

ECONOMIC AND FINANCIAL CRIMES IN ISLAMIC JURISPRUDENCE

BY

Prof. MurtadaAremuMuhibbu-Din: dinmuhibbu@gmail.com

&

Dr. AminuKambariMu'allimu: Department of Islamic Studies Nasarawa State University,
Keffi, muallimu1@nsuk.edu.ng

Abstract

Corruption has been identify as worldwide phenomenon and as age long practices predating the revelation of Qur'an. In the recent time the phenomenon is in the increase threatening political, economic and social problem in many society globally. According to Islamic teaching, any action of mankind that flout justice or rule of law whether at home, place of work, learning institutions, social or political gathering are acts of corruption. This article aim at stating clearly that Islam consider all forms of corruption staring above as crimes that are punishable with deferent degrees. The researcher used survey design method where data were collected from both primary and secondary sources. The paper discovers that Islam jurisprudence has provided solution to the problem of corruption. The paper, recommends stickiness to the Islamic law as the solution to corruption for the eradication of corruption in the throughout the world. Also, the perpetrators to face the law so as to save as detrains others

Keywords:*Economic, Financial, Crimes, Islamic, Jurisprudence*

Introduction

The problem of corruption has received an extensive attention by both policy makers and scholars in contemporary societies. Even though the problem is not new, it has reached an unprecedented proportions in recent years. It cuts across nations, cultures, races and organizations. Corruption is undoubtedly one of the greatest challenges of our time, a challenge that is not only leading to impoverishment and loss of lives, but also threatening the stability of societies. It has been argued by social scientists that one of the major obstacles against development of poor countries is corruption(Abdulkareem,2014).

Nigeria, being the most populated country in Africa, has been ranked high in corruption by Transparency International Index and other notable Organizations that checkmated the level of corrupt practices in many countries. It does not tell well of many countries including Nigeria as a country. This high corruption ranking has been affecting Nigerians that travelled to foreign countries as host communities have the perception that since the country is marked corrupt, almost all of them share in the practice. Nigerians are therefore ridiculed or looked down with disdain or lack of respect. This development is embarrassing to the citizenry (Corruption Perception Index 2018).

In Nigeria, there are two laws enacted in a bid to fight corruption. These are Independent Corrupt Practices Commission (ICPC) Act 2000 and the Economic and Financial Crimes Commission (Establishment) Act 2004 respectively. Section 2 of the ICPC Act defines corruption to include, bribery, fraud and other related offences while the EFCC has powers to investigate and prosecute offences such as advance fee fraud, money laundering, counterfeiting, illegal funds transfers, futures and market fraud, fraudulent encashment of negotiable instruments, fraudulent diversion

of funds, computer fraud, contract scam, forgery of financial instruments and issuance of dud cheque (EFCC Act, 2004).

Economic and Financial Crimes in Islamic Jurisprudence

Economic and financial crimes have remained a subject of discussion by the academics, policy makers, Media houses and even common man on the street all over the world. It is a global challenge which cuts across all systems and regimes. It does not dispose itself to any coloration in the forms of religious denominations, political system, age or gender. Corruption is found in politics, social, religious and economic systems. Every country suffers one form of Corruption or the other (Lipset and Gabriel 2018). The Glorious Qur'an affirms the world wide phenomenal dimension of Corruption when it says:

Corruption has appeared on land and sea because of (the meed) that the hands of men have earned, that (God) may give them a taste of some of their deeds: in order that they may turn back (from Evil) (Q 30:41)

Islamic law looks at Economic and Financial crimes from moral and ethical angles and strongly offers a universally comprehensible blueprint for human behavior which revolves around social justice, equitable distribution of wealth, provision of necessities of life and the protection of the weak against economic exploitation by the strong (Mamoun 4).

