

Islamic Approaches to Corruption

Query:

“Please can you provide examples of specifically Islamic approaches to tackling corruption. I am particularly interested in the Middle East / North Africa Region but also in examples from elsewhere. For example, has Sharia law been successfully applied in relation to dealing with corruption? Is there any evidence on the advantages or otherwise of adopting a more emphatically religious perspective rather than a secular or political approach”

Purpose:

“To inform discussion and possible programming in relation to corruption in the MENA region.”

Content:

- Part 1: Introduction : Corruption in the face of Traditional Islamic Values
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Part 1: Introduction: Corruption in the face of Traditional Islamic Values

There is a rich tradition in Islamic heritage of high moral standards, ethics, values and norms of behaviour, which govern personal, professional and business life. These standards, ethics and values have much in common with other world religions and as such it may be more useful and unifying to invoke these values as common cultural values, rather than to promote them as purely Islamic values.

Nevertheless, in the time of growing religious fundamentalism, Sharia and religious laws provide a normative framework that is likely to give more weight, impact and legitimacy to anti-corruption initiatives in the context of Islamic countries. Furthermore, experts consider that an entirely secular legal system is not an option in Islamic countries. According to David Powers for example, professor of Islamic Law and History at the Cornell University, there is no separation between the secular and the sacred in Islam and the law is suffused with religion. As a result, fighting corruption in an Islamic context must be rooted in the Islamic values guarded by the Sharia (Islamic law) to ensure ownership and legitimacy of anti-corruption measures.

Among others, these values promote commercial fairness and ethical business as basic standards of economic activities. Bribery is taken extremely seriously in Islam. For example, there is the well-known Hadith (saying of the Prophet Muhammad, p.b.u.h): "Damned is the bribe-giver (or 'corrupter'), the bribe-taker (or 'corrupted') and he who goes between them", which illustrates the severity with which bribery and corruption is viewed. In terms of generation and creation of wealth, fair trade and

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the creation of wealth for the benefit of all is positively encouraged in Islam – but even more important is the sharing of that wealth: “O ye who believe! Give of the good things which ye have honourably earned” (Surat Al Baqarah, verse 267). In the realm of ethics and morals in business, there are repeated injunctions in the Quran (for example in Surat Al Rahman, verses 7 and 8), to “weigh with accurate scales” and the Quran warns against those who do not weigh fairly. Here the “weighing” applies not only to scales in the sense of merchandise, but also in the sense of passing of judgement.

In terms of general business ethics there are specific Islamic recommendations for doing business. Business dealings must be clearly documented and certified as a means of sustaining finance, defining rights and instilling mutual confidence, all of which contribute to creating strong relations among people. Duties towards other people should be fulfilled promptly. It is a virtue to grant respite to those who are bankrupt or to relieve them altogether of their liabilities. Such conduct helps decrease disputes, deepens trust and keeps transactions in balance. Raising prices without any legitimate exigency and selfishly making use of people's hardship are totally prohibited. There is a great emphasis on lawful, as opposed to unlawful, profit. In terms of contracts, transactions must be certified by recording and signing contracts in the presence of witnesses. The prophet Muhammad called on Muslims to comply with obligations and contracts saying “Never break or throw aside a covenant you have signed with anybody until the period of the covenant comes to a natural end.”

These values influence and legitimise the Islamic approach to corruption but don't determine how corruption is dealt with in practice in fundamentalist societies or countries implementing the Sharia law.

Part 2: Islamic Legal and Institutional Framework against Corruption

Sharia Law in Islamic legal systems

Sharia or Islamic law influences the legal code in most Islamic countries but the extent to which it is integrated in the national legal system varies considerably. Some countries like **Egypt, Iraq or Saudi Arabia** acknowledge Islamic law in the constitution and consider Sharia as the source of the nation's law, while other countries like **Turkey** favour a more secular approach to the law. Only **Iran and Saudi Arabia** claim to fully implement Sharia in all areas of the law. But most Middle East countries incorporate to some degree some elements of Sharia law into their modern legal codes, mainly in the area of marriage, divorce and inheritance and these are often enforced by the national judicial systems.

In principle however, Sharia governs all aspects of life, including ethics in business and banking and should theoretically provide a legitimate and culturally sensitive normative framework to fight corruption. Yet little evidence exists on how Sharia law and courts specifically deal with corruption related matters.

