

# Reflection on Judicial System's Corruption and Offering Solutions to Promote Its Safety

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## Abstract

Judicial system of a society is responsible for consolidation and durability of its citizen's mental and physical, personal and social health and judges bear decision making about citizens' life, the freedom, rights, duties and estates. One of the items contained in United Nations' charter is creating the conditions which in it, it is provided justice, respect to human's rights and basic freedoms without any discrimination. With this purpose, countries' judicial system should have full safety and in order that anti-corruption laws find run opportunity, it is natural that at first judicial system should be safe from corruption.

Writers in this study are paid to investigate reasons and fields of judicial's corruption to achieve available best procedures in countries' internal courts and judicial system with the aim of offering global standards and it is introduced available tools to qualitative increase of supervision and establishment of judicial's security. After reviewing available national and international standards, this article is paid to offer solutions in the direction of judicial system safety's promotion of Islamic Republic of Iran, assuming that the results of such approach will be increasing of public welfare and trust toward Islamic government.

**Keywords:** judicial's safety, transparency, responsiveness, judicial's independence, immunity, favorable ruling.

## 1. Introduction

The need to deal with corruption is not wearing on any one. Corruption is an undeniable illness which threatens social favorable structure widely. Nowadays, corruption and its control is the original concern of all countries and international organizations which it can be observed it on approval of conventions and issuance of multiple resolutions from international different organizations as well. Here, judicial system's corruption with its enormous extent which contains different sections like courts, judges and judicial and administrative staff, lawyers and other connected social institutions including police and police force certainly has destructive effects on public trust and it will hinder the existence of transparency in issuance of votes and ruling appropriate procedures and realization of social justice. In this respect, judicial's corruption is considered as a threat to public manage of society, implementation of law and implementation of anti-corruption effective policies, but it is also raised as a precondition in favorable ruling.

Lack of establishment of judicial's security and people's bewilderment in reference to courts provides people's discontent causes from this system, so that, sometimes most of community members prefer that pass from their right but, they are not refer to courts. This is for the reason that unfortunately, although during the past years, many anti-corruption laws have been added to law books, but, the implementation of most of these laws is very weak yet. If we want anti-corruption laws find opportunity to run, judicial system itself should be safe from corruption. Perhaps the time has come that this problem is reviewed with more depth and it is analyzed basic links among judicial corruption, judicial's independence and widespread corruption. Hence, one of the obstacles of the implementation of research's solutions it can be known non-recognition necessity contact with judicial's corruption. Most of governments are not identified corruption as an important issue yet to put it in their agenda, therefore, reforms which have been to form of regulations are facing with implementation barrier. It is essential that governments are recognized the existence of judicial's corruption as an issue with enormous economic consequences and they put struggle with it in their priority. This necessity needs an appropriate tools especially

in judicial section which governments can learn with the help of successful countries' experience and presented solutions in international documents and also regional and international organizations' experiences and this issue is one of the goals of this research.

Globally, "international transparency organization's report" is stable around corruption axis in judicial systems specifically in 2007. International transparency organization puts judicial corruption measurement tools to the readers as a "check list" which in fact, it is this organization's advices in the field of coping with judicial system's corruption. This list is used as a diagnostic tool to evaluate the rate of judiciary's corruption in each country and its purpose is offering necessary guidances to the individuals who are looking for investigation to corruption issue in internal judicial system. This check list which is combined available international standards in association with judges' independence, accountability and responsiveness and judicial's corruption together has been created through consultation with judges, judicial communities, legal experts and expert professors in the area of reforms in justice section and it will be used in different sections in this research.

## **2. First Part: Judicial's Corruption and Connected Concepts in International Documents**

The original message of corruption in judicial systems is corruption license in level of sovereign and government and society, public interests threat by resorting to ways like bribery, apply penetration, rent, embezzlement and waste of treasury. With the aim of investigating required primary concepts to promote judicial's safety, this section is paid to investigate judicial's corruption concept, its international dimensions, corruption measurement index in judicial system and justice concept in international documents and it has raised discussions regarding bribery as the basic difficult and the main barrier of judicial system's safety.