Economic Crimes are said in Islamic jurisprudence to be those ones that are against the integrity of public and state properties. It causes disturbance in the economic system of a country and by deviating the economic affairs out of its safe and correct course results in unfair possession of great wealth by a few individuals who have some relationships with some political officers. Also, abuse of the information, political, economic resources and other ways or connections provide the possibility of gaining the wealth and the property of public illegally (Kosha 23, Mashahadi and Tadayyon 111). Examples of economic crime, among others are: smuggle of goods and exchanges, money laundering, hoarding, usurious and interest, bribery, disruption in the monetary and the currency system of the country, tax crimes, trafficking of the cultural heritage, national wealth and offences relating to the securities market etc (Saki 30-31).

Islamic finance refers to a form of financing which is in compliance with *Shari'ah* or Islamic law principles. The major principles of Islamic finance which differ from conventional debt finance are a ban on interest (*riba*), a ban on uncertainty (*gharar*), adherence to risk sharing and profit sharing, promotion of ethical investments and asset backing (Badr El Banna 6). Examples of financial crimes among others include: counterfeiting, forgery, embezzlement, funding activities that endanger the society, funding suicide, murder etc (Tijani 4)

Jurisprudential Appraisal of Economic and Financial Crimes

The first economic principle emphasized by the Qur'an with repeated stress is that all natural means of production and resources which subscribe to man's living, have been created by Allah. It is He who made them as they are and set them to follow the laws of nature that make them useful for man. It is He who allowed man to exploit them and placed them at his disposal. The Glorious Qur'an says:

How can you disbelieve in Allah? Seeing that you were dead and He gave you life. Then He will give you death, then again will bring you to life (on the Day of Resurrection) and then unto Him you will return (Q 2: 29)

And as for those whose scale will be light, they are those who will lose their own selves (by entering Hell) because they denied and rejected Our Ayat (proofs, evidences, verses, lessons, signs, revelations, etc.) (Q7:10).

And it is He Who spread out the earth, and placed therein firm mountains and rivers and of every kind of fruits He made Zawjain Ithnaīn(two in pairs may mean two kinds or it may mean: of two sorts, e.g. black and white, sweet and sour, small and big, etc.) He brings the night as a cover over the day. Verily, in these things, there are Ayat (proofs, evidences, lessons, signs, etc.) for people who reflect (Q 13:3),

Allah is He Who has created the heavens and the earth and sends down water (rain) from the sky, and thereby brought forth fruits as provision for you; and He has made the ships to be of service to you, that they may sail through the sea by His Command; and He has made rivers (also) to be of service to you. And He has made the sun and the moon, both constantly pursuing their courses, to be of service to you; and He has made the night and the day, to be of service to you. And He gave you of all that you asked for, and if you count the Blessings of Allah, never will you be able to count them. Verily! Man is indeed an extreme wrong-doer, a disbeliever (an extreme ingrate, denies Allah's Blessings by disbelief, and by worshipping others besides Allah, and by disobeying Allah and His Prophet Muhammad SAW) (Q14:32-34),

Tell Me! The seed that you sow in the ground. Is it you that make it grow, or are We the Grower? (Q56:63-64).

He it is, Who has made the earth subservient to you (i.e. easy for you to walk, to live and to do agriculture on it, etc.), so walk in the path thereof and eat of His provision, and to Him will be the Resurrection.(Q67:15) .

On the basis of the aforementioned truth, the Qur'an lays down the principle that an individual has neither the right to be free in acquiring and exploiting these resources according to his own sweet will, nor is he entitled to draw a line independently, to decide between the lawful and the unlawful. It is for Allah to draw this line, and none else Allah says:

They said: "O Shu'aib! Does your Salat (prayer) (i.e. the prayers which you offer has spoiled your mind, so you) command that we leave off what our fathers used to worship, or that we leave off doing what we like with our property? Verily, you are the forbearer, right-minded!" (They said this sarcastically) (Q 11:87).

