

ANALYSIS OF THE UNITED NATIONS CONVENTION AGAINST CORRUPTION (UNCAC) 2003 IN THE LIGHT OF THE PURPOSES OF ISLAMIC LAW (MAQASID AL-SHARI'AH)

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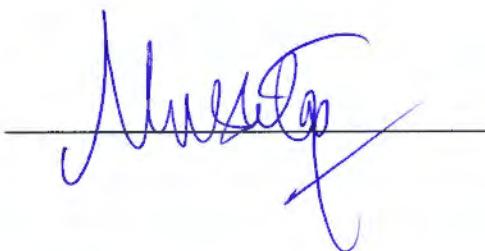
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APPROVAL SHEET

This is to certify that we evaluated the thesis entitled "Analysis of the United Nations Convention against Corruption (UNCAC) 2003 in the light of the Purposes of Islamic law (Maqasid al-Shari'ah)" submitted by Miss Mehwish Safdar, Reg. No.148-FSL/LLMIL/F11 in partial fulfillment of the award of the degree of LLM International Law. The thesis fulfills the requirements in its core and quality for the award of the degree.

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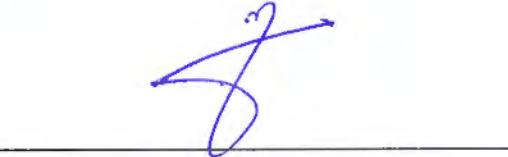


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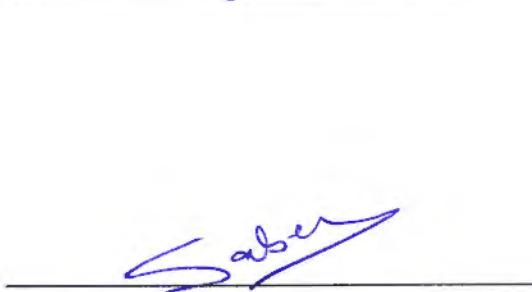


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TABLE OF CONTENTS

TITLE PAGE.....	i
APPROVAL SHEET.....	iii
TABLE OF CONTENTS.....	iv
DECLARATION.....	vii
ACKNOWLEDGEMENT.....	viii
DEDICATION.....	ix
LIST OF ACRONYMS.....	x
TABLE OF CASES.....	xii
ABSTRACT.....	I
INTRODUCTION.....	II
 CHAPTER ONE: PROTECTION OF WEALTH AND OBJECTIVES OF ISLAMIC LAW.....	01
INTRODUCTION.....	01
1.1.1. The Principles of Maslaha (Consideration of Public Interest).....	02
1.1.1.1 The Principle of Maslahah Mursalah.....	05
1.1.2 The Doctrine of Maqasid al-Shari'ah (Objectives of Islamic law).....	07
1.2 THE IMPORTANCE AND APPLICATION OF MAQASID AL-SHARI'AH AND MASLAHA.....	14
1.3 THE PROTECTION OF WEALTH OR HIFZ AL-MAL IN ISLAMIC LAW.....	15
1.4 THE ISLAMIC LAW PERSPECTIVE ON CORRUPTION.....	16
1.4.1 Definition of Corruption under the interpretation of Qur'anic term "Fasad".....	17
1.4.2 The Prohibition of Corruption in Islamic law.....	20
1.4.2.1 Bribery.....	20
1.4.2.2 Money Laundering.....	22
1.4.2.3 Fraud.....	23
1.4.2.4 Misappropriation (Embezzlement and Theft).....	24
1.4.3 The Legal Characterization of Corruption and Bribery as Criminal offenses under the Umbrella of the Islamic Criminal Justice System: Ta'zir and Siyash Crimes.....	26
1.4.4. Protection Provided by Islamic law against Corruption.....	28
1.4.4.1 Protection of Community Rights.....	28
1.4.4.2 The Eradication of Corruption by Promoting Moral Values and maintaining justice.....	29
1.4.4.3 Accountability in Islamic law.....	30
1.4.4.4 The institution of <i>Hisbah</i>	31
1.4.5 Punishments of Corruption and Bribery in Islamic Penal Law.....	31
1.5 CONCLUSION.....	32
 CHAPTER 2: INTERNATIONAL LAW AND THE FIGHT AGAINST CORRUPTION..	34
2.1 INTRODUCTION.....	34

2.1.1. International Legal Standards Regarding Corruption.....	35
2.1.1.1. Inter-American Convention against Corruption (OAS) 1996.....	35
2.1.1.2. Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD), 1997.....	36
2.1.1.3. United Nations Declaration against Corruption and Bribery in International Commercial Transactions, 1996.....	36
2.1.1.4. The Criminal Law Convention on Corruption (COE Criminal Convention), 1999.....	37
2.1.1.5. The Civil Law Convention on Corruption (COE Civil Convention) 1999.....	37
2.2.1.6 The United Nations Convention against Transnational Organized Crime (UNCTOC), 2000.....	37
2.2 WEAKNESSES IN INTERNATIONAL LEGAL STANDARDS.....	38
2.3 DEFINITION AND FORMS OF CORRUPTION.....	39
2.3.1. Bribery.....	42
2.3.2. Embezzlement.....	43
2.3.3. Extortion.....	44
2.3.4 Favoritism, Nepotism and Cronyism.....	45
2.3.5. Fraud.....	47
2.3.6 Money Laundering.....	48
2.4 ANALYSIS OF THE UNITED NATIONS CONVENTION AGAINST CORRUPTION (UNCAC), 2003 IN THE LIGHT OF ISLAMIC LAW STANDARDS	50
2.4.1 The focus on morality.....	56
2.4.2 Accountability and Transparency system.....	59
2.4.3 Legitimacy.....	61
2.4.4 The Enforcement mechanism.....	61
2.4.5 The Binding or Non-binding nature.....	64
2.5 CONCLUSION.....	65
CHAPTER 3: MAQASID AL SHARI'AH AND ANTICORRUPTION LEGISLATIVE SYSTEM OF ISLAMIC REPUBLIC OF PAKISTAN.....	67
3.1 INTRODUCTION.....	67
3.1.1 The Situation of corruption in Pakistan.....	67
3.1.2 Instances of corruption in Pakistan.....	69
3.1.2.1 Muhammad Yasin vs. Federation of Pakistan (PLD 2012 SC 132).....	69
3.1.2.2 Suo Motu Case No. 7 of 2011 (2012 SCMR 226).....	70
3.1.2.3 Suo Motu Case No. 24 of 2010 (2015 PLC CS 73).....	70
3.1.2.4 Suo Motu Case No. 13 of 2009 (PLD 2011 SC 619).....	71
3.2 AN OVERVIEW OF ANTI-CORRUPTION LEGISLATIVE EFFORTS OF ISLAMIC REPUBLIC OF PAKISTAN.....	71
3.2.1 The Prevention of Corruption Act of 1947 (PCA).....	73
3.2.2 The Public Representatives (Disqualification) Act, 1949 and the Elected Bodies (Disqualification) Ordinance, 1959.....	76
3.2.3 The Ehtesab Ordinance 1996.....	76
3.2.4 The Ehtesab Act 1997.....	77
3.2.5 The National Accountability Bureau Ordinance, 1999	77

3.2.6 Pakistan's National Anticorruption Strategy, 2002.....	79
3.2.7 The National Reconciliation Ordinance (NRO) 2007.....	80
3.2.8 The Pakistan Penal Code, 1860.....	81
3.3 THE IMPLEMENTATION OF THE OBJECTIVES OF ISLAMIC LAW AND THE ANTI-CORRUPTION LEGISLATION OF PAKISTAN.....	83
3.4 CONCLUSION.....	87
CONCLUSION AND RECOMMENDATIONS.....	88
BIBLIOGRAPHY.....	91

DECLARATION

I, Mehwish Safdar, hereby declare that this dissertation is original and has never been presented in any other institution. I, moreover, declare that any secondary information used in this dissertation has been duly acknowledged.

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DEDICATED

TO

MY BELOVED PARENTS

LIST OF ACRONYMS

ACES	Provincial Anti-corruption Establishments
CDA	Capital Development Authority
COE	The Criminal Law Convention on Corruption
COE	The Civil Law Convention on Corruption
CrPC	The Criminal Procedure Code
EU	European convention
FBI	Federal Bureau of Investigation
FIA	Federal Investigation Agency
INGO	International Non Governmental Organizations
ISAF	International Security Assistance Force
MPCHS	Multi-Professional Co-operative Housing Society
NAB	The National Accountability Bureau
NRO	National Reconciliation Ordinance
OAS	Inter-American Convention against Corruption
OECD	Convention on Combating Bribery of Foreign public officials in international business transactions
OGRA	Oil and Gas Regulatory Authority
PCA	The Prevention of Corruption Act
PPC	The Pakistan Penal Code
PSPE	Pakistan Special Police Establishment

SC	Supreme Court
TI	Transparency international
TI P	Transparency International Pakistan
UCR	Uniform Crime Reporting
UN	United Nations
UNCAC	The United Nations Convention against Corruption
UNCTOC	The United Nations Convention against Transnational Organized Crime
WJP	World Justice Project.

TABLE OF CASES

Case:	Page No.
Muhammad Yasin vs. Federation of Pakistan (PLD 2012 SC 132)	69
Suo Motu Case No. 7 of 2011 (2012 SCMR 226)	70
Suo Motu Case No.24 OF 2010 (2015 PLC CS 73).....	70
Suo Motu Case No. 13 of 2009 (PLD 2011 SC 619).....	71

ABSTRACT

This thesis highlights the anti-corruption legislative efforts of both international law and Islamic law by presenting a detailed analysis of the first globally recognized treaty against corruption, the United Nations Convention against Corruption 2003, in the light of *maqasid al-shari'ah*. Furthermore, this research focuses on the significance and role of the Purposes of Islamic law (*maqasid al-shari'ah*) in the process of legislation regarding corruption. For this purpose, it gives a detailed description of Islamic law perspective on corruption and standards of objectives of Islamic law related to the protection of wealth (*Hifz al-mal*). This research also assesses and compares anti-corruption solutions provided by both International law and Islamic law against the menace of corruption and suggests better solutions to all the victim nations around the world. While considering the bleak picture of corruption in Islamic Republic of Pakistan, this study also examines the anti-corruption legislative and administrative efforts done by Pakistan for finding a more robust anti-corruption legislative system.

INTRODUCTION

Corruption is one of the biggest threats to the global economy which may affect any form of government. In this regard, this research analyzes the first globally recognized treaty against corruption, the United Nations Convention against Corruption 2003 (UNCAC), in the light of the objectives of Islamic law (*Maqasid al-Shari'ah*).

Moreover, this study will examine, analyze and compare the anti-corruption standards of both international law and the Islamic law in order to figure out which legal system is better in providing effective solutions against corruption and why international law including the UNCAC seems helpless in the complete eradication of corruption around the world. It also tries to find out the reasons of failure of international anticorruption legislations in the elimination of corruption and how the doctrine of *maqasid al-shari'ah* can be utilized and implemented to be a part of anti-corruption legislations.

While considering the ground realities and situation of corruption in Pakistan, this research also attempts to expose the failures of anti-corruption legislations in the abolition of corruption. This study highlights why Pakistan is unable to give an effective anti-corruption legislation and how its legislative system can be made better by applying the doctrine of *maqasid al-shari'ah* including *hifz al-mal*.

The prime focus of this research is to find out whether the principles or the legal standards of the UNCAC are compatible with the objectives of Islamic law.

This research is an effort to improve the existing literature on corruption by gathering and comparing the standards and principles of both legal systems against corruption i.e., Islamic law

and International law. It is hard to find a comparative study on the issue of corruption and different solutions provided by both legal systems.

This research mentions the importance, scope and implementation of *maqasid al-shari'ah* in various legislative and administrative affairs. In this way, legislators can easily adopt various Islamic law principles and make anti-corruption laws compatible with the purposes of Islamic law. Furthermore, the religious and political authorities may also know their effective role in finding the public interest.

CHAPTER NO. 1

PROTECTION OF WEALTH AND THE OBJECTIVES OF ISLAMIC LAW

1.1 INTRODUCTION

This chapter focuses the importance and application of the principles and solutions provided by the doctrine of *Maqasid al-Shari'ah* and the principle of *Maslahah* against corruption and its newly emerged forms for the protection of wealth (*Hifz al-mal*). It also discusses legislative standards and solutions presented by the objectives of Islamic law which should be a vital part of anti-corruption legislative system for reforming and making anti-corruption legislations better, more effective and compatible with the objectives of Islamic law.

By utilizing the doctrines of *maqasid* and the principle of *maslahah* many social problems like corruption and some of its forms which emerged with the advancement in technology and the changing shapes of the societies can be solved and explained. To be specific, the main purpose of this chapter is highlighting the importance, scope, and role of the objectives of Islamic law (*Maqasid*) in the process of eradicating corruption.

In this regard, religious scholars possess the authority to consider *maslahah* in this world and hereinafter.¹ Thus, the responsibility rests upon the political authorities to make the participation

¹Felicitas Meta Maria Opwis, *Maslahah and the Purpose of the Law: Islamic Discourse on Legal Change from 4th/10th to 8th/14th century* (Leiden: Brill Publishers, 2010), 44, <http://books.google.com.pk/books?id=MfK3uIcR9tYC&pg=PA7&lpg=PA7&dq=maslahah+and+its+application&source=bl&ots=HYeULVoeUI&sig=zuvFikrPYVMejy0XYTUhIE7sU8A&hl=en&sa=X&ei=xmI1UtKXJoLetAab81GwDA&ved=0CDcQ6AEwAzbU#v=onepage&q=maslahah%20and%20its%20application&f=false> (last accessed: 6.09.2013).

of religious scholars possible for establishing the religious and mundane *maslahah* of the people.²

In order to know the importance and application of *maqasid* it is necessary to elaborate the principle of *maslahah*, as the doctrine of *maqasid* depicts *maslahah* an essential element and notion, for securing the society by doing *ijtihad* in this modern time.

1.1.1 The Principles of *Maslahah* (Consideration of Public Interest)

The *maslahah* can be literally used as “benefit” or “interest” “welfare”, or “advantage.” Accordingly literal meanings of the *maslahah* are “seeking benefit and repelling harm.” In the context of the Islamic law, it is defined by jurists literally as “the seeking of benefit and the repelling of harm as directed by the Lawgiver.”³ In sum, the *maslahah* is an extra textual basis of reasoning and embodies the concept of the preservation of the purposes of Islamic law. As a dynamic method of Islamic jurisprudence, it provides the practical solutions to the changing needs and demands of the society. For this reason, it can play a significant role in comprehending the true spirit of the Islamic law and its manner of application as many *fataawa* of the companions of the Prophet (P.B.U.H) are based on it.⁴

²Hayatullah Laluddin et al., “An analysis of maslahah’s development through al-Ghazali pre and post al-Ghazali periods,” Medwell Journals: International Business Management 6, no.2 (2012), 187-193. <http://docsdrive.com/pdfs/medwelljournals/ibm/2012/187-193.pdf> (last accessed: 18.09.2012).

³Imran Ahsan khan Nyazee, *Islamic jurisprudence (usul al-fiqh)* (Islamabad: International Institute of Islamic Thought and Islamic Research Institute, 2000). 195.

⁴Laluddin et al., “An Analysis of Maslahah’s Development,” 187.

The collection and compilation of the *Quran*, the introduction of the land tax are examples of the *maslahah* during the period of companions.⁵ In this aspect a famous jurist *al-Ghazali* in his definition focuses the importance of preservation of Islamic law's objectives by saying that *Maslahah* consists of those considerations which are harmonious with the objectives of the *Shari'ah*.⁶ Al-Ghazali defines *Maslahah* as follows;

In its essential meanings (*aslan*) it [maslaha] is an expression for seeking something useful (*manfa'a*) or removing something harmful (*madarra*). But this is not what we mean, because seeking utility and removing harm are the purposes (*maqasid*) at which the creation (*khalq*) aims and the goodness (*salah*) of creation consists in realizing their goals (*maqasid*). What we mean by *maslaha* is the preservation of the *maqsud* (objective) of the law (*shar'*) which consists of five things: preservation of religion, of life, of reason, of descendants and of property. What assures the preservation of these five principles (*usul*) is *maslaha* and whatever fails to preserve them is *mafadsa* and its removal is *maslaha*.⁷

The view of al-Ghazali that people's interests should be according to the commands of *Allah* is worth mentioning. The clash between the interests of individuals may cause difficulty in maintaining *maslahah*. Every person has its own interests which can conflict with the interests of the other person. Therefore, in order to avoid conflict of interests among the people, only *Allah's* will is important in the recognition of legal issues based on the *maslahah*.

⁵Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, 2nd ed. (Kuala Lumpur: Ilmiah Publishers, 1998).

⁶Roslina Che Soh and Nora Abdul Hak, "Application of Maslahah (interest) in Deciding the Right of Hadanah (Custody) of a Child," available at: <<http://www.aensiweb.com/jasr/jasr/2011/2182-2188.pdf>> (last accessed: 03.09.2013), 2182.

⁷Al-Ghazali, *al-Mustasfa min 'ilm al-usul*, Baghdad, 1294 (A.H), vol. 1, P.286. See also Nayee, *Islamic Jurisprudence*, ed. 3rd, 219. See also Muhammad Khelid Masud, *Islamic Legal Philosophy: A Study of Abu Ishaq al-Shatibi's Life and Thought* (Islamabad: Islamic Research Institute, 1977), 152,153.

