



Afghanistan's Criminal Policy on Economic Crimes

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Abstract

The difference between economic crimes and financial crimes lies in their goals and impacts. The primary objective of financial crimes is to protect private property rights and combat ordinary and public criminals, while the goal of criminalizing and punishing economic crimes is to adopt a punitive policy and support the country's economic system in matters of production, distribution, monetary, currency, customs, banking, and combating white-collar criminals and individuals who abuse their governmental and political and economic influence for personal gain through deception, fraud, or coercive methods to seize public assets and wealth. The Law on Monitoring the Compliance with the Anti-Corruption Strategy in Afghanistan, alongside the substantive and procedural law, namely the Penal Code and the Principles of Criminal Procedure, indicates that the measures taken by the Afghan government to regulate the economic situation of society and combat economic crimes such as embezzlement, bribery, money laundering, and prevention of government officials' abuses are differentiated punitive policies. However, white-collar criminals are often not identified due to their influence within the government structure, and even if they are recognized, they are not pursued for conviction and punishment due to the weakness of the executive and judicial system and the lack of a strong punitive policy. The reason for this inefficiency is that a differentiated punitive policy alone cannot resist white-collar criminals and prevent their extremely dangerous and harmful crimes. Instead, the differentiated punitive policy should be coordinated and differentiated in both the legislative and enforcement stages.

Keywords: *Differentiated Punitive Policy; White-Collar Criminals; Economic Crimes; Financial Crimes*

Introduction

Establishing order, security, and progress in society depends on prudent and rational management in various areas of life, including economic, social, cultural, political, and judicial domains. Authorities and managers in each of these areas must adopt strategies and policies that lead to positive outcomes. Among these, the role of economic regulations and mechanisms is crucial due to their direct impact on people's livelihoods, national security, domestic production, attracting domestic and foreign investors, and ultimately the development and prosperity of the country. Any form of corruption and disruption in the economic sector can cause irreparable damage to other sectors, especially public trust and security, hindering the economic cycle and the processes of development and growth with serious obstacles. This

issue is particularly evident in countries with rentier economies, where problems such as disruptions in the economic system and crimes committed mainly by government officials and ministers, known as white-collar crimes, have led to a weakening of social trust and public participation, slowing down processes of nation-building, reconstruction, and development. Although extensive efforts have been made by national and international institutions to combat this heinous phenomenon in Afghanistan, these efforts have not only been ineffective but have also seen an increase in the level and scope of abuses and law-breaking by this category of individuals in recent years. These dysfunctions indicate that Afghanistan's criminal policy to combat corruption and economic crimes is flawed and needs revision. Administrative corruption in Afghanistan is a tangible, recognized, painful, and pervasive phenomenon that is felt by everyone from the president to an ordinary citizen in society, with many believing in its universality. However, what are the reasons for this prevalence? And what essential components are missing in Afghanistan's system that have allowed corruption to pervade the entire structure? Perhaps one of the most significant questions facing the country's administrative system and analysts of organizational and administrative issues in Afghanistan is precisely this question. It is self-evident that until the roots of the disease are identified, any treatment will be ineffective.

This paper aims to demonstrate the hypothesis that criminal policy alone is not sufficient to eliminate economic crimes such as embezzlement, fraud, bribery, etc., by explaining the fundamental concepts of economic crimes, criminal policy, and white-collar crime, using religious teachings. It argues that a comprehensive criminal policy in legislative, judicial, and executive domains with the most effective methods and variables is necessary for combating economic crimes effectively.

1. Economic Crimes

Economic crimes refer to a broad spectrum of unlawful behaviors against the economic system, which typically vary depending on the type of economic system and criminal policies of countries. However, the most significant manifestations of corruption and economic crimes, which are common among most countries, include embezzlement, fraud, bribery and extortion, intervention of ministers and government officials in government transactions, collusion in foreign transactions, customs offenses, smuggling, tax evasion, money laundering, and disruption of the economic system.