Thus, the Qur'an has prohibited the following ways of acquiring wealth:

i) Taking another's property without his consent or remuneration or with consent and with or without remuneration in such a way that the consent is forced or obtained by guile Qur'an says:

And let not those who covetously withhold of that which Allah has bestowed on them of His Bounty (Wealth) think that it is good for them (and so they do not pay the obligatory Zakat). Nay, it will be worse for them; the things which they covetously withheld shall be tied to their necks like a collar on the Day of Resurrection. And to Allah belongs the heritage of the heavens and the earth; and Allah is Well Acquainted with all that you do (Q 3:180)

O you who believe! Verily, there are many of the (Jewish) rabbis and the (Christian) monks who devour the wealth of mankind in falsehood, and hinder (them) from the Way of Allah (i.e. Allah's Religion of Islamic Monotheism). And those who hoard up gold and silver [Al-Kanz:the money, the Zakat of which has not been paid], and spend it not in the Way of Allah, announce unto them a painful torment (Q 9:34)

Behold! You are those who are called to spend in the Cause of Allah, yet among you are some who are niggardly. And whoever is niggardly, it is only at the expense of his own self. But Allah is Rich (Free of all wants), and you (mankind) are poor. And if you turn away (from Islam and the obedience of Allah), He will exchange you for some other people, and they will not be your likes. (Q 47:38)

Those who are misers and enjoin upon people miserliness (Allah is not in need of their charity). And whosoever turns away (from Faith Allah's Monotheism), then Allah is Rich (Free of all wants), Worthy of all praise (Q 57: 24)

So keep your duty to Allah and fear Him as much as you can; listen and obey; and spend in charity, that is better for yourselves. And whosoever is saved from his own covetousness, then they are the successful ones (Q 64:16)

And urged not on the feeding of AlMiskin (the poor) (Q 69:34).

And niggardly when good touches him (Q70:21)

And we used to talk falsehood (all that which Allah hated) with vain talkers (Q74:45)

As for man, when his Lord tries him by giving him honour and gifts, then he says (puffed up): "My Lord has honoured me. But when He tries him, by straitening his means of life, he says: "My Lord has humiliated me!, Nay! But you treat not the orphans with kindness and generosity (i.e. you neither treat them well, nor give them their exact right of inheritance)!, And urge not on the feeding of AlMiskin (the poor)!, And you devour inheritance all with greed, And you love wealth with much love! (Q 89:15-20)

And what will his wealth benefit him when he goes down (in destruction) (Q 92:11).

He thinks that his wealth will make him last forever! (Q 104:3)

Have you seen him who denies the Recompense?, That is he who repulses the orphan (harshly),And urges not the feeding of AlMiskin (the poor),So woe unto those performers

of Salat (prayers) (hypocrites), Who delay their Salat (prayer) from their stated fixed times, Those who do good deeds only to be seen (of men), And refuse Al-Ma'un (small kindnesses e.g. salt, sugar, water, etc.) (Q 107:1-7).

ii) Forcible acquisitions, the glorious Qur'an says:

And let those who find not the financial means for marriage keep themselves chaste, until Allah enriches them of His Bounty. And such of your slaves as seek a writing (of emancipation), give them such writing, if you know that they are good and trustworthy. And give them something yourselves out of the wealth of Allah which He has bestowed upon you. And force not your maids to prostitution, if they desire chastity, in order that you may make a gain in the (perishable) goods of this worldly life. But if anyone compels them (to prostitution), then after such compulsion, Allah is Oft-Forgiving, Most Merciful (to those women, i.e. He will forgive them because they have been forced to do this evil action unwillingly). And indeed We have sent down for you Ayat (proofs, evidences, verses, lessons, signs, revelations, etc.) that make things plain, and the example of those who passed away before you, and an admonition for those who are Al-Muttaqun (the pious - see V.2:2) (Q 24:33).

iii) Fraud, whether with private or public wealth the Qur'an further says?