Al-Shatibi, in his book *al-Muwafaqat*, defines *Maslahah* as; “I mean by *Maslahah* that which concerns the subsistence of human life, the completion of man’s livelihood, and the acquisition of what is emotional, and intellectual qualities require of him, in an absolute sense.”⁸ *Najm al-Din al-Tufi*, considered it a “source of law” and gave it value “superior to the revealed text in some cases except devotional matters, specific injunction and prescribed penalties.”⁹

Al-Jassas declared that the legislation of the God has a specific “divine wisdom” which is attached with a *maslahah* and accordingly the believer will get a reward or punishment in the hereafter upon obedience or non obedience as the case may be. *Ma’tazili* circles also suggested same views.¹⁰

Keeping in view all the definitions of the jurists mentioned above, *Maslahah* or interest must be related to the category of *darurat*, *hajat* and *tahsinat*. *Maslahah daruriyyah* consists of five fundamental objectives and ignorance of any of them creates chaos and disruption in the social life. The prohibition of murder and the preservation of the property are the examples of *Maslahah daruriyyah*.¹¹

Maslahah hajiyah removes hardship, provides comfort in life and placed at the level of need only. The contracts of leasing (*ijarah*) and irrigation *musaqah* come under the ambit of

⁸Al-Shatibi, *Al-Muwafaqat*, vol. II (Cairo:Mustafa Muhammad,n.d.). See also Masud, *Islamic Legal Philosophy: A Study of Abu Ishaq al-Shatibi's Life and Thought*, 225.

⁹N.D. Al Tufi, *Epistle in sources of Islamic law in the absence of Legal Text* (Kuwait: Pen house, 1978), 18. See also Laluddin et al., “An Analysis of *Maslahah*’s Development,” 192.

¹⁰Opwis, *Maslahah and the Purpose of the Law: Islamic Discourse on Legal Change from 4th/10th to 8th/14th century*, 28-29.

¹¹Muhammad bin Husayn Al-Jizani, *Ma’alim Usul al-Fiqh ‘Ind Ahl al-Sunnah wa Al-Jama’ah* (Arab Saudi: Dar Ibn al-Jawzi, 1422H), 244. See also, Nik Abdul Rahim Nik Abdul Ghani et al., “*Maslahah as a Source of Islamic Transactions (Mu’amalat)*,” *Islamiyat* 33, (2011), 59 – 66, <http://www.google.com.pk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CDEQFjAB&url=http%3A%2F%2Fejournal.ukm.my%2Fislamiyyat%2Farticle%2Fdownload%2F1829%2F1457&ei=IPmrUqnnE6O00wWn04CA&usg=AFQjCNGgFJyMhpE8uWfexHKrcXEQJDfSqQ> (last accessed: 14.12.2012).

*Maslahah hajiyah.*¹² *Maslahah tahriniyyah* facilitates worldly benefits. Specifically talking about *mu'amalat*, the prohibition of sale of faeces is among the examples of this type of *maslahah*.¹³

Maqasid of such a nature should be taken into account.¹⁴ Therefore, in order to make *maslahah* a practical method and procedure of law finding, an interpretation of *maslahah* in the light of *Allah*'s intention is required as He revealed his law.¹⁵

1.1.1.1 The Principle of *Maslahah Mursalah*

For making a new principle related to any new case or situation, the jurists take up the principle of *maslahah mursalah*. In order to discover the law and while using the techniques of legal reasoning each new principle or derived law must be confirmed against the standards and conditions imposed by the *maqasid al-shari'ah*.¹⁶

An important fact is that the *maslahah mursalah* is a type of analogy in which a jurist employs *maslahah mursalah* whenever he confronts with the problem of non existence of any

¹² Muhammad Sa'd Al-Ayubi, *Maqasid al-Shari'ah al-Islamiyyah wa Alaqtuha bi al-Adillah al-Shar'iyyah* (Riyad: Dar al-Hijrah, 1998), 318-319. See also, Ghani et al., "Maslahah as a Source of Islamic Transactions," 62.

¹³ Ghani et al., "Maslahah as a Source of Islamic Transactions," 63.

¹⁴ Amir Husin Mohd Nor et al., "Application of the Principles of *Maqasid Shari'ah* in Administration of the Islamic Countries," *Advances in Natural and Applied Sciences* 6, no.6 (2012), 847-851 <http://www.aensiweb.com/anas/2012/847-851.pdf> (last accessed: 09.06.2013), 849.

¹⁵ Opwis, *Maslahah and the Purpose of the Law*, 28-29.

¹⁶ Nayae, *Islamic jurisprudence*, ed. 3rd, 224.

rule or base (*Asl*) from which a rule can be extended through literal interpretation or strict analogy (*Qiyas*).¹⁷

Khallaf defines *maslahah mursalah* as “The benefits which the lawgiver did not impose as a rule to be implemented, and neither there is any textual indication acknowledging it nor rejecting it.”¹⁸ This definition describes the legal status of the *maslahah mursalah* according to *Khallaf*. Another jurist *Wahbah Zuhayli* considered them compatible with the “attitudes and objectives of the *Shari’ah*” with the condition if they promote benefits or repel harm.¹⁹

Allamah Yusuf al-Qaradawi by giving justification of the *maslahah mursalah* wrote that “if the *masalih* can prevail in the *ibadat* which are primarily aimed at worshipping (*Allah*), why should there not be *masalih* in the earthly matters shaped by lifestyles and relationships between individuals, families, societies and nations?”²⁰ This definition shows the importance of the *maslahah mursalah* and focuses its utilization in different aspects of the life.

¹⁷ Ibid., 270.

¹⁸ Abd al-Wahab Khallaf, *‘Ilm Usul al-Fiqh* (Cairo: Maktabah al-Da’wah al-Islamiyyah), 84. See also, Tawfique Al-Mubarak, and Noor Mohammad Osmani, Applications of Maqasid al-Shari’ah and Maslahah in Islamic Banking Practices: An analysis. Available at: <http://irep.iium.edu.my/4251/1/Applications_of_Maqasid_Shari%60ah.pdf> (last accessed: 17.08.2013), 3.

¹⁹ Wahbah Zuhayli, *Al-Wajeez fi Usul al-Fiqh* (Beirut: Dar al-Fikr al-Mu’asir), 92. See also, Al-Mubarak, et al., “Applications of Maqasid al-Shari’ah and Maslahah,” 4.

²⁰ Yusuf al-Qaradawi, *Madkhal li-dirazatil-Shari’ah al-Islamiyyah* (Beirut: Mu’assasat al-Risalah, 1993), 54. See also, Al-Mubarak et al., “Applications of Maqasid al-Shari’ah and Maslahah,” 4.

It must be noted that *Ghazali* considers that *maslahah mursalah* a form of *maslahah mu'tabarah*, i.e., *maslahah* acknowledged by the *Shari'ah*.²¹ In view of this, three conditions imposed by *Ghazali* are required to be fulfilled before making a new principle.²²

If all the conditions imposed by *al-Ghazali* are fulfilled by the new principle than the law is considered to be valid. Otherwise, it will not be able to develop into a new principle.²³ Therefore, according to one of the classifications of *maslahah*'s acceptance and rejection by the *shari'ah*; "a *maslahah* which is acknowledged by the Lawgiver at the level of genus (*jins*) is called *maslahah mursalah*."²⁴ Hence, it becomes clear that any *maslahah* which is recognized by the doctrine of the objectives of the *shari'ah* is *maslahah mursalah*.

1.1.2 The Doctrine of *Maqasid al-Shari'ah* (The Objectives of Islamic law)

In Islamic law the term '*Maqsid*' (plural: *maqasid*) is used in the meaning of purpose, objective, principle, intent, goal, or end.²⁵ Accordingly *maqasid* are the objectives/purposes

²¹ If *Maslaha* is based on textual evidence (i.e a quotation from the *Qur'an* or the *Sunnah*), it is called *Maslaha Mutabara* (accredited), and it must necessarily be taken into account. If, on the other hand, the *Maslaha* invoked is contradictory to an undisputed text (*Nass Qat'i*), it is called *Mulgha* (discredited) and cannot be taken into account. See, Mehran Kamrava, ed., *The New Voices of Islam: Rethinking Politics and Modernity-a Reader* (Berkeley and Los Angeles: University of California Press, 2006), 75, http://books.google.com.pk/books?id=SI50zP_dhEwC&pg=PA76&lpg=PA76&dq=maslaha+and+its+application&source=bl&ots=nQZjXk0_Og&sig=cOy4GUT4xf4dgIE-HQ_xUXi6ZsY&hl=en&sa=X&ei=GZgyUvqyGyj24QTP9YGYAw&ved=0CE0Q6AEwBzgU#v=onepage&q=maslaha%20and%20its%20application&f=false (last accessed: 6.09.2013).

²² Nyazee, *Islamic jurisprudence*, 270. Three conditions are; i) that the new principle does not clash with the text or attempt to alter the implications of the text, ii) that it does not clash with the existing principles and propositions of Islamic law. iii) that the new principle is not *Gharib* (strange) for the *shari'ah*. For validating a *maslahah* which is not accepted or rejected by *Shari'ah* which is *Gharib* al ghazali puts three more conditions; i) that the case should lie in the area of the *darurat* (necessities) ii) that it should be definitive (*qat'i*), that is ,we should be certain about the resulting consequences iii) and it should be general (*kulli*) that it should affect the entire muslim ummah and be a public interest. Nyazee, *Islamic jurisprudence*, 270, 271.

²³ Ibid., 224.

²⁴ Ibid., 269.

²⁵ Mohammad al-Tahir ibn Ashur, *Ibn Ashur: Treatise on Maqasid al-Shari'ah*, trans. Muhammad el-Tahir el-Mesawi (London, Washington: International Institute of Islamic Thought (IIIT), 2006), 2. See also, Jasser Auda,

behind Islamic rulings.²⁶ But terminologically it is defined by many jurists. *Ibn 'Ashur* defined *maqasid* as “the underlying meanings of *Shari'ah* rulings intended by God in all or most of the cases.”²⁷ It could rightly be inferred that *maqasid* are the wisdom behind the ruling.

Al-'Alim linked it with *maslahah* (whether worldly one or the one related to the hereafter) by achieving benefits or repulsion of harms.²⁸ *Al-Raysuni* asserts that the intended purpose of *Allah* can be achieved by *maslahah* and accordingly human welfare may be realized and improved.²⁹ All these definitions show that Islamic law is a legal system which deals with the attainment of benefit or welfare (*maslahah*) and prevention from harm (*mafsadah*).³⁰

Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach (London : International Institute of Islamic Thought (IIIT), 2008), 2. *Maqasid al-Shari'ah* are the principles that provide answers to many questions about the Islamic law. *Maqasid* include the wisdoms behind rulings, such as 'enhancing social welfare,' which is one of the wisdoms behind charity, and 'developing consciousness of God,' which is one of the wisdoms behind fasting. *Maqasid* are also good ends that the laws aim to achieve by blocking, or opening, certain means. Thus, the *Maqasid* of 'preserving people's minds and souls' explain the total and strict Islamic ban on alcohol and intoxicants. *Maqasid* are also the group of divine intents and moral concepts upon which the Islamic law is based, such as, justice, human dignity, free will, magnanimity, facilitation, and social cooperation. See Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law*, 1.

²⁶ Al-Tahir Ibn Ashur, *Maqasid al-Shariah al-Islamiyyah*, ed. el- Tahir el-Mesawi (Kuala Lumpur: al-Fajr, 1999), 183.

²⁷ Muhammad al-Tahir ibn Ashur, *Maqasid al-Shariah al-Islamiyyah* (Amman: Dar al-Nafa'is, 2001).

²⁸ Yusuf ibn Hamid Al Alim, *Al-Maqasid al-'Arrah li al-Shari'ah al-Islamiyyah* (Cairo: Dar al-Hadith, 1997).

²⁹ Ahmad Al-Raysuni, *Nazariyyat al-Maqasid 'ind al-Imam al-Shatibi* (Mansurah: Dar al-Kalimah li al-Nashr wa al-Tawzi', 1997). See also Anwar Fakri Omar et al., “The Importance of the *Maqasid Al-Shari'ah* in the Process Of Governing and Policy Making,” *Advances in Natural and Applied Sciences* 6, no.6 (2012), 823-830. <http://www.aensiweb.com/anas/2012/823-830.pdf> (last accessed: 17.08.2013).

³⁰ Habib Ahmed, “*Maqasid al-Shariah and Islamic Financial Products: A Framework for Assessment*,” *International journal of Islamic finance* 3, no. 1 (2011) 149-160. <http://dro.dur.ac.uk/9775/1/9775.pdf> (last accessed: 02.07.2013). Al-shatibi considered *Ibqa'* (Preservation) and *hifz* (Protection) the two phases of *Maqasid*. The first he say is “what affirms its elements and establishes its foundation” and the second is “what repels actual or expected disharmony.” See, Al-Shatibi, *al Muwafaqat*, vol. 2, p. 8. See also, Nyazee, *Islamic jurisprudence*, 272.

Furthermore, according to the above mentioned views of jurists *maqasid al-Shari'ah* is an alternative expression of “people's interests” (*masalih*). *Abdul-Malik al-Juwayni* also relates *al-maqasid* with public interests (*al-masalih*) and frequently used them interchangeably.³¹

In the same context *Najm al-Din al-Tufi* defined *maslahah* as, “what fulfills the purpose of the Legislator.”³² *Al Qarafi* declared the link between *maslahah* and *maqasid* a fundamental rule which states that “A purpose (*maqsid*) is not valid unless it leads to the fulfillment of some good (*maslahah*) or the avoidance of some mischief (*mafsadah*).”³³ Therefore the two important elements of a valid *maqsid* are attaining good and repelling harm.

Abu Hamid al-Ghazali in his definition protects the five objectives of *shari'ah*:

The very objective of the *Shariah* is to promote the well-being of the people, which lies in safeguarding their faith (*deen*), their lives (*nafs*), their intellect (*aql*), their posterity (*nasl*), and their wealth (*maal*). Whatever ensures the safeguarding of these five serves public interest and is desirable, and whatever hurts them is against public interest and its removal is desirable.³⁴

³¹ *Abdul-Malik al-Juwayni*, *Ghiath al-Umam fi Iltiyath al-Zulam*, ed. *Abdul-Azim al-Deeb* (Qatar: Wazarah al-Shu'un al-Diniyyah, 1400 AH), 253. See also, *Abu Bakr al-Maliki ibn al-'Arabi*, *Al-Mabsul fi Usul al-Fiqh*, ed. *Hussain Ali Alyadri* and *Saeed Foda*, 1st ed. (Amman: Dar al-Bayariq, 1999), vol. 5, p.222. *Al-Amidi*, *al-Ibkam*, vol. 4, p.286. See also *Auda*, *Maqasid al-Shariah as Philosophy of Islamic Law*, 2.

³² *Najm al-Din al-Tufi*, *Al- Ta'yin fi Sharh al-Arba'in* (Beirut: al-Rayyan, 1419 AH), 239. See also, *Auda*, *Maqasid al-Shariah as Philosophy of Islamic Law*, 2.

³³ *Shihab al-Din al-Qarafi*, *Al-Dhakhira* (Beirut: Dar al-'Arab, 1994), vol. 5, P.478. See also *Jasser Auda*, *Maqasid al-Shariah as Philosophy of Islamic Law*, 2.

³⁴ *Abu Hamid al-Ghazali*, *Al-Mustasfa min 'ilm al-usul* (Cairo: al-Maktabah al Tijarriyah, 1973), 1:139-40; See also *Abu Ishaq Ibrahim b. Musa al-Shatibi*, *Al-Mawfaqat fi usul al-Shariah*, ed. 'Abd Allah Darraz, 4 vols. (Beirut: Dar al-Ma'rifah, 1975, 2nd ed.), 1:38 and 3:46-47) See also, *Asyraf Wajdi Dusuki*, *Assoc. and Said Bouheraoua*, “The Framework of Maqasid al-Shariah (Objectives of the Shari'a) and Its Implications for Islamic Finance,” ISRA Research Paper (NO. 22/2011), available online at: <https://www.google.com.pk/url?url=https://www.bibd.com.bn/pdf/articles/research_paper22.pdf&rct=j&frm=1&q=&esrc=s&sa=U&ved=0CBIQFjAAahUKEwjNsZ6koZTJAhUFGpQKHfTzDqs&usg=AFQjCNExmgsNEJNbVPO28wuqRyD4BuZvw> (last accessed: 14.3.2014), 3. See also, *Auda*, *Maqasid al-Shariah as Philosophy of Islamic Law*, 18.

Considering the definition of *al-Ghazali*, the peace and welfare of the society are the objectives behind securing and establishing these five interests given by the *shari'ah*. Accordingly, any legislation based on the public interest must constitute elements which provide *maslahah* or remove *mafsadah* from the society.

Here *Imam Al-Ghazali* categorized the objectives into two primary categories; the *dini* and the *dunyawi* (related to this material world).³⁵ The *dunyawi* purposes are further divided into four types, which are all individually meant to serve the single *dini* purpose. The four *dunyawi* purposes are; the protection of *nafs* (life), *nasl* (lineage), *aql* (intellect), and *maal* (wealth). These five purposes come under the ambit of *Darurat* (necessities) and considered to be the primary purposes of the law. *Daruriaat* are followed by *hajaat* (needs) and *hajaat* are followed by the third category *tahsinaat* (complementary values).³⁶

Although, *al-Ghazali* listed 'necessities' like the way his teacher *Al-Juwayni* had suggested,³⁷ but his worth mentioning work is the creation and development of the term 'preservation' (*al-hifz*) of these necessities. He also gave a fundamental rule related to the priorities within *maqasid*. Additionally, he suggested that *maqsid* should be arranged according to its level of necessity. In other words, it means that in case of conflict the higher-order necessity should be given priority over a lower-order necessity.³⁸

³⁵ Masud, *Islamic Legal Philosophy*, 221-223.