Categories of crime under Sharia law

Islamic law distinguishes three major categories of crime: *Hadd* (plural Hudud), or crimes against God's law (the most serious crimes), *Tazir*, or crimes against society, (the least serious crimes) and *Qesas*, (crimes demanding restitution). Penal codes based on Sharia provide for passing sentences such as the death penalty, the amputation of limbs or flogging, particularly in the case of *Hadd* crimes. Sharia-based criminal codes prescribe the system of *Hadd* punishment for crimes such as theft, adultery and sex before marriage. They are punished by a determined sentence that no judge has the power to change or reduce as they are set by God and found in the Qu'ran. Although no

evidence was uncovered in the context of the research for this query of cases of corruption being dealt with as a Hadd crime, certain forms of corruption could in principle qualify as “theft”.

Tazir crimes were not written, codified or found in the Qu’ran and Islamic judges enjoy some flexibility in the way they address these crimes, based on local norms and customs. Some nations, for example Egypt, have a parliamentary process and a formal penal code written and based on the principles of Islamic Law. Others, such as Saudi Arabia, grant the judge the discretion of setting and punishing *Tazir* crimes. Among others, *Tazir* crimes cover fraud, bribery, and the forgery of documents. Common sentences for *Tazir* crimes include fines, seizure of property, removal from office, life sentences, confinement, as well as flogging. (For more information on Islamic law and jurisprudence, please refer to http://www.steinigung.org/artikel/islamic_jurisprudence.htm as well as http://www.iiu.edu.my/deed/lawbase/ilw_myth_real.html).

Islamic Institutions Dealing with Malfeasance

Sharia Courts

In many countries where Sharia law is practiced, the Sharia system operates alongside the state legal system. In **Pakistan**, in the state system, there are four high courts, located in the provincial capitals, and the 17-judge Supreme Court, which together make up the ‘superior judiciary’. The remaining courts are collectively known as the ‘subordinate judiciary’. There is also a federal Sharia court consisting of eight Muslim judges, including a Chief Justice, appointed by the president. This latter court, which has original and appellate jurisdiction, decides whether any law is repugnant to Islam. It also hears appeals from criminal courts on decisions relating to the enforcement of hudood laws, which pertain to offences such as intoxication, theft and sexual relations.

Complaints mechanisms

The office of **Wafaqi Mohtasib** (or Ombudsman) was established in **Pakistan** in 1983 by a presidential order. The office of Wafaqi Mohtasib is an ancient Islamic concept that many Islamic States established to make sure that no wrong or injustice was done to citizens. It is empowered to investigate and award compensation to those who have suffered loss or damage as a result of maladministration by a federal agency or official. The Wafaqi Mohtasib is also appointed by the president for a period of four years. The Mohtasib has been given jurisdiction to investigate into the affairs of all the offices of the Federal Government, except the Supreme Court, the Supreme Judicial Council, the Federal Sharia Court and the High Courts.

The Hisbah Institution

Islamic tradition has a history of practices and institutions specifically set up to ensure that citizens observe the laws of Allah, in particular, the Sharia law. The Hisbah (Arabic for “verification”) is a religious institution under the authority of the states that fulfils the obligatory duty under Sharia of enjoining “what is right and forbidding what is wrong”. As Sharia law controls in principle economic activities as much as individual behaviours, the Hisbah institution extends to regulating business trading, monitoring and supervising commercial activities, market places and other secular affairs.

Institutions such as the Committee for the Propagation of Virtue and the Prevention of Vice in **Saudi Arabia**, for example, carry out some of Hisbah’s responsibilities. Some other countries, like **Malaysia**, also have a Muslim moral police. As an official office of a Muslim State, the Hisbah institutions operate in conjunction with other relevant government agencies and establishments. To know more about the Hisbah Institution, its principles, procedure and dimensions, as well as built-in corrective measures, please see: <http://www.islamic-world.net/economics/hisbah.htm>

Part 4: Application of Sharia Law in Relation to Corruption

Concerns regarding the application of Sharia law to corruption

Although there is an extensive literature on the application of Sharia in the area of personal-status laws, there is limited information on how Sharia law and courts deal with specific cases of corruption. In **Nigeria**, for example, where since 2000 Islamic law has been extended to give Sharia courts jurisdiction over criminal cases in 12 of the country's 36 states, the introduction of Sharia penalties was originally widely welcomed in the country as a symbol of Islamic identity. But media reports controversially note that, in such oil rich country, corrupt practice involving government officials appears to go unpunished, while Sharia law seems to apply only to the powerless.