He who misappropriates (the public money) will come on the Day of Judgment with what he has misappropriated, then shall everyone be given in full what he earned (Q3:161)

iv) Theft

O Messenger (Muhammad SAW)! Let not those who hurry to fall into disbelief grieve you, of such who say: "We believe" with their mouths but their hearts have no faith. And of the Jews are men who listen much and eagerly to lies - listen to others who have not come to you. They change the words from their places; they say, "If you are given this, take it, but if you are not given this, then beware!" And whomsoever Allah wants to put in AlFitnah [error, because of his rejecting the Faith], you can do nothing for him against Allah. Those are the ones whose hearts Allah does not want to purify (from disbelief and hypocrisy); for them there is a disgrace in this world, and in the Hereafter a great torment (Q 5:41).

v) Misappropriation of orphans' property

Verily, those who unjustly eat up the property of orphans, they eat up only a fire into their bellies, and they will be burnt in the blazing Fire! (Q 4:10).

vi) Taking or given wrong measures

Woe to Al-Mutaffifin [those who give less in measure and weight (decrease the rights of others)], Those who, when they have to receive by measure from men, demand full measure, And when they have to give by measure or weight to men, give less than due (Q 83:1-3).

vii) Businesses which help to spread indecency

Verily, those who like that (the crime of) illegal sexual intercourse should be propagated among those who believe, they will have a painful torment in this world and in the Hereafter. And Allah knows and you know not (Q 24:19).

viii) Prostitution and its earnings (Q 24:2) along with making adultery a criminal offence, the earnings of adultery are also declared forbidden.

The woman and the man guilty of illegal sexual intercourse, flog each of them with a hundred stripes. Let not pity withhold you in their case, in a punishment prescribed by Allah, if you believe in Allah and the Last Day. And let a party of the believers witness their punishment. (This punishment is for unmarried persons guilty of the above crime but if married persons commit it, the punishment is to stone them to death, according to Allah's Law).

The Messenger of Allah (SAW) called it the most abominable of earnings

Narrated by Abu Huraira: The Prophet forbade taking the earnings of a slave girl by prostitution (Bukhari Vol.7: Book 63: Hadith 260)

ix) Manufacture, buying and selling, and carriage of wines are also prohibited

O you who believe! Intoxicants (all kinds of alcoholic drinks), gambling, AlAnsab, and AlAzlam (arrows for seeking luck or decision) are an abomination of Shaitan's (Satan) handiwork. So avoid (strictly all) that (abomination) in order that you may be successful (Q5: 90).

x) Gambling, including all such ways in which the transfer of wealth from one person to another depends on mere chance (Q 5:90)

xi) Manufacture, buying and selling of idols and buying of temples where idols are kept or worshipped.

xii) Earnings from business like astrology, foretelling of fate, divination etc. The Glorious Qur'an reads:

Allah has permitted trade and forbidden usury (Q2:275)

xiv) Bribes (Q 2:188) Seeking to gain the nearest of the judge includes resorting to law-courts to lay a false claim to another person's property, or offering bribes to the judges to obtain a favorable decree (Alusi, Vol2, 60)

As for bribery in the terminology of the jurists, it is agreed that bribery means: what is given to invalidate a right or to validate a wrong which is a kind of ill-gotten wealth. There is no differing views on its prohibition and it leads to disbelief if the one collecting it proclaims its permissibility, because of the saying of Allah, the Most High:

Listeners for the shake of a lie, devourers of (al-Utbiyyah) forbidden things (Q5:42)

But bribe given in its actual name or designated as 'gift', it is compulsory to return it to the public treasury. In *Fatḥul-Bari* (vol. 2:349), Al-Muhlib has stated that the strategy of a worker to be presented a gift occur, where he compromises the obligations which other people are supposed to render. That is why the Messenger of Allah (SAW) said: He (i.e Ibn al-Latabiyyah) should have sat in the house of his mother to see if he would be offered a gift.