³⁶ Mohammad Hashim kamali, "Maqasid al-Shariah, <<http://www.jstor.org/stable/20837037>> (Last accessed: 24.07.2013).

³⁷ Al Ghazali, *Al-mustasfa*, 258. See also Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach*, 18.

³⁸ Ibid., 265.

Abu al-Ma'alia al Juwayni added “necessities (*darurat*), public needs (*al-hajah al-'amah*), moral behavior (*al-makrumat*), recommendations (*al-mandubat*), and what cannot be attributed to a specific reason” in the five levels of *maqasid*. He recommended “the protection (*al-ismah*) for people's 'faith, souls, minds, private parts, and money” in the “purpose oriented approach” of Islamic law.³⁹

While assessing the definition of *Abu Ishaq al-Shatibi* it may be noted that he also employed “more or less,” the terminologies of *al-Juwayni* and *al-Ghazali*.⁴⁰ *Shams al-din ibn al-qayyim* focused on the “wisdom and people's welfare” and suggested justice and mercy. Hence, his findings depict that “any ruling that replaces justice with injustice, mercy with its opposite, common good with mischief, or wisdom with nonsense, is a ruling that does not belong to the *shari'ah*, even if it is claimed to be so according to some interpretation.”⁴¹ *Shams al-din ibn al-qayyim* expressly declared that any legislation which does not encourage any benefit (*maslahah*) cannot be a part of *shari'ah*.

³⁹ Al Juwayni, Al Burhan, 4th ed, vol.II, p.521, 22, 747. See also Auda, *Maqasid al-Shariah as Philosophy of Islamic Law*, 11, 17.

⁴⁰ Auda, *Maqasid al-Shariah as Philosophy of Islamic Law*, 20. In Shatibi's view, the purposes of law are of two types: those that relate to the intention of the Law giver, and those that relate to the intention of the subject. He expounded doctrine of *Maqasid al-Shari'ah* and stated that the end of law is only one and that is *Maslaha* or the welfare of human beings and clarified that God instituted the *Shariah* for the *Masalih* (benefits, good) of the people, both immediate and future. His doctrine considers *Maslaha* as an essential element of the ends of law. See, *al-Muwafaqat*, vol. II (cairo: Mustafa Muhammed.n.d). See also Masud, *Islamic Legal Philosophy*, 221-223.

⁴¹ Shams al-din ibn al-qayyim, *I'lam al-Muwqqi'in*, ed. Taha Abdul Rauf Saad (Beirut: Dar al-Jil, 1973), vol. I, P. 333. See also Auda, *Maqasid al-Shariah as Philosophy of Islamic Law*, 20.

Shihab al-din al-Qarafi's description of *maqasid* is different from all other jurists. He based his theory of *maqasid* on the "differentiation between different actions taken by the Prophet (PBUH) based on his intents."⁴² in his book *Al-Furuq* (The Differences) he wrote that;

There is a difference between the Prophet's actions in the capacity of a conveyer of the divine message, a judge, and a leader ... The implication in the law is that what he says or does as a conveyer goes as a general and permanent ruling ... [However,] decisions related to the military, public trust, ... appointing judges and governors, distributing spoils of war, and signing treaties ... are specific to leaders.⁴³

Al-Qarafi's definition gave a new approach to the theory of *maqasid* which is also worth considering. He expanded the theory of *maqasid* by using the phenomenon of promoting the means for achieving good ends and blocking the means which lead to the illegality or prohibition.⁴⁴ *Ibn 'Ashur* also followed *Al-Qarafi's* theory and gave a broader angle to his definition of *maqasid*.⁴⁵ *Ibn 'Ashur* defines *Maqasid* from a broader angle;

The overall objective (*maqsad 'amm*) of Islamic legislation is to preserve the social order of the community and insure its healthy progress by promoting the well-being and virtue (*salah*) of the human being. The *salah* of human beings consists of the soundness of their intellects and the righteousness of their deeds, as well as the goodness of the things of the world in which they live that are put at their disposal.⁴⁶

⁴² Shihab al Din al-Qarafi, *Al-Furuq*. (Ma'a Hawamishihi), ed. Khalil Mansour (Beirut: Dar al-Kutub al-'Ilmiyyah, 1998), vol. I, P.357. See also Auda. *Maqasid al-Shariah as Philosophy of Islamic Law*. 19.

⁴³ Ibid.

⁴⁴ *Al-Qarafi, al-Dhakhira*, vol. I, P.153. *Al-Qarafi, al-Furuq* (Ma'a Hawamishihi), vol. 2, p.60. See also Auda, *Maqasid al-Shariah as Philosophy of Islamic Law*, 19.

⁴⁵ Ibn Ashur, *Maqasid al-Shariah al-Islamiyyah*, 100. See also Auda. *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach*. 19.

⁴⁶ Muhammad Tahir Ibn 'Ashur, *Ibr. Ashur: Treatise on Maqsid al-Shariah*, trans. and annotated by Muhammad al-Tahir al-Misawi. (London and Washington: International Institute of Islamic Thought, 2006), 87.

After detailed study of jurists' views it becomes clear that there is no doubt in the credibility and legal status of the *Maqasid*. They are on the status of "definitive (*Qat'i*)" and have been determined from the texts.⁴⁷ The establishment and preservation of the necessities of *maqasid* must be the "objective behind any revealed law."⁴⁸ But purpose which does not provide any good and repel from harm is not valid.⁴⁹ So it can be deduced that any ruling or legislation which is not based on the *maslahah* of the people needs to be reformed.

Moreover, *Mohammad Abdu* and *Al-Tahir ibn Ashur* considered the *maslahah* and *maqasid* important "components of their fundamental reform in the Islamic law."⁵⁰ *Ibn Ashur* suggested that *Maqasid* are "the only shared reference that deals effectively with the dilemmas of change of circumstances and differences of opinion."⁵¹ In this context, it may be said that the scope of the *maqasid* has expanded to the level in which every global issue or social problem may be addressed and solved. This expansion in the scope leads the objectives of Islamic law "from 'wisdoms behind the rulings' to practical plans for reform and renewal."⁵²

⁴⁷ Al-Shatibi, *al-muwafaqat*, vol 2, 7. See also, Nyazee, *Islamic jurisprudence*, 226.

⁴⁸ Al-Shatibi, *al-Muwafaqat*, vol. 3, P.5. See also, Auda, *Maqasid al-Shariah as Philosophy of Islamic Law*, 3.

⁴⁹ Shihab al-din al-qarafi, *al-Dhakhireh* (Beirut: Dar al-'Arab, 1994), vol. 5, p.478. Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law*, 2.

⁵⁰ Mesawi, M.al-Tahir, "Al-Shaykh ibn Ashur wa al-Mashru' Alladhi Lam Yaktamil" in *Maqasid al-Shari'ah al-Islamiyyah* (Kuala Lumpur: al-Fajr, 1999), P-72. See also Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law*, 176.

⁵¹ Ibn Ashur, *Maqasid al-Shari'ah*, 115. See also Auda, *Maqasid al-Shariah as Philosophy of Islamic Law*, 176, 177.

⁵² Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach*, 5.

1.2 THE IMPORTANCE AND APPLICATION OF *MAQASID AL-SHARI'AH* AND *MASLAHAH*

The previous description reflects the true picture of the doctrine of *maqasid* and *maslahah* that both are extremely important in the area of *siyasah shar'iyah* (Islamic public policy), process of *ijtihad* (legal reasoning/derivation of rulings) and determination of law.⁵³

In short, by adopting the rules of *maqasid* political and administrative affairs can be managed successfully.⁵⁴ All sorts of new *fatawa* are justified by this idea nowadays even in the cases which are contradictory to the obvious proof from the *Qur'an* and the *Sunnah*.⁵⁵

So it is essential to take into the consideration the doctrine of *maqasid* in the process of law making and administration. Attention is also required in determining the priorities within the *maqasid*. With the aim to check the accuracy of a public policy, the understanding of *maqasid* is vital. Thus, the best interest of the community can be attained.⁵⁶

1.3 THE PROTECTION OF WEALTH OR *HIFZ AL-MAL* IN ISLAMIC LAW

Although, *Al-Ghazālī* and *Al-Shātibi* placed the protection of wealth at the end in the list of *maqasid* but this does not portray its least importance. Indeed, without the protection of wealth

⁵³Omar et al., "The Importance of the Maqasid Al-Shariah in the process of Governing and Policy Making," 823.

⁵⁴Ibid.

⁵⁵For example in the case of rules concerning interest (Riba) and inheritance. See, Kamrava, ed., *The New Voices of Islam*, 73.

⁵⁶Omar et al., "The Importance of the Macasid Al-Shariah," 824, 825.

other four *maqasid* cannot be achieved in a manner which is required to ensure the general level of well-being.⁵⁷

Undeniably wealth is a trust from *Allah*, therefore, its use and acquisition must be primarily for the function of realizing the *maqasid*. Faith and wealth are extremely important for the well-being of the society. It is the faith which gives a meaning to the earning and spending and make it a source which is vital for enabling an individual to fulfill its duties towards *Allah*, himself, and to his fellow beings. In such a way religion plays an imperative role in preventing the unequal distribution of wealth and imbalances.⁵⁸

That's why the Islamic law protects wealth by several means. It develops a sense of responsibility in its followers to earn their livelihood in a legal way. Thus, the objective of protection of wealth must be construed broadly.⁵⁹

The specification of Islamic system is that the priorities of the economic system are determined by the *maqasid*. The Islamic economic system always tries to ensure that there is no one dispossessed or hungry within the community. Islamic law has its own specification and Muslim community is distinct from other communities having its own ideals represented by the *maqasid al-Shari'ah*, therefore, Islamic economics as a discipline should be identified in the light of *maqasid*. Hence, uniform norms can also be attained and followed by the political, legal

⁵⁷M. Umer Chapra, "The Islamic Vision of Development in the Light of Maqāsid Al-Shari'ah," available online at: http://www.irti.org/irj/go/km/docs/documents/IDBDevelopments/Internet/English/IRTI/CM/downloads/Distance_Learning_Files/The%20Islamic%20Vision%20of%20Development%207.pdf (last accessed: 17.09.2013).

⁵⁸Ibid.

⁵⁹Hisham M. Ramadan, "Toward Honest and Principled Islamic Law Scholarship," *Michigan State Law Review*, (2005), 1594-1595.

and economic subsystem.⁶⁰ It can easily be inferred that all behaviors that threaten the Islamic law's values and moral standards are condemned by Islamic law and corruption is one of such behaviors.⁶¹

1.4 THE ISLAMIC LAW PERSPECTIVE ON CORRUPTION

It is pertinent to mention that in Islamic law, economic & financial crime is not a commonly used expression. Here it doesn't mean that Islamic law ignores crucial offenses which may affect the financial system and social interests badly.⁶² It criticizes and condemns corruption in all its forms and declares it harmful and immoral in both this life and hereafter.⁶³

One of the goals of the Prophet (Peace be upon Him) has been to eliminate all forms of discrimination.⁶⁴ The Holy *Qur'an* declares corruption an evil doing; "And do no evil nor mischief on the (face of the) earth"⁶⁵ and *Allah* hates corrupt people; "But God loveth not

⁶⁰ Nyazee, *Theories of Islamic law: The Methodology of Ijtihad*, 263.

⁶¹ Mamoun Abuarqub, "Islamic Imperatives to Curb Corruption and Promote Sustainable Development," available online at: <<http://www.islamicrelief.com/Indepth/downloads/Islamic%20imperatives%20to%20curb%20corruption%20and%20promote%20sustainable%20development.pdf>> (last accessed: 26.09.2012), 5-7.

⁶² Yusuf Ibrahim Arowosaiye and Ahmad Ibrahim, "Economic and Financial Crimes and ICT Infrastructure: The Islamic Criminal Law Perspective," Online available at: <<http://www.unilorin.edu.ng/publications/arowosayei/ECONOMIC%20AND%20FINANCIAL%20CRIMES%20AND%20ICT.pdf>> (last accessed: 26.09.2013).

⁶³ Yousif Khalifa al Yousif, "Corruption and Development: An Islamic view," available online at: <<http://www.darussalam.ae/magazine/14.pdf>> (last accessed: 31.05.2013).

⁶⁴ Asad Raza, "Corruption: the Source of Inequality and Exploitation," available online at: <<http://www.islamicinsights.com/religion/religion/corruption-the-source-of-inequality-and-exploitation.html>> (last accessed: 27.10.2013).

⁶⁵ Qur'an 2:60.

mischief”⁶⁶ In the light of this verse the detailed description and interpretation of the word “corruption” used by the *Qur'an* is necessary.

1.4.1 Definition of Corruption under the interpretation of Qur'anic term “*Fasad*”

Unfortunately, it is difficult to agree on a precise definition⁶⁷ as corruption has different dimensions, i.e., economic, social and environmental as well as ethical, therefore, the definition of corruption depends on the context in which it is being used.⁶⁸

Particularly discussing the sources of Islamic law, the *Qur'an* addresses this issue by using the term “*fasad*”⁶⁹ while the words *rashwah*, or *rishwa* are used for bribery, corruption and dishonesty.⁷⁰ The Arabic word ‘*fasad*’ can be translated into rottenness, corruption, decay, and decomposition.⁷¹ In English translations of the *Qur'an*, *Pickthal* frequently uses the word

⁶⁶ Qur'an 2:206. Same as, the Messenger of *Allah* (Peace Be upon Him) said, "Some people spend *Allah's* wealth (i.e., the Muslims' wealth) in an unjust manner; such people will be put in the Hell on the Day of Judgment."⁶⁶ Reported by Al-Bukhari. See also, Imam Shamsu ed-Deen Dhahabi, "Major sins," Available online at: <<http://www.islamguiden.com/arkiv/majorsins.pdf>> (Last accessed: 28.09.2013).

⁶⁷ Arvind k. Jain, “Corruption: a Review”, available online at: <[http://darp.lse.ac.uk/PapersDB/Jain_\(JES01\).pdf](http://darp.lse.ac.uk/PapersDB/Jain_(JES01).pdf)> (last accessed: 26.10.2013).

⁶⁸ Mamoun Abuarqub, “Islamic Imperatives to Curb Corruption,” 3.

⁶⁹ Syed Abul A'la maududi, *Al jihad fil islam* (Hyderabad: Idarah tarjumanil Quran, 1974), 64. See others, Abdulmajeed Hassan Bello, “Corruption and Democratic Governance in Nigeria: An Islamic Perspective on Solution”, *International Journal of Advanced Research in Management and Social Sciences* 2, 1(2013), 302-320 <http://garph.co.uk/IJARMSS/Jan2013/22.pdf> (last accessed: 26.10.2013). See also, Abuarqub, *Islamic Imperatives to Curb Corruption and Promote Sustainable Development*, 5.

⁷⁰ Abdulmajeed Hassan Bello, “Corruption and Democratic Governance in Nigeria: An Islamic Perspective on Solution,” 306.

⁷¹ J. M. Cowan, ed., *The Hans Wehr Dictionary of Modern Written Arabic*, 3d ed. (New York: Spoken Language Services, Inc., 1976) quoted in Zafar Iqbal and Mervyn K. Lewis, “Governance and Corruption: Can Islamic Societies and the West Learn from Each Other?” *The American Journal of Islamic Social Sciences* 19, No.2, 1-33, http://www.google.com.pk/url?url=http://i-epistemology.net/v1/attachments/687_Ajiss19-2%2520-%2520Iqbal%2520and%2520Lewis%2520-%2520Governance%2520and%2520Corruption.pdf&rct=j&frm=1&q=&esrc=s&sa=U&ved=0CCAQFjADahUKEwjQgbmX0YLJAhWj6KYKHSfeBdM&usg=AFQjCNHxqZQPPzq7HmMRdO5qM_vZDox3Cw (last accessed: 10.10.2012).

corruption in lieu of *fasad* and its derivatives⁷² while *Abdullah Yusuf Ali* frequently uses *mischief*.⁷³

According to the literal meaning every action which is against the *adl* (Justice) and *salah* (Righteousness of the Faith) is *fasad*.⁷⁴ Therefore *Qur'an* expresses the term "fasad" which comprises of all human behaviors that disrupt and harm individuals' life, morality, social harmony, political life and social manner of living.⁷⁵ This is illustrated in Chapter 30, Verse 41, "There has arisen a tumult (*fasad*) in land and in sea because of what people do".⁷⁶ This means that corrupt behaviors of the people badly affect the society or it can be said that the peace of any society depends on the behaviors of its people.

In accordance with the *Qur'an* and *Sunnah*, corruption refers to a "broad range of behavioral digressions that threaten the social, economic and ecological balance."⁷⁷ Hence, it is proved through various verses that corruption involves different acts and omissions which put various rights of the people and the state in danger.

