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Monitoring and Preventing of Corruption in Government Contracts in the Legal System of the Islamic Republic of Iran

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Abstract:

Financial and administrative corruption is something that many countries are now grappling with it in varied dimensions. This phenomenon is widespread adverse effects on public contracts and transactions, due to extensive financial volume and its relation to various aspects of governance and public life and deserve a more commanding widespread. In particular, in developing countries such as Iran it was more important because of the relatively estimated enterprises and greater involvement in their assigned areas. In terms of prevention we must first investigate corruption and criminal law to prevent certain forms of contracts and administrative transactions induce that noted to the necessary framework criminalizing crime related deviations. Legislator of our country in dealing with this phenomenon has to double without adopting a specific preventive policy of proactive and reactive in each case. The result too often has accumulated some parallel or contradictory laws and regulations. This is a descriptive study - an analysis by using a library of texts to the prevention of corruption in administrative contracts.

Keywords: *monitoring and prevention, corruption, government contracts and administrative rules and regulations*

1. Introduction

Corruption is one of the main obstacles to peace and stability, sustainable development, democracy and people that extends the stability and security of communities are at risk. Now, it is clear that statehood requires efficient, effective, prevention of corruption in administrative contracts and consequently deal the problem. The volume of transactions and administrative government in Iran, has led one of the vulnerabilities described transactions and crime in the administrative system of Iran. The vulnerability is caused in numerous legal rules be passed on office transactions, and in this way people in government transactions, such as through public tender, committed crimes, thereby hurt to realize their government, Rights and face criminal prosecution. In the legal system of the Islamic Republic preventing corruption is predicted in government contracts and administrative policies in different ways. On the other hand, aspects of interaction or lack of interaction is not known among these strategies the exact figure. There is pervasive corruption problem in many countries today, especially developing countries, including our country to involved with. This wide range of public and private sectors in the areas of economic actions taken and causing adverse effects on both parts (Hussain, 1385: 15)

The administrative contract in each country, especially in the Islamic Republic is a major part of wider economic relations and exchanges form. Something that is directly with the rights of millions of people and indirectly in communication. And the reason of it is public assets and due to its high sums due to its supervision more. In practice, this is not properly monitored and corruption in high places. These concerns require Iranian legal system that regulatory policy regarding administrative contracts and take the positive and negative aspects of it. It should be done carefully to prevent and monitor corruption policy in this regard and coordinated by the contracts, government contracts should be prevented negative consequences, including widespread financial corruption and waste of public funds.

Meanwhile, the issue of corruption prevention campaign in administrative contracts exceeded the level of the administrative system and has become a strategic issue. Therefore, the importance of this issue of the series. The main question of this paper is that the Iranian legal system is for preventing and combat corruption in administrative contracts and what measures have been taking? So, we suppose that we must find the way for preventing the Fight against Corruption in administrative contracts and what measures have been taken in this regard can be a serious problem and is the issue of "non-compliance".

1.1. First Topic: The Concepts of Theoretical Fundamentals

1.1.1. First Speech: Monitoring

In general, the concept of surveillance, including the most important and most complex issues in every institution and organization is political and social system and is inextricably linked with social responsibility. Scholars and experts have been in this field from the distant past, in proportion to this issue and have offered various definitions. In this article, we will first examine the concept of monitoring.

1.1.2. The First Paragraph: Terminology Monitoring

At first, we monitor the literal and technical meaning.

A: literally:

Monitoring is essentially an Arabic word that means looking contemplative view of the matter and the credit and more means the source of the judgments to apply that is issued by the supervisor. (Mydznjany et al., 1389,14). It also means looking at something reflecting supervision, eye drop, to govern the people and resolve their disputes, help and assistance, as well as sightseeing, seen, thought, monitoring and stewardship sense to have something. (Dehkhoda, 1385: 233) For monitoring the equivalent word in English words such as: monitoring, overseeing, inspection, control, stewardship, supervision review and expressed. (Akhavan Kazemi, 1391: 29).