### *2.1 Judicial Corruption Concept*

Corruption is attributed to a case according to definition of international transparency organization which person exploits for personal interests from the power which is delegated to him. These interests can be included material or non-material benefits like advancement of political or professional demands. Judicial corruption can be included "any undesirable effect on judicial fair process" and by any factor in the court system. For example, a judge may be known valid a special documents and evidences with the aim of innocence justification of a defendant or vice versa he ignores them. Judges or court staff may be "change dates in favor of one the parties". In countries which is not registered court's exact minutes of meetings, judges may be arranged trial process inaccurately and desirably or they change witnesses' witness in favor of person who has given bribery before issuance of vote. Court's low-class staff also may be "lost one of the files" by taking an amount. Judicial's corruption can start at different stages of activities before attention and continues in trial session until adopting decision by court and implementation of taken decisions by related retainers.

Most programs fight with corruption are based on legal and judicial institutions like judiciary, police and investigators. Here, it is assumed that better implementation of law and regulations leads to corruption reduction. But, in such an approach, the problem is that in most poor countries these institutions executive of anti-corruption laws themselves are dysfunctional and/or corrupt and they can't run anti-corruption laws.

Other sections of judicial system also affect on judicial corruption, criminal files may be experienced corruption before reach to court and while police has privacy negotiations with the witness who supports guilty's testimony or attorney general unable to apply integrated measures toward presented documents and evidences by police, corruption happens (Farhodi, 2007: 1).

Goals of perpetrators of corruption are different in different sections of judicial system, some types of corruption are flawed the judicial process to create unfair result, but, there are many individuals who give bribery for "acceleration and environ of judicial investigation stages which lead to justly judgement." Eventually, none of these are not accepted because in both cases, its victim is court's client. Finally, judicial corruption is caused by a case that which in it judicial's security in courts is not established due to lack of security and ineffectiveness of judiciary, as a result, "voice of the oppressed is not heard" and tyrants behave so with peace of mind and immunity unlike law, right and justice.

### *2.2 Judicial Corruption International Areas*

Corruption is also studied from international aspect in judicial system of a country. "Being international index of an issue is that anywhere weakness shakes country's pillar in part of the system, the issue will find international aspect." Corruption control also will be possible through international coordinated strategies and reactions (Albersht, 2006: 169-170). Pay attention to international standards and comparative comparison with judicial systems of some countries can be remedial in rooting and investigation of relationship ruption reasons among researches related to executive institutions. Here, human rights topics including "access to justice" also is

proposed. “Justice’s basic principles declaration for crime victims and abuse from power” recommends “it is adopted measures at international levels in order to improve access to fair justice and behavior, situation restoration, compensation and help for crime victims” (Shahmoradi, previous: 41); generally, several conventions and instructions has been developed by international authorities like United Nations in order to help member governments in implementation of their duties to supply and promote efficiency in investigations it should be respected and considered by governments within the national rules and procedure.

### *2.3 Corruption Measurement Component in Judicial System*

Corruption measurement has great importance since specifies partially strategies coping with this difficult. Available reviews show that corruption phenomenon is common more than all among poor or developing countries and it is a major barrier on the way of development in these countries. “Iran is a developing country and it is among appropriate environments for the incidence of corruption in terms of specifications which is enumerated for countries prone to corruption (Homayoni, 2009:1).

