

# A Critical-Analytical Approach to the Criminalization of Bribery in the Private Sector

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## Abstract

The criminalization of bribery in the private sector constitutes one of the major challenges in modern legal systems. This issue is accompanied by complexities in terms of definition, scope, and enforcement of the law, which necessitates a thorough and critical analysis. In this regard, various approaches exist to examine the subject, including the evaluation of theoretical foundations, comparison with other legal systems, and analysis of its practical consequences. Bribery, as one of the most prominent manifestations of financial corruption, has always posed a serious threat to the economic and social health of societies. While this phenomenon has often been addressed and criminalized in the public sector, it also results in widespread negative consequences within the private sector, such as the erosion of public trust, the weakening of fair competition, and the degradation of transparency principles in the market. However, current Iranian laws have thus far failed to comprehensively criminalize bribery in the private sector. Although some legal provisions contain limited references to this issue, such regulations do not adequately address the complexity and breadth of the existing problems. On the other hand, international instruments such as the United Nations Convention against Corruption (UNCAC), which Iran has ratified, emphasize the necessity of criminalizing bribery at all levels, including within the private sector. Furthermore, Islamic jurisprudential and legal foundations, drawing upon principles such as the prohibition of unjust enrichment (*hurma al-akl bi-l-bā'il*) and the maxim *al-ta'zīr li-kull ḥarām* (discretionary punishment for every unlawful act), stress the imperative to combat this phenomenon in all its forms. The 2022 Draft Penal Code on Discretionary Punishments (Lāyeḥe Ta'zīrāt 1401) represents a positive step toward addressing this legal gap, but it still contains deficiencies and ambiguities that require revision and supplementation. This article adopts a critical-analytical approach to examine the necessity of criminalizing bribery in the private sector, its jurisprudential and legal foundations, and the legislative challenges involved. Additionally, it reviews the experiences of select countries and relevant international standards to offer recommendations for improving and completing the legal approaches to this issue.

**Keywords:** critical-analytical approach, criminalization of bribery, private sector.

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## 1. Introduction

Corruption, particularly in the form of bribery, is considered one of the most significant threats to administrative and economic integrity in societies. Although addressing bribery in the public sector has consistently been a legal priority, bribery in the private sector—as a destructive phenomenon—has often remained outside the focus of attention. This neglect has led to the proliferation of unhealthy competition in commercial markets, the erosion of principles of transparency and trust, and even a decline in economic productivity. In many countries, including Iran, the criminalization of private-sector bribery has either been entirely overlooked or, where present, remains incomplete and weak in enforcement. This is despite the fact that neither jurisprudential nor legal foundations pose any barrier to criminalizing this act; in fact, they emphasize its necessity.

Contrary to common belief, bribery in the private sector does not merely harm economic interactions. It also undermines professional ethics and meritocracy, thereby diminishing public trust in private institutions. From this perspective, criminalizing private-sector bribery is not merely a legal act but a social necessity that can promote transparency in economic transactions and enhance organizational productivity. However, in many legal systems, this domain continues to suffer from legal ambiguities that hinder the effective enforcement of the law.

In Iran's legal system, the legislator has not yet comprehensively or accurately addressed the criminalization of bribery in the private sector. Although certain laws—such as Article 588 of the Islamic Penal Code of 1996 and Article 3 of the Law on Aggravated Punishment for Bribery, Embezzlement, and Fraud—have made limited references to this issue, such provisions are generally incomplete and insufficient to meet contemporary needs. As the role of the private sector expands within the national economy, this legal void has become increasingly apparent. In response, the 2022 Draft Penal Code on Discretionary Punishments has sought to address this gap by introducing more comprehensive provisions specifically targeting private-sector bribery. While this development represents a positive step toward combating corruption in the private sector, it still requires critical analysis and refinement to overcome its shortcomings.

In recent years, the criminalization of private-sector bribery—due to its role in undermining transparency and reducing public trust—has emerged as a central topic in legal policymaking. Contemporary research demonstrates that bribery in the private sector not only leads to financial and administrative corruption but also creates inequality in access to opportunities, lowers organizational productivity, and diminishes the quality of services rendered. This issue is particularly critical in developing economies where the private sector plays a significant role in economic growth. In its 2022 report, the Organisation for Economic Co-operation and Development (OECD) emphasized that criminalizing private-sector bribery must be accompanied by preventive measures, such as increasing transparency in business processes, strengthening professional ethics standards, and educating employees to achieve optimal outcomes. The same report showed that countries with comprehensive laws against private-sector bribery have succeeded in attracting investor trust and creating more stable economic environments. Given the growing significance of the private sector in Iran's national economy, there is an urgent need for a more holistic approach to criminalizing bribery in this domain to preserve economic integrity and mitigate the destructive effects of corruption.

