Recognition of Administrative Corruption in Iran's Legal System

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INTRODUCTION

Administrative corruption is one of the most common kinds of corruption and it is seen governmental system usually.

From the time organization began corruption or more exactly administrative corruption born. In Iran some codes tried to prevent corruption and punish the people or stuffs which commit this crime. Nowadays in Iran and some other countries administrative corruption is a problem which is related to the fundamental organization of the country.

Definitions:
2-1- Corruption:
Some scholars believe that the root of word corruption is romper.

In Persian language corruption is equal to the Persian word ”Fesad”.

Fesad means getting something from somebody cruelly, evilness. Fesad is an Arabic word which is also means corruption[1].

Corruption also means: dishonest or illegal behavior especially by powerful people (such as government officials or police officers).

On legal point corruption differ in every country. For example in Iran giving percentage to the manager of a company or organization is a crime and it is found as a kind of corruption,[2], but in some other countries such as America this action is not a crime.

Corruption has some kinds, but we want to discuss administrative corruption.

2-2- Administrative Corruption:
Administrative corruption is a kind of corruption in which the employee of an administration especially employees of the government abuse his or her offices and authority to gain illegal profit. It seems that we would be better to give a definition of administrative first: Administration is an organization to follow its duties. In administrative law, administration has to major aim:

First, maintenance of public policy
Second, providing public services
So, when an employee of an administration abuses his office he commits administrative corruption.

3- Corruption in Criminal Law of Iran and Islamic Jurisprudence:

3-1- Bribery:
Bribery is one of the oldest kinds of administrative corruption in the world.

According to article 3 of the of the intensification of punishment of bribery, embezzlement committers and tricks code of Iran which is related to the mentioned crimes, Is a legal source to preventing mentioned crimes in Iran.

Islamic punishment code of Iran, in Article 589 also said:
If the judges because of bribery make awards to punish a person more than the measure which is declared in the related codes, he (the judge) commits the crime of bribery and also should pay the money which is above the law.

We should mention here that the above article is related to the judges of the courts only. So, other judges such as judges of administrative courts and tribunal are not the aim of this Article. Also pay attention that the purpose of the Article 589 of the Islamic punishment code is to prevent awards in which a punishment more than the legal measure is used mainly and also preventing bribery by the judges of the courts which result the punishment more than the measures of codes. It is obvious that punish an audience to the maximum punishment in the law is not a crime and according to the situation can be used.

Bribery is also banned in Islamic jurisprudence or figh.

Imam Ali (peace be upon him) said:
If a governmental stuff hides him from the needs of the people God will hide himself from his needs in the judgment day. He also added that bribery by the employees of the government he is guilty [3].

He also mentioned that: if I am given the whole world and I am asked to do something against orders of the God I would not accept [4].

3-2- Embezzlement:
Embezzlement means rubberty:

Article 367 of the intensification of punishment of bribery, embezzlement committers in Iran which replaced the taazirat code (1983) in this matter, defines embezzlement as bellow: If one of the employee of the government or related to the government in organizations, offices, institutes, or the employees of the organization or institutes which continue their work by the help of government, judges, stuff of the three branches of the power in Iran, armed forces, employees of public services abuse the money which is in their hands according to their duties and he abuse the money he commits embezzlement. So, according to the mentioned article, non-governmental stuff or ordinary peoples which have governmental money to do something if abuse that money do not commit the crime the mentioned Article.

Also the money which is not related to government and belongs to private persons cannot deal with the above Article, and if the stuff is not given the mentioned money and he has it by other means it is not embezzlement and it is other crimes according to the situation.

The code of administrative violations in 8th Article of this code declares that embezzlement is a crime which is under jurisdiction of the administrative tribunals [5].

Embezzlement is banned in Islamic Jurisprudence.

3-3- Abuse of Dominance:
Abuse of dominance is a situation in which a governmental or non-governmental stuff get money in order to use his dominance against the law [6].

Abuse of dominance can also be happen in the relation between the boss and employee or upper employee and lower employee [7].

3-4- Extortion:
Extortion (also called shakedown and exaction) is a criminal offense of obtaining money, property, or services from a person, entity, or institution, through coercion. Refraining from doing harm is sometimes euphemistically called protection. Extortion is commonly practiced by organized crime groups. The actual obtainment of money or property is not required to commit the offense. Making a threat of violence which refers to a requirement of a payment of money or property to halt future violence is sufficient to commit the offense. Exaction refers not only to extortion or the unlawful demanding and obtaining of something through force, but additionally, in its formal definition, means the infliction of something such as pain and suffering or making somebody endure something unpleasant [8].

Extortion in Article 669 of the Islamic punishment of Iran is banned and according to it:
If anybody use force or threaten somebody to kill him or her or his relatives, will be punished 2 months to 2 years or 74 strike of whip.
Extortion is distinguished from robbery.
In robbery, whether armed or not the offender takes property from the victim by the immediate use of force or fear that force will be immediately used as in the classic line, "Your money or your life[9].
Extortion, which is not limited to the taking of property, involves the verbal or written instillation of fear that something will happen to the victim if they do not comply with the extortionist's will.
Another distinction is that extortion always involves a verbal or written threat, whereas robbery does not. In United States federal law, extortion can be committed with or without the use of force and with or without the use of a weapon.
In administrative law this crime has the punishment of dismissal too.
Article 19 of the combat against corruption declares the mentioned crime as abuse of office.

3-5- Abuse of Office:
A public employee commits the crime of misuse of confidential information if in contemplation of official action by himself or by a governmental unit with which he is associated, or in reliance on information to which he has access in his official capacity and which has not been made public, he:
- Acquires a pecuniary interest in any property, transaction or enterprise which may be affected by such information or official action;
- Speculates or wagers on the basis of such information or action; or
- Aids another to do any of the above.
Related to the concept of abuse of office is failure to disclose a conflict of interest.
A public employee commits the crime of failing to disclose a conflict of interest if he exercises any substantial discretionary function in connection with a government contract, purchase, payment or other pecuniary transaction without advance public disclosure of a known potential conflicting interest in the transaction. Accepting a pecuniary benefit in return for a promise of an appointment to a public office or public employment or designation or nomination as a candidate for public office is another related offense which may be subject to prosecution under law.

4- Preventing Administrative Corruption:
One of major cause of administrative corruption is growing of the government.
So, by privatization in the country we can hope to reduce this crime. As we all know privatization is growing in developed countries.
Another method to fight against crimes which are related to administrative corruption is much more duties of employees, so by controlling this issue we can reduce these kinds of crimes. Increasing the punishments of the related crimes in this case can also be helpful. Every country should have special groups to work on this issue and try to prevent this problem which can be dangerous to the society. Government should control the stuffs carefully and use confident people for controlling because the supervisors can make administrative corruption too. We know that this program needs time and money, indeed.

Conclusion:
As a whole, administrative corruption is a bad phenomenon in all countries which need multiple works to fight it. It is necessary to have better codes, updating them to preventing these kinds of crimes.
Privatization can be very helpful in this case, because shrinks the large government and also reduce the power and duties of the government employees. Privatization can send some the duties of the government to private parts and organizations, so the government is not obliged to control huge organization. Control of the financial situation of the employees and stuff is another method. As a summary fighting against administrative corruption is a duty for every country and the countries should help each other and make more helpful convention in this matter.

REFERENCES