

Study of Bribe Commandments and its Effects in Imameyeh Jurisprudence from the Viewpoint of Hanafi Jurisprudence

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ABSTRACT: The thesis entitled "A study on The Bribe Commandments And it's Effects in Emamiyeh Jurisprudence From The Viewpoint Of Hanafi Jurisprudence " is in this context that we seek to clarify what is the common law between Imami jurisprudence and Hanafiyah. The things that both Imami and Hanafiyah have the same ideas are that bribe is tabu and unlivable.

Poverty and impiety are the negative results of bribe in society and there was paid less attention to these two categories. This study is a library and descriptive research. This study investigated the relationship between the analysis of the cabbala of bribe by using of Qoran lectionary and valied texts and Imami and Hanafi jurisprudence. Bribe is one of the nitty-gritty that there are alot of agrapha about it. Bribe is a kind of the public crimes. It has two sides, the person taking the bribe and the person giving it. It has been used in many different meanings based on them gained which the word "bribe" means taking one thing in order to sentence or to accelerate or to indicate one thing particularly and even gaining right or rejecting void or vs. getting a void and destroying others 'right. In all of them, the main gained result getting bribe and endowing it both in Imami and Hanafi jurisprudence is tabu and unlivable and also, in the convention of society. All of them are accounted as an evidence of bribe.

Keywords: bribe, the bribe commandments, the effects of bribe, Imami jurisprudence, and Hanafi jurisprudence.

INTRODUCTION

Criminal politics of countries against law breaking in various juridical and executive aspects has close relationship with cultural views and ideals of society, and just legal, juridical and policy fight with law breaking doesn't suffice to remove roots of this social phenomenon and taking and implementing cultural and social politics is necessary according to moral and human rules dominant on society. The destructive role of some crimes to someone who aren't directly offender and higher than it, creating instability in the foundations of political system is not hidden, we can infer to bribe as an example of crimes. The prevalence of this crime not only injures crime parties, but also disorders executive, financial and administrative system and destroys the structure of social and economical system and the relationship between members of society and political system, authority and governance legitimacy and disturbs ethical and worth ful system. Thus, officers of society affair must present plan by collaboration of thinkers and using all legal levers and scientific achievements of various sciences to root and fight - with this ominous phenomenon and just don't suffice using legal and juridical instruments. As bribe resulted from weakness in function of social institutions, it is proposed in crimes against public comfort and is example of public crime and its pursuance doesn't need the complaint of private suer. This paper seeks to clarify the true meaning of bribers, its work and ordinances and different angels, so that the term comes from bribe and blaming Islam of bribery its tabu document has been proved based upon Quran and other narrations, then the types of bribe explained including (bribe in commandment

and bribe in topics) and other hidden angles from bribe issue such as gift, and judgment and difference of bribe and gift and finally the negative results of bribe in society have been investigated.

Research by potheses:

1. Bribe commandment are common in Imameyeh jurisprudence and Hanafi juris prudence.
2. Developing poverty and atheism is the negative effects and consequences of bribery.
3. Not performing juristic and law is the effects and result of bribery in society.
4. Income and expenditure imbalance is a factor in the choice to bribe

Research aims:

1. To obtain the strengths' and weaknesses of view in Imamate and Hanafi jueis prudence
2. To raise awareness of student and help to nearness of religious
3. Finding common points between Muslims and strengthening the spirit of unity and brotherhood in society.

MATERIALS AND METHODS

This research has been performed by analysis of content, descriptive, analytical and taking notes. The documentaries and library method has been used. Also, available documents, especially international convention such as the convention pledged to combat corruption or (OECD) in 1997 or convention related to corruption, stasbourg 1999 have been presented.

But it is mentioned that this research must use interview and questionnaire method, unfortunately because of complex and hidden nature of bribe and receiving bribe, we can't perform this perfectly. But we collect data and insert in thesis from interviews that were conducted by other institutions.

Examining bribe word and its derivatives in the narrations Thus, using personalized book and also soft wares of Islamic sciences in Imamate school, we present narrations that bribe word by one of its derivatives in table 1- appendix section, two words: Alrashy and Almrtsy commonly used, for example, the words Alrashy, Rasha , Al - mortashy are used 9, 39 and 14 times respectively (refer to table 1 at the end).

Forms of bribery

Bribe in order and judgment:

It must be understood that the "bribery" just track in «economy» district and "economic activities" , but we can seek foot print of this anti - moral act in «judgment» district and as this act can spoil the right of the weak and become rude the rich to violate an public properties and it provides the probability of developing guilty in society level and Islam interpreted as "blashemens" and know disbelief. In God, as Imam sadegh says: Bribe in judgment is blashemy to Great God (Makarem shirazi (1994) vol 2, pp 8).

