

## "Combating Bribery in the Public Sector through Increasing the Lawful Financial Income"

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## Abstract

Bribery is an immoral practice, as it increases wealth inequality and support corruption. As such it is considered a serious offence which may affect several aspects of our life. There are several reasons for committing the offence of bribery, however, the most important one, for the purpose of this paper, is directly related to the compensation and wage levels in public sector connected with the desire of civil servants to have an increase on their financial income. The motive or intention of this paper is firstly to draw a distinction between bribery as an offence and other means of lawful based contract gains and secondly to make an attempt to use the doctrine of reward so as to safeguard the additional financial sources for civil servants who are engaged in the public sector with the view to minimize the corruption level. In this paper bribery will be discussed with a special reference to the relevant Saudi Laws.

**Keywords:** Bribery Corruption, Civil Servants, Laws, Reward, Public Sector.

## 1. Introduction

Bribery can be described as one of the major components of corruption. The term corruption is a broad term which indicates that a secret agreement has been made between two parties. The aim of this agreement is to take an immoral or illegal advantage by one involved in the practice, through infringing or violating the explicit or implicit moral expectations attached to a given position not necessarily office, usually, but not necessarily infringing legal norms as well, while the other offers material or immaterial reward for the decision-maker. Corruption is a multifaceted and a complex phenomenon, its origin is rooted in bureaucratic and political institutions. Both corruption and bribery are detrimental to the society and the country as whole, and their evolution acts like a hindrance to development of any country. Corruption enables any government to interfere in the fields in which they are not needed and as a result the ability to implement policies in various areas, particularly in the economic sector.

Countries are realizing their role to prevent corruption and bribery which is growing at an alarming rate, therefore the anti-corruption programs must be implemented judiciously in all countries to help the growth of economy. The pattern of corruption can be altered only by altering the structure of power accumulated in the hands of corrupted civil servants this is possible by the better functioning of a sound government.

Corruption in the public sector erupts within the system, giving rise to several hindrances to the growth and development of the economy. Thus, corruption has become unavoidable in all societies, and hence there is an urgent need to stop corruption and bribery or at least to reduce the level of its spreading, in order to make the lives of citizens easier. Bribery being the major tool of corruption, it evolves within the government public sector where the civil servants may seek bribes for government contracts, government benefits like access to pension or unemployment relief, lower taxes, issuance of exclusive licenses, ignoring illegal activities or to favor legal proceedings. The public sector is a system whose objective is to improve the lives of the citizens by utilizing the public funds and provide services in the field of administration and other related fields. The causes of corruption and bribery within the system comes from the concept of dysfunctional government where the public sector employees are discouraged to work productively because of certain factors that include low and diminishing civil service remunerations, and lack of other aspects of expansion in work. This paper attempts to find additional financial income sources for the civil servants. The paper is divided into two sections: the first presents the regulatory framework of bribery together with its essential requirements, while the second section presents the main rules of the doctrine of reward in Islamic law.

## 2. The Regulatory Framework on Bribery

As mentioned above bribery is the major tool of corruption. Subject to Anti-Bribery Law of Saudi Arabia, Bribery of public officials is prohibited by the Regulations for Combating Bribery, issued under Royal Decree M/36 dated 29/12/1412H. (**Anti-Bribery Act 1412H**) The Civil Service Regulations and the Military Officers Regulations also prohibit public servants and military officers from misusing their positions or using influence, including in connection with accepting bribes, and they may be disciplined or terminated for doing so. But unlike the Bribery Regulations, these regulations do not impose any penalties on anyone other than the public servants or officers. (**Ayman, 2016**)

**2.1 Definition of Bribery:** Bribery is defined as that every public official shall be deemed as having received a bribe, if he has solicited for himself or a third party, or accepted or received a promise or gift to perform any duties of his function or claims that such act falls within the scope of his duties, even where the act is lawful, shall be punished with imprisonment for a period not exceeding ten years or a fine not exceeding one million rials or both; the offence shall be deemed as having been committed, even if the official did not intend to carry out such act. (**Article 1 Anti-Bribery Act 1412H**)