However, the concept of corruption in the *Qur'an* is broader than the ordinary concept which is the "misuse of entrusted power".⁷⁸ One of the famous Islamic law scholars *Maulana Maududi* has mentioned eleven categories of crimes discussed by *Qur'an* which come under the

⁷² *The Meaning of the Glorious Qur'an*, trans. Mohammed Marmaduke Pickthall (New Delhi: Idara Isha'at-e-Diniyat Pvt. Ltd, 1994), quoted in Zafar Iqbal et al., "Governance and Corruption," 8.

⁷³ *The Holy Qur'an: English Translation of the Meanings and Commentary*, trans. Abdullah Yusuf Ali, ed. The Presidency of Islamic Researches, Ifta, Call and Guidance (Madinah: King Fahd Holy Qur'an Printing Complex) quoted in Zafar Iqbal, "Governance and Corruption," 8.

⁷⁴ Maududi, *Al jihad fil islam*, 64.

⁷⁵ Ibid.

⁷⁶ *Qur'an*, 30:41.

⁷⁷ *Qur'an*, 11:85; 28:4, 77, 83; 29:28-30; 30:41; 89:12.

⁷⁸ Abuarqub, "Islamic Imperatives to Curb Corruption," 5.

ambit of *fasad*.⁷⁹ *Qur'an* considers racial discrimination, killing of poor and showing dissension, following the path of oppressors and tyrants, act of extravagance, obstructing roads and committing evil, use of fraudulent weights and measures, theft, robbing and plundering a place, act of breaking *Allah's* covenant after ratifying, Hypocrisy and destruction and using of governmental powers and authority for spreading tyranny and oppression, threatening, and hindering from the path of *Allah*, Running towards sins and transgression and eating what is forbidden and practicing evil doing, as corruption.⁸⁰

⁷⁹Maududi, *Al jihad fil Islam*, 65.

⁸⁰At one place *Qur'an* discussed Racial discrimination, killing of poor and showing dissension as corrupt behavior : "Now Pharaoh had exalted himself in the land and had divided its inhabitants into sects, abasing one party of them, slaughtering their sons, and sparing their women; for he was of the workers of corruption." (Qur'an, 28:4). In another context Qur'an tells that following the path of oppressors and tyrants come under the ambit of corruption: "such were the 'Aad People: they rejected the Signs of their Lord and Cherisher; disobeyed His messengers; and followed the command of every powerful, obstinate transgressor." (Qur'an, 11:59). At another place Qur'an depicts an act of extravagance as corruption that true believers should not emulate: "But fear God and obey me; and follow not the bidding of those who are extravagant- Who make mischief in the land, and mend not their ways" (Qur'an, 26:151-152). Obstructing roads and committing evil is also cooption according to *Qur'an*: "And [mention] Lot, when he said to his people, "Indeed, you commit such immorality as no one has preceded you with from among the worlds. Indeed, you approach men and obstruct the road and commit in your meetings [every] evil." (Qur'an, 29:28-29). However in another perspective a person is corrupt who does not give full measure and full weight in his transaction: "And to (the people of) Madyan (Midian), (We sent) their brother Shu'aib. He said: "O my people! Worship Allah! You have no other Allah (God) but HIm. [La ilaha ill-Allah (none has the right to be worshipped but Allah)]." Verily, a clear proof (sign) from your Lord has come unto you; so give full measure and full weight and wrong not men in their things, and do not mischief on the earth after it has been set in order, that will be better for you, if you are believers. (Qura'an, 7: 85)"And sit not on every road, threatening, and hindering from the Path of Allah those who believe in Him. and seeking to make it crooked. And remember when you were but few, and He multiplied you. And see what was the end of the Mufsidun (mischief-makers, corrupts, liars)." (Qura'an, 7: 86). Theft is also corruption: "The brothers) said: "By Allah! Well ye know that we came not to make mischief in the land, and we are no thieves!" (Qur'an, 12:73). Robbing, plundering and destruction of a place are a corrupt behaviour; she said: "Verily! Kings, when they enter a town (country), they despoil it, and make the most honorable amongst its people low. And thus they do." Yet in another context, it is looked at as breaking God's covenant after it is ratified thus leading to loss: "And those who break the covenant of Allah after ratifying it, and sever that which Allah hath commanded should be joined, and make mischief in the earth: theirs is the curse and theirs the ill abode." (Qur'an, 13:25) In another place the Holy Qur'an compares corruption with hypocrisy and destruction: "when he turns his back, His aim everywhere is to spread mischief through the earth and destroy crops and cattle. But Allah loveth not mischief." (Qur'an, 2:205). Threatening, and hindering from the Path of Allah is a situation which is also corruption: "those who disbelieve and bar others from the Path of Allah, We shall add punishment upon their punishment because they were corrupting." (16:83).Running towards sins and transgression and eating what is forbidden and practicing evil doing, are also illustrated by Quran as corruption. "And you will see many of them run towards sin and transgression and eating what is forbidden. Undoubtedly they are practicing evil things. (Qur'an, 5: 62) The Jews have said, the hand of Allah is tied up, their own hands he tied up and there be curse of Allah on them for their uttering, but His hands are wide open. He gives how He pleases, And O beloved Prophet! Whathas been sent down to you from your Lord will increase many of them in wickedness and infidelity. And Wehave cast among

In this aspect Almighty Allah says:

But seek, with that (wealth) which Allah has bestowed on you, the home of the Hereafter, and forget not your portion of legal enjoyment in this world, and do good as Allah has been good to you, and seek not corruption on Earth (mischief in the land). Verily, Allah likes not the *Mufsidun* (those who commit great crimes and sins, oppressors, tyrants, mischief-makers, corrupts).⁸¹

It is expressly mentioned in this verse that *Allah* prohibits from corruption and dislike corrupts.

1.4.2. The Prohibition of Corruption in Islamic Law

After considering various Islamic law sources such as the *Qur'an*, *Sunnah*, and *Ijm'a*, the majority of Muslim scholars are of the view that corruption in all its shapes, i.e., bribery, nepotism, favoritism, fraud, embezzlement and misappropriation is forbidden, illegal and banned.⁸²

1.4.2.1 Bribery

In Islamic law the word bribe possesses a particular offensive position among all kinds of unlawful gains.⁸³ The Bribery is a motivation that is illegally given to someone in a position of authority to influence his sense of justice, due process and discretion. Accordingly, the Islamic

them enmity and hatred till the Day of Judgement. Whenever they kindle the fire of war, Allah extinguishes it and run about in the land for mischief. And Allah loves not the mischief mongers. (5: 64)." See, Maududi, *Al jihad fil Islam*, 65-70.

⁸¹Qur'an, 28:77.

⁸²A. 'Arafa, Mohamed. "Corruption and Bribery in Islamic law," *Annual survey of int'l & comp. law* [vol. xviii], 171-242, <<http://www.earla.org/userfiles/Corruption%20and%20Bribery%20in%20Islamic%20Law.pdf>> (last accessed on: 15.5.2013), 202.

⁸³Franz Rosenthal, "Gifts and Bribes: The Muslim View," *JSTOR* 108, No. 2 (1964), 135-144 <http://lhrgateway.nu.edu.pk/articles/985891.pdf> (last accessed: 28.12.2013).

law prohibits bribery as a form of economic crime.⁸⁴ Every major school of thought includes rules against bribery.⁸⁵ The *Qur'an* proclaims that "Allah loveth not corrupters,"⁸⁶ In this way, the *Qur'an* conveys the prohibition of corruption, including bribery, in order to enhance the prosperity of the people which is an important element of the objectives of Islamic law.

The Prophet (Peace Be Upon Him) was reported to have said, "Allah has cursed one giving bribe and one receiving bribe as well as the go between."⁸⁷ This *Hadith* represents the legal status of the prohibition of bribery and announces a most severe punishment on the Day of Judgment. In this aspect, a case law happened during the time of the Prophet (Peace Be Upon Him) must also be considered;

Abu Humaid al-Sa'idi said:

The Messenger of Allah (PBUH) appointed a man from the *Azd* tribe called Ibn Al-Utbayya, in charge of *Sadaqat* to be received from *Banu Sulaim*. When he came back, the Messenger of Allah (PBUH) asked him to render his account. He said: This wealth is for you (i.e. for the public treasury) and this is a gift presented to me. The Messenger of Allah (PBUH) said: You should have remained in the house of your father and your mother, until your gift came to you if you spoke the truth; then he addressed us. He praised God and extolled Him, and afterwards said: I appoint a man from you to a

⁸⁴Yusuf Ibrahim Arowosaiye and Ahmad Ibrahim, "Economic And Financial Crimes And Ict Infrastructure: The Islamic Criminal Law Perspective," 3rd International Conference on Postgraduate Education (ICPE-3 '08, Penang-Malaysia, 2008) available at:<<https://www.google.com.pk/url?url=https://www.unilorin.edu.ng/publications/arowosayeyi/ECONOMIC%2520AND%2520FINANCIAL%2520CRIMES%2520AND%2520ICT.pdf&rct=j&frm=1&q=&esrc=s&sa=U&ved=0CBIQFjAAhUKEwj2rs-c0oLJAhWh56YKHRvtAGM&usg=AFQjCNGirUIOpDMeQF7aZbyWvi0OO4pzAA>> (last accessed: 14.09.2014)

⁸⁵Philip M. Nichols, "The Business Case for Complying with Bribery Laws," *American Business Law Journal* 49: 2(2012), 325-368. <https://lgst.wharton.upenn.edu/lgst/assets/File/ablj1134.pdf> (last accessed: 26.09.2013).

⁸⁶*Qur'an* 28:77.

⁸⁷Sunan Abu Dawud, Hadith No. 1595. See also, Iqbal et al., *Governance and Corruption*.9. Professor Yusuf Al-Qardawi discusses the same *hadith* through Musnad Ahmad, Al-Tirimidhi, and Ibn Hibban adding the word "fi Al-hukum", which means matters of governance, decision making, and rules. He brings another *hadith* through Musnad Al-Hakim that adds condemnation of the mediator between the briber and the bribee.

responsible post sharing with the authority that God has entrusted to me, and he comes to me saying: This wealth is for you (i.e. for the public treasury) and this is a gift presented to me. Why did he not remain in the house of his father and his mother and his gift came to him, if he was truthful? By God, any one of you will not take anything from the public funds without any justification, but will meet his Lord carrying it on himself on the Day of Judgment. I will recognize any one of you meeting Allah and carrying a growling camel, or a cow bellowing or a goat bleating. Then he raised his hands so high that whiteness of his armpits could be seen. Then he said: O my Lord, I have conveyed Thy Commandments.⁸⁸

Through this case law, it may easily be evaluated that the Prophet (Peace Be Upon Him) gave a very strong message against bribery and embezzlement by condemning the act of Ibn al-Utbiyya.

1.4.2.2 Money Laundering

It is important to mention here that the techniques of crimes at the time of the Prophet (Peace be upon Him) were not as complex and widespread as today. Money laundering is the result of improvement in technology and exact definition and other independent judicial sources regarding money laundering cannot be found. However, Islamic law claims itself a complete guidance for people of all the time periods, therefore, after considering and analyzing different Islamic law sources the jurists have derived evidences against money laundering also.⁸⁹ It is against the objectives of Islamic law and a cause of exploitation.

⁸⁸Sahih Muslim, Knowledge, No. 4511, Vol. I, bk. 20; The Book on Government: Kitab Al-Imara, at Chapter 7. *See also* Sahih Al-Bukhari, The Book on Judgments: Kitab Al-Ahkaam / Chapter 8: State Officers Gifts, Vol. 9, bk. 89. *See also* A. 'Arafa, "Corruption and Bribery in Islamic law," 204, 205.

⁸⁹Adel Sarikhani, Nur Allah Soltani and Seyyed Mohammad Musavi, "Money laundering in the Criminal Policy of Islam," *International Research Journal of Applied and Basic Sciences* 3, No. 6(2012), 1251-1257. http://www.irjabs.com/files_site/paperlist/r_444_121110151758.pdf (last accessed: 23.2.2014).

As Allah (SWT) says in *al-Qur'an*: "And do not eat up your property among yourselves unjustly and do not use it as bribe for the judges, with intent that you may eat up wrongfully and knowingly (even) a little of other people's property."⁹⁰ Basically, the involvement of any person in any economic activity which enhances *mafsadah* and undermines the *maslahah* is forbidden according to the objectives of Islamic law.

Hence, the above mentioned verse may apply to money laundering because the general rule is that "not to take or use someone's property wrongfully." In money laundering money is derived from stealing, fraud, cheating, and smuggling, therefore the objectives of Islamic law reject money laundering which is the proceed of all illegal activities.⁹¹

1.4.2.3 Fraud

The objectives of Islamic law prohibit gaining of property through cheating, fraud, theft, deceit and falsehood and stresses on the importance of honesty and the use of legal earning.⁹² Fraud is based on injustice and condemned by the objectives of Islamic law under the notion of *Hifz al-mal*.

Chapter 83 in the *Qur'an* contains following verses related to fraud "Woe to those who deal with fraud. Those who, when they have to receive by measure from men, exact full measure.

⁹⁰ Qur'an 2:188. Another verse that could be indicative the prohibition of money laundering is "O you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent. And do not kill yourselves [or one another]. Indeed, Allah is to you ever Merciful." Qur'an 4:29.

⁹¹ Zulkifli Hasan, "Roles of the Islamic Financial Institution in Combating Money Laundering: Legal and Shariah Perspectives," available online at :<<http://www.kantakji.com/media/9416/role-of-the-islamic-financial-institution-in-combating-money-laundering-legal-and-shariah-perspectives1.pdf>> (last accessed: 23.2.2014).

⁹²Baker Ahmad Alserhan, "The Principles of Islamic Marketing," available online at: <<http://www.gowerpublishing.com/pdf/SamplePages/The-Principles-of-Islamic-Marketing-CH1.pdf>> (last accessed: 23.02.2014).

But when they have to give by measure or weight to men, give less than due.”⁹³ This verse expressly declares the fraudulent acts forbidden and illegal.

The objectives of Islamic law discuss business ethics in detail and concentrate on lawful business transactions. Unlawful ways of earning which spread injustice in the society are strictly forbidden.⁹⁴

1.4.2.4 Misappropriation (Embezzlement and Theft)

Rudolph Peters linked misappropriation with extortion (*ghasb*), theft (*seriqah*) and embezzlement (*ihtila's*).⁹⁵ In other words, it is a combination of injustice, disregard of an obligatory act and illegally using someone's property. According to the objectives of the Islamic law misappropriation is highly censuring therefore it must be exterminated.⁹⁶

The prohibition of misappropriation is clearly shown by this verse of the *Qur'an* “O ye that believe! Betray not the trust of *Allah* and the Messenger, nor misappropriate knowingly things entrusted to you.”⁹⁷ This verse gives a broader meaning to the misappropriation of wealth which is the breach of trust with *Allah*, with the Holy Prophet (Peace be upon Him) and with people.

⁹³Qur'an 83:1-3. The Holy Prophet *Muhammad* (Peace be upon him) said “The honest merchant or business man on the day of resurrection will be rewarded with prophets, pious, virtuous and martyr people”. Tirmidhi, 1130.

⁹⁴Muhammad Hashim, “Islamic Perception of Business Ethics and the Impact of Secular Thoughts on Islamic Business Ethics,” *International Journal of Academic Research in Business and Social Sciences* 2, No.3 (2012) 98-120. <http://www.hrmars.com/admin/pics/656.pdf> (last accessed: 23.2.2014).

⁹⁵Rudolph Peters, “For his correction and as a deterrent example for others,” Mehmed Ali's first Criminal Legislation (1829-1830), *Islamic law and society* 6, 2 (1999) 164-192. <http://ruudpeters.nl/articles/for%20his%20correction.pdf> (last accessed: 17.3.2014).

⁹⁶“Defalcation or misappropriation of Property” available online at: <<http://www.erfan.ir/52876.html>> (last accessed: 17.03.2014).

⁹⁷Qur'an, 8: 27.

A *hadith* narrated by *Hazrat Adi ibn Amirah al-Kindi* (RA.) reveals Islamic law's approach of tackling corruption; the Prophet *Muhammad* (Peace Be Upon Him) said: "Whoso from you is appointed by us to a position of authority and he conceals from us a needle or something smaller than that, it would be misappropriation (of public funds) and [he] will (have to) produce it on the Day of Judgment."⁹⁸ This verse unveils that the acquisition of property through theft or embezzlement is vehemently forbidden in Islamic law.

According to the classical Islamic law and the definition written by *Hamid khan* theft includes "the surreptitious (or by means of stealth) taking away of movable property of a certain minimum value wholly owned or entrusted to someone other than the offender from a locked or guarded place."⁹⁹ This definition represents that something taken from public or open places, partially owned items or embezzlement does not come under the ambit of *hadd*-based offense of theft.

Overall, Islamic law defines embezzlement as "an overt and unlawful acquisition of something in the presence of the owner."¹⁰⁰ This definition lacks the description of property whether it is public or private property. But, in both cases the objectives of Islamic law condemn the unlawful gain which causes *mafsadah*.

⁹⁸Sahih Muslim no. 847

⁹⁹Hamid khan, "Practitioner's guide: Islamic Law," available online at: <http://inprol.org/sites/default/files/publications/2013/islamic_law_guide-july_2013_final_0.pdf> (last accessed: 20.05.2014).