This article, using a descriptive-analytical method and relying on library-based research, examines various dimensions of the criminalization of bribery in the private sector. The first section addresses terminological clarity and resolves conceptual ambiguities related to bribery. The second section analyzes the legal status of private-sector bribery under Iranian law, international instruments, and select national systems, demonstrating that the issue has been inadequately addressed in Iran and requires revision and reinforcement. The third section explores the necessity of criminalizing bribery in this field, emphasizing its economic, social, and cultural ramifications. The fourth section is dedicated to its jurisprudential and legal foundations. The fifth section investigates the challenges and barriers faced in the legislative process. The sixth section discusses various methods for criminalizing bribery in the private sector. Finally, the seventh section evaluates the legislative performance in the 2022 Draft Penal Code and assesses its strengths and weaknesses.

## 2. An Overview of the Criminalization of Bribery in Iran and Select International Instruments

Iran's legal system has so far failed to provide a comprehensive and transparent framework for the criminalization of bribery in the private sector. Although scattered provisions have addressed the issue, they remain limited and insufficient to deal with the wide-ranging challenges associated with private-sector bribery. One such provision is Article 588 of the Islamic Penal Code

(1996), which specifically criminalizes bribery received by experts, arbitrators, assessors, and individuals paid money or property under the label of tax filers or similar roles. This article indicates that even in the 1990s, the Iranian legislator recognized the necessity of combating private-sector bribery. However, this criminalization was restricted to specific cases and has not been extended to other private actors (Mir Mohammad Sadeghi, 2021; Nazari Monazam & Vatkhah, 2016).

Additionally, Article 3 of the Law on Aggravated Punishment for Bribery, Embezzlement, and Fraud employs the term “public service agent,” which, based on certain interpretations, may sometimes be extended to include individuals in the private sector. However, this extension is neither explicit nor comprehensive in the law and has only been possible through judicial interpretation. Moreover, Iranian judicial practice has attempted to bridge the legal gap in criminalizing private-sector bribery through broad interpretations of existing statutes. For example, in Unification Opinion No. 798 issued by the Supreme Court, although the ruling did not directly pertain to bribery, the interpretation of the term “public service agent” made it possible to apply the concept to private-sector actors. This indicates that judicial practice, particularly by referencing Article 588 of the Penal Code, has aimed to align the law with contemporary conditions to fill legal voids concerning the criminalization of bribery in the private sector (Hamdami Khatbe Sara, 2004; Javidi et al., 2021).

Despite these efforts, it is clear that current laws are insufficient to effectively address private-sector bribery, and this legal gap requires serious intervention by the legislature. In response, the 2022 Draft Penal Code on Discretionary Punishments has been developed to address this deficiency. This draft seeks to establish a more comprehensive framework that fully criminalizes bribery in the private sector, thereby making a substantial contribution to economic integrity and the fight against corruption in this domain.

A comprehensive review of all international efforts related to corruption lies beyond the scope of this article; however, this study focuses on the most significant initiatives of the United Nations in this area. Since 1996, following reports of illicit payments, the UN has intensified its attention to bribery, ultimately leading to the adoption of the United Nations Declaration against Corruption and Bribery in International Commercial Transactions. Although the declaration was not legally binding, its provisions significantly influenced domestic laws in many countries. Nevertheless, the UN's efforts culminated in two major international instruments: the United Nations Convention against Transnational Organized Crime (Palermo Convention) and the United Nations Convention against Corruption (UNCAC or Merida Convention). The Palermo Convention, adopted in 2000 and ratified by around 184 countries by 2003, was among the earliest comprehensive anti-corruption efforts. Articles 8 and 9 of this convention address the criminalization of corruption and mandate the adoption of countermeasures. Article 8 defines the term “public official” in a manner that includes not only government employees but also individuals who provide public services without formal employment contracts. However, the Islamic Republic of Iran did not accede to this convention due to the Guardian Council's view that it violated Islamic law, a position upheld by the Expediency Discernment Council (Vaezi & Alborzi, 2017; Yaghouti, 2021).