Measurement of all concepts in social sciences faces with problems, but, measurement of corruption has more problems since this phenomenon basically takes place in secret and with intentional secrecy of its activists. Activists try don’t leave any document and evidence from their corruption, therefore, following corruption proceedings and measurement of its incidence rate is very difficult and thus corruption measurement takes place with indirect ways (same, 1). International transparance organization is one of the institutions which is attempted to offer different reports about corruption in different sections of world countries every year. Among these, because “global corruption barometer” is an expression of public thoughts about corruption has considerable place to experts and media. Some barometer findings 2010 is as to this place: (Homayoni, previous: 2-5)

- Corruption level is increased in all over the world.
- Police is designated as the most reciever of bribery.
- Government’s actions often has been considered inefficient in fight with corruption.
- There is a little trust to official institutions in fight with corruption.
- Quarter of individuals in all over the world are announced they do not trust to any special institution more than other institutions in fight with corruption.
- Almost quarter of individuals have trust to media or government to stop corruption.
- Amon most corrupt judicial systems, there are seen Bolivia, Bulgaria, Afghanistan, Lithuania, Romania, Peru, Armenia, Ukraine, Senegal, Cambodia, Croatia and Republic of Macedonia countries (same 41-44).
- All over the world, poorer people suffer from more bribe. In 8 systems of 9 services institutions under study in barometer 2010, individuals with lower earnings have paid more bribery compared to individuals with higher earnings.
- It is not happened any decrease in level of minor bribery in the past 5 years, pay bribery to judicial system, police and registration and license services becomes more significantly compared to past.

### *2.4 Bribery in Judicial Section*

Global bank knows corruption as only great barrier on the way of economic and social development. 2004 assessments of this bank has shown that it is paid more than one trillion dollars bribery per year and countries which fight with bribe and improve their “ruling” and “rule of law” can increase their capitation up to 400% (Derher, Hersfeld, 2010: 21).

Barratry can occur at each stage of deal with the judicial system: court offices may be get money of people for the work which is considered their task and totally, they may be get extra expenses to accelerate or delate of files or they guide client to the judges who take bribe for their arbitrary decisions. Judges accept bribe for delay or acceleration in investigating files and they impact on other judges’ votes or they decide about a file in a certain way simply. Reports of this study of India and Bangladesh show that to what extent investigation prorogation has forced people to pay bribe to accelerate their files. When defendant or litigant has little faith to the judges’ honest and the judicial process, desire to frequent meets for bribery to court’s staff, lawyers and judges increase to earn optimal result (Farhodi, previous: 4).

## **3. International Standards Ruling on Judicial System**

Many actions of international standards can cause the promotion of judicial system’s health in very effective way. Hence, this section is paid to introduce some international standards ruling on judicial system including independence and immunity of judicial, appointment and promotion on the basis of meritocracy, community

involvement in health promotion of justice, neutralize judges' resistance against reforms and so on.

### *3.1 Judicial Independence*

Judicial independence means that judges put law and conscience governor of their actions in issuance of verdict and they are not pay attention to other's orders and wishes, they do not fear from any obstacle and impediment and they do not fear from disjunction, decline in rank and changing work location and job status (Akhondi, 2009: 17) and immunity can be sponsored independency or is caused corruption as double-edged sword.

#### *3.1.1 Immunity: Guarantees Judicial Independence or Causes of Corruption*

Basically, judges have legal immunity to a certain extent due to their nature of activities. Limited immunity for issues related to judicial functions allows judges to adopt decisions regardless of citizens' fear and requests (Farhody, previous: 7). In general, it is considered two immunities to supply the independence of judges during the period of judicial service:

A) **Job immunity:** Mission conversion of president of the court is not possible unless with his satisfaction.

B) **Immunity from criminal pursuit:** Immunity from criminal pursuit is in fact complementary of job immunity and this means that it can't put under criminal prosecution holders of judicial bases without permission of Supreme Disciplinary Court of judges and before deprivation of judicial immunity.

Here, it arises this question that is judges' immunity a factor to deal with judicial corruption or is it itself can factor of creating judicial corruption? Are judges should independent and powerful enough to immune themselves from interpellation or is should corrupt their independence enough which be targeted to corruption? What seems obvious is that judge should not be allowed to stronghold behind the protective rules named immunity protection. What is needed is establishing the exact balance between independence and responsiveness and transparency.