It appears that bribery generally indicates the request or acceptance, and the offer or making, of any promise or gift (defined as any profit or other advantage, tangible or intangible, regardless of what it is called) by or to a public official in order to cause him or her to perform or fail to perform his or her official duties whether to act or not to act or the failure to act is lawful or to pursue any matter with the government. (**Ayman, 2016**)

There are three essential requirements for the offence of bribery that must be established, and the most important one is the capacity of public official which will be discussed later in more details. Other requirements are guilty act and guilty mind.

**2.2 The Guilty Act:** the guilty act or actus reus Article (1) criminalizes the “offering, promising or giving” of an undue advantage or reward. Therefore, the unilateral offer of a bribe, irrespective of whether the offer was accepted, must be criminalized. Soliciting or Accepting, Similarly a request for a bribe, whether or not a bribe is agreed to or is actually given is to be criminalized. It is argued that the prohibition of an “acceptance” of an “undue advantage” or reward should be interpreted to mean that an offence is committed even if the public official acquiesces to the offer of a bribe, but subsequently returns the bribe or does not follow through on performance of the corrupt agreement. The latter circumstances would be, however, relevant to determining an appropriate sentence for the public official. (**Ferguson, 2018**)

**2.3 The Guilty Mind:** the prohibited conduct in Article (1) indicates that the act must be committed intentionally. The phrase in Article (1) “in order to act” in the exercise of his or her official duties requires that some link must be established between the offer or advantage and inducing the official to act in the course of his or her official duties. Specific intent and general intent are other terms used to describe a person's state of mind. General intent means the intent to do something that the law prohibits; the prosecution does not need to establish that the defendant actually intended the precise result. Specific intent designates a special element above and beyond the actus reus, of the crime, and generally signifies an intentional or knowing state of mind. For example, in the case of bribery, the prosecution must establish the defendant's intent to accept the bribe. Statutes frequently employ terminology such as purposeful, knowing, reckless, or negligent to describe differing gradations of intent. (**Ferguson, 2018**)

**2.4 The Public Official:** As for the “public official” the term is broadly defined to include the following:

- (a) Persons working for the government or any public service whether on a permanent or temporary basis
- (b) Arbitrators or experts appointed by the Saudi government or by any authority with judicial capacity
- (c) Any person assigned to a specific mission by the Saudi government
- (d) Directors and employees of any company or other business establishment who manage or maintain a public establishment or perform a public service, as well as directors and employees of joint stock companies or companies to which the government contributes capital or perform banking activities. (**Adam, 2019**)

The Bribery Regulations do not generally extend to promises or gifts as defined, requested or accepted, and offered or made among persons in the private sector, subject to certain exceptions. Technically, the definition of “public servant” in the Bribery Regulations does include persons who work for joint stock companies and banks (whether or not they have any government ownership or other relationships with the government), a joint stock company being a reasonably common

form of doing business in Saudi Arabia. In addition, the Bribery Regulations also extend to persons performing a “public service,” presumably even if not employed by the government. (Ayman 2016)

Other theories of liability may apply to render the participants in wholly private sector bribery, subject to either civil or even criminal exposure. For example, under the Islamic Law, the overriding law of Saudi Arabia, bribery is generally condemned, and although whether civil or criminal penalties may be imposed in cases other than those involving public servants is a matter of debate, Islamic law scholars believe that they may be. Other Saudi regulations, such as the Labor, Competition and Procurement Regulations and the Health Professions Law also contain possible bases to impose liability for private sector bribery, including on an aiding and abetting theory. The wide definition of the term “bribery” is as under the Bribery Regulations. (Ayman, 2016)

Under the Islamic law, bribery is generally taken to mean the offer or payment of money or any benefit to a person with control over “public” interests, in order to obtain entitlement of an object. In the Health Professions Regulation, bribery means to request, accept or receive commissions or gratuities, or obtain any benefits in return for the promotion of, or commitment to prescribe certain preparations, or for directing patients to some particular hospital or laboratory or any other acts of similar nature.