In the Afghan Penal Code, economic crimes are not defined and classified, but embezzlement and extortion are considered criminal offenses, and severe penalties are provided for their perpetrators. Moreover, in the Law on Supervision of Compliance with the Anti-Corruption Strategy, embezzlement and extortion are considered subcategories of administrative corruption, and new legislation has been passed regarding money laundering, with the legislature considering relatively important and new measures to prevent this crime. In the new Islamic Penal Code of the Islamic Republic of Iran, economic crimes are defined through examples (Article 35), which include embezzlement, fraud, bribery and extortion, influence peddling, intervention of ministers and government officials in government transactions, collusion in foreign transactions, customs offenses, smuggling, tax evasion, money laundering, and disruption of the economic system.

Therefore, although the difference between economic crimes and financial crimes has not been properly articulated in legal doctrine and relevant laws lack necessary transparency, in the distinction between these two criminal phenomena, it can be said that the primary objective of financial crimes is to criminally protect private property rights and individuals, while the objective of criminalization and punishment in the field of economic crimes is to adopt criminal policies and support the country's economic system in production, distribution, monetary, currency, customs, banking matters, eliminating information rents, strengthening economic management, and enhancing the efficiency of the country's economic system. In other words, in financial crimes, the aim is to adopt criminal and non-criminal measures against blue-collar and public criminals and support individual ownership, whereas the aim of

criminal policy in economic crimes is to combat white-collar criminals and individuals who abuse their governmental authority and political, social, and economic influence for personal gain, using deception, fraud, or coercive methods to seize public property and assets.

2. White Collar and Blue Collar Criminals

"White collar crime" is a term used to describe individuals in society who are respected and hold a high social position in terms of influence and authority. Although the concept of white collar crime is often associated with criminal behavior, a white collar individual may not necessarily be a criminal, but due to wealth, power, social influence, and the like, they have the potential to commit major and dangerous crimes. Additionally, they have the ability to commit crimes in a way that leaves no trace behind, and even if their crimes are discovered, due to their connections and influence, they may remain safe from pursuit or prosecution. According to Sutherland, these individuals, who often have significant political, social, or economic influence, are usually well-dressed (dark suits, white shirts, and appropriate ties) and use their power, high social and political status, and their charming appearance and exceptional intellectual abilities to commit crimes such as fraud, embezzlement, credit card abuse, computer crimes on a large scale, forgery, and other financial crimes.

The most important characteristics of white collar crime include:

- 1- Difficulty in detecting and identifying their crimes, leading to less reflection in official crime statistics.
- 2- Society does not show sensitivity and serious reactions to these crimes.
- 3- The judicial and executive bodies tend to deal with these criminals with leniency and tolerance, so they are rarely pursued.
- 4- Due to the lack of sensitivity to these types of crimes at a high level in society, they occur but are not given much attention.
- 5- Perpetrators of these crimes belong to privileged classes with strong social, economic, or political influence, known as white collars.
- 6- They impose much heavier costs on society compared to crimes committed by deprived classes.
- 7- The number of victims of these crimes is much higher than those of crimes committed by deprived classes.
- 8- The weakness of public awareness of these crimes hinders their defense and legal pursuit.
- 9- The violent aspects of these crimes are less apparent compared to murder, assault, rape, etc., but in some cases are more significant and serious.
- 10- If the perpetrators of these crimes are not government officials or employees, they still have strong influence within these institutions and organizations.
- 11- Many of these crimes are committed against public and government property, causing harm to the general public.
- 12- If discovered and pursued, such crimes are usually diverted from their true course through improper influence.

In contrast, "blue collar" individuals are usually lacking extraordinary social, political, or economic power. They often resort to criminal activities due to social and economic pressures and similar factors. This group does not have a high level of conformity with society and is usually immediately arrested and sent to prison after committing a crime. The crimes committed by this group are often street crimes that rely on physical force and violence. These criminals are known as blue collar or dirty collar criminals and are sometimes referred to as street criminals.