¹⁰⁰Al-Sarkhasi, *Al-mabsot* (Beirut: Dar Al-Maa'refa, 1978). See also Ibn Qudama, A. (1984). *Al-mughni ala mokhtasar Al-kherki [The sufficient: on Al-kharki's outline]*. Beirut: Dar Al-Fikr. Both sources are quoted in Moamen Gouda, Stealing more is better? Marginal Deterrence in Islamic Criminal Law of Theft," available online at: <<http://extranet.isnie.org/uploads/isnie2012/gouda.pdf>> (last accessed: 23.2.2014). This verse of the Holy *Qur'an* is relevant to the embezzlement; "And if you are on a journey and cannot find a scribe, then a security deposit [should be] taken. And if one of you entrusts another, then let him who is entrusted discharge his trust [faithfully] and let him fear Allah, his Lord. And do not conceal testimony, for whoever conceals it - his heart is indeed sinful, and Allah is Knowing of what you do." *Qur'an* 2:238.

1.4.3 The Legal Characterization of Corruption and Bribery as Criminal Offenses under the Umbrella of Islamic Criminal Justice System: *Ta'zir* and *Siyasah* Crimes¹⁰¹

This fact is admitted that the rules and regulations in the *Qur'an* do not cover the whole legal system, but few issues are left to the discretion of judges and jurists.¹⁰² The criminal law is not a single branch of law, it is discussed in three separate chapters; *hadd*, *ta'zir* and *siyasah*.¹⁰³ Today there is no distinction or demarcation line between *ta'zir* and *siyasah* therefore, a lot of criminal offenses in Islamic law come under the scope of *ta'zir*.¹⁰⁴

It has been established that the *ta'zir* and *siyasah* both are discretionary punishments as they occupy simple procedure. Both these terms are sometimes used as synonyms.¹⁰⁵ All the acts which contravene private or community interests are dealt by *ta'zir* category.¹⁰⁶ On the other hand *siyasah* punishment may also be administered for acts threatening the public order.¹⁰⁷

¹⁰¹ A. 'Arafa, "Corruption and Bribery in Islamic law," 201.

¹⁰² Omer Düzbaşar, Bribery in Islam-Ottoman Penal Codes and Examples From The Bursa Shari'a Court Records of 18th Century, Ahmet Yesevi University Board of Trustees *Bilik* 51: 55-84 (2009). http://www.google.com.pk/url?url=http://www.acarindex.com/dosyalar/makale/acarindex-1423873169.pdf&rct=j&frm=1&q=&esrc=s&sa=U&ved=0CBIQFjAAhUKEwjBp8Lv1YLJAhWE5qYKHVpGDP&usg=AFQjCNEkyw63_h2xUNysyfprcCupYb-V8Q (last accessed: 15.8.2014), 64.

¹⁰³ Rudolph Peters, *Crime and Punishment in Islamic law: Theory and Practice from the sixteenth to the twenty-first century* (New York: Cambridge University Press, 2005), 7. <http://www.bandung2.co.uk/books/Files/Law/Crime%20and%20Punishment%20in%20Islamic%20Law.pdf> (28.12.2013).

¹⁰⁴ Imran Ahsan Nyazee, *General Principles of Criminal Law: Islamic and Western* (Islamabad: Shari'ah Academy International Islamic University, 2007), 175.

¹⁰⁵ Peters, *Crime and Punishment in Islamic law*, 67.

¹⁰⁶ A. 'Arafa, "Corruption and Bribery in Islamic law," 202.

¹⁰⁷ Peters, *Crime and Punishment in Islamic law*, 68.

Corruption and bribery are considered serious threats to the welfare of the community and declared religious and criminal offenses, therefore, they are punished by *ta'zir*.¹⁰⁸

It is imperative to mention here that the *ta'zir* crimes are not codified and Islamic jurists and judges have discretionary power to define these crimes. Basically the belief behind the *ta'zir* crime is the judicial autonomy, legislative independence and the development of criminal law.¹⁰⁹ As far as the *siyasah* is concerned, whenever there is an infringement of the state's right the procedure of *siyasah* will be followed, but the *fugaha* do not mention all the *siyasah* penalties. In this aspect the Muslim ruler possesses a broad discretion.¹¹⁰ Subject to the doctrine of *siyasah* a ruler can inflict severe punishments under *hudood* and *ta'zir*. This doctrine concerns about public interest and possesses a wide jurisdiction and flexibility of the procedure which has the tendency to fulfill the changing needs and demands of the society.¹¹¹

The above discussed matter portrays that the corruption comes under the scope of "Provisions concerning discretionary punishment of sinful or forbidden behavior or of acts endangering public order or state security (*ta'zir* and *siyasah*)."¹¹² It is suggested that the only solution is the amalgamation of both these areas; *ta'zir* and *siyasah* and left to the discretion of

¹⁰⁸ M. Cherif Bassiouni, *The Islamic Criminal Justice System*, 152-153 (1982) quoted in Mohamed A. 'Arafa, "Corruption and Bribery in Islamic law," 202.

¹⁰⁹ Shahid M. Shahidullah, *Comparative criminal Justice Systems: Global and local perspectives* (Burlington and Mass: Jones and Bartlett Publishers, 2012) 372. <http://books.google.com.pk/books?id=eZD-MHVMHsQC&pg=PA372&lpg=PA372&dq=ta'zir+punishment+for+corruption&source=bl&ots=1NHOgje1cz&sig=r1PZfcqsveQJJtiVCqCVb5dgCmg&hl=en&sa=X&ei=sC3AUvrIIse2yAPJ34HwAw&ved=0CGsQ6AEwCTgK#v=onepage&q=ta'zir%20punishment%20for%20corruption&f=false> (last accessed: 29.12.2013). Some examples of *ta'zir* crimes, as mentioned in the source, are; Weapon procession, Drug addiction, Robbery, Organized crimes, Cyber crimes, Treason, Rebellion, Espionage, Sedition, Perjury, Bribery, Corruption, Embezzlement, International abuse of power, Obstruction of justice, Vagrancy, Indecent exposure, Sexual harassment, and Unlawful assembly.

¹¹⁰ Nyazee, *General Principles of Criminal Law*, 63, 64, 177.

¹¹¹ Ibid., 177, 178.

¹¹² Peters, *Crime and Punishment in Islamic law*, 7.

the ruler for making rules against public interest violations in accordance with the objectives of the Islamic law,

1.4.4 Protection Provided by Islamic Law against Corruption

Keeping in view the discussion above, the topic under discussion is the protection of wealth or *hifz al-mal* through the objectives of Islamic law which is an essential part of this research. Islamic law is based on a divine religion and provides absolute protection against social problem of corruption by following means;

1.4.4.1 Protection of the Community Rights

The doctrine of the objectives of the Islamic law is a symbol of the protection of individuals and the community.¹¹³ According to the objectives of Islamic law the individuals are socially responsible for one another and to the community. The responsibility to protect the wealth is a primary objective of the Islamic law which permits the people to earn their living in a fair way without exploiting the rights of other people so that the whole society can take the advantage of this responsibility.¹¹⁴

¹¹³Azyumardi Azra and Wayne Hudson, ed., *Islam Beyond Conflict: Indonesian Islam and Western Political Theory* (England: Ashgate Publishing, Ltd., 2008) 164. <http://books.google.com.pk/books?id=rr40qWoVQRwC&pg=PA165&lpg=PA165&dq=public+interest+is+prior+to+the+private+interest+in+islamic+law&source=bl&ots=9UARDouyKS&sig=zTBr9QPgj7hjh-Xzli4TSTKEhX0&hl=en&sa=X&ei=JELFUqTcFsWI4ASF2oGIAQ&ved=0CD0Q6AEwAw#v=onepage&q=public%20interest%20is%20prior%20to%20the%20private%20interest%20in%20islamic%20law&f=false> (last accessed: 2.1.2014).

¹¹⁴Zafar Iqbal and Mervyn K. Lewis, *An Islamic Perspective on Governance* (Cheltenham, U.K.: Edward Elgar Publishing Limited, 2009), 255-256, [http://sirat-e-mustaqeem.com/web/uBooks/Ahlehadees%20\(Eng\)/AAAA/An%20Islamic%20Perspective%20on%20Governance.pdf](http://sirat-e-mustaqeem.com/web/uBooks/Ahlehadees%20(Eng)/AAAA/An%20Islamic%20Perspective%20on%20Governance.pdf) (last accessed: 26.09.2013).

It has already been discussed that there are certain priorities within the *maqasid*. Under the purposes of Islamic law “public interest is prior to the private.”¹¹⁵ This means in order to secure a community and safeguard its prosperity and progress, public interests allow sever punishments.¹¹⁶

A verse of *the Qur'an* states that: “... and if God had not enabled people to defend themselves against one another, corruption would surely overwhelm the earth....”¹¹⁷ In the light of the above mentioned verse, by strengthening the factors and people who fight against the corrupt people can save a community better. Hence, it is a collective responsibility of the people to defend each other against corruption.

1.4.4.2 Eradication of Corruption by Promoting Moral Values and maintaining Justice

Previous discussion on the objectives of Islamic law clarified that the ethics and morality are the key factors for the well being, peace, and harmony of the world. *Allah* (s.w.t.) says that “you are the best of peoples, evolved for mankind, enjoining what is right, forbidding what is wrong.”¹¹⁸ The focal point of many *Qur'an* verses and the objectives of Islamic law is to enjoin what is virtuous and forbid what is vicious in order to maintain Justice.

In brief, wealth obtained through rightful sources opens a way to ethical and religious enhancement. When willingly wealth is spent to help needy people, it purifies and releases man

¹¹⁵ Nyazee, *Islamic Jurisprudence*, 211.

¹¹⁶ A. Arafa, “Corruption and Bribery in Islamic law,” 193.

¹¹⁷ Qur'an 2:251.

¹¹⁸ Qur'an 3: 110.

from voracity and arrogance. *Maqasid* believes to search for or have property through lawful means.¹¹⁹

1.4.4.3 Accountability in Islamic law

The objectives of *shari'ah* are all about success in this world and hereinafter according to which an individual is responsible and accountable for his actions and the motives behind them.¹²⁰ No doubt, it was also a most important characteristic of the caliphate that anybody could criticize any action of executive without hesitation. They were also accountable for their actions and deeds in front of the people, hence, realized the importance of accountability.¹²¹ *Maqasid* considers justice¹²² the base of accountability.¹²³

In fact, Islamic law talks about “ethical transparency and accountability in all humankind’s deeds and sayings beyond the power of legal systems and the enforcement of laws and procedures”.¹²⁴ This signifies that every soul is accountable to *Allah* for every action and every Muslim feels himself accountable even in the absence of any legal system and punishment.

¹¹⁹ Iqbal and Lewis, *An Islamic Perspective on Governance*, 77.

¹²⁰ Abdel-Hameed M. Bashir, “Property Rights in Islam.” Harvard University 1999, 71-82, available at: http://ifpprogram.com/login/view_pdf/?file=Property%20Rights%20in%20Islam.pdf&type=Project_Publication (last accessed: 21.1.2015).

¹²¹ Syed Wajid Rizvi, *Islam and Good Governance* (Lahore: khurshid Maqbool Press, 2005), 136-137.

¹²² Literal meaning of Adl is “to place things in their right and proper place.” See, Azra and Hudson, ed., *Islam beyond Conflict*, 164-165.

¹²³ Qur'an 21:47. The Prophet *Muhammad* (S.A.W.) said: “The son of Adam will not pass away from *Allah* until he is asked about five things: how he lived his life, and how he utilized his youth, How did he earn his wealth, how did he spend his wealth, and what did he do with his knowledge.” Reported by Tirmidhi, See, Naleem Badurdeen, “Corruption an Islamic Perspective”, available online at : <http://www.sailanmuslim.com/news/corruption-an-islamic-perspective-by-naleem-badurdeen/> (last accessed: 14.05.2013).

¹²⁴ Abuarqub, “Islamic Imperatives to Curb Corruption,” 6.

1.4.4.4 Institution of *Hisbah*

Hisbah is an Arabic word means “to compute” and “to measure.”¹²⁵ It is a voluntary accountability system in which followers of Islamic law enjoin good and forbid evil.¹²⁶ History shows that the precedent of *Hisbah* was set by the Prophet *Muhammad* (Peace Be upon Him). He was the first *Muhtasib* who performed this duty.¹²⁷ The protection and supervision of rights of *Allah*, the rights of people or rights of both come under the duties of *Muhtasib* according to the objectives of Islamic law.¹²⁸

Hence, *Hisbah* is a system of check and balance, involuntary accountability, social responsibility and establishments of the rights of *Allah* and people. If properly used, it can play an effective and efficient role in the elimination of corruption.

1.4.5 Punishments of Corruption and Bribery in Islamic Penal Law

It has been discussed earlier that there is a lack of clear and direct evidences related to the sanctions and references of corruption and bribery with respect to fixed penalties (*hadd*). Therefore, they are derived from relevant Qur’anic verses and left to the discretion of judges,

¹²⁵ Athar Murtuza, “Islamic Antecedents for Financial Accountability,” *International Journal of Islamic Financial Services*, Vol.4, No.1, <http://www.perpustakaan.depkeu.go.id/FOLDERJURNAL/vol4no1art1.pdf> (last accessed: 3.1.2014).

¹²⁶ R. K. Salman and N.M Abdulraheem “Hisbar Institution and Protection of Islam Human Rights in Nigeria: Congruence or Conflict,” available online: http://rksalman.com.ng/publications/HISBAR_INSTITUTION_AND_PROTECTION_OF_ISLAM_HUMAN_RIGHTS_IN_NIGERIA.pdf (last accessed: 3.1.2014).

¹²⁷ Abdul Azim Islahi, “Works on market supervision and shar’iyah governance (al-hisbah wa al-siyasah al-shar’iyah) by the sixteenth century scholars,” available online at: <http://mpra.ub.uni-muenchen.de/18445/1/MPRA_paper_18445.pdf> (last accessed: 3.1.2014).

¹²⁸ Athar Murtuza, “Islamic Antecedents for Financial Accountability,” *International Journal of Islamic Financial Services*, Vol.4, No.1, <http://www.perpustakaan.depkeu.go.id/FOLDERJURNAL/vol4no1art1.pdf> (last accessed: 3.1.2014).

local customs and administrative dispensations in order to provide a supplement to the divine law and are compatible with the objectives of Islamic law.¹²⁹

The *ta'zir* punishment is for reforming and deterring the offender, but *siyasah* punishment is for attaining the public interest and protection of society from law and order disturbances. Imprisonment and banishment come under the scope and domain of *siyasah* punishment. *Ta'zir* punishment ranges from a reprimand to the death penalty i.e. flogging, public rebuke, exposed to public scorn (*tashh'ir*), expulsion, or displacement, banishment and imprisonment until repentance, etc. There is no corporal punishment (*Al-darb wa Al-jald*) except flogging.¹³⁰

There is an obligatory punishment (*hadd*) for undermining the five purposes of Islamic law. So it may be inferred that there is a scope for adding death penalty through discretionary punishment in order to protect the wealth (*hifz al-mal*). Consequently, both rehabilitation and deterrence may be applied in order to eradicate corruption from the society.¹³¹

1.5 CONCLUSION

Corruption, every type of economic exploitation and unequal distribution of income come under the ambit of *ta'zir* and *siyasah* crimes which are prohibited and strongly condemned by the objectives of Islamic law. Growing calls for the religion to be a part of anti-corruption legislation demand that religious values and principles of *maqasid al-shari'ah* and *maslahah* should be considered while making any new policy and legislation on the matter of corruption. So the

¹²⁹Omer Düzbaşar, "Bribery in Islam-Ottoman Penal Codes," 64

¹³⁰Peters, *Crime and Punishment in Islamic law*, 65-67.

¹³¹ Mohamed Selim El-'Awa, *Punishment in Islamic Law: A Comparative Study*, 98-113 (1983). See also, A. 'Arafa, "Corruption and Bribery in Islamic law," 232, 235.

doctrine of *maqasid* finds *maslaha* of the people embedded in the death penalty as punishment for corruption. Hence, the death penalty should be added through discretionary punishment for the protection of wealth (*hifz al-mal*).

CHAPTER 2:

INTERNATIONAL LAW AND THE FIGHT AGAINST CORRUPTION

2.1 INTRODUCTION

Corruption badly affects the civil, political, economic, social, and cultural rights.¹³² It is not a problem of any specific country, but the whole world is facing this problem, therefore an internationally recognized anti-corruption strategy is required to secure victim nations.¹³³ This chapter gives a brief overview of the anti-corruption legislative efforts of the international law along with the analysis of first globally recognized treaty, the United Nations Convention against Corruption (UNCAC) 2003, in the light of the objectives of the Islamic law. It is a vital part of the research and also essential to know whether the purpose and the anti-corruption legislative standards of the UNCAC are compatible with the standards of the objectives of Islamic law including *hifz-al- mal*. Moreover, the significance of the UNCAC and the analysis of its solutions for the elimination of corruption is also the scope of this chapter.

The wide range of internationally recognized standards of corruption maintain principles and highlight the importance and recognition of corruption as a threat to the nations and show

132. Patrick Keuleers “Corruption, poverty and development” in Knowledge commitment action against corruption in Asia and the Pacific (Philippines: Organization for Economic Co-operation and Development (OECD) and Asian Development Bank (ADB); 2006), 61.