And just for this reason and for immunizing Islamic judgment from this dangerous calamity, Islam orders, judge mustn't go market personally to free from hidden bribe and discount of price doesn't effect on judge (Makarem shirazi (1994) vol 2, p 8).

on page 347 of the first volume of worthy book called.

Mortal sins, the valuable work of sanctuary.

Ayatollah Dasgheib, it is given in this regard:

Bribe in commandments is that is given to judge to order by advantage of donor, although the right is for donor and judge orders by right and taking bribe and owning it is forbidden and is of moral sins and also giving bribe is forbidden and donor and recipient have been cursed, (Dastgheib, 1995, vo 1 , p347).

As it is observed, Martyre Dastgheib knows it tabu, although donor has right and judge orders correct.

Bribe in non - commandment when bribe is given to other than judge like ruler or general managers or governor general to protect of donor or perform un lawful and illegal will. For example, to enter special good or export goods or establish factory or obtain suitable land, thus to reach goal, they must face to problems and pass special phases and legal ways by high costs and more time and in summary, observing legal ways prevents this considerable benefit. They give bribe to government officers or municipalities to ignore law and they reach to goals more comfortable and easily.

Is bribers forbidden in other than judgment and the order like bribery about judgment considering that the title of bribery is correct in non - judgment? or has tabu allocated to judgment and isn't correct other than?

For example someone give property to other that recipient solves his/her problem before ruler and solves his/her work by mediation.

Then if his/her act is tabu or combination of tabu and lawful, donor for the incentive of doing whole work (tabu or lawful) pays property, this is tabu. In the new terms, this meaning expresses as "owning without reason and some times injustice owning". tabu because of corruption not intention or forbidden recipient, (assignment tabu). We must say, property after seizing from bribery - taker reminded in bribery giver owning and the possession of recipient (Regarding transaction corruption) are forbidden.

Of course, attributions are argued in giving gift to ruler or doer and injustice agents to forbid this briber. As to take property from parties is as wage and earning today not only isn't issue but if it occurs, issue is bribery. The first martyr says in book «Iameh Dameshiyeh»: judge can use treasury of it is necessary but it isn't allowed that takes something by antagonist (earning a living) (first martyr, volume1, p353).

The defunct (dead) researcher helli says in book «Islam religion laws»: this issue isn't correct, some jurists know lawful to take wage and some consider it tabue if judge was poor and judgment isn't necessary for him (khomeini, 2007, vo.2 , p537).

For person that judgment isn't necessary for him, earning living is lawful even if he hasn't need and if he hasn't the need it is better to leave it. Of course there are other theories that we with hold to bring them.

At first chapter - The examples of bribery, prevention code and comb acting bribery in executive system are as follows: Article 1- Employees and officers of executive system that they take property or receive the document of fund payment or giving property provide probability of agreement and negotiation or receiving property or document of fund payment according to below paragraphs. According to paragraph (17) article (8) law investigating administrative violations - approved 1372 their case will be referred to boards investigating administrative violations to do suitable punishment.

A- Taking fund other than what has been determined in regulations.

B- Taking gratuitous property or in notorious sum cheaper than normal price or by normal price and actually in notorious amount less than price.

C- sailing property to notorious sum more expensive than price directly or indirectly to referred person with out observing related regulations.

D- providing bribery causes such as negotiation of agreement or reception of fund, property or document of fund payment from referred person.

E- Taking or accepting fund or property or document of fund payment or giving property from referred person directly or indirectly to perform or not perform work related to executive system.

F- Taking each other property that regards as bribery such as each or giving loan without observing law or accepting commitment or responsibility that is unjust. and also taking reward and discount and special merit to provide services to person and perform agreement or protection outside norms that causes exemption studying the causes of bribe from social perspective Bribe is one social and cultural concept that has developed as one boundless phenomenon free from each social phenomenon and it is observed in each society the presence of government and administrative system, it is like acute syndrome that pollutes each administrative system and perhaps we can say that non organization is immunize it?

I have one purpose to express the above issued and it is to mention the penetration of bribery in administrative system and this administrative system is one of the biggest factors forming infrastructures of one society, In some countries like united nation, the government has minor role because of the presence of private section in the social fields and conducting wide spread volume of duties by this section, because the main volume of society works in charge duties of government and government just pays to ruling deeds that is related and resulted from public authority and of course few people involve this administrative system, while in country by dominant structure of state and in the government like Iran state people must refer to governmental section in 80% of their affairs and considering that the administrative system is one of the biggest factors forming infrastructures of one society, it shows that our society is one society with governmental structure and it causes to increase bribery coefficient.

It is necessary to mention that societies have different structures according to the type and their culture level, assuming united nation has different nations from all over the world and this difference in minor cultures leads to various attitudes to social phenomenon and bribery, of course we must pay attention to the other important factor and is social basis of special jobs and their importance in society that it increase the probability of bribe in such jobs, hobs such as judgment, legal medicine, disciplinary forces and so on.

