

## THE STUDY OF THE REASONS OF OCCURRENCE OF FINANCIAL CRIMES IN BANKS AND PRESENTING THE PREVENTIVE SOLUTIONS

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### Abstract

*In recent years, the rules in accordance with the structure of presenting the new bank services and the weakness of control systems led to the considerable financial crimes in bank system of Iran. Thus, the identification of the effective factors on committing the financial crimes in bank system is legally of great importance. The present study aimed to identify the effective factors in financial crimes in the bank and presented the preventive solutions. The main question is raised that what are the effective factors in committing financial crimes of the bank? What are the main solutions to eliminate the increasing financial crimes? To achieve the mentioned goals and questions, a descriptive-analytical method was applied. The study findings showed that in financial crimes as rent, fraud, bribery and trickery, political, economical, cultural and administrative factors are involved and based on the nature of financial crimes in the bank; the law maker determines the punishment. Thus, to eliminate the increasing financial crimes in the bank, preventive solution were presented.*

**Key words:** Financial crimes, Bank, Solution.

### Introduction

The administrative corruption phenomenon in the current world namely in the developing countries is raised as one of the most important barriers of society progress. This phenomenon had unavoidable damages on the development of the society and limited the development process.

The governments always were faced with the problem of abuse of the state brokers. In ancient texts, it is mentioned that the governments always were concerned about the personal misuse of the state brokers and authorities of their job status and privileges. Political changes, democratic institutions and press freedom in two recent centuries in the western countries and all over the world obliged the government to be responsive about their performance to the people. Thus, among these changes, administrative offence is of great importance and the governments should take into account this issue to keep the political legitimacy. Some offences as

embezzlement, bribery and forgery are not new crimes and they were created since the governments were established (Shalalvand, 1998).

Despite the considerable attempts to control financial corruption and crimes in various aspects, this phenomenon is not only decreased, but also it is increased in accordance with the statistics issued by the World Bank regarding the good governance indices in recent years (Kafman et al., 2008; cited in Rahnavard et al., 2009). Economic instability, distrust among the investors, reduction of the government control in economical policies, corrupted government, people distrust, the invalidity of the governments and economical institutions, the development of illegal business, reduction of government tax income, instability in world market are the adverse effects of financial crimes in bank system. Some crimes as embezzlement, illegal possession, bribery and E-banking crimes are the common crimes in the bank system. In various countries, besides the

preventive penal punishment, non-penal preventive policies are taken to fight against the financial corruption. In Iran to prevent these crimes damaging the economical stability and validity of the banks, specific non-penal preventive actions are predicted. For example, exact selection of the bank employees among the healthy people, providing the wages of the banks employees for social crimes prevention, formulating a bank controllable system being supervised by the account holders or the top managers of the bank system are emphasized. Little consideration is given to the identification of the effective factors on bank crimes and penal prevention solutions in committing crime. It seems that considering the effective factors on financial corruption in the bank system as legally and taking preventive policy to reduce committing the financial crimes are of great importance in the legal system. In the present study, the main goal is the identification of the effective factors in committing the financial crimes in the bank system and the study of the preventive solutions to avoid committing these crimes.

### **Methodology**

The study method was descriptive-analytical and the researcher aimed to describe and analyze the data of documents and books of the study hypotheses and questions. The data were collected from the library resources and documents. The data collection measure in this study was note taking the books, journals and writing of the law sites. The data of the present study was qualitative and by considering the nature of the data, they were classified, analyzed and inferred logically. Thus, the collected data analysis

was considered to study the hypotheses and responding the study questions by deductive-inductive method.

### **First section: Different kinds of financial crimes in the bank**

Economical crime in all human activities, health, recreation, transportation, market and labor market creates crime victims. Thus, no one is protected completely against the economical crime. The economical victimization is an accepted thing for great companies as two third of them accept to be targeted by this crime. In addition, in recent years, economic and financial crime is at international and transnational level. This condition put dividing the classic law based on land dependency or governance of the internal legal institutions under the question and revealed the limitations and incapability of these institutions. Although economic crime is not very important in formal statistics of delinquency, its consequences are very high. Indeed, based on criminology report of USA, the damage of the economic crimes is 20 to 40 times more than the street crimes. In Germany, although economic crimes in criminal offence registered in the policy station are low, it is the source of 60% of the losses of the crime recognized by the police (Ibid). Some of the financial crimes are including:

- 1- **Rent:** Nowadays, economic rent is misusing the state authorities and is different from land rent applied by Rekardo. Rent seeking was first proposed to explain the exclusions in a paper in 1967. The term "rent seeking" was applied for the first time by Kerugger (1974). Rent seeking is including legal (lobbying) and illegal acts (bribery) of people and relevant groups to gain the rent being created

after the false shortcomings created by the government. In the articles 49, 142 of the constitution, punishing the misuse of contracting, state trading and investigating the assets of the president, the deputies of the president, ministries and wife and their children before and after the work experience was on the priority to avoid its illegal increase and by considering the people equality principle against the law, the Islamic Republic of Iran attempted to punish these groups of the criminals based on the significance of the topic.