There are no statutory exceptions for or limitations on “facilitation expenses” that exempt them from the definition of bribery, either public or private. Each such expense must be evaluated on its own and with consideration to the surrounding facts in order to judge whether it is likely to be considered a bribe. Moreover, there are no compliance program defenses to liability that otherwise might be attached to acts of bribery in Saudi Arabia, although it is possible (though there is no jurisprudence on the issue as far as we are aware), as an equitable matter, that a court might take into account the existence and operation in fact of such programs in considering the liability of or penalties to be assessed against, for example, a corporate body whose employee engaged in the act of bribery without authorization. The absence of such a compliance program is not in itself an offense, and Saudi law does not prescribe what elements must be part of a compliance program. (Ayman, 2016)

The Public Prosecutor of the Control and Investigation Board has power to prosecute bribery cases before the Board of Grievances, the Saudi court with jurisdiction over such matters, among many others. The investigation is generally carried out by the Administrative Investigation Office. In addition, Saudi Arabia has established the National Anti-Corruption Commission to investigate corruption allegations and follow up on prosecution, as well as implement judgments made by the Board of Grievances. Penalties under the Bribery Regulations include fines not exceeding SAR 1 million or imprisonment for a period not exceeding 10 years, or both. They may be imposed on either or both the person offering or making, and the person requesting or accepting a bribe. Pursuing matters with the government that are not within the official duties of the public official is punishable by either or both a fine not exceeding SAR 200,000 and imprisonment for a period not exceeding two years. In both cases, the penalties will include the seizure of the bribe. (Ayman, 2016)

The Saudi Anti-Bribery Law provides for rewards for information substantiating an offence of bribery. Any person who is not a briber, or an accomplice, and who provides incriminating information substantiating any the offence will receive a reward not less than SAR 5,000 or up to half of the money confiscated. The reward can also be increased according to the seriousness of the crime exposed. From the legal perspective any reward offered to the general public in return for specific performance may constitute a permissible subject-matter under the general rules of the doctrine of reward. (Article 17 Anti-Bribery Law of Saudi Arabian)

**2.5 Appointment of Public Official:** the general Provisions of Article 3 of the Labor Law, states that work is the right of every citizen. No one else may exercise such right unless the conditions provided for in this Law are fulfilled. All citizens are equal in the right to work. Article 4 when implementing the provisions of this Law, states that the employer and the worker shall adhere to the provisions of Sharia laws whereas Article 5 states that the provisions of this Law shall apply to certain categories of persons among them are:

1. Any contract whereby a person commits himself to work for an employer and under his management or supervision for a wage.

2. Workers of the government and public organizations and institutions including those who work in pastures or agriculture. (**The Labor Law of Saudi Arabian, 1426H**)

The above mentioned categories of workers are entitled to basic wage which comprises of all that is given to the worker for his work by virtue of a written or unwritten work contract regardless of the kind of wage or its method of payment, in addition to periodic increments. The basic wage plus all other due increments decided for the worker for the effort he exerts at work or for risks he encounters in performing his work, or those decided for the worker for the work under the work contract or work organization regulation. This includes the commission or percentage from sales or profits paid against what the worker markets produces, collects, or realizes from increased or enhanced production. Allowances the worker is entitled to for exerted effort, or risks he encounters while performing his work. (**Article 14 Labor Law of Saudi Arabian 1426H**) Increments may be granted in accordance with the standard of living or to meet family expenses. Grant or reward indicates what the employer grants to the worker and what is paid to him for honesty or efficiency and the like, if such grant or reward is stipulated in the work contract or the work organization regulation of the firm or if customarily granted to the extent that the workers consider it part of the wage rather than a reward. Having highlighted some of the provisions of labor law in respect of remuneration of the workers or the civil servants, it is quite appropriate to examine the rules of reward with the view of showing their relevancy to bribery and public services.