In contrast, the Merida Convention, adopted in 2003, overcame the dispute between the Parliament and the Guardian Council and was ultimately ratified by the Expediency Council, enabling Iran's accession. Unlike the Palermo Convention, which did not explicitly address private-sector bribery, the Merida Convention directly addresses this issue in Articles 12 and 21. Article 12 focuses on preventing corruption in the private sector, recommending the development of auditing and accounting standards. It adopts a preventive approach, aiming to enhance transparency and deter financial crimes rather than impose punitive measures. Conversely, Article 21 explicitly criminalizes bribery in the private sector and classifies actions such as offering, promising, or receiving improper advantages by private-sector actors—when committed intentionally—as criminal offenses. The article also outlines provisions for intergovernmental cooperation to combat private-sector corruption. Given that the Merida Convention was ratified by Iran's Expediency Council, it is expected that the issue of private-sector bribery will be addressed more seriously in Iran's domestic legislation. These international instruments—particularly the Merida Convention—can serve as valuable models for drafting more precise and comprehensive anti-corruption regulations for the private sector in Iran's legal framework (Afosu et al., 2005).

On the other hand, comparative analysis with leading legal systems reveals that various countries have adopted different approaches to criminalizing private-sector bribery. For instance, in the United Kingdom, the *Bribery Act 2010* explicitly criminalizes bribery in the private sector and even holds corporations liable for failing to prevent bribery committed by their employees. In contrast, despite advancements such as the 2022 Draft Penal Code, Iran still faces gaps in the legal definition

and scope of the law. Notably, the concept of “public service agent” remains ambiguous in the draft legislation, and there is no uniform understanding of it among legal scholars. This ambiguity may lead to potential abuse in legal interpretation and undermine the effectiveness of the law.

### **3. Legal Foundations for the Criminalization of Bribery in the Private Sector**

The criminalization of bribery in the private sector is a necessary measure rooted in social, cultural, economic, and organizational imperatives. It directly affects societal health, public trust, and the economic system. From a socio-cultural standpoint, the proliferation of bribery among individuals lacking faith and moral conviction alters societal values and marginalizes professional responsibility. These individuals, often lacking proper qualifications, attain key positions through bribery, thereby reducing national productivity and steering society toward moral decay. Economically, criminalizing bribery can reduce financial corruption, preserve market transparency, attract investment, and enhance public trust—all of which foster economic growth and reduce government expenditure. At the organizational level, bribery endangers institutional integrity, promotes nepotism and corruption over meritocracy, and ultimately weakens governance structures, posing risks of systemic collapse. Moreover, the absence of bribery control in the private sector—especially in sensitive contracts such as those in technical, medical, and construction domains—leads to the appointment of unqualified individuals and non-expert decision-making, inflicting irreparable harm on society and severely undermining public confidence. Thus, criminalizing bribery in the private sector not only protects social and economic integrity but also strengthens institutional trust and lays the foundation for a healthy and transparent society.

### **4. Criminalization Approaches for Bribery in the Private Sector**

Bribery in the private sector can be criminalized through three approaches, each with specific advantages and disadvantages. The first approach is to expand existing legislation, such as Article 3 of the Law on Aggravated Punishment for Bribery and Embezzlement and Article 588 of the Islamic Penal Code (1996). The legislator can include a clause extending these provisions to the private sector. While this method is simple and cost-effective, fundamental differences between public- and private-sector bribery may present practical challenges. The second strategy is to enact new legislation under a different title, such as criminalizing the conduct under the label of “unlawful acquisition of property.” This method assumes that the term “bribery” should be reserved for judicial contexts. However, using a different term is inadvisable, as “bribery” carries a negative and inherently immoral connotation in public perception; renaming it may reduce the law’s deterrent effect. The third and most effective approach is to explicitly criminalize private-sector bribery under the term “bribery,” treating it identically to public-sector offenses. This method preserves legal consistency and yields the greatest impact in combating this harmful practice (Hajarian, 2011; Hamdami Khatbe Sara, 2004; Javidi et al., 2021).

One of the key challenges lies in the practical implications of criminalizing private-sector bribery. While such measures can reduce corruption, poor or incomplete implementation may lead to new problems such as increased oversight costs and diminished investment appeal. Research has shown that stringent laws without adequate oversight infrastructure can actually lead to greater hidden corruption. Therefore, drafting clear, comprehensive legislation along with establishing effective monitoring mechanisms is essential for successfully tackling bribery in the private sector.

### **5. Review of the 2022 Draft Penal Code on Bribery in the Private Sector**

Chapter Seven of the 2022 Draft Penal Code, titled “Offenses Against Administrative Integrity,” addresses bribery in Articles 200 to 210 and attempts to close legal gaps by comprehensively criminalizing bribery in the private sector. Although this draft has yet to be implemented and requires further analysis through judicial precedents and legal scholarship, examining its bribery-related provisions provides a foundation for future academic inquiry. Article 200 criminalizes bribery in the public sector and extends its scope to include members of the Dispute Resolution Council, Islamic Azad University personnel, and private-sector employees engaged in public service. This inclusion is a positive step given the destructive effects of bribery in both sectors. However, a detailed analysis of who qualifies under this article lies beyond the scope of this paper and is recommended for future research.