- 2- **Fraud:** Literally, forgery or fraud means economic criminal offence. Today, in the business environment, the white collar crime is common. Unfortunately, most of the businesses and state organizations namely in financial and services sector suffer from different types of forgery and fraud. Fraud causes considerable damage to the good intention and fame of an organization.
- 3- **Bribery:** It can be said that bribery crime is one of oldest crimes in the crime history of human beings. This crime dates back to the formation of the first governments and bureaucracy structure in the world. Bribery is given to invalidate the rights or validating the falseness.

Legally, bribe is given to the formal or informal authority of the government to do a legal or administrative task; even it is not related to the job of the bribee. It is not different whether he receives the money directly or by another person and also it is not different the bribee is able to do the task or not and it is not different whether the task being done for the briber is a right thing or not (based on the law), the bribery

is fulfilled by the agreement of the briber and bribee to receive the bribe.

- 4- **Trickery:** Trickery is not merely the traditional trickery that is inserted in the definition of the law of severe punishment of the people committing bribery, embezzlement and trickery. Indeed, deception of public sector by fraud for illegal gain of the public property. Embezzlement, financial crimes, insurance and pension, unemployment wage crimes for the related people are the most important criminal act committed by white collars (Salimi, 2008).
- 5- **Financial corruption:** It is the most obvious example of financial corruption (bribery) but financial corruption is more extensive than bribery. The deceptions in the public tender, giving the public loan and privileges are all considered in this range. Influencing the political authorities and parliament representatives to raise the specific issue with considerable benefits for specific group are the examples of financial corruption. Financial corruption in international trading including export and import and foreign investment is common (Salimi, 2008).
- 6- **Electronic fraud:** It is one of the common crimes in bank system. The development of the computer and internet besides its all scientific and economical benefits created some opportunities for white collar criminals to gain illegal benefits. Illegal use of data bank of the computers of other real and legal entities and abusing it and drawing the money from other

people credit cards are the examples of these crimes (Salimi, 2008).

**Illegal embezzlement and possession:** It is one of the financial crimes being committed extensively by white collars. What is making these two crimes similar is the description of the characteristic of the offender and in both cases, the offender should be employed in the government or he is the government authority (Habibzade, 2001).

### **Second section: The reasons of committing financial crimes by the bank employees**

As the banks can be the effective factor in economic development and led to the economic and social development. If the financial corruption leads to the inefficiency in banking system, by disorder in macro economical policies in each country, the social, cultural, political and administrative plans and policies will be failed. Based on the above issues, the factors in financial crimes by the bank employees are investigated separately.

1- **Political factors:** Sometimes, taking a policy or ratification of law, regulation or formation of criminal group of the politicians with the collaboration of the managers and chiefs in the banks lead to the continuity of financial corruption in the banks. By concentration of ownership in the bank, it is difficult for the government to consider all the crimes and criminal behaviors and provide the coping strategies. Although, not reporting some of the specific financial crimes is criminalized in accordance with article 606, in case of any crime in the bank, not only the banks report to the certified courts but also by the claim of

keeping the public trust to the bank system and continuing the absorbance of the customers and encouraging them to deposit and using the services of the bank, prevent the propagation of this issue in public opinion and the offender employee is forgiven and this can make him do it again. If the inefficiency of its systems is with financial corruption, the governance is weakened and the government power is reduced in the responsibilities and duties and it inhibits the political development and welfare and civil reforms. This leads to the public dissatisfaction and financial misuse and political instability and political corruption are effects (Gossan, 2004).

2- **Economical factors:** Some of the factors and reasons of committing crime namely the financial crimes are economical problems and poverty. If the bank employees don't receive the adequate money to the services they performed in the bank to provide their primary needs as ho using, car and other requirements, even investment and saving for future, they will have the motivation of committing crime and providing the financial resources via illegal methods as receiving bribery, collaborating with other people for deception from the financial resources of the banks, stealing the cash or documents with financial credit, illegal possession of the properties belonging to the government and banks will dominate their dignity motivation (Najafi Abrandabadi, 2004).