Legal systems addressing corruption also need to meet basic human rights and international legal standards. Concerns have been raised regarding the manner in which Sharia penal codes may conflict with basic human rights as well as the way some Sharia courts fail to meet international standards on fair and due legal process (see the 2007 Human Right watch report on Nigeria published by UNHCR at <http://www.unhcr.org/home/RSDCOI/45aca2a316.html>). The introduction of Sharia law does not necessarily imply that harsh punishments are actually enforced. In particular, the Qu'ran sets out strict evidentiary standards and they are not supposed to be applied in case of doubt. In Nigeria, for example, no executions or amputations have taken place since early 2002 and capital sentences have generally been thrown out on appeal. Sharia courts in Nigeria continue, however, to hand down death or amputation sentences for some categories of crime.

Alternative Islamic approaches: The case of Malaysia

Since his coming to power in 2003, the current Malaysian Prime Minister Abdullah Ahmad Badawi, has strived to implement "Islam Hadhari", or "civilizational Islam" - a theory of government based on the principles of Islam as derived from the Qu'ran. It is an attempt to promote a "model Islamic democracy", while stemming extremism and fundamentalism through technological and economic competitiveness, moderation, tolerance and social justice. Islam Hadhari outlines a series of fundamental principles that the Prime Minister presented in various forums as a framework to address corruption in a comprehensive and holistic manner. Islam Hadhari has been consistently promoted by the Malaysian government as a practical approach consistent with the pillars of Islam that provides an alternative to full implementation of Sharia law. Some observers criticize the broad terms of these principles that haven't yet been translated into law or formal practices. Others see this as a strength that provides for inclusiveness.

Fighting corruption was on Abdullah Ahmad Badawi's electoral agenda in 2004 and his promise to tackle corruption allegedly played an important role in his victory. Since his coming to power, a few high profile cases have indeed been exposed and brought to court. But other cases involving government or ruling United Malays National Organisation officials appear to have been dropped. In recent weeks there have been a series of allegations of corruption against senior government officials. These various cases undermine the credibility of the government's political will against corruption. Recent media reports goes so far as speaking of "Malaysia's losing Battle against Corruption" (Asia Sentinel, 16/03/07).

Furthermore, analysts observe that the Islam Hadhari approach to development has been mainly promoted by government through a top-down approach, which could explain the mixed results of the anti-corruption campaign. Countries like **Indonesia** have favoured a bottom-up route, which seems more effective in advocating for a more moderate implementation of Islamic principles. The reformist agenda is being promoted there by the two largest and most influential Muslim organisations, whose membership consists largely of young Muslims. In addition to promoting a reformulation of the Sharia law, they are jointly campaigning against corruption in public life and in favour of accountable and open democracy.

For a deeper analysis of the Islam Hadhari in Malaysia, please see:

http://www.futureofmuslimworld.com/research/pubID.43/pub_detail.asp

Part 5: Further Reading

Global Corruption Report 2007

Transparency International's GCR 2007 focuses on how corruption manifests itself within judicial systems. It does not focus on how a particular legal system tackles corruption. Nonetheless there are compelling insights into how a legal system – whether it is based on Sharia law or otherwise – should be structured and developed so that it is a bulwark against corruption within its ranks.

Clientelist politics. State formation and corruption in Palestine 1994-2000
(<http://www.cmi.no/publications/publication/?770=clientelist-politics>)

This is an example of a general country case study of corruption in a Muslim context.

The Reintroduction of Islamic Criminal Law in Northern Nigeria

This study commissioned by the European Commission in 2001 to analyse the issue under various aspects, including its possible conflict with basic Human Rights. Please see:

http://ec.europa.eu/europeaid/projects/eidhr/pdf/islamic-criminal-law-nigeria_en.pdf

Although we didn't have access to the following papers, their scope and area of focus could provide additional background and contextual information on the issue:

The prevention of financial crime within an Islamic legal framework, by Faisal Abtani, *Economic Affairs*, Vol. 27 Issue 1 Page 27 March 200:

This paper explores the Islamic legal approach to the prevention of financial crime and how this can be integrated into international regulatory frameworks.

(http://papers.ssrn.com/sol3/papers.cfm?abstract_id=969111)

Rule of law, anti-corruption, anti-terrorism and militant Islam: Coping with threats to democratic pluralism and national unity in Indonesia, by Hainsworth, Geoffrey¹:

This paper explore the challenges facing President Yudhoyono, Indonesia's first directly elected president, namely, the urgent need to implement judicial and administrative reform and to launch a wide-ranging anti-corruption campaign; the need to confront the resurgence of militant Islamic terrorism; and finally the intense and convoluted problem of inter-sectarian animosities, and the clash of religious versus secular values in the context of Indonesia. (*Asia Pacific Viewpoint*, Volume 48, Number 1, April 2007, pp. 128-144(17).