(B) the meaning of the term:

In short "monitoring" can be determined in the legal sense of the inspection and evaluation officers and supervisors who work for the purpose of such inspection and evaluation. (Mydznjany et al., 1389: 15)

1.1.3. Second Paragraph: Types and Forms of Supervision

Monitoring of diverse landscapes can be categorized. One of these types, categorized into two general types of government supervision and surveillance monitoring people. Government supervision of various types such as: corporate governance (hierarchical and monitoring patronage), quality monitoring (legal, administrative, financial, political, and parliamentary), internal and external supervision, monitoring form (continuous case), monitoring a posteriori, a priori and processual, substantive supervision (approval and passive) and ... (Amid Zanjani et al., 1389,61)

1.2. Second Discourse: The Prevention of Crime and Corruption

1.2.1. First Paragraph: Prevention of Crime and Corruption Means

In a general sense, prevention consists of all the measures which can prevent crime. According to Sherman, any event be applied and the results show that the crime rate has decreased, it can be considered preventive (Abrndabady Najafi, 1387: 288) on the basis of this definition Sherman will prevent some criminal prevention (prevention of crime and corruption through penalty) and are considered non-criminal prevention.

1.2.2. Second Paragraph: Type of Prevention

A: orbital position prevention

Situational Prevention (orbital position), refer to the specific circumstances in which a person may commit a crime where corruption is common (Abrndabady Najafi, 1387: 1242)

(B) social prevention

Unlike social prevention, crime prevention position pathogenic or spoilage-causing situation that has the potential offender and he pays environment.

A: Roshdmadar Prevention

Roshdmadar prevention seeks to identify the following:

- 1- Risk factors that may indicate turning to crime in the future;
- 2- Protective factors that it can reduce the likelihood of crime and corruption;
- 3-Breakers factors that it can continue teens or youth from deviant or criminal activity and corruption deter computer (Krvfrd, 2007: 883)

(D) community-based prevention

Social Prevention considers all people. In general, we can say that the purpose of the prevention community is, neutralizing agents fighting crime and corruption that have emerged in the environment (ibid., 1263)

1.3. Third Speech: The Concept of Government Contracts

In the general sense, the government contract is any contract that one party, the bureaucracy, whether public (e.g. ministries, agencies and state-owned companies) or devices Baladi (municipalities). According to this definition, any contract on behalf of a government or public institutions, is government contract. But it is clear that all government contracts are not of the same importance. Therefore,

all government contracts cannot be equated to the legal system. But many government contracts are governed by the Civil Code and Tjarnd.

1.4. Fourth Speech: A Variety of Government Contracts

Section One: Administrative Contract: administrative contract, is a contract both in terms of procedures and in terms of the provisions governing, its conclusion, subject to certain rules and public rights.

The second paragraph of contract non-administrative: Non-administrative contract is a contract that though the process of blood coagulation, is subject to the general rules and norms, but in nature, subject to the provisions of private law in civil and trade. (RAFIPOUR, 1388)

1.4.1. Second Topic: Collusion and Corruption in Government Contracts Deals

Collusion is not defined, in none of our laws. But the special law crime of conspiracy is anticipated, especially in public trading, collusion Penal Code Act of 1348 is in public transactions. The law criminals are in trading, bids and public tenders; thus, they collude with the above, harm to the government or state-owned companies, however, will be sentenced to imprisonment and a fine. In a situation in which civil servant or state trading entities enforcement officer, with the knowledge to do the deal or somehow in collusion, to the maximum sentence and eternal separation from government service awaits him.

1.4.2. First Speech: The Effect of the Lack of Good Faith in Contract Status

In Iranian law, there does not seem to be directly caused the invalidity of the contract in good faith; in fact, goodwill is not trading among the basic elements of the agreement. However, according to the agreement acquired through corruption, deception cucumber is revocable, there is no doubt (Katouzian, 1390, p. 305); however, if misrepresentation of attributes is essential, element of the contract is missing.

1.4.3. Second Discourse: The Impact of Corruption on the Status of Contract

Although it can be argued that the contract is a legitimate government, but its direction is illegitimate. The legal opinion, it is legitimate for public contract acquired through corruption because corruption has occurred before or simultaneously with the **contract, while the Dai contract must be fulfilled.** (Shahid, 1390, p. 332)

1.5. Third Speech: The Impact of Corruption on Auction or Tender Procedures Unattainable

It could be argued that public contracts acquired through auction or tender procedure and will be void of corruption on the basis of non-compliance, existence of such formalities because philosophy transparency materials windows compliance with the state public trading realization the corruption of prevent purpose.