3- **Cultural and administrative factors:** Besides the economical and political factors as the origin of committing

crime, the role of cultural, religion us and administrative factors is important. If a culture or a society accepts corruption and it cannot fight against corruption, the work place will be occupied by corrupted, fraudulent without conscience instead of good people with conscience and this leads to the development of corruption in the society. By development of corruption, the indecency of corruption in the society is eliminated and good reaction to it is eliminated.

Besides the mentioned factors, the underlying conditions on work place can be a factor in committing crime. Because when there is no close supervision of the people dealing with bank credits and money, these people commit some crimes including embezzlement, robbery, etc. Thus, to cope with these crimes, just one factor is not a basis and all the solutions cannot be applied and the sum of the factors should be investigated (Heshmati Molayi, 2005).

### **Third section: Penal system to cope with the economical crimes**

Legally, economic crime is an action or omission of an act with the motivation of gaining profit or materialistic privilege and is committed by committed in the job activities and the trust on profession is violated and as potential or actual disturbs the economic system in the country. In this definition, some criteria as the motivation of the offender: gaining profit- committing in the job activities- violating the trust in the job is referred. The criteria are separated based on the disorder criterion in the mentioned economic system in definition of economic crime from other crimes including the financial crimes. The

economic crimes destroy the economy of a country as the basis of its power (Tavasolizade, 2011). Thus, fighting against these crimes is of great importance as: First the economic crimes are committed as hidden in the close state offences and financial enterprises and other places and they don't have a definite victim and their adverse effects don't influence other people and the public opinion is not stimulated. Second, the offenders of these crimes are professional, intelligent and influential people committing crime by specific knowledge and information in administrative and economical issues and with high social adaptability and high risk are in the white collar criminals. Third, these crimes are transnational as the economic crime offence is considered as the problem of the current world. Fourth, these crimes by disturbing the people life create unavoidable damage to the financial relations of the people with each other and people with the government and damage the basis of the government. Thus, various countries in fighting against the economic crimes, considered prevention as a strategic principle in criminal politics priority. Prevention of crime reduced the risks of the criminal offence events and the related behaviors via intervention in their act and type and they are the criminal policy measures that by criminal and non-criminal reduced the delinquency that is divided into action and reaction based on the intervention time. Action prevention is the preventive measures that are taken before committing the crime with the aim of preventing the committing of crime or reduction of the losses and it is of two types.

One is social prevention of the crime by reforming the society and social system as family, education, economy and educating people in their sociability process and another is situational prevention that is fulfilled of the reduction of the opportunities facilitating the committing of crime (Rustayi, 2009). But, taking the preventive strategies of economical crimes didn't make the governments as not in need of the penal prevention and it is considered as effective measures to cope with the economical crimes. The theoretical basics of this type of prevention is verification of the inhibition of penal rules and formal or legal methods of fighting against the crime, applying punishment and effective measurements to arrest the offenders as strengthening the police and legal system (Safari, 2001). The penal prevention with threatening the penal law subjects and implementation of this threat via the punishment of those who violated the criminal ban are the examples of the general and specific prevention of the crime and its repetition. In this type of the prevention, the most important role is dedicated to the institutions related to the criminal justice system, the justice court authorities.

1- **The role of criminal justice system institutions in prevention of the economical crimes:** Literally, prevention is including any act reducing the crime. In this meaning, one of the prevention types is penal prevention gained from the discovery of crime, investigation and punishing the criminals (Zarghami, 2008). This is the duty of penal justice system as the legal factors involving in the penal process are considered. The penal

justice system institutions play important role in coping with the economical crimes namely in reaction prevention of the economical crimes. The institutions are police, court and public prosecutor's office.