Article 201 introduces a new provision stating that if a bribe is accepted for a task assigned to another individual within the same organization, the bribe taker (*murtashi*) shall face a reduced penalty. This concept, partially addressed in earlier laws, serves to differentiate punishments based on individual responsibility. Article 202 explicitly criminalizes bribery in the private sector, correcting the deficiencies found in Article 588 of the Islamic Penal Code and Article 3 of the Law on Aggravated Punishment. This article, following the Merida Convention, extends the definition of bribery to include all private-sector employees. However, ambiguity remains surrounding the term “public service agent,” which needs further clarification within the draft (Rose-Ackerman & Palifka, 2016).

Article 203 stipulates punishment for bribe givers (*rashi*) to both private and public employees, indicating no legal distinction between the sectors regarding bribery. Article 204 discusses cumulative bribe amounts in repeat offenses, stating that the total bribes received will determine sentencing—a concept previously seen in fraud cases and now extended to bribery. Article 205 introduces a new clause criminalizing the mere offer or promise of a bribe, but it restricts its application to individuals covered under Articles 1 and 2, thus excluding some private-sector employees. This creates inconsistencies in analogous cases—such as private versus public prison administration—making the extension of this provision to all private-sector employees imperative (Afosu et al., 2005; Farahmandfar, 2009; Habibzadeh, 2000; Hajarjan, 2011).

Article 206 incentivizes the return of bribes by reducing the penalty if the bribe is returned before the act is completed. However, because the offender is not granted full immunity, the law may fail to encourage cooperation. It is suggested that if the bribe is returned and reported to judicial authorities, full exemption from punishment should be granted to increase compliance. Article 207 criminalizes the act of the bribe giver (*rashi*), aligning with current law, yet the punishment is equal to that of the bribe taker, which seems unfair given the accessory role of the bribe giver. A more proportionate penalty based on accomplice liability principles is advisable.

Article 208 reduces the sentence for bribe takers who return the bribe before the indictment is issued. While this helps mitigate the offense’s impact, to maintain administrative integrity, it is recommended that imprisonment be replaced with penalties such as dismissal or disqualification from public office. Article 209 mandates the immediate reporting of indictments to relevant authorities—a legislative innovation that may expedite the processing of bribery cases. However, failure or delay in implementing this article should itself be criminalized. Finally, Article 210 addresses organized bribery and assigns specific penalties to members of organized groups. Yet, the article does not impose harsher penalties on ringleaders, which is a significant shortcoming requiring legislative correction. Overall, the 2022 Draft Penal Code represents a positive step toward criminalizing private-sector bribery and attempts to address legal gaps. Nonetheless, certain provisions remain ambiguous or insufficient and must be revised for more effective enforcement.

## 6. Conclusion

The criminalization of bribery in the private sector is inevitable given cultural, social, and political imperatives, as well as the need to maintain institutional integrity and public trust. Jurisprudential foundations support this necessity, viewing bribery either as an inherently prohibited act and a form of unjust enrichment (*akl al-māl bi'l-bāṭil*), or as a specific offense applicable to both public and private sectors. International instruments, especially the Merida and Palermo Conventions, also underscore the importance of criminalizing private-sector bribery. Although Iran did not join the Palermo Convention, its accession to the Merida Convention has reinforced this obligation within its domestic legal framework. The criminalization of private-sector bribery in the 2022 Draft Penal Code indicates the legislature's awareness of the existing legal vacuum and constitutes a positive development. However, the draft still suffers from deficiencies—such as limiting the criminalization of bribe offers and promises to public officials and private actors serving in public functions, while neglecting other private-sector employees. Addressing these gaps and expanding criminal liability to encompass all private-sector employees will enhance the law’s effectiveness.

In general, criminalizing bribery in the private sector is a crucial step in combating corruption, but it must be tailored to the cultural, social, and economic context of each country. In Iran, despite efforts like the 2022 Draft Penal Code, further reforms are needed. In particular, legal coverage must include all private-sector employees, and ambiguities surrounding key concepts such as “public service agent” must be resolved. Additionally, greater attention must be paid to training and public awareness

to reduce the inclination toward bribery, as legal measures alone—without strong moral and cultural foundations—cannot fully prevent this phenomenon.

### Authors' Contributions

Authors contributed equally to this article.

### Declaration

In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

### Ethical Considerations

All procedures performed in this study were under the ethical standards.

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### Conflict of Interest

The authors report no conflict of interest.

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