#### *3.1.2 Judicial Independence in International Documents*

The Universal Declaration of Human Rights insists on having right of fair and obvious trial by righteous, independence and neutral court appointed by law.

Sixth congress of United Nations about prevention from crime and the treatment with offenders in No. 6 of its resolution wants crime prevention committee to put elaboration about guide related to judges' independence and selection, professional training and position of judges and attorney generals in their priorities, based on these principles, judiciary's independence should be guaranteed by state and is emphasized in constitution or country's law frankly. Judiciary decides even-handed based on the facts and according to the law without restriction, pressure and so on. Based on these principles, judges' length of service, their independence, security, adequate rights, terms of service, pension and retirement age should be guaranteed by law adequately. Enterprise of judgement is guaranteed until the retirement age or expiry of their term of service. Judges' promotion should be based on objective factors especially ability and experience. Made charge or complaint against judge in his judicial and professional position should be attended quickly and fairly under the appropriate procedure. Judges will be subject to suspension or dismissal due to disqualification.

### *3.2 Independent Part of Judicial Appointments*

The presence of transparent and impartial process for the appointment of judges provides this confidence that only volunteers are selected who are eligible maximum capacity and about this, there is not specific trend or commitment toward some politicians or senior judges who are appointed individuals in special job (Farhodi, previous: 5-6). Representatives of legislative and executive branches should not be involved in the appointment of judges and basically judges' society should be representative of people (Jalali & Bahremand, previous: 169).

### *3.3 Judicial Appointments and Promotion Based on Meritocracy*

Selection criteria should be obvious and it is announced as well and allow volunteers, authorities of selection of judges or others to have a clear understanding from the way of choosing people. Creating transparent criteria based on meritocracy for promotion of judges' grade causes to prevent from the promotions which are based on political dependence or other improper criteria. If promotion is done by a governmental institutions such as justice ministry, it may be agreed judges' independence. If this issue is done by senior judges or a judicial council, its result will depend on independence and accuracy of behavior and performance of head of the judiciary (Yang & Ehrichs, 2007: pp 51-52). It is better it is used criteria like having judicial background and based on annual performance evaluation about this.

### *3.4 Training for Judges*

Judges should have easy access to new rules and files their training is established before getting started the work or meanwhile appointment to the new organizational post and continues during the whole service. This issue is included training in analysis of laws, description of judges' rulings, the way of writing sentences and judicial votes and files management and ethics fundamental training and foundations of anti-corruption education (Farhodi, previous: 6).

### *3.5 Responsiveness*

Judges' independence and their actions convert them as a powerful anti-corruption force, but, this creates unique challenges. Responsiveness structures should be considered judicial activities and to identify and attend other actions which are not compatible with the judiciary issue.

### *3.6 Transparent and Fair Dismissal Procedure*

Accurate and specified standard should apply the dismissal of a judge. Judges' dismissal mechanism should be obvious, transparent and fair and it is offered related causes for taken decisions and if corruption case was found, related judge should put under law pursuit (same, 7).

### *3.7 Public's Access to Some Information*

It is necessary that people have accessed to some information such as change of laws, judges' argument in judicial votes, judicial assignments criteria and so on.

### *3.8 Disclosure of Judge's assets and Income*

Judges' estate, assets and income should be examined periodically. The implementation of these investigations should be done with guarantee of disciplinary and criminal implementation randomly and of course unbiased.

### *3.9 Notices of People's Right*

Courts' clients should be aware of in all stages of addressing of their rights and this is one of the duties of judiciary system to provide cause of improving health of judiciary system with offering advice with other mechanisms.

### *3.10 Participation, Investigation and Report by Society*

One of the contributory factors in judicial corruption which is also remediable irrespective of available type of legal system social tolerance against corruption. Increasing of people's participation in this field will be caused enhancing of courts' credibility and legitimacy and increasing of will of people outside the organization for participation or cooperation in judicial investigations (Galali, Bahremand, previous: 175).