2- **Situational prevention of the economical crimes:** In Iran criminal politics and UN, some measurements are taken with penal and non-penal characteristics. The non-penal measurements are self-centered, community-centered or situation-centered and in this paper the important situation -orientated prevention solutions of economic crimes:

- a. **Eliminating the benefits contraction:** Benefits contraction leads to corruption and in case of the lack of performance guarantee results into committing corruption. This law deals with the lack of permission in transaction and arbitrage in the claims with the government. Thus, it is necessary to ratify the law stating the forms of benefits contradiction and define the executive mechanisms to prevent corruption via benefits contraction. In recent years, some rules investigated this topic as a case study and the example is the morality and behavior of the employees of customs office in which employment of the customs employees to the trading , commission or another profession being related to their duties in the customs office is forbidden (section 1, article 5).
- b. **Creating a comprehensive supervision and control system:** As a great number of the benefits of economic crimes namely corruption

and laundering enter the economic structure of each country via the monetary and bank systems, considering the performance of these institutions by creating the comprehensive supervision and control system for them and exact implementation of this system can be considered as an important preventive factor. By supervision, the offence can be revealed. Generally, it is concluded that there is a correlation between the preventive effects and discovery danger (Korsell, *ibid*).

### 3- Crimes and punishments in E-commerce rule:

In the cyber space, some crimes are committed that a law maker considered some punishments for it. The crimes being defined in the business law are including:

- Electronic fraud
- Electronic forgery
- Violating the exclusive rights in electronic trading
- Violating the support of personal “message data” /supporting the data
- Violating the protection of “message data” in E-commerce

### Fourth section: The solutions of prevention of financial crimes

The economic crime control methods depend upon the required criteria and logic in terms of the actors. These criteria are justice development, economic and advertisement logic. The justice development logic punishes the criminal behaviors, economic logic reduces the victimization costs and advertisement logic presents a good image of a victim. Sometimes these criteria and logics are added. For example, the penal prosecution when it leads to the condemnation of the

accused and compensation of the damage of the victim and let the victims prove that he is not blamed can be in accordance with three logics but sometimes the adaptability of three logics is not possible. It is true when the claimant desire is ignorable and the costs of criminal and civil costs are more compared to the lost benefit. For example, in terms of the economic logic, the lack of prosecuting a fraud with ignorable cost is on the priority compared to the insurance or forgery in the bank card for the victim. Although the punishment and discovery logic is based on the fact that any claim is prosecuted, this reaction to the crime leads to the considerable costs more than the avoidable loss of the victim (Becher and Close, 2007).

### 1- Preventive strategies

The preventive strategies of economic crime are logically arising from the type of the various definitions of this type of crime. The economic crime is analyzed by various methods and from macro, micro and psychological aspects. This crime is committed at macro level due to the set of the factors as economy, unemployment, economic system or the type of current culture. At micro level, the researchers focus on the opportunity situational factors, offender economic condition or psychological features of the economic crime offenders. As some people in most cases considered anti social behaviors and psychological diseases as the source of fraud behaviors. Also, there are some intermediary factors between the macro and micro factors. The organizational factors of the companies or government and structural factors of an industry as a whole or the weakness of the norms and

the control on some of the economic activities are in this group.

It seems that using situational preventive methods based on the micro determinations are easier and effective. Indeed, if the change of the type of capitalism system or reduction of unemployment is difficult, affecting the materialistic conditions of criminal opportunities is possible. To reduce the risk of fraudulent use of credit cards, we can print the photo of the legal holder on it. To prevent the embezzlement and other types of fraud in the companies and its discovery, the precise periodical auditing is used. Indeed, the potential offence victims should be equipped with the control tools. In the companies, the people responsible for control should supervise the problems of dividing the qualifications, evaluation, independent investigations and mechanisms of the license. If the crime prevention is done at the beginning of employment of the new forces in the companies, the entrepreneurs should investigate the background of the applicants and the related shortcomings and ask them to fill out the employment forms and deliver with some recommendation forms and investigate about the truth or falseness of the given data by phone. They should be careful in appointing the people in important positions and ask for a summary of the background of legal registry of people and ask for the required information of job background and temporary activities. Finally, to avoid using unsuitable forces, psychometric tests should be taken from the applicants (Ibid).

## **2- Discovery methods**

Discovery of the economic crime is extensively based on information investigation on which the trading is done. It is including the identity of the actors and businessmen, the final aim of the method of implementation of the contract, source and destination of the money, etc. These data are investigated at first and before the intervention of the others by the potential offence victims of the economic crime. Indeed, economic crime without the collaboration of the offence victim is hardly reported to the police and justice court.