133. Luciano Vaz Ferreira and Fabio Costa Morosini, “The Implementation of International Anti Corruption Law in Business: Legal Control of Corruption Directed to Transnational Corporations” *Austral: Brazilian Journal of Strategy & International Relations* 2, No.3 (2013), 241-260. <http://www.google.com.pk/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=30&ved=0CGYQFjAJOBQ&url=http%3A%2F%2Fseer.ufrgs.br%2Faustral%2Farticle%2Fdownload%2F35615%2F23980&ei=Z490UprEE8XBhAf87IHIDQ&usg=AFQjCNHZsVRR4qkYrVzOCWCNEp9RWFzUPw> (last accessed: 2.11.2013).

international concern.¹³⁴ Here the goal is not to discuss each international legal instrument in detail, but an overview of anti-corruption efforts made by international law is necessary in order to check the accuracy and efficiency of these laws.

2.1.1 INTERNATIONAL LEGAL STANDARDS REGARDING CORRUPTION

Since the end of the Cold War, corruption has gained the attention of many countries around the world. At first, anti-corruption initiatives started from the regional level in the form of binding legal instruments, political declarations and normative measures, however, later on these instruments paved the way of transition from regional to international instruments.¹³⁵

2.1.1.1 Inter-American Convention against Corruption (OAS Convention) 1996

International legal standards include the Inter-American Convention against Corruption (OAS Convention), 1996. The special focus of the convention is to prevent and eradicate corruption and take necessary action in this regard.¹³⁶ It pays particular attention to the prevention of democratic or public institutions from active and passive bribery and domestic corruption. Through this legal document the state parties are requested to criminalize illegal payments, bribery, and fraudulent use of property.¹³⁷

¹³⁴ Robert Leventhal, "International Legal Standards on Corruption", available online at :< <http://2001-2009.state.gov/p/inl/rls/rm/103955.htm> > (last accessed: 23.01.2012).

¹³⁵ Philippa Webb, "The United Nations Convention against Corruption: Global achievement or missed opportunity?" *Journal of International Economic Law* 8, No.1 (2005), 191–229. http://www.solusipintar.com/e-library/dir_dok/UNCAC-Global-Achievement-or-Missed-Opportunity.pdf (last accessed: 8.3.2014), 193.

¹³⁶ The Inter-American Convention against Corruption was adopted by the Organization of American States on 29 March 1996. Document available online at: <<http://www.oas.org/juridico/english/treaties/b-58.html>> (last accessed: 19.02.2014).

¹³⁷ Webb, "The United Nations Convention against Corruption: Global achievement or missed opportunity?", 193-195.

2.1.1.2 Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD) 1997

Another legal instrument, i.e., the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD), 1997 criminalizes corruption in international business transactions and requires the member states to punish the accused who offer bribery to the officials of a foreign country.¹³⁸ It binds the states to use their domestic law in order to eradicate active and passive bribery of foreign public officials in international business transactions.¹³⁹

2.1.1.3 United Nations Declaration against Corruption and Bribery in International Commercial Transactions, 1996

Another document is the United Nations Declaration against Corruption and Bribery in International Commercial Transactions, 1996. The scope of this declaration is the promotion of social responsibility by adopting appropriate ethical standards, laws and business conduct on the part of private and public corporations. It also takes into consideration the impact of this activity on economic and social development and environment protection.¹⁴⁰

¹³⁸The Convention on Combating Bribery of Foreign Public Officials in International Business Transactions was signed on 17 December 1997 and entered into force on 15 February 1999. Document available online at: <http://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf> (last accessed: 19.02.2014).

¹³⁹Webb, "The United Nations Convention against Corruption: Global achievement or missed opportunity?", 195-198.

¹⁴⁰Resolution 51/191 of the General Assembly, 16 December 1996. Document available online at: <http://www.un.org/documents/ga/res/51/a51r191.htm> (last accessed: 19.2.2014).

2.1.1.4 The Criminal Law Convention on Corruption (COE Criminal Convention)

1999

The Criminal Law Convention on Corruption (COE Criminal Convention), 1999 is a part of international law regarding corruption which expressly declares many corrupt practices as criminal acts including bribery, money laundering, trading in influence and accounting offenses connected with corruption offenses.¹⁴¹

2.1.1.5 The Civil Law Convention on Corruption (COE Civil Convention) 1999

Considering the damages and relieves, the Civil Law Convention on Corruption (COE Civil Convention), adopted on 4 November 1999, provides the common international rules for civil action in corruption cases and damages according to the loss sustained in a particular case. This convention does not offer punitive damages, except as provided by the domestic law of any state.¹⁴²

2.1.1.6 The United Nations Convention against Transnational Organized Crime (UNCTOC) 2000

International law's another achievement is the United Nations Convention against Transnational Organized Crime (UNCTOC), 2000. It entered into force on 19 September 2003 which mainly fights against organized crime, but also contains several provisions on corruption. This convention focuses on the prevention, detection and punishment of corruption of the public

¹⁴¹In November 1998, the Committee of Ministers of the Council of Europe adopted the Criminal Law Convention on Corruption and decided to open it for signature on 27 January 1999 by the member States of the Council of Europe and the non-member States that had participated in its development. Document available online at :<<http://conventions.coe.int/Treaty/en/Treaties/Html/173.htm>> (last accessed: 19.02.2014).

¹⁴²Original Document available online at : <<http://conventions.coe.int/Treaty/en/Treaties/Html/174.htm>> (last accessed: 19.2.2014).

officials, including accomplices and provides a concept of developing integrity among public officials.¹⁴³

2.2. WEAKNESSES OF INTERNATIONAL LEGAL INSTRUMENTS

Every legal system or standards have some shortcomings. Here some weaknesses related to the international anti-corruption legal instruments mentioned above, are briefly discussed. International legal instruments like the UNTOC did not give the idea of mandatory criminalization requirements, international cooperation and technical assistance. Furthermore the UNTOC is monitored through a conference of the states parties, but there is no exact time period set for these conferences. In addition, the verification system also does not exist in the reports of the country.

Disappointingly, the Criminal Law Convention on corruption does not cover extortion, embezzlement and nepotism. It is also silent on the protection of informants. Mutual legal assistance may be refused in case of undermining the fundamental interests, national security and sovereignty of the requested state. On the other hand, the Civil Law Convention on corruption has a more limited scope than criminal law convention as it only applies to bribery and similar acts.¹⁴⁴

The African Union Convention on Preventing and Combating Corruption's expensiveness and lack of follow up mechanism are reasons of delay and avoidance of its implementation. Inter-American Convention against Corruption is silent on implementation and

¹⁴³Resolution 55/25 of the General Assembly, 15 Nov, 2002. Original document available online at :<<http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>> (last accessed: 30.03.2014).

¹⁴⁴Webb, "The United Nations Convention against Corruption: Global achievement or missed opportunity?," 193-205.

monitoring mechanism of the convention. The Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD) has limited scope because it does not apply to other forms of corruption except bribery.¹⁴⁵

2.3 DEFINITION AND FORMS OF CORRUPTION

In recent years, the subject of corruption has received a considerable attention¹⁴⁶ as it is a universal curse and exists in all countries.¹⁴⁷ It can infect all forms of government and no one can measure and afford the social, political and economic costs that corruption entails.¹⁴⁸ It is not a new phenomenon instead its rapid growth and harmful effects highlighted by researches are new and challenging for the nations.¹⁴⁹

The Corruption is derived from the Latin world *corruptus*, the meaning is “to break.” The World Bank and Transparency International define corruption “the abuse of public office for private gain”¹⁵⁰ which is also the widely accepted definition of corruption.¹⁵¹ However, the

¹⁴⁵ Ibid.

¹⁴⁶ “Corruption and Human Rights: Making the Connection”, available online at: <http://www.ichrp.org/files/reports/40/131_web.pdf> (last accessed on: 15.07.2012).

¹⁴⁷ Muhammad Tariq Khan et al., “Corruption: Causes and Effects in Pakistan’s Case (A Review Research),” *International Journal of Business and Behavioral Sciences* 2, no.6 (2012):79, <http://cprenet.com/uploads/archive/IJBBSS_12-1145.pdf> (last accessed on: 3.09.2102).

¹⁴⁸ N. Vittal, *Corruption in India: The Roadblock to National Prosperity* (India: APH Publishing Corporation and S.B Nangia, 1997), 26.

¹⁴⁹ Dayanath Jayasuriya, “The expanding frontiers of international law in the fight against corruption,” *Amicus Curiae*, no. 67 (2006), 7-10. http://sas-space.sas.ac.uk/2931/1/Amicus67_Jayasuriya.pdf (last accessed: 2.11.2013).

¹⁵⁰ Helping Countries Combat Corruption: The Role of World Bank (Washington: World Bank), and Transparency International. 2008. Bribe Payers Index 2008. Berlin: Transparency International quoted in Luciano Vaz Ferreira and Fabio Costa Morosini “The Implementation of International Anti Corruption Law in Business: Legal Control of Corruption Directed to Transnational Corporations,” 242.

¹⁵¹ Ophelie Brunelle-Quraishi, “Assessing the relevancy and efficacy of the United Nations Convention against Corruption: a Comparative Analysis ” *Notre Dame Journal of International & Comparative law*, (2011), 101-166. <http://www3.nd.edu/~ndjicl/V2I1/Brunelle-Quraishi.pdf> (last accessed: 2.11.2013), 101.

scholars always leave room for the possible addition of any new element under different circumstances.¹⁵² According to the Encyclopedia of Social Sciences 1931 consideration of these circumstances, new elements and misuse of the public power for private profit should be left to “the best opinion and political morality of the time”.¹⁵³

It has been noticed that the white collar crimes were generally committed by the criminals who hold a respectable position and influence in the society and because of this high socioeconomic status and money, their collars always remain white even after committing this heinous crime.¹⁵⁴ It is also discovered that they are more problematic and complex as compared to blue collar crimes. Comparatively, blue collar crimes are the violent crimes and may affect a single family or a small portion of the society.¹⁵⁵

Therefore, after several attempts to define these terms and even after finding aware definitions, giving a proper definition and description is thus problematic because of the existence of little resemblance in these several interlinked fields and partially defined definitions in academic writings.¹⁵⁶

¹⁵²Michael Clarke, ed., *Corruption: Causes Consequences and Control* (Great Britain: Frances Pinter publishers Limited, 1983), 207.

¹⁵³C. Aikin, (1964), corruption, in J. Gould and W.L. Kolb, A Dictionary of social sciences , New York, UNESCO, p. 142, quoted in Leslie Palmier, “Bureaucratic Corruption and its remedies,” in Michael Clarke, ed., *Corruption: Causes Consequences and Control* (Great Britain: Frances Pinter Publishers Limited, 1983), 207.

¹⁵⁴Thakur shailendra Nath, *White Collar Crimes X-Posed* (New Delhi: Manas Publications, 2010), 11, 12.

¹⁵⁵Graham Megan, "White Collar Crime and the United States' Economy" (2012). *Honors Theses*. Paper 49, available online at: <<http://scholars.unh.edu/cgi/viewcontent.cgi?article=1048&context=honors>> (last accessed: 18.3.2014).

¹⁵⁶Janice GoldStraw-white, *White-Collar Crime: Accounts of offending behavior* (New York: Palgrave Macmillan, 2012), 3.

Basically, the white collar crimes connected several fields and overlap with neighboring concepts.¹⁵⁷ In contrast, blue collar crimes are the crimes violently committed by the citizens of the lower class and cause an immediate and highly visible harm to a person and his property. It includes robbery, burglary, theft, assault and substance abuse.¹⁵⁸ It may also be in the form of victimless crime, i.e., prostitution, gambling and drug abuse.¹⁵⁹

The National White-Collar Crime Center defines white collar crime as “illegal or unethical acts that violate fiduciary responsibility or public trust for personal or organizational gain”.¹⁶⁰ In addition, the FBI defines white-collar crime as;

Illegal acts which are characterized by deceit, concealment, or violation of trust and which are not dependent upon the application or threat of force or violence. Individuals and organizations commit these acts to obtain money, property, or services, to avoid the payment or loss of money or to secure personal or business advantage.¹⁶¹

¹⁵⁷These interlinked fields are ‘bribery, campaign finance abuse, clientelism, cronyism, fraud, embezzlement, extortion, graft, kickbacks, machine politics, misappropriation, misconduct, nepotism, patronage, pork, rent-seeking, scandal, side payments, special interest politics, theft and venality.’ Although different forms of these crimes are also separate issues in criminology, but all these diverse fields have some common characteristics which make them complex. See John Gerring and Strom C. Thacker, “Political Institutions and Corruption: The Role of Unitarism and Parliamentarism” available online at: < <http://sws.bu.edu/jgerring/documents/Corruption.pdf>> (last accessed: 28.09.2013).

¹⁵⁸Christina Evonne Poulos, “A Comparative Study of White-Collar and Blue-Collar Criminals in American Jails,” *The Journal of the Honors Program*, 67-81 (2007). <http://www.marywood.edu/dotAsset/117691.pdf> (last accessed: 28.04.2014).

¹⁵⁹Megan, “White Collar Crime and the United States’ Economy” (Honors Theses, University of New Hampshire, 2012).

¹⁶⁰Kane J, Wall AD: 2005 National Public Survey on White-Collar Crime. Fairmont, VA: National White-Collar Crime Center, 2006, quoted in Marilyn Price and Donna M. Norris, “White-Collar Crime: Corporate and Securities and Commodities Fraud,” *The Journal of the American Academy of Psychiatry and the Law* 37, (2009), 538-44. <http://www.jaapl.org/content/37/4/538.full.pdf> (last accessed: 27.11.2013).

¹⁶¹Federal Bureau of Investigation: White-collar crime: A report to the public. Washington, DC: U.S. Department of Justice, 1989, p 3. See also, Marilyn Price and Donna M. Norris, “White-Collar Crime: Corporate and Securities and Commodities Fraud,” *The Journal of the American Academy of Psychiatry and the Law* 37, (2009), 538-44. <http://www.jaapl.org/content/37/4/538.full.pdf> (last accessed: 27.11.2013). See also, Cynthia Barnett, U.S. Dep’t of Justice, The Measurement of White-Collar Crime Using Uniform Crime Reporting (UCR) Data 1, http://www.fbi.gov/ucr/whitecollar_forweb.pdf (last visited Oct. 21, 2005) (citation omitted). See also, J. Scott Dutcher, “From the Boardroom to the Cellblock: The Justifications for Harsher Punishment of White-Collar

Both the definitions prove that white-collar crimes are generally committed for financial gain and badly affect the financial positions of individuals and business. Corruption expresses itself in theft, bribery, misappropriation, money laundering, fraud, nepotism, collusion and many other forms.¹⁶²

2.3.1 Bribery

According to International law, bribery is a trade between two individuals or group of individuals or between bribe givers or receivers.¹⁶³ It is a major form of corruption because of the existence of a corrupt relationship around the world driven by profits, contracts or any other monetary and non monetary favors.

By doing so they can buy political favors, profits, licenses, facilities, services, quotas, and can also get an escape from the full burden of tax and so on.¹⁶⁴ Article 15 of the United Nations Convention against Corruption, 2003 defines bribery as;

(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

and Corporate Crime," available online at : <<http://www.law.asu.edu/LinkClick.aspx?fileticket=0i2aD-vScP0%3D&tqid=1122>> (last accessed: 19.08.2013).

¹⁶²Philip M. Nichols, "The Business Case for Complying with Bribery Laws", *American Business Law Journal* 49: 2 (2012), 325-368. <https://lgst.wharton.upenn.edu/lgst/assets/File/ablj1134.pdf> (last accessed: 26.09.2012).

¹⁶³George Cremer, *Corruption and Development Aid: Confronting the Challenges*, trans. Elisabeth Schuth (India: Viva Books Pvt. Ltd., 2010) 10.

¹⁶⁴Jens Chr. Andvig et al., "Research on Corruption: A policy oriented survey", Norwegian Agency for Development Co-Operation NORAD, Final report, December 2000 available online at :<http://www.icgg.org/downloads/contribution07_andvig.pdf> (last accessed: 21.1.2014), 15.

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.¹⁶⁵

Thus, both the acts of giving and taking bribe come under the ambit of bribery, according to the above mentioned article. In this definition the description of “undue advantage” must also be explained to make it more understandable.

It is commonly observed that most countries deal bribery in their penal law where one person offers or promises money or any other benefit to officials in order to get any reciprocal advantage which might be in the shape of influencing the decision of that public officer. For this purpose, public officers accept illegal payments or other advantages in the form of bribery and abuse their powers.¹⁶⁶

2.3.2 Embezzlement

Embezzlement is the theft of resources by the officials who are responsible to administer the resources entrusted to them within the official capacities, but they misappropriate or steal from these public resources.¹⁶⁷ Thus, this serious crime involves the stealing, misappropriation, and the abuse of power entrusted to the officers.¹⁶⁸

¹⁶⁵Article 15 ‘Bribery of national public officials’ of United Nations Convention against Corruption, 2003. See also related article 16 of the same convention for ‘Bribery of foreign public officials and officials of public international organizations’ and Article 21 for ‘Bribery in the Private sector.’ Text available online at: <http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf> (last accessed: 29.09.2014)

¹⁶⁶Talwar, ed., *Corporate crime*, (India: Isha books, 2006), 221.

¹⁶⁷Cremer, *Corruption and Development Aid: Confronting the Challenges*, 11-12.