### 3. The Reward Doctrine

Reward or Ja'alāh is a legal doctrine which contains a body of inter-related rules built and associated with a legal concept, though it is part of the Islamic law of contracts. The 'term' contract in a legal sense refers to an agreement between two or more parties that is lawfully binding. Although most of contracts are described as bilateral, in a sense that they may involve two persons or more, reward is classified as unilateral contract that entered into by the absolute discretion of a party. It is a permissible contract based on evidences from the Holy Quran, the Sunnah and the Ijmaa or consensus of opinion. (**al-Khatāb, 1978**) The general rules of reward can be summed up as follows:

(a) The term reward signifies the consideration offered to a person known in return for specific performance, work or deed. The party who undertakes to offer a reward is called Ja'a'il or the payer, whereas the party who is required to perform is called majaul lahu or payee. The general principles related to the formation of Islamic contract shall be applied to the reward as well. Reward is valid on hiring services, work, deed or any other performance provided it does not contravene the Islamic law. Reward is invalid, where the performance, work or the deed required do not contain the element of hardship or mashaqaḥ that incurred by the payee. (**al-Khatāb, 1978**)

(b) There shall be permissible and legal benefit or a real interest for the payer on the subject-matter, otherwise the contract is deemed invalid. The fixed reward or Ju'al which is offered as the consideration shall be made known and fixed in advance with certainty whether in form of specified amount of money or any other form. The fixed reward becomes lawful and binding upon the completion of the performance required or upon the commencement of the performance. (**al-Nawawi, 1972**)

(c) The payer shall incur the expense needed for the required performance, unless there is an agreement to the contrary. The hand of the payee over the property provided to facilitate the performance is the hand of a trustee, no guarantee of such property can be given unless upon default, negligence or transgression. (**al-Ansari, 1967**)

(d) The fixed reward is negotiable before the commencement of the performance unless the parties agreed otherwise. Reward is also considered valid where it was made or offered by the payee to the payer and the latter accepted it. The parties who entered into a contract on reward basis may rescind it before the commencement of the performance. Where the contract is held invalid for any reason, no fixed reward shall be deserved, alternatively an equivalent amount of money or a hire that commensurate with the exact hardship incurred shall be paid to the payee. The contract is terminated upon completion of the performance or it shall be terminated subject to the general rules of the contract of reward. (**al-Ansari, 1967**)

At this stage and in the light of reward rules, let me clarify my position about reward and bribery. Assuming 'X' is a civil servant working in an investment department, while 'Z' is a businessman who wants to accelerate his application approval for instance ( items imported ) within 24 hours, the job which routinely takes a round three working days. As such 'Z' offers a sum of money say five thousands rials to the civil servant to get the job done, so does that sum of money be equal to a bribe in the light of Article 1 of Saudi-anti Bribery Act? Article 1 of the Act clearly states that every public official shall be deemed as having received a bribe, if he has solicited for himself or a third party, or accepted or received a

promise or gift to perform any duties of his function or claims that such act falls within the scope of his duties, even where the act is lawful, shall be punished with imprisonment for a period not exceeding ten years or a fine not exceeding one million rials or both punishments. Article1 of the Saudi-Anti Bribery Act

It is obvious that any act of acceptance or making a promise or gift to perform any duties of his function even where the act is lawful shall be punishable in a sense that such act is considered a bribe. But what will be the case where the civil servant claims that it is a permissible reward and moreover, he alleges that the Article contradicts or at least inconsistent with Article (1) of the Law of Criminal Procedures. The Article states that Courts shall apply Shari'a principles, as derived from the Holy Qur'an and the Sunnah (Traditions of Prophet Muhammad peace be upon him) to cases brought before them. They shall also apply the State promulgated laws that do not contradict the provisions of the Sharia laws, and shall comply with the procedure set forth in this Law. **(Law of Criminal Procedures 1435H of Saudi Arabian)**