He pointed out that, if not because of his desire to be assigned a position for collection of *Zakat* he (i.e Ibn al-Latabiyyah) would not have been presented a gift. Al-Muhlib further said:

The Messenger of Allah (SAW) has made compulsory the remitting of such gift and merging it with the wealth of Muslims (*Fatḥul- Bari* Vol. 2:349)

It was narrated from ‘Mu‘adh ibn Jabal (RA) he said:

The Messenger of Allāh (SAW) dispatched me to Yemen, he warned me: Do not take anything without my permission for that will be Ghulul (stolen part of war booty) (Fathul-Bari Vol. 2:349)

The differences between bribery and *al-Suḥt* (ill-gotten wealth) is as follows: bribery is receiving money/wealth to validate a wrong, or to invalidate a right (most especially by corrupt judges or leaders); while *al-Suḥt* linguistically, in its origin, is destruction with intensity. Allāh the Most High says:

Lest He destroys you with a punishment (Q20:61)

It was said to a hair dresser: 'You finish it' meaning: he removes the hair completely and annihilated it. Ill-gotten wealth is called '*saḥtan*', because it devastates good deeds, meaning, it removes good deeds, completely and annihilated it (*al-Qurānubi*, vol. 6, 18)

al-Suḥt is devouring something (i.e wealth) in a way that is not permissible such as bribe, usury, stealing, snatching or fraud and any type of gambling and bet, all are termed *Suḥt* (*Ash-sharawivol. 1, 217; Sarki 31*). It is apparent from the above quotations that *Suḥt* is a comprehensive term which refers to all ways of accumulating ill-gotten wealth, it does not refer to a special wealth to the exclusion of the other, it is forbidden in the Islamic law. While bribe is specific to wealth collected to validate a wrong or to invalidate a right, *al-Suḥt* (ill-gotten wealth) as a term is more encompassing than what is forbidden and bribe (*Fatḥul-Bari* vol.2, 454). It was narrated from ‘Abdullah b. ‘Umar (RA), he reported:

The Messenger of Allāh (SAW) said: every flesh that was built up from *Suḥt*, Hell fire is more befitting of it. A Companion enquired? Oh ! Messenger of Allah what is *Suḥt*? He replied: it is bribery in judgment (*al-Tabarani* vol. 10, 323, Hadith no. 12022, Sarki, 32)

However, the answer of the Messenger of Allāh (SAW) to the questioner on *Suḥt* in the above mentioned *ḥadith*, does not make *suḥt* to be restricted to bribery in judgment, but rather he mentioned that, to show the gravity of guiltiness of the perpetrators of bribery in judgment. There are a lot of these instances in the Prophetic traditions, for example, the *ḥadith* transmitted by Imam Aḥmad and Tirmidhi: that the Prophet (SAW) said:

Du‘a is worship,

The Prophet did not mean with that statement that worship is restricted to invocation but rather what he meant by that, invocation is the greatest form of worship. "indeed, worship is a comprehensive term for whatever Allah loves and is pleased with from supplications, physical acts and hidden ones" Ibn Taymiyyah, (vol. 10, 149) similarly observed that the saying of Messenger of Allah (SAW):

Pilgrimage is standing at ‘Arafah (Imam Ahmad, vol. 4, 309, hadith 18774 and 18981)

Meaning, the highest pillar of pilgrimage is standing at ‘Arafah; because performing pilgrimage is not restricted to standing at ‘Arafah, but it completes pilgrimage with the rest of other pillars. Similarly, bribery in judgment is the most severe forms of *suht*. Looting public treasury is another form of *suht* referred to as *Ghulul* (stolen part of the war booty). The Messenger of Allah (SAW) warned Muslim public servants, officials and governors against the illegal act He said:

No part of the booty under their watch should be stolen, even though there is much attraction to doing this while in the state of belief (i.e as believers in Allah (Bukhari, vol. 3, 178 hadith no. 2475).