Bribery effects and consequences

Administrative corruption in the form of bribery is one social and administrative injuries that it has abundant negative effects in developing countries and has huge costs in political, economical and cultural districts, we can infer to some sample:

1. Annuling right and revival of void
2. Financial and administrative corruption
3. Violation of laws and social rights
4. Creating unsuitable economical conditions
5. Unsatisfaction of people and questioning government and law.
6. Hard heartedness
7. Not accepting prayer and warship.
8. Severity of bad deed and the next world torture punishment of bribery (receiving a bribery)

As it is mentioned, the punishment of doer of bribery crime has been more extreme during time and this house that unfortunately the mentioned crime has been developed. The punishments have been determined according to position and degree of governmental officers and also severity and weakness of crime by money and violation limits and to study closely, we must refer to the related materials. Types of these punishments have been predicted in law of punishment of bribery and embezzlement doers (articles 3,4) and Islamic penal law (articles 588, 592): Whipping, cash fine, taking the taken property, confiscating property by government, imprisonment from six months to 15 years or life imprisonment, separation of governmental and public jobs and in some cases that is related to disturb of economical discipline or the importance of crime is very high, even execution punishment. Of course in this case, it may be change the crime title and attempted by other name like "corruption in land". These punishments are observed in article 4 of punishment law of embezzlement and bribery doers approved 1988. Therefore, this severity of punishment will be implemented for some one who disturb economical system and society discipline by forming or leadership of multi - person network.

Giving bribe crime

by looking at the narrations about bribe, it is shown that crime taking or giving bribe or mediation between them are simultaneous: crime of taking or receiving bribe are two sides of coin, although giving bribe crime may be accomplished but receiving bribe is lack of spiritual moral element and basically receiver didn't intended to crime and is lack of bad intention. Briber is one person who pays money or property to do or leave work that is related to government servers or officers of public services or juridical employees. As Article 592 approved 1998 says every one who pays money or property or gives document of fund payment directly or in directly to do or leave affair is briber and his/her punishment is to confiscate his/her property resulted from receiving bribe and imprisonment from six month to three years or 74 whips

The elements of giving bribe crime include:

pecunity element of giving bribe crime

- 1) pecunity element of giving bribe crime is that referee to one governmental, juridical institutions or municipalities councils gives property, money or payment document to one of governmental officers to do or leave deed that is one of duties of servers in article 592 and article 3 of punishment intensification
- 2, Acceptance of property from receiver

Spiritual element of giving bribe crime

Crime of giving bribe is deliberate and if it accomplishes that briber gives property or money by bad intention and consciousness and connivance with governmental or juridical staff and bribe - taker takes it by agreement and connivance and as we saw if bribe is accomplished .

lagal element of receiving bribe and giving bribe:

In a glance to punishment law (articles related to bribe) The below cases help us to obtain goal:

1. Bribe isn't just in the order and judgment, but it includes other cases, article 3 from governmental officers, concerning all juridical, administrative and council officer and municipalities three branches and armed forces related to government.
2. Donor of property has right or his work is unjust, it is bribe.
3. bribe and bribe taker are punished
4. The committed or not committed work is bribe.
5. property or money confiscate by government

6. The taken merit is cancelled by briber
7. The punishment of beginning of receiving bribe is determined
8. Formation of network in bribe leads to intensification of punishment (life imprisonment)
9. If briber informs officers to detect crime, it is exempted of financial punishment (Note 5. article 3)
10. Briber of merits when it is necessary
11. Crime by each title, donation, gift and so on
12. Determination of punishment is according to heavy or light crime

Legal advices of jurists:

1. Ayatollah Sayyed Mohammad kazem Tabatabaei yazdi writer of book «Aroghah Alvosgha» says: bribery is a property that briber pays to judge to order void or his/her advent age or learn who to claim or defend (Yazdi).
2. First martyr in book "Lameh" says: bribe is a property that judge gives from parties or third party to order by his/her advent age, It is no difference to jubilate void or right by bribe (Jabei Ameli, 2007).
3. The dead Haj Sheikh Mohammad Hasan Najafi, writer of book (Javaher Al - Kalam) says: «bribe isn't absolutely forgery, but there is difference between both of them and also bribe isn't to give property about void (Najafi, 1981): As writer of Qhamos, Mr Firoz Abadi introduces bribe as forgery
4. The dead sayyed Javad Ameli in «Al - meftah Al Kerameh» states: According to Shiite. Ulamas, bribe is a property that is given for judge and it is no difference that order is by right or void (Hosseini Ameli, 1998).
5. The researcher sani (researcher Karki). Says in book (Jameh Al - Maghased): bribe is to take property from claim parties (Researcher Karki, 1991).
6. Researcher sani in «Jameh Al - Maghased» and Martyr sani in Moslek say: by consensus of Muslims, bribe is forbidden and the importance is obvious for all people (Researcher Korki, 1991).
7. Mohammad Naraghi in document of Shiite, book Al - ghasa (judgment) volume 2, p 526 writer: by consensus of Muslims, taking bribe is forbidden for judge.