**3.1 The Difference between Bribery and Reward:** To address the questions above one may highlight the difference between reward and bribery in specific terms with the view to draw a distinction between the two:

1. 'Reward' means any 'valuable consideration', usually in situations where one person performs a useful service for some other person, and the person performing the service is given recompense (reward) for that service. In other words reward indicates the consideration which is given in return for certain performance of an act, provided such an act is permissible whereas bribe is unlawful act which may result in causing damage to others.
2. Reward is deserved upon hardship in a sense that efforts are incurred while performing the required an act, however, in bribe normally no efforts are exerted.
3. The basis of performance on reward shall not affect or result in neglecting the official duties of an official, in other words the performance shall be made after office hours preferably with permission.
4. Personal interest of the payer is a requirement while making an offer to another on the basis of reward.
5. The reward shall be fixed in advance with certainty and its amount depends on the discretion of the payer.
6. The demand for reward is valid where it was initiated by the performing party.

It is submitted that the reward offered to a civil servant in return of specific performance does not fall within the scope of Article1 rather it is permissible reward provided that it satisfied the condition of validity as shown above. Acting on the basis of reward in public service shall not be lifted to the civil servants rather it shall be arranged by the organization itself. As to the question of what motivates a person to offer a reward in return of specific performance, there are many reasons such as:

-To avoid the routine which is signifies a regular way of doing things in a particular order or a boring state or situation in which things are always done the same way.

-To avoid bureaucratic consequences which constitute a major obstacle in public service.

-The desire to do things quickly

As far as the speed is concerned in business, Adam Fridman wrote that we all know entrepreneurs and business owners have to think fast to survive. It's in their blood; moving quickly is a natural instinct to them. Still, it's difficult to overstate the importance of speed in business. With the pace at which society progresses, companies have to do whatever it takes to stay relevant. Here are four reasons why speed is everything in business. **(Fridman, 2015)**

(a) With the speed at which business moves, keeping up is a constant task that never gets any easier. Everyone out there is pushing harder than ever to quickly take the next step, which leaves you with little time to prove yourself. If you can't keep



up and move quickly, your competitors will. They won't hesitate to leave you in the dust if you can't think on your feet. (Fridman, 2015)

(b) We live in an age of near-instant gratification, where consumers are not-so-patiently awaiting the next big thing. They want something more and they want it now. Companies must work quickly to satiate their appetites because audiences will have no qualms about moving to another product or service. (Fridman, 2015)

(c) The Faster You Learn, The Faster You Evolve So far, we've covered the difficult side of maintaining speed as a company, but it's a hugely beneficial practice that businesses ought to embrace. As companies learn to move quickly, they naturally evolve faster than ever to the point of near-exponential growth. (Fridman, 2015)

(d) It Creates a Culture of Speed, once you learn to move quickly and maintain speed a culture of speed naturally forms, where standards for speed are just as high - if not higher - than those of consumers. The benefits are obvious, but they can't be overstated. With everyone and everything moving faster, innovation and efficiency go through the roof, blowing back your competition and blowing away your customers. No company in any industry can expect to get ahead with a slow culture; by design, entrepreneurship is all about moving forward and pushing innovation forward. (Fridman, 2015)

Taking into consideration the speed needed to carry out proper business, the top authorities that in charge of the public service shall consider the introduction of reward doctrine as elaborated in Islamic jurisprudence so as to ensure additional financial income for the civil servants in one hand, and to deal more effectively with an increasingly complex and demanding business environment on the other. It is submitted that the top authorities shall consider offering the public sector services in two levels the ordinary one which is currently in practice while the other needs to be established and made available for those who can afford to pay more for the government public services. This assumption is based on convenience and equality as Smith, in the context of tax philosophy, said that taxes should be based on what a taxpayer can afford to pay. So a CEO making \$3 million a year and the mom making minimum wage at her coffee shop job won't be paying the same dollar amount<sup>1</sup>. The statement is clearly indicates that the richer shall pay more taxes than others similarly the rule may be applied as to payment for government public services. ( Shmoop Uni, 2020)