1.6. Fourth Speech: The Role of Corruption in the Government Representatives out of Jurisdiction

If a public contract through corruption bilateral (between the parties and representing the state in the contract) is acquired, representing the interests of a single state with corruption has not adhered to. In fact, in this case, counsel of their choice is located simply for self-importance (Katouzian, 1389, p. 181) and thus blunt the contract.

The third topic: the role of corruption in government contracts invalid due to non-compliance with public order

In Iranian law, there is no clarity in relation to contracts acquired through corruption against public order. Corruption is not the most qualified person because they spent studying contract through corruption and will cause damage to the public interest. Education-based meritocracy in government contracts depends on the type of contract the public interests and the mere absence of meritocracy will cause damage to the public interest. It does not seem to distinguish between different types of corruption, because of all the instances of corruption will apply bloomed Foundation. Corruption property acquired by a non-suitable original contract and damage to public interests; so, it makes no difference whether corruption charges applicable or not. The principle of no agreement can be said that corruption in public contracting is to accelerate the legal process.

We intervened to prevent public order, "private" seems to be the case, which according describe the purpose of the doctrine in public contracts identify the nature of the exercise of sovereignty as administrative contract have been violated; plus, negation does not prove a thing.

1.7. The Fourth Debate: National Anti-Corruption Strategy and Public Administrative Contracts from Iran

There are other key factors in fostering the country's macro-management system that can prevent corruption, and as a result, the issue of fighting corruption control faded even more.

According to the constitution of our country's political system, other laws are based on the values of Islam in trading contracts and public administrative corruption in the country, what strategy it can be corrected is as follows.

1.7.1. First Speech: Record Keeping and Information Related to Administrative Contracts and Public

One of the principles of anti-corruption system is, requiring departments and financial institutions to keep records and information. Financial Action Task Force against corruption is in transactions and public administration. public objectives require financial institutions to keep records, calling for the maintenance of records as follows:

Financial institutions should maintain their own records on domestic and international transactions that can in the shortest time possible to respond to requests for information by the competent authorities. These records shall be offer sufficient evidence to reconstruct transactions (including the amount and type of currency used) and prosecution of criminal behavior. The proposal to account records, business correspondence and records extends customer identification and record keeping period of "at least five years" after the closure of accounts. It is noteworthy that although record-keeping is one of the basic ways to combat money laundering and corruption in the contract, however, applying this method and how it works should be maintain, such that the privacy of individuals at all levels. Therefore, it is important to observe the following principles:

Records must be kept completely if needed, the possibility of restructuring to be the various stages of their financial transactions and enough reason to prosecute the criminal activities of the competent authorities.

Financial institutions are required, identification documents or birth certificates, driver's licenses or similar documents, commercial activities related to customer bills to keep in specified time in the rule. The documents should be available when there is prosecution and judicial investigation. (Leader, 1387: 93)

1.7.2. Second Speech: Report Suspicious Transactions

And the order of evidence is logical that a normal human conditions and circumstances prompted to investigate the origin of property and depositors or other relevant operations. This means that any action or attempt must be reported to carry out suspicious transactions. Some of the factors and symptoms can help people to better detect suspicious that some of these factors and symptoms is include:

1-trading and financial operations related to client that he is more than expected activity level.

2-discovered the forgery, false or untrue reports said the client before or after the deal is done and at the time of basic services.

3. The legal domicile of counterparty transactions, which are located in High-risk area.

4 transactions over a threshold amount master's client before or during the transaction of its withdrawal or after the transaction unreasonable act to terminate the contract.

5. commercial transactions over the threshold with the subject of his client and commercial purposes known to be incompatible.

6-transactional or in any way determine the actual beneficiary at least one visual interaction that person or other people have.

According to custom, persons subject to complex business transactions, unusual and without clear economic goals reporting suspicious transactions as a crime prevention strategy in administrative contracts and public corruption have also been incorporated in the laws of many other countries. (Scientific Najafi, 1382).

1.7.3. Third Speech: Promoting Accountability

The first pillar of the strategy of prevention of corruption is in administrative contracts and public accountability in the country's leaders and public office managers. So as the action will meet the cost of making those decisions, they are awarded that benefits increases at the expense of the public interest. Certainly, accountability, enforcement and administrative director and public institutions rely to a large extent on the effectiveness of sanctions and the capacity are accountable to monitor the actions, decisions and private interests. Accordingly, the transparency is involved through a public inquiry into one of the most powerful forms of monitoring public authorities and public in the field of administrative transactions.