When the economic crime is committed in a company, office or an organization, the informed co-workers can participate in declaration of this crime. The law makers of various countries predicted various support measurements to encourage these people to report what they know. The companies also implement a type of incentive policy and report the committed crimes. This causes that the employees witnessing the crime avoid to sharing it with the media and be sure about declaring the crime by them as precisely and be supported against any retaliation act from the stated people and in case of any loss, it is compensated. Regarding some crimes as fraud with credit card, the offence victim companies can use the computer programs to process and analyzed the data. These tools and plans aimed to identify the suspicious cases among the concentrated data by artificial intelligence. By this method, the communication is established by comparing the abnormal behaviors of the data bank and criminal behaviors of the sample behaviors by which the abnormal behavior should be compared and simulated (Ibid).

### 3- Inhibition strategies

The inhibition strategies are performing the penal sanctions or threatening to perform them when the inhibition is based on forcing the sanctions and these sanctions can be formal or informal. The informal sanctions in private sector are providing a black list, taking a person away from the professional environment or prevention of purchasing the goods or receiving the services with the equal conditions with others. The main problem of informal sanction is frequent application on the accused without his information and not observing his fundamental rights including hearing right in the court, defense and objection right to the decisions, etc. The formal sanctions are mostly found in civil law as resorting to inserting the terms in the contracts and weakening the potential criminal benefits, these sanctions are mostly for the benefit of the offence victim. The potential offender gives up after considering the potential compensation. For example, fraud sanction in labor rights is being dismissed. In fraud to insurance, the sanction is avoiding to pay the compensation from the insurance. The penal sanctions are different. Cash fine is more influential due to preventing the economic criminals. Indeed, if imprisonment and suspension have low effect on repetition of the economic crimes, the effect of cash fine is unavoidable and hinders the time of crime repetition (Ibid).

### Summary

Criminology and substantial criminal law are traditionally concentrated on the crimes against the people and property,

delinquency and treatment of the offenders. Focusing on delinquent behaviors and its treatment can be one of the reasons of determining this issue that why economic crimes are ignored despite their significance. In the classification of the offenders, the economic criminal is always in the white collar group, not the delinquent or criminal group. While the effect of economic crimes and the damages are not less than the offences as assassination and smacking. The majority of penal interventions is dedicated to intervention in economic field and the law maker considered using the penal tools the easiest way to achieve the economic order and avoiding the occurrence of unsuitable economic activities but penal intervention in this field without observing the principles of criminology is a barrier to achieve the law maker goals and progress of economic system. Extensive investigation of suitable legal sanctions, determining the legal aims of criminology of economic activities, using the various penal sanctions, avoiding the repetitive rules, choosing the best sanctions and using the experts namely the scientists of economy are the principles the law maker should consider in regulating the economic penal rules. On the other hand, regulating the best rules is not possible without the prediction of the efficient investigation system that can provide the aims of the law maker as it is required. Thus, the prediction of the best legal system of investigating the crimes, increasing the legal transparency in the work method of these courts, observing the rapidness principle in investigating the economic crimes are inhibitory factors and they should be revised by the law maker.

Based on the social and job status of the offenders and non-violent behavior of the white collars, their identification is faced with some problems. The organized crimes give more power to the offenders and coping with them is difficult. As the offenders of these crimes make the most out of the unawareness of people and authorities with good intention, any ambiguity in the rules and people and authorities ignorance will make the white collar criminals successful and any transparency will defeat them. Thus, the most important prevention and fighting against these crimes is giving information and introduce the characteristics of the white collar criminals and the effect of their criminal acts on the society. All the citizens should be informed via giving information that the white collar crimes will have direct adverse effect on their routine life. Thus, the citizens via the public media and regulating the rules should know themselves as beneficiary in fighting against the white collar criminals and be encouraged to collaboration. People should be informed of their actions and the effect of their criminal act and the collaboration of people with the police should be educated. In Iran law, fighting against the white collars is ambiguous

while in some cases even capital punishment is predicted for the economic criminals. In some cases as laundering, that were ratified after 5 years, its draft was written, due to the inconsistency of the predicted sanction, it is not important. Because cash fine equal to the one fourth of the laundering is predicted for the offenders. By comparing these punishments with the severe punishments considered for traditional crimes against the properties as stealing, fraud, treason in trust, destruction, etc the disturbance in legal policy is clarified.

Fighting against the white collar criminals is not adequate only via suppression policy and it is required to support the white collar crime victims to be protected against the retaliation of the white collar criminals and also their damage is compensated. The policy should be trained well that people are sure about their qualification and they can resort without any concern.

Thus, regulating the transparent rules and training the specialized labor force including legal, police and administrative units and finally encouraging the people to collaborate in fighting against the crimes via giving information and public training to cope with the white collar criminals are of great importance.

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