¹⁶⁸José G. Vargas-Hernández, “The Multiple Faces of Corruption: Typology, Forms and Levels,” Available online at: <https://www.google.com.pk/url?url=https://spaa.newark.rutgers.edu/sites/default/files/files/Transparency_Research_Conference/Papers/Vargas->

Article 17 of the UNCAC deals with the embezzlement, misappropriation or other diversion of property by a public official;

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offenses, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.¹⁶⁹

According to the source embezzlement does not come under the ambit of corruption from a legal point of view, but from a broader definition it is a form of corruption. It affects general public when public funds are misappropriated; however, there is no involvement of direct stealing of individual's property. This is how it is different from stealing.¹⁷⁰

2.3.3 Extortion

Extortion is the use of coercion, threat of violence or the exposure of the information for the purpose of attaining cooperation, consent, bribery or abuse of state power.¹⁷¹ A public official can be a victim or an instigator. In this way public as well as private right can be affected.¹⁷² Article 25 of the UNCAC discusses this issue as;

[Hernández_Jos.pdf&rct=j&frm=1&q=&esrc=s&sa=U&ved=0CB8QFjACahUKEwj0zaGJ2pHJAhXEopQKHQD1Azl&usg=AFQjCNF8WDakDTWl3emEFVnycDssrJGGeg](https://www.google.com.pk/url?url=https://spaa.newark.rutgers.edu/sites/default/files/files/Transparency_Research_Conference/Papers/Vargas-Hernandez_Jos.pdf&rct=j&frm=1&q=&esrc=s&sa=U&ved=0CB8QFjACahUKEwj0zaGJ2pHJAhXEopQKHQD1Azl&usg=AFQjCNF8WDakDTWl3emEFVnycDssrJGGeg) (last accessed: 17.2.2014).

¹⁶⁹ Article 17 of UNCAC 2003. See also related article 22.

¹⁷⁰ Andvig et al., "Research on Corruption: A policy oriented survey," 15.

¹⁷¹ United Nations Office on Drugs and Crime, "The global Programme against Corruption un anti-corruption toolkit," 3rd Edition, Vienna, September 2004, available online at: <<http://www.cgu.gov.br/onu/publicacoes/arquivos/toolkit.pdf>> (last accessed: 16.4.2014).

¹⁷² Hernández, "The Multiple Faces of Corruption: Typology, Forms and Levels," See https://www.google.com.pk/url?url=https://spaa.newark.rutgers.edu/sites/default/files/files/Transparency_Research_Conference/Papers/Vargas-Hernandez_Jos.pdf&rct=j&frm=1&q=&esrc=s&sa=U&ved=0CB8QFjACahUKEwj0zaGJ2pHJAhXEopQKHQD1Azl&usg=AFQjCNF8WDakDTWl3emEFVnycDssrJGGeg (last accessed:17.2.2014).

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

- (a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;
- (b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.¹⁷³

Normally organized crime groups use extortion for attaining the desired behavior through illegal means. It can be committed violently and non-violently. If it is performed non-violently than obviously it also comes under the ambit of the white collar crimes. Its punishment depends upon the use of force inflicted on a person and in the form of state prison.¹⁷⁴

2.3.4 Favoritism, Nepotism and Cronyism

Favoritism is another form of corruption which is the name of undermining the objective grounds and an abuse of power for giving unfair advantages to the people on the basis of

¹⁷³ Article 25 of the UNCAC.

¹⁷⁴ Legal Info, "Crime Overview Extortion," available online at: <http://www.legalinfo.com/content/criminal-law/crime-overview-extortion.html> (last accessed: 22.05.2014).

personal relations. Nepotism and cronyism are its two forms.¹⁷⁵ Article 18 of the UNCAC on this aspect states that;

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

- (a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;
- (b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.¹⁷⁶

When an officer abuses his official powers and gives preferences, favors and benefits to his close ones, family members, and people belong to his ethnic group or religion or from same political receptiveness, this is called nepotism.¹⁷⁷ Same as, cronyism is broader than nepotism and both these forms easily overlap. In cronyism preferences are given to the friends, family, colleagues and favored political supporters.¹⁷⁸ Article 19 of the UNCAC relates to the abuse of functions which states that;

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of

¹⁷⁵ Jonasson, "International Law against Corruption – An Icelandic Perspective," 12.

¹⁷⁶ Article 18 of the UNCAC.

¹⁷⁷ Cremer, *Corruption and Development Aid: Confronting the Challenges*, 13, 14.

¹⁷⁸ Jonasson, "International Law against Corruption – An Icelandic Perspective," 12.

functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.¹⁷⁹

This article addresses the issue of abuse of power through which a public officer may get an unfair advantage for himself or for any person belongs to him. Such behavior is condemned by the UNCAC and declared as a criminal offence.

2.3.5 Fraud

Another form of corruption named fraud is a broad legal term covering many illegal activities like overpricing, providing work of inferior quality, late supply, alteration in time of completion, non supply,¹⁸⁰ bribery,¹ embezzlement, counterfeit, illegal trade network, use of misleading information, misrepresentation, trickery, swindle or deceit and other similar fraudulent activities by state agencies and representatives.¹⁸¹

However, there are still many crimes which come under the scope of fraud, as a result, scholars, analysts, and professional investigators always leave room for the adjustment of other offenses in the scope or definition of fraud. Hence it is difficult to define it legally.¹⁸²

It must be noted that although it covers the largest group of offenses, but in all these common offenses, there exists a common element of deception for the purpose of any gain. According to another view two elements are essential for proving a crime to be a fraud, i.e.,

¹⁷⁹ Article 19 of the UNCAC.

¹⁸⁰ Talwar, ed., *Corporate crime*, 222.

¹⁸¹ Andvig et al., "Research on Corruption: A policy oriented survey," 16.

¹⁸² Geoffery Smith, Mark Button, Les Johnston, and Kwabena Frimpong, eds., *Studying Fraud as white collar crime* (United Kingdom: Palgrave Macmillan, 2011), 14.15.

deceit or an intention to deceive and the actual injury or an intention to expose any person either to actual injury or in risk of possible injury through that deceit or secrecy.¹⁸³ In this regard, Article 12 Sub- clause 3 of the UNCAC states that;

12 (3) In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:

- (a) The establishment of off-the-books accounts;
- (b) The making of off-the-books or inadequately identified transactions;
- (c) The recording of non-existent expenditure;
- (d) The entry of liabilities with incorrect identification of their objects;
- (e) The use of false documents;¹⁸⁴

These are some acts which come under the ambit of fraud, according to the article 12 of the UNCAC.

2.3.6 Money laundering

Money laundering is a process of concealing the source, identity and destination of the monetary proceeds generated from the illegal or corrupt activities and covering it for further, future and legitimate use.¹⁸⁵ A complete definition of money laundering cannot be given as it

¹⁸³Ibid., 5, 14.

¹⁸⁴ Article 12 (3) of the UNCAC.

¹⁸⁵Micheal Levi, Maria Dakolias and Theodore S. Greenberg, "Money Laundering and Corruption," in *The Many Faces of Corruption: Tracking Vulnerabilities at the Sector Level*, ed. J. Edgardo Campos and Sanjay Pradhan, 389-426. United States of America: The World Bank, 2007.

depends upon each country's domestic legal system and legal trends.¹⁸⁶ However, Article 23 (1) (a) (i) and (ii) of UNCAC defines laundering of proceeds of crime as;

(1) (a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offense to evade the legal consequences of his or her action;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;¹⁸⁷

Basically, concealment of the true resources of the proceeds of illegal or corrupt activities is the focal point in the definition given by the UNCAC.

Money laundering creates hurdles for the law enforcement agencies in the identification and detection of these ill-gotten gains. Another worth considering issue is that it is difficult to estimate the exact amount laundered every year around the world because of the existence of some jurisdictions that formally offer bank secrecy and avoid mutual legal assistance in this regard.¹⁸⁸

In addition, it is practiced by individuals, business holders, corrupt states and companies, thus causing a reduction in the legitimate flow of money in the market consequently money accumulates in the hands of the criminals. It destabilizes a country economically and exposes it

¹⁸⁶Basel Institute on Governance, International Centre for Asset Recovery 2011, "Development Assistance, Asset Recovery and Money Laundering: Making the Connection", available online at: http://www.baselgovernance.org/fileadmin/docs/pics/publications/DfID_brochure_Final_Version_for_print.pdf (last accessed: 21.1.2014).

¹⁸⁷Article 23 (1) (a) (i) and (ii) of UNCAC 2003.

¹⁸⁸Micheal Levi, Maria Dakolias and Theodore S. Greenberg, "Money Laundering and Corruption," in *The Many Faces of Corruption: Tracking Vulnerabilities at the Sector Level*, ed. J. Edgardo Campos and Sanjay Pradhan, 389-426. United States of America: The World Bank, 2007.

to other major crimes. Accordingly, international cooperation between countries is essentially required for tracing the ill-gotten gains.¹⁸⁹

2.4 ANALYSIS OF THE UNITED NATIONS CONVENTION AGAINST CORRUPTION (UNCAC), 2003 IN THE LIGHT OF ISLAMIC LAW STANDARDS

The UNCAC is the first globally recognized treaty which has tried to establish anti-corruption obligations.¹⁹⁰ International anti-corruption mechanism has become stronger after the incorporation of this convention. The main purpose of this convention is to establish strong anti-corruption policies by regulating cooperation among state parties and by harmonizing its policies with the domestic anti-corruption legislations of state parties. These policies are related to the prevention, detection, punishment and eradication of the corruption in both public and private sector, which is a remarkable and tremendous work of the United Nations Organization.¹⁹¹

This convention claims universality as it is a leading anti-corruption tool. There are four founding pillars; prevention, criminalization, international cooperation and asset recovery on which the convention is based.¹⁹²

¹⁸⁹ Thakur shailendra Nath, *White Collar Crimes X-Posed* (India: Manas Publications, 2010), 97, 98.

¹⁹⁰ U.N.O.D.C. Corruption: Compendium of International Legal Instruments On Corruption, 2nd ed., 2005, available online at :< <http://www.cgu.gov.br/onu/publicacoes/Arquivos/Compendium.pdf>> (last accessed: 11.03.2013). It was adopted by general assembly in its resolution 58/4 of 31 October 2003 and opened for signature in Merida, Mexico, 2003.

¹⁹¹ R. Rajesh Babu, "The United Nations Convention against Corruption: A critical overview," available online at <http://www.google.com.pk/#hl=en&sugexp=les%3Beaqth&gs_nf=3&cp=64&gs_id=x&xhr=t&q=Unitednations-conventions-against-corruption-a-criticaloverview&pf=p&sclient=psy-ab&oq=Unitednations-conventions-against-corruption-a-criticaloverview&gs_l=&pbx=1&bav=on.2,or.r_gc.r_pw.r_qf.&fp=6388cae474943256&bpcl=35466521&biw=1093&bih=466> (last accessed on: 22.08.2012), 8.

¹⁹² Quraishi, "Assessing the relevancy and efficacy of the United Nations Convention against Corruption: a Comparative Analysis," 107.

The second chapter of the convention “Preventive Measures” relates to the precautionary or defensive measure against corruption in the public and private sector. It provides effective solutions and discusses some restraint factors also. These preventive measures and solutions include the establishment of anti-corruption policies and promotion, transparency and accountability of these policies as stated in the Article 5 (1) of the convention;

1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.¹⁹³

All the steps that should be taken into account, as mentioned in this article, rely on the domestic legal systems of the states which show that these policies and solutions depend upon domestic or national enforcement.

The UNCAC declared certain acts or different forms of corruption as criminal offences. It also requires from state parties to declare certain acts¹⁹⁴ as criminal offences through legislative or certain other measures.¹⁹⁵

The statement which emphasizes that; “Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences”¹⁹⁶ is mentioned in the Article 15 and other articles of the chapter III “Criminalization and law enforcement.”

¹⁹³ Article 5 (1) of the UNCAC.

¹⁹⁴ like bribery, embezzlement of public funds, trading in influence, abuse of functions, illicit enrichment, money Laundering, concealment, obstruction of justice and “participation in any capacity, such as an accomplice, assistant or instigator in an offence established in accordance with this Convention” See, Philippa Webb, “The United Nations Convention against Corruption: Global achievement or missed opportunity?” 204-229. See also Article 15-42 of UNCAC.

¹⁹⁵ Webb, “The United Nations Convention against Corruption: Global achievement or missed opportunity?” 204-229. See also Article 15-42 of UNCAC.

While focusing on the chapter IV, the provisions of UNCAC on “International cooperation” congregate all states and demand their consensus over cooperation in the fight against corruption. A general clause on cooperation is depicted by Article 43 of the convention, which affirms that “States Parties shall cooperate in criminal matters in accordance with articles 44 to 50 of this Convention. Where appropriate and consistent with their domestic legal system...”¹⁹⁷ It is true that the cooperation among the states at the international level is required to combat corruption. Otherwise, it will not be possible to end corruption around the world. Unfortunately, once again this clause depends on the approval of the domestic legislations from the member states which show that the national legislations are better than international enforcement mechanism.

As a matter of fact the convention has paid much attention to the mandatory cooperation on the criminal matters. But in civil and administrative matters state parties are only required to “consider assisting each other” and adopt certain measures against corruption.¹⁹⁸ Article 43 of the convention states that “.....States Parties shall consider assisting each other in investigations of and proceedings in civil and administrative matters relating to corruption.”¹⁹⁹ In civil and administrative matters state parties should endeavor more than the level of consideration.

Furthermore, the fundamental principle of “asset recovery” provides a mechanism of return of assets to the requesting state and a framework for utilizing the combined power of all

¹⁹⁶ Article 15-42 of UNCAC.

¹⁹⁷ Article 43 (1) of UNCAC.

¹⁹⁸ Jan Wouters, Cedric Ryngaert and Ann Sofie Cloots, “The fight against corruption in International Law,” Working Paper No. 94 – July 2012, available online at:<http://ghum.kuleuven.be/ggs/publications/working_papers/new_series/wp91-100/wp94-jwouters-cryngaert-acloots.pdf> (last accessed: 15.3.2014).

¹⁹⁹ Article 43 (1) of UNCAC

the states in recovering and locating a victim nation's wealth.²⁰⁰ Article 51 generally imposes that "The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard."²⁰¹ No doubt, the principle of the asset recovery is a wonderful concept and effort of the convention. This is how the victim nations may get a relief, if properly enforced.

The return of these illegally obtained assets mechanism covers three stages, i.e., investigation, prevention and confiscation along with the return.²⁰² This convention obliges financial institutions to verify the identity of its customers and beneficial owners of the funds. Scrutinizing the accounts belongs to public officers is also essential for the purpose of prevention and detection of suspicious transactions.²⁰³ Article 52 Para 1 of the UNCAC focuses on this issue which states that;

.....each State Party shall take such measures as may be necessary, in accordance with its domestic law, to require financial institutions within its jurisdiction to verify the identity of customers, to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. Such enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to

²⁰⁰Jayasuriya, "The expanding frontiers of international law in the fight against corruption," 7-10. See also Article 54-55 of UNCAC.

²⁰¹ Article 51 of the UNCAC.

²⁰²R. Rajesh Babu, "The United Nations Convention against Corruption: A critical overview," 21, 22. See article 57 of the UNCAC.

²⁰³Jayasuriya, "The expanding frontiers of international law in the fight against corruption,"7-10, See also Article 52 Para 1 of the UNCAC. Other related articles are; Article 54 and 55 of UNCAC.

discourage or prohibit financial institutions from doing business with any legitimate customer.²⁰⁴

Article 52 (1) describes some important measures which must be followed and implemented in order to stop suspicious transactions.

Moreover, Article 65 Para 1 of the convention highlights the need of close conformity of national legislation with this convention through new laws or amendment in existing laws.²⁰⁵ Article 65 Para 1 of the convention states that; “Each State Party shall take the necessary measures, including legislative and administrative measures, in accordance with fundamental principles of its domestic law, to ensure the implementation of its obligations under this Convention.”²⁰⁶ But, the article does not bind the party states to adopt any specific step which could be a part of these “necessary measures.”

After considering various international law standards on corruption, it is pertinent to mention here that the UNCAC has many innovations, but in reality it also consists of some weaknesses as well, which affect its impact on the battle against corruption. Although it created a high level of awareness among the people about corruption, however, here is the question of its credibility and fulfillment of the world’s expectations. According to *Philippa Webb*, it is not an achievement, but a “missed opportunity”. Its provisions related to the private sector’s corruption

²⁰⁴ Article 52 Para 1 of the UNCAC.

²⁰⁵ Demosthenes chryssikos, “United Nations convention against corruption: An overview with special focus on the provisions relevant to criminal justice authorities,” available online at :<http://www.unafei.or.jp/english/pdf/RS_No83/No83_19VE_Demosthenes1.pdf> (last accessed: 05.03.2014).

²⁰⁶ Article 65 Para 1 UNCAC

are non mandatory, ignoring the large size of the private sector and its relations with public sector.²⁰⁷

Another failure is related to monitoring mechanism which is challenging no doubt, but it does not influence the state sovereignty on the matter of corruption.²⁰⁸ One of the loopholes of the UNCAC is that it “encourages” but does not “require” state parties to provide assistance or services in investigation and procedure related to civil and administrative matters of corruption as mentioned earlier.²⁰⁹ Like all other multinational treaties it also copes with the enforcement crisis whenever there is a conflict between national law and international law. Its provisions are mostly non mandatory. This convention does not comprise of military and economic sanctions also. It consists of discretionary terms too, which make it ineffective to some extent, in order to eliminate corruption.²¹⁰

Now coming to the substantial part of the research, the Islamic law is a different and unique divine religion based on the characteristics of Qur’anic legislation. That is why its legislative process and standards are also different from other legislations made by the Western legal systems.²¹¹ The UNCAC must be checked against Islamic law standards which is central to the discussion.