Bribe from Hanafi perspective:

(Hani Mansour, p 65) in this book the reasons of bribe tabu has been divided in two classes:

1. The reason from noble Quran: verse 188 of Boa have surah, 62 Maede, 29 Nesa have been used to express tabu of bribery

2. The reason from prophetic sunnah: In this section, the prophet Mohammad word is said from Abdollah Ibn Omar As that prophet says «damn an briber and bribe recipient (Itani Mansour, 1430 H, P 66).

If the child or writer or some co - workers of judge take bribe or help or help briber, if judge awares, his judgment isn't effective. In Hanafi religion, there are four forms for bribery

1. If he judge by bribe, he isn't a judge and bribe is forbidden for donor and receiver.
2. If he/her gives bribe to the judge to judge by his/her advent age if judgment is void or correct, this bribe is cabu for parties.

3. If person gives bribe for fear of own life or property, this is forbidden for receiver and isn't forbidden for donor also if person wants all his/her property and he/she gives bribe some part his/her property.

4. person gives bribe to someone to improve his work before judge, It isn't forbidden for donor but is forbidden for receiver but if person hires mediation and gives money then it isn't forbidden for receiver

And if person wants someone to improve his/her work before rule, but doesn't wants something, after improve work, he gives something there is two cases.

A) To take isn't lawful

B) It is lawful

The second case is correct because it is a reward of goodness (Har Ameli, 1968, p64, Hadith 22064)

Abi Mohammad Alnasehi Al - Neishabouri writes in book "Adb Al - Qhazi": If judge takes bribe and orders by right, his judgment is void and no one has the right to know effective his order and his justice is redered null and if he take judgment position by bribe, he isn't a judge (Abdolghani, Maktad Al - Zahra Qublication p61). But judge can take reward for writing claim and name of witnesses, because the work isn't obliged for him (Abdol ghani, difference between bribe and gift, Maktab Alzahra publication, p66).

Taking fees about non - obligations isn't unlawful, Bribe - receiver can't own bribe

Also in sahih Bokhari, hadith ni 2597 - 2895, there are two hadithes about reproach of bribe and bribery. The prophet Mohammad «may God send greeting to him» recites this verse: a such is the seizure of your lord when He seizes the (population of) the town while they are doing wrong verily his seizure is painful (and) sever (Hud,102) In sahih hadith, it is brought that prophet Mohammad says: «inequity and cutting kinship relationship are more deserved of all sins that exalted God gives them torture in this world and also the other world (Ibn Majeh, 1401 H. hadith 4211).

Certainly, bribe and all kinds of oppression that God forbids them are given in sahih Bokhari that prophet Mohammad says: God gives deadline to oppressor but when he call him/her to account, doesn't save him/her (Bokhari, 2007, hadith 4686).

Strategies of prevention of and can frontation with bribery culture - constructing of government and private organizations and asministrations and establishing stability in methods of incentive and encouraging identify fiction of providing personal and financial independence in individuals can inject identity in the essence of organization and administration members and strengthens commitment sense and leads to stability of social system. The approach is considered by help of principles of common sciences especially humanities to how recognize phenomenon of administrative corruption and who confront it according to scientific finds. The purpose of preventive method is to mobilize the revolved system on decline corruption causes and punishment of violators, to attempt to solve it basically by approach of system and society. It is clear that organizational culture can have high capacity for prevention of administrative corruption by doing basic functions.

Conclusion

1. from jurisdicial and legal perspective, there isn't problem in the punishment of briber and bribe - taker: all Imameyeh and Hanafi jurists have consensus on tabu of bribe mostly and have difference in rare cases, but the writer concluded that although there are efforts about law but there are problem that must be solve
2. lack of detecting crime about private section must be reviewed according to raising their performance in the society.
3. For briber, legal punishments must be considered for discount or lack of doing punishment, while this encouraging tool hasn't been implemented about bribe - taker that is applied tool of penal preventive politics. It - has been expressed in the right of other countries but in the law ۷ right of our country hasn't paid attention to it.
4. High volume of law is a big problem in severity of bribe in society: according to these interpretations we must reminds this point that the severity of punishment won't be only obstacle for doing crime, but as Sezar Bekayar Said, certainty is important in punishment not severity that un for tunately, in crime like bribe we don't see certainly in the punishment.

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