crime in this case is realized?

According to the to Article 3 of the law escalation... And Article 118 Criminal law of the Armed Forces, the bribery and corruption are as an independent crime, And is possible to realize and action of officers in the mentioned assumptions has also seen instances of bribery. The unity of intent between Briber and bribee basically is not necessary and that the officer or employee of the government or the military in any way for refusing to serve or receive money or financial is considered Bribery. And essentially there is no difference whether Briber is actual or not Or offer bribes to test agent or based on a normal visit of the judiciary in a number of inquiries answered as follows, the Legal Department of the Judiciary in several cases answered the inquiries as follows. "Payment of the district of officers of judicial authorities, If the payment is in coordination with the relevant authorities in order to discover receiver (Bribery) is punishable by law, but the officer is exempt from punishment. Assuming that the Briber is of the officers and agents and his practice was to evaluate the work of the police checkpoint, Obtaining the money by the agent, however is include the Article 3 of the Act of escalation the punishment of perpetrators, and is considered Bribery.

The opposite is true and that is when the recipient has no intention of taking a bribe, but that bribes are eligible." So as mentioned, the knowledge of the funds or property of the employee or military is necessary, therefore, if he is not in the employ of the State (Article 3 of the officers, Law escalation... And Article 118 of armed forces) and is unaware of the notification or subsequent employment and the neglect of this aspect accepts money from anyone, his act can not be considered bribery. Despite the fact that the Iranian legislator only in Article 592 about Bribery, constraints "knowingly" is used. And in Article 3... about corruption, does not the mention these words, But to accomplish both offenses the committed should deliberately had to be taken financial from another person (bribery) or be given to him (Bribery).

The study of mental aspect of and Bribery and corruption in Merida Convention

According to Article 28 of the Merida Convention, knowledge, intent has been identified as elements of the crime. "Knowledge or intent or intent to" as the spiritual element of an offense established in the Convention may be derived from the "real objective. According to a criminal in the Convention and with the goal of accelerating the ratification of the Convention which is the fight against corruption the mental element follows of "objective theory". In other words, "the circumstances at the time of" can indicate the presence of intention or lack of it. So In order to establish ill will, it can be assumed in many cases.

So, the reason of the first approach of the Convention in knowing the psychological element and that in many cases there is no need to verification It is indicative that ill will in these crimes in adherence to "objective theory" is considered assumed. Of course, if the actual situation which is in the outside world indicate that there is "malice" does not mean that the defendant can not prove the opposite. The second reason for the existence of Article 28 of the Convention is the face of "assumes criminality" with the "presumption of innocence". Because in 2000, as well as the ratification of the Palermo Convention on transnational organized crime, it is argued that It is assumed that participants in transnational organized crime and crime in the formation of the organization are informed, As a result, their criminality is considered assumed unless the contrary is proved. It has pointed out to in Article 15 "... if the crime done intentionally," the purpose for the crime prescribed under the Convention can be deduced from the objective and real conditions.

CONCLUSION

According to the subjects mentioned in this article, it should be said that bribery is what is given to eliminate the right, or the right of a vicious, or what is given to someone to do a job contrary to their duty. There is a difference between Currently material element and internal psychological laws in Merida and the convention. Physical and mental behavior of committed to the realization of the crime, to pay or give money or property or document properties, And in bribery, accepting money or property, or payment or submission of financial documents, as well nominal transactions or with unrealistic amount. The point that must be considered is that the purpose of the restrictions in Article 3 of escalation act is that The discussed employee Take money or property documents. In this case, only suggesting by clients who accept the offer of money or property or a document is not bribery. Therefore, only promise and interpersonal appointment between a person as Briber and the other as mrtasha for the fulfillment of bribery and corruption is not enough But to accept the surrender of property or funds Which means it is accepting that with getting it is realized as bribery. Otherwise only the promise of Briber is not enough for the fulfillment of the crime. Unless what that Bribee done together with the promise of Briber is useful to bribery crime. The issue of bribes in Merida Convention is the broader the financial aspects. And as well as covers the non-financial aspects.

Merida Convention, contrary to Article 590 and 592 and Article 3 of the Law of escalation. . . that summarises the bribery and corruption in the material element of taking and awarded and as previously mentioned, bribery is not only the promise. In materials of the Merida Convention, offer, promise to accept and demand, as well as the material elements of the crime and generally has spoken of getting the benefit of an adventitious or accept benefits of adventitious spoken. (Article 15 of the Convention). The reason for this can be said that, since the purpose of the Convention is the fight against corruption with regard to desire that no violations remain unpunished. Thus, the issue of crime corruption in law of Iran is, only money, documents or property payment. In general, the bribe is only material. But The issue of crime in Merida Convention includes any illegal concession all examples of spiritual and material and any direct or indirect interest.

With The use of the term of any points earned illegally in the Convention is to simplify a criminal topics, with the aim of adapting them to modern forms of

criminality and at the same time encompass all behaviors that should be considered as criminal. In the judgment of Article 3 and articles of 15, 16 and 21 of the Convention must be said that In Iranian law, do not need the act or omission to be of official duties of employee. But the task may be within the scope of the organization. But in all the cases referred to in the Convention stipulated that the responsible in the application of their official and legal duty to do something or abstain from doing something. And consider the mental element, it should be mentioned that in Article 592, Constraint of knowingly used has been mostly. And in Article 3 of the law of intensification, there is no mention of these constraints on bribery. However, to fulfill both offenses committed should take financial deliberately from someone another or is given finance (bribery). Thus, the principle is based on the intentional of crimes. And knowingly words emphasis on laws articles and the crimes are non-intentional if the lawmaker has made it clear in law. In Merida Convention in the article predicted, the principle is on intentional practice, unless the accused to prove the opposite.

By joining the government of Iran to the Merida Convention, duties are located on the Iranian legislator. One of these duties is criminalize actions that are in the Statute of Convention as a criminal offense and is not yet criminalized in the Iranian penal code.

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