3. Criminal Policy

Criminal policy, which is the equivalent of the concept of criminal policy, refers to a set of measures regarding the response of the criminal justice system to offenders, including punishment, preventive actions, and rehabilitative measures. Although some Western criminologists have defined criminal policy as a set of repressive and punitive measures against criminal behavior (Hosseini: 2004), it is more appropriate to consider it as encompassing all measures taken by the criminal justice system, including the judiciary, prisons, and correctional facilities, in response to criminals in order to reduce the recurrence of crime. Therefore, part of criminal policy includes measures aimed at preventing crime, rehabilitation, and corrective actions that are not primarily repressive or coercive in nature. In a broader sense, criminal policy is a set of methods through which society organizes its responses to criminal phenomena (Hosseini: 2004). According to this general definition, all measures and strategies, whether reactive or proactive, punitive or non-punitive, used in combating criminal behavior fall within the scope of criminal policy. Furthermore, this definition encompasses all measures taken by various formal and informal institutions.

4. Measures of the Afghan Government

Studies indicate that the Afghan government has consistently utilized criminal policy (ranging from criminalization to determining punishments such as imprisonment, fines, asset forfeiture, dismissal from service, and even in certain circumstances, execution) to organize the economic situation and combat economic crimes such as embezzlement, corruption, money laundering, and prevent abuse by government officials in order to ensure the maximum benefits for the government and the nation. Despite occasional reactive measures, the criminal policy employed by the Afghan government is somewhat selective in responding to these types of crimes.

Differential Criminal Policy in Relevant Legislation

The law on supervising the alignment of strategies to combat administrative corruption in Afghanistan, along with general criminal legislation such as the Penal Code and the Principles of Criminal Trials, serves as an example of differential criminal policy in dealing with economic offenders. It should be noted that differential criminal policy legislation can effectively prevent or reduce crimes committed by government employees and senior officials if these laws are transparent, precise, and proportional to the offense and if they are implemented and enforced effectively. If the judicial and executive system is not strong and independent in dealing with economic criminals, particularly white-collar criminals, the apprehension and prosecution of their crimes will not be feasible. Instead, their cases may get entangled in legal disputes with the support of government individuals and institutions at an early stage, leading to obstacles in their pursuit and prosecution. Therefore, legislative differential criminal policy alone cannot resist white-collar criminals and prevent their highly dangerous and damaging crimes; rather, the differential criminal policy must also be coordinated and differentiated in both legislation and execution stages.

Conclusion

The increase in economic crimes in our country indicates the weakness of criminal policies against white-collar crimes. The criminal tools and mechanisms that act effectively against blue-collar criminals are weak and ineffective against white-collar criminals. This is because the white-collar individuals, due to their position within the government, have entwined their dignity and destiny with the dignity and destiny of the governing authorities and their affiliated systems in such a way that dealing

with them is perceived as a stain on the honor of the government, institution, or organization, and prosecuting such individuals is equivalent to prosecuting the government.

Negligence and forgiveness towards white-collar crimes not only hinder economic development but also do not reflect a system based on religious teachings. The policy of Islamic rulers in dealing with white-collar crimes has been very strict and intolerant, in contrast to the leniency shown towards the general public and blue-collar criminals, accompanied by the use of institutions such as courts, criminal justice, and similar entities, a policy that contrasts with criminal justice policies.

Considering the negative consequences of economic crimes on one hand, and the weakness and inefficiency of Afghanistan's criminal policies in preventing and controlling economic crimes on the other hand, we reach the important point that differential criminal policy alone will not be able to prevent economic crimes. Therefore, it is essential to adopt strategies such as establishing a healthy economy, transparency in economic laws, eradicating corruption, improving monitoring systems' efficiency, promoting ethical values, strengthening the commitment of administrative employees, etc., before resorting to criminal policies. In short, it can be concluded that adopting appropriate differential criminal policies in dealing with economic criminals can have positive and constructive consequences in preventing corruption from infiltrating various layers of government, alleviating deprivation and poverty, and bringing about mental security and trust in government officials.

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