In sum, economic and moral values have been drawn together into a harmonious blend. The economic crimes have been tackled not from purely 'economic point of view, it has been solved after being appropriately placed in the overall scheme of life based on ethico-legal concepts of Islam (AbulA‘laMaududi 189). There is no separation between the secular and the sacred in Islam and the law is suffused with religion. Thus, Islamic law distinguished three major categories of crime: *Hadd* (plural *Hudud*), or crimes against God's law (the most serious crimes, *Ta‘zir* or crimes against society, (the least serious crimes) and *Qisas*, crimes demanding restitution). The three objectives of punishments in Islamic law are justice, general deterrence and rehabilitation or reformation. In addition to the three categories of punishments, there are other penalties which are designed to instill morality. Islamic scholars consider penalty as a deterrent before the commission of the crimes and suppression after it. Thus, observes Bolatito(4) ' knowledge of punishment is intended to prevent the commission of the criminal act, and its execution thereafter should prevent the offender from engaging in similar conduct in the future.

Works Cited

- Abdulkareem, A. (2014). An Appraisal of the Role of religious leaders in the fight against corruption. A paper presented at the second annual conference of African Law and Religion held at Stellenbosch, South Africa. 1.
- AbulA‘laM (1963) Economic and Political Teachings of the Qur‘an History of Muslim Philosophy, Germany, Otto Harrassowitz. Wiesbaden, Pakistan Philosophical Congress Vol.1

- Aḥmad ibn H, (ND) Musnad Aḥmad ibn Ḥambal Cairo: Muassanah Qurtuba
- Al- Bukhari M.I. (2004) Sahih al-Bukhari Cairo, Maktabah al Traqafah al- Diniyyah
- Al-Ah'ath A.S; (1997) *English translation of Sunan Adbu Daud*, with explanatory notes; by Ahmad Hasan Nusrat Ali, Nasri Fir Kitab Bharan, India.
- Ali A. Y, (2007) The meaning of the Holy Qurān (complete translation with selected Notes) Al-Ain, United Arab Emirates, Zayed House for Islamic Culture
- Ali, M. and Abbas T, (2015) Preventing Economic Crimes in the criminal law of Iran with respect to Article 44 of the Iranian Constitution and in light of the corruption' Journal of Scientific Research and Development
- Al-Qurtubi al- Jami'u li Ahkam al-Qurān
- Al-Tabarani, S. ibn Ahmad ibn Ayyub Al-mu'jam al-kabir ed. Hamdi ibn 'abd al-Mujad al-Salafi 2nded.
- Ash-Sharawi Tafsir Ash-Sha'rawī Bolatition Aina-Obe Shamsuddin, The Muslim-Ethical Norms Combat against Corruption, Are Islamic Perspectives been met in Practice? International Journal of Science and Research (IJSR), Vol. 5, issue 5 www.yshr.net 2016
- El-Banna, Bdr N, Islamic Finance, Money Laundering and Terrorist Financing Lebanon, Special investigation Commission, badr. banna@sic.gov.lb
- Ibn Hajr A. (2007) Fathul Bari *Sharhu Sahihal-Bukhari* Dar Al Kotob Al Ilmiyah
- Ibn Majah, M. (2004) Riyail Ansan Abu ' Abd Allah Muhammad b. Yazid, *Sunan ibn-e-maja*, Arabic – English version vol. I, India, Musrat Ali Nasri. For kitab Bharan.
- Kosha, J. (2010) Pleadings of Comparative private penalty, Science and Research Branch, Islamic Azad University Master thesis on criminal Law and Criminology
- Muslim, IH (1971) Asakir al-Din b. Hajjaj, *al-Jami'u – Salih, Abdu Hamid Sadiq (transl.)* 4 vols,
- Sarki, M. R. (2011) Economic Crimes law Journal publication
- Sarki, M.M. (2018) Bribery in Islamic jurisprudence unpublished paper Lafia JIBWIS Nasarawa, State, Nigeria
- Tijani, I.M. (ND) Money Laundering: an Islamic Perspective, International Shari'ah Research Academy (ISRA)
- Tirmidhi M. bin 'Isa Sunan al-Tirmidhi (ed.) Ahmad Muhammad Shakir et al Beirut Dar Ihyā Turath al-'Arabi