In public management civil servants help to ensure that the social, economic, and educational needs of the public are properly met. In order to encourage the civil servants to discharge their duties efficiently there must be incentives. The definition of incentive is something that makes someone wants to do something or work harder. An example of incentive is extra money or reward offered to those employees who work extra time for work completion. As mentioned earlier, the purpose of this paper is to secure additional income for civil servant, as such it is entirely different from the concept of privatization of government public services as privatization is the transfer of decision making authority, delivery, or financing from a public to a private entity. In theory, privatization approaches are based on the premise that the private sector can deliver goods and services more effectively and efficiently than the public sector.

Presently, Saudi Arabia has embarked on an determined trip to achieve vision 2030 driving the public sector to undergo massive overhaul to the way public sector entities operates while setting a number of ambitious goals and targets that requires diligent support from the consultancy market to achieve<sup>2</sup>. (KPMG, 2020) Currently civil servants are engaged in performing several functions during their ordinary official office hours, beside the e-government public services. In 2005, the Ministry of Communications and Information Technology created the e-Government Program with the ministry of finance and the Communications and Information Technology Commission. The portal offers around 2500 services for people of Saudi Arabia. The main goal of the service is to facilitate the transactions of citizens, residents and visitors by providing a quick and sufficient assistance. Moreover, the program contributes to encouraging governmental agencies in achieving a sustainable progress by improving efficiency and capacity. In August 2019, Saudi Arabia announced a royal decree to establish the Saudi Authority for Data and Artificial Intelligence to support the innovation and digital transformation in the country. Two more agencies were created and linked with the authority to achieve the Kingdom's vision 2030. These agencies are: "The National Centre for Artificial Intelligence" and "The National Data Management Office"<sup>3</sup>. (MCIT gov.sa, 2020)

It is submitted that one may use this basis to encourage top authorities to make the right decision which may motivate the civil servants to work harder in their free time in order to gain additional income on reward basis. The authorities can make use of the wide spread shopping malls to provide these public services and facilities after the office hours. The reward rates for all public services and facilities are to be determined and fixed in advance by the authorities concerned.

#### 4. Conclusion and Recommendations

Bribery is the major tool of corruption. Subject to anti-bribery law in Saudi Arabia bribery of public officials is prohibited by the Regulations for Combating Bribery. Bribery indicates that every public official shall be deemed as having received a bribe, if he has solicited for himself or a third party, or accepted or received a promise or gift to perform any duties of his function or claims that such act falls within the scope of his duties, even where the act is lawful. The public official is broadly defined to include persons working for the government, arbitrators or experts, directors and employees of any company perform public service. The public officials are entitled to receive grant or reward if such grant or reward is stipulated in the work contract or the work organization regulation of the firm or if customarily granted. The term reward which appears in the doctrine signifies the consideration offered to a person in return for specific performance. Whereas, it is generally understood by many that reward means any valuable consideration usually in situations where one person performs a useful service for some other person, and the person performing the service is given recompense or reward for that service. Thus in drawing a distinction the study has shown that reward indicates the consideration given in return for certain performance of an act, provided such an act is permissible whereas bribery is obviously unlawful act which may result in causing damage to the society.

It is recommended that the top authorities shall consider offering the public sector services in two levels the ordinary one which is currently in practice while the other needs to be established and made available for those who can afford to pay more for the government public services.

The authorities can also make use of the wide spread shopping malls to provide these public services and facilities after the office hours. The reward rates for all public services and facilities are to be determined and fixed in advance with certainty by the authorities concerned.

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