1.7.4. Fourth Speech: Regulatory Measures on Financial Operations in Government Contracts

comprehensive monitoring and internal control systems for offices and non-bank financial institutions are to transfer money or valuable services, which is within the framework of its jurisdiction to deter and detect all forms of money laundering to keep records, reporting transactions and identify suspicious customers. (Khomami Zadeh, 1382)

1.7.5. Section Five: Approaches to Deal With Corruption in Government Contracts

First speech: an efficient state administration structure reform in government contracts

The inefficient system of government, various forms of chaos to arise from such violations in contracts, excessive complexity, a deficiency in laws and regulations and their enforcement, and senior officials of neglecting the rules and regulations by officials and lower categories, weak human resources, compromise government agencies with influential individuals and groups, foundations and disproportionate loose organization, monopoly positions, weaknesses and this disorder and behavioral patterns in other words, influenced and even intensify each other's effects altogether. . (Abbaszadegan, 1383: 35)

1.8. Second Discourse: The Formulation of Appropriate Rules and Regulations Approval

We can say that one of the major combat corruption is in government contracts by improving prevention, rehabilitation, education and legislation efficient administrative system and help in the fight against corruption in the contract.

Meanwhile, determine standards to determine the health of the reform of administrative and monitoring and control instruments will have an effective role in improving oversight. The role of monitoring national and popular, such as the audit office and the General Accounting Office institutionalized oversight, internal controls, the definition monitor with any economic decision-making, culture and society and ensure its implementation a key role in the fight against corruption in the contract.

One way to create economic security for their fight against corruption and anti-bribery and simplification of administrative health depends on the provisions of the contract. We know, commissioning major works in the fight against corruption in contracts through

reform of the administrative system of prevention and education, efficient, and useful legislation on anti-corruption, anti-corruption program that requires effective management thought.

1.9. Third Speech: An Efficient Monitoring and Inspection of Government Contracts

Having good society, have good relationship with type and the way of controlling government section is one of the main section in every country. Because in this section there is a lot of assets and it is important to have a good supervision because it needs the lack of support from government property and financial operations, in response to the failure of the government's major policies for solving public.

2. Conclusion

The main problem discussed in this article surveillance and prevention of corruption in contracts for corruption in government. The most important causes of corruption in the public-sector enterprises of government in the economy is concerned and involved trade restrictions, industrial subsidies, price controls, multiple exchange rates, low wages in the public service, commercial, and reserves of natural resources such as oil. The public sector in terms of the tasks of governments (especially in the exercise of their tenure) engage with different types of contractual and transactional and more contact with this phenomenon, the corruption in contracts and deals. In addition, the process is quick and transfers the public sector to the private sector within the framework of Article 44 of the Constitution and contracts macroeconomic policies increased the importance of this issue in our country.

Punishment is the only solution to the problem of corruption actors in this section and does not deal with corruption and economic corruption problem, unless the causes and roots of this ugly phenomenon discovered, and anti-corruption eradication of these factors be provided by them. The criminal inclusive and comprehensive policies to prevent this, is something essential in the prevention and repression which must be studied to prevent adverse effects further ahead. Something that the legislative and judicial procedure has been made less in Iran.

3. Suggestions

Researcher with regard to the issues presented for preventing corruption in government contracts, the procedures set forth below:

3.1. Executive Offers

1. aggregation of all tenders within an organization and include information about the base Tender
2. One of the ways to combat collusion certain penalties
3. The tender must protect those responsible for administrative and solely for not implementing the illegal orders of more senior managers.
4. strengthening human resources expert in monitoring tenders in regulatory agencies;

3.2. Research Proposal

1. Evaluation of public procurement contracts Services GIO recognized by the Court of Auditors and related disadvantage;
2. The process of withdrawal should be limited tender procedures or insert a subject and because of the notification;
3. The Commission shall take appropriate law-making that was banned in contracts;
4. establishing appropriate institutional arrangements is for transparency in tenders through the notification accurate documentation;
5. rehabilitation of Management and Planning Organization to prevent collusion between contractors and consultants

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