## **4. Anti-corruption Mechanisms in Judicial Section of Iran**

One of the goals of the Islamic Revolution of Iran has been fight against corruption, hence, it is focused on preventing and fight against corruption always and put it as important goals of constitution and it has predicted its realization requirements in several principles such as principles 3, 8 and 22. In this regard, Islamic Republic of Iran signed United Nations conventions to fight against corruption and parliament has approved it. However, to objections which Guardian Council has arrived about some of its provisions and the parliament's insist on its directive, annexation bill of Islamic Republic of Iran was referred to aforementioned convention of Expediency Council which finally was adopted by convention (same, 133). In addition to above convention, there are also other anti-corruption mechanisms with internal supplier which will be examined in this section.

### *4.1 System's General Policy in Judicial Security Section*

With the aim of establishing of judicial security, in carrying out the commands dated 15 April 1998 of Supreme Leader and based on article 110 of the constitution Expediency Council is announced the final advisory opinion about general policies of its Islamic Republic of Iran. Some of the goals and frameworks contained in these legislations are included:

- 1- Reform of the country's judicial system in order to realize justice and support of the individual and social rights and supply independence of judiciary.
- 2- Specialization of to take care of claims in the required levels.
- 3- Reducing of trial stages in order to achieve finality of sentences at the right time.
- 4- Judicial procedure unity and trial order in country's judicial system with compliance of constitution.
- 5- Reinforcement of regulatory system and inspection of judiciary on executive, judicial and institutions

systems.

- 6- Using judgement method and arbitration in settlement of claims.
- 7- Reinforcement and promotion of educational level of legal training centers proportional with country's judicial system.
- 8- Promotion of judges' legal knowledge and reinforcement of research issues of judiciary.
- 9- Improvement of intellectual and material conditions of operating staff of judicial jobs.
- 10- Promotion of scientific level and ethical competence and practical power of justice enforcement officials and using specialized judicial police
- 11- Supply of financial, organizational and recruitment needs of judiciary in order to realize mentioned independence on three principles of 156, 157 and 158 constitution.
- 12- Review and refine of laws.
- 13- The spread of judicial's advice and assistance system .

That judiciary can reach to above goals is not deniable. However, lack of proper and annual and accessible reporting is caused that these efforts are not seen as it should be and will not be praised.

#### *4.2 Anti-Corruption Elements in Judiciary*

Judiciary is as one of the three branches of in Islamic Republic of Iran which has special structure to apply its duties and powers and it is also taken different responsibilities which can cause promotion of judicial health if the proper functioning. Judiciary do its legislative duties based on foundations and organizations which some of them have monitoring and anti-corruption performance, accordingly, it seems information protection and collection of this protections in judicial complexes can play an effective role in in timely identification and disposal of corruption

Supreme court is considered as country's supreme judicial reference. Based on what is predicted in constitution its important task is monitoring the proper implementation of laws in the courts and creating judicial procedure unity, but, at the moment, perhaps it can mentioned this reference as anti-corruption regulatory reference hardly which of course has such a capability legally.

Based on principle 170 of constitution courts' judges are required to prevent from implementation of governmental canon and regulations which is opposed to Islamic laws and regulations outside the authority level of the executive branch and based on this principle, everyone can demand the cancellation of such regulations of court of administrative justice. Hence, court of administrative justice is an appropriate reference to promote judicial health and to fight against corruption.

Monitoring virtue of current affairs and proper implementation of laws in administration system is also duties of judiciary branch which is doing this issue through inspection organization of the whole country, but, this organization is not interfere in obtaining or handling non-administrative corruption cases (judicial), however, it was worthy that to do intermediate for receiving people's complaints informal investigation to people's reports a judicial ombudsman.

In order to coordinate and focus in policies, creating coordination in huge and combined programs of judiciary branch notices and in line with the second development plan judiciary, a comprehensive system of notification procedures of judiciary branch in date of 19 October 2007 is approved by head of judiciary branch and since that date, regulations of the Supreme Council for information and accountability was outdated and mentioned regulation was replaced it and it was came into force.

### **5. Solutions of Promotion Judicial Health with Emphasis on Localization**

In addition to mentioned cases in previous sections and proposed solutions in some resources including international documents and internal laws and regulations, this section offers suggestions and solutions for localized as follows:

- 1- The need for political will to promote judicial health and lack of neglect and indifference of politicians of corruption in judicial system.
- 2- The need for disclosure of names of corrupters with following the procedure of Imam Ali and also based on the conventional requirements of fight against corruption.
- 3- Judges' responsibility in contrast mistakes and failures in issuing vote.

- 4- Make a decision about more and various and antithetical and cumbersome and non clear mass of rules and prevention from ability to influence and abuse from legal vacuum.
- 5- The need to ease courts' procedures and their understandability for references.
- 6- Exit legal materials of ambiguity and increasing people's right understanding in order to prevent judge's abuse of law.
- 7- Adoption of religious approach and attention to moral principles as preventive approach by relying on this principle that corruption does not grow in healthy religious community.
- 8- The forecast of necessary and clear mechanism to response various organs of judicial system periodically.
- 9- Observance merit principle in selection of brokers of judicial system.
- 10- Attention to delayed justice denied justice principle and prediction of effective, immediate and appropriate arrangements to reduce prolongation of investigation as cause and effect of judicial corruption.
- 11- Establishment of balance between judicial independence and responsiveness and transparency.
- 12- Periodic evaluation of judges.
- 13- Publication of judicial decisions.
- 14- Prosecution and punishment of judges (in addition to dismissal them) after taking corruption.
- 15- Annual publication of report of activities and expenses periodically.
- 16- The possibility of monitoring, comment and active participation of civil society academics and non government organizations.
- 17- Special attention to whistleblowers in courts or police office and supporting them.
- 18- Supporting media in reflecting shortcomings and coping with judicial corruption by using various mechanisms including people's reporting to media and media's staircase reporting to judicial authorities.
- 19- Lack of entrenchment of judicial system in the category of judges; corruption and judicial system staffs.
- 20- Attention to health of judicial system body (administrative and judicial staff, lawyers and other actors) in addition to its head (authorities in head of judiciary branch).
- 21- Formation of a judicial investigator system (ombudsman).
- 22- Organizing of anti-corruption small units, establishment of news agency and public relations center.
- 23- Activating principle 90 commission of constitutions and parliament representatives based on its regulatory duty through design of questions and impeachment and investigation in the field of judicial corruption.
- 24- Codification of empowerment bill and supporting non government organizations and press in the field of prevention and fight against corruption.
- 25- Lack of restriction of investigation of judiciary branch only in the framework and range of administrative and financial.
- 26- Lack of resort to maintaining people's secrets as a justification for lack of response of judicial branch and in contrast resort to necessity to fight against corruption in order to maintain Muslims' treasury.
- 27- Search of corruption's root by comprehensive action by three branches.
- 28- Justice impact decisively but at the same time accurate and subtle.

## 6. Conclusion

What is seen in internal courts of most of developing countries including Iran is not favorable of judicial trials. Due to done studies, the presence of rules and regulations is recognized necessary condition but insufficient to fight against corruption. Our country despite having adequate regulations to increase efficiency of judicial branch and coping with corruption in this section, despite determining specified references, institutions and organizational posts is face with implementation obstacle. With investigation of international standards in this research, we see that Islamic Republic of Iran has all necessary infrastructures according to standards about regulations and implementation obstacle is the biggest problem in achieving an ideal judicial system.

Proposed suggestions in this article which mainly is based on world standards retrieved from international conventions and consultations with judges, legal experts and expert professors in the field of reforms in judicial section can be used as a guide for doing reforms to develop judicial independence and its more responsiveness

and thus, it causes effective and accurate actions.

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