²⁰⁷ Webb, “The United Nations Convention against Corruption: Global achievement or missed opportunity?” 227-229.

²⁰⁸ *Ibid*

²⁰⁹ Micheal Levi, Maria Dakolias and Theodore S. Greenberg, “Money Laundering and Corruption,” in *The Many Faces of Corruption: Tracking Vulnerabilities at the Sector Level*, ed. J. Edgardo Campos and Sanjay Pradhan, 397.

²¹⁰ Quraishi, “Assessing the relevancy and efficacy of the United Nations Convention against Corruption: a Comparative Analysis.” 164-166.

²¹¹ Naseem Razi, “Qur’anic Legislation in Modern Context,” *Pakistan Journal of Islamic Research* 8(2011), 17-30. <http://www.bzu.edu.pk/PJIR/eng2NaseemRazi.pdf> (last assessed: 19.10.2014), 29.

2.4.1. The Focus on morality

It has been discussed earlier that the objectives of the Islamic law and Islamic ethics are the same and cannot be separated from each other. The concept of ethics in Islamic law is based on the individual and societal behavior. These are the norms which every person should obey and act accordingly.²¹² *Allah* (s.w.t.) says that “you are the best of peoples, evolved for mankind, enjoining what is right, forbidding what is wrong.”²¹³ For making a society free from corruption ethical values must be taken into consideration in every aspect of the life including business and economics.²¹⁴

Dr. Dayanath Jayasuria while focusing on the problem of corruption also stresses that honesty, integrity, moral values and virtues cannot be implemented through international law or treaty obligations. There is a need to inoculate these values and moral standards into the generations. He added that, for the nations, it is the time to show their moral strength for winning the battle against corruption.²¹⁵

Asad Ullah and Mussawar Shah discuss the work of some scholars named; Beets, Tittle and Welch, in which all of them focused on the relationship between religion and corruption. *Beets* in his work discussed that religion abstains from economic exploitation thus, in this regard

²¹²Adibah Binti Abdul Rahim, Understanding Islamic Ethics and Its Significance on the Character Building, *International Journal of Social Science and Humanity*, Vol. 3, No. 6(2013), 508-513, <http://www.ijssh.org/papers/293-B00007.pdf> (last assessed: 1.10.2014), 511.

²¹³ Qur'an 3: 110.

²¹⁴ Abdul Rahim, “Understanding Islamic Ethics and Its Significance on the Character Building,” 510.

²¹⁵Jayasuriya, “The expanding frontiers of international law in the fight against corruption,” 10.

religious leaders should be consulted.²¹⁶ Furthermore, *Tittle* and *Welch*, both have paid attention to the social control mechanism which may become strong through religious teachings and morality.²¹⁷

Unfortunately, the religion always has been ignored in tackling corruption. Use of religious teachings is the only way through which social and ethical values can be revived and accordingly economic exploitation can be minimized.²¹⁸ In western countries, religion always has been separated from the law. The policy makers of the west always tried to promote secularization for political, social and economic reforms and considered the participation of religious parties in governmental affairs as “dangerous and backward.”²¹⁹

Without any kind of objection, Muslims are under a strict liability to fulfill the principles of the objectives of Islamic law. Western legislations, quite the opposite, consider religion a personal matter of individuals.²²⁰ However, it is a sad reality that whenever Muslims tried to implement “western development strategies” they pay much less attention on the significance and realization of *maqasid*. In fact, it is more right to say that they badly ignored the development of the society through the doctrine of *maqasid*.²²¹

²¹⁶Beets, S.D. (2007) *International corruption and religion: an empirical examination*. Journal of Global Ethics, 3(1), pp. 69-85, quoted in Asad Ullah and Shah, “Does Pakistani Society Accept Corruption as a Changed Value with Reference to Religious Perspective?,” 69.

²¹⁷Tittle, C.R. and Welch, M.R. (1983) *Religiosity and deviances: toward a contingency theory of constraining effects*. Social Forces, vol, 61(3), pp. 653-82, quoted in Asad Ullah and Mussawar Shah, “Does Pakistani Society Accept Corruption as a Changed Value with Reference to Religious Perspective?,” 69.

²¹⁸Asad Ullah and Shah, “Does Pakistani Society Accept Corruption as a Changed Value with Reference to Religious Perspective?,” 70.

²¹⁹“Reclaiming Tradition: Islamic Law in a Modern World,” *International affairs review*, available online at: <<http://www.iar-gwu.org/node/23>> (last assessed: 10.10.2014).

²²⁰Naseem Razi, “Qur’anic Legislation in Modern Context,” 29.

²²¹M. Umer Chapra, “*Islam and Economic Development (Islamization of knowledge -14)*, ed. Zarar Ishaq Ansari, (Islamabad: International Institute of Islamic Thought, and Islamic Research Institute, 1993), 9.

The Transparency International's (TI) former Chief Executive, *David Nussbaum* in his speech pays attention to the role of personal values or moral decision making in the fight against this menace of corruption. He also mentions the research by the Federal Reserve Bank of St Louis that explain about the relation between values, religion and corruption;

A belief in hell tends to mean less corruption. and less corruption tends to mean a higher per capita income. . .Combining these two stories. . .suggests that, all else being equal, the more religious a country is, the less corruption it will have and the higher its per capita income will be.²²²

The fact has been established in this research that religious values matter a lot and can play an imperative role in the eradication of corruption.

It is good to know that in some developing countries, there are certain voices calling the religion to be used as a new approach to end corruption in all its forms. It is depressing, but true to some extent that current solutions are insufficient to provide that level of success and effort which is required to combat this evil.²²³

http://www.irti.org/irj/go/km/docs/documents/IDBDevelopments/Internet/English/IRTI/CM/downloads/Distance_Learning_Files/ISLAM%20AND%20ECONOMIC%20DEVELOPMENT.pdf. (last accessed: 30.09.2014).

²²²Nussbaum, 2006: 14 quoted in Heather Marquette, "Finding God' or 'Moral Disengagement' in the fight against corruption in Developing Countries? Evidence from India and Nigeria." See, http://r4d.dfid.gov.uk/pdf/outputs/religiondev_rpc/marquette-12.pdf (last assessed: 10.10.2014).

²²³Heather Marquette, "Finding God' or 'Moral Disengagement' in the fight against corruption in Developing Countries? Evidence from India and Nigeria." *Public administration and development* (2011), http://r4d.dfid.gov.uk/pdf/outputs/religiondev_rpc/marquette-12.pdf (last assessed: 10.10.2014).

2.4.2 Accountability and Transparency System

The institution of *Hisbah* is an example of the voluntary accountability system which is also an element of social responsibility and once again empowers the Islamic objectives of ethics and morality.²²⁴ Consequently, in this way the immorality of corruption can be reduced.

Keeping in view the objectives of Islamic law, the western approach lacks self restraint factor or moral values so there is a need of a moral reinforcement in the west through western legislations including the UNCAC in order to combat corruption. In Islamic law approach restraining influence comes from inner side of a person, thus, self restraint is essential.²²⁵ One of the western authors John M. Carroll also provides a solution of preventing white collar crime in the personal accountability.²²⁶

On the contrary, according to western social scientific approach restraining influence comes from the external sources otherwise the self restraint does not work alone. Additionally, the Islamic approach solely depends upon the ethics and morality which is not sufficient for attacking corruption so there must be some external supporting stratagem for providing a complete solution.²²⁷

²²⁴ R. K. Salman and N.M Abdulraheem "Hisbar Institution and Protection of Islam Human Rights in Nigeria: Congruence or Conflict," available online: http://rksalman.com.ng/publications/HISBAR_INSTITUTION_AND_PROTECTION_OF_ISLAM_HUMAN_RIGHTS_IN_NIGERIA.pdf (last accessed: 3.1.2014).

²²⁵ Iqbal and K. Lewis, "Governance and Corruption: Can Islamic Societies and the West Learn from Each Other?," 24.

²²⁶ John M. Carroll, *Controlling white collar crime: design and Audit for systems security* (London: Butterworth Publishers, 1982) 27.

²²⁷ Iqbal and K. Lewis, "Governance and Corruption: Can Islamic Societies and the West Learn from Each Other?," 24.

But the truth is that the objectives of Islamic law consist of absolutely valid norms and standards of uniformity against the variety of legal systems.²²⁸ The doctrine of *Maqasid* possesses a principle of *ijtihad* for amending the existing laws and accommodating the new laws based on the public interest through the concept of *maslahah*.²²⁹

Unluckily, the UNCAC has failed to adopt certain measures which can forcefully deal with the political corruption. The main issue is that “transparency in political financing” is only a recommendation under this convention. It also did not suggest any specific political system which can be helpful in the reduction of corruption. Due to the presence of this weakness the role of the parliament to make a government accountable in case of political corruption also diminishes.²³⁰

Moreover, the principles of transparency and impartiality, provided by the UNCAC, have become weak only by pleasing the majority member states during negotiation on the matter of monitoring mechanism. Because this close monitoring mechanism may highlight or expose the deficiencies present in the government system of these developing countries related to the availability of transparency or impartiality based remedies and solutions.²³¹

²²⁸N. J. Coulson, *A History of Islamic Law* (London: Edinburgh University Press, 1964) 5-6. <http://books.google.com.pk/books?id=Hh5rf0YLfAEC&printsec=frontcover&dq=N.+J.+Coulson,+Islamic+Law+and+Legal+Theory&hl=en&sa=X&ei=FV9DVMj6INexazImageAG&ved=0CB4Q6AEwAA#v=onepage&q=N.%20J.%20Coulson%20Islamic%20Law%20and%20Legal%20Theory&f=false> (last assessed: 19.1.2014).

²²⁹Ibid, 225.

²³⁰“UNCAC in a nutshell: A quick guide to the United Nations Convention against Corruption for embassy and donor agency staff,” *U4 Anti-Corruption Resource Centre U4 Brief*, September 2010:6 <http://www.cmi.no/publications/file/3769-uncac-in-a-nutshell.pdf> (last assessed: 20.1.2014)

²³¹Quraishi, “Assessing the relevancy and efficacy of the United Nations Convention against Corruption: a Comparative Analysis,” 140.

2.4.3 Legitimacy

There is no doubt in the authenticity of the objectives of the Islamic law.²³² On this base, Islamic law's principles and morality is superior and dominating over any other law or religion of the world.²³³ On the contrary, international law regarding corruption including the UNCAC is not derived from any divine source instead its subjects and states play a direct and fundamental role in its creation. It also has been discussed earlier that its enforcement and application depend upon the states and the domestic legal systems of the states.²³⁴

In addition, according to leading international law scholars "international law is suffering from a legitimacy crisis." In many constitutional democratic states international law is considered to be an institutional framework which only guides its citizens. So in this situation, what would be the future of this law, it is an important question to ponder.²³⁵

2.4.4 The Enforcement Mechanism

In the western countries, legislation is mostly under the state control. On the other hand, Islamic law is not under the control of Islamic government.²³⁶ That's why the enforcement

²³²Naseem Razi, "Qur'anic Legislation in Modern Context," 17. <http://www.bzu.edu.pk/PJIR/eng2NaseemRazi.pdf> (last assessed: 19.10.2014).

²³³Majid Khadduri, "Islam and Modern Law of Nations", *The American Journal of International Law* 50, 358-372, <http://en.iwpeace.com/sites/en.iwpeace.com/files/field/files/pdf-1498.pdf> (last accessed: 7.08.2014).

²³⁴Colin B. Picker, International Law's Mixed Heritage: A Common/Civil Law Jurisdiction, *Vanderbilt journal of transnational law* 41, (2008), 1083-1140. http://www.vanderbilt.edu/jotl/manage/wp-content/uploads/Picker_final_7.pdf (last assessed: 13.10.2014).

²³⁵Mattias Kumm, "The Legitimacy of International Law: A Constitutional Framework of Analysis," *The European Journal of International Law EJIL* Vol. 15 no. 5 (2004), 907-931. <http://207.57.19.226/journal/Vol15/No5/3.pdf> (last accessed: 18.05.2014).

²³⁶Wael B. Hallaq, *An Introduction to Islamic Law* (New York: Cambridge university press, 2009), 8. <http://books.google.com.pk/books?id=3YvEt3PxmAcC&printsec=frontcover&dq=Islamic+Law+and+Legal+Theory+ed.+lan+Edge+by+N.+J.+Coulson&hl=en&sa=X&ei=bmVDVJ2yO9HUaqHHguAD&ved=0CDQQ6AEwBTgK#v=onepage&q&f=false> (last assessed: 19.1.2014).

problem is another major issue of international law. It is often complained that its sanctions are costly, difficult to impose, coordinate and usually ineffective.²³⁷

One of the main hurdles or barriers in the effectiveness of the UNCAC is that it does not consist of sanctions or punish its member states for non compliance. They are more in the favor of cooperation among the states instead of punitive tactics. But it is central to the discussion that sanctions are vital for the enforcement of any treaty.²³⁸

Another unfortunate fact is that the crisis of “Political Dominance” in the enforcement of International law is another related issue. Dominant states often use international law for their own purposes. Furthermore, history shows that powerful states always have been violating this law. Nevertheless, international law seems very helpless in this regard as it always needs powerful and dominant states for its effectiveness and enforcement.²³⁹

That is why the effective enforcement or value of any agreement or multilateral treaty or convention can be judged through the binding capacity. How much and to what extent the agreement may bind the members to obey it.²⁴⁰ Another trouble is that it is much difficult to get a consent, harmony or compromise of all the member states to trim down their sovereignty,

²³⁷ Anu Bradford and Omri Ben-Shahar, “Efficient Enforcement in International Law,” *Chicago Journal of International Law* 12, No. 2(2012) 375-431. http://home.uchicago.edu/omri/pdf/articles/Efficient_Enforcement_International_Law.pdf (last assessed: 13.10.2014).

²³⁸ Ophelie Brunelle-Quraishi, “Assessing the relevancy and efficacy of the United Nations Convention against Corruption: a Comparative Analysis,” 141.

²³⁹ Nico Krisch, “International Law in Times of Hegemony: Unequal Power and the Shaping of the International Legal Order,” *The European Journal of International Law* EJIL 16, No.3(2005), 369-408. <http://www.ejil.org/pdfs/16/3/301.pdf> (last accessed: 13.10.2014).

²⁴⁰ Andrew T. Guzman, *The Design of International Agreements*, 16 EUR. J. INT'L L. 579, 580 (2005) quoted in Ophelie Brunelle-Quraishi, “Assessing the relevancy and efficacy of the United Nations Convention against Corruption: a Comparative Analysis ” *Notre Dame Journal of International & Comparative law*, (2011), 101-166. <http://www3.nd.edu/~ndjicl/V211/Brunelle-Quraishi.pdf> (last accessed: 2.11.2013).

territorial rights, benefits and demands. The conflict of interests of different states is also a main obstacle in the enforcement of the multilateral treaties.²⁴¹

It is argued that the UNCAC has different levels of obligations based on the implementation of the convention. These obligations range from “hard” obligations to “very soft ones.” Consequently, through some provisions state parties are required to implement certain provisions. A number of provisions are only to consider a few steps. Several are dependent on the economic condition of the countries. Numerous are only for guidance and rely on the domestic policies and decisions. Few are linked to the sovereignty of the state parties, i.e. article 4 of the UNCAC.²⁴²

So, according to the author, there are many “escape hatches” in the UNCAC which have proved very problematic in the enforcement of the UNCAC.²⁴³

²⁴¹Quraishi, “Assessing the relevancy and efficacy of the United Nations Convention against Corruption: a Comparative Analysis,” 126,127.

²⁴²The United Nations Convention² against corruption: the globalization of anticorruption standards,” Prepared for a Conference of the International Bar Association International Chamber of Commerce Organization for Economic Cooperation and Development “The Awakening Giant of Anticorruption Enforcement” London, England, 4-5 May 2006. Available online at: <http://archive.transparency.org/global_priorities/international_conventions/readings_conventions#un> (last assessed: 3.11.2014), 4. See also Article 4 (1) and (2) of the UNCAC is related to the protection of sovereignty which states that;

1. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.
2. Nothing in this Convention shall entitle a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.

²⁴³Ibid.

2.4.5 The Binding or Non-Binding Nature

It is true that there is no compulsion in Islamic law on the people of the world to adopt this religion,²⁴⁴ but once they adopt it, they are strictly bound by the dictates, commands and the objectives of Islamic law.²⁴⁵ It is “unalterable” or “indivisible” law. Muslims accept it as a whole and not in parts. In this way, the international law on corruption can be more helpful or more effective if western policymakers add the notion of *hifz al-mal* that mankind is a trustee of all resources given by *Allah* almighty and the doctrine of the objectives of Islamic law is a guardianship system for the preservation of these God given wealth resources.²⁴⁶

It also has been criticized that in some Islamic regional societies the law and religion are not closely interlinked as they were in classical times. *Shari'ah* and public law (*Qanoon*) are merged into some Muslim countries, the range of which differs from country to country which makes the status of Islamic law different in different Muslim countries. Author wrote, in reply to this criticism regarding the situation of the legal systems in many Muslim countries, that *Shari'ah* is a legal order, it has nothing to do with the legal situation in Islamic countries. It has universal application and its legal norms are much broader than considered by the people and the media of the west.²⁴⁷

²⁴⁴ Qur'an states that "There is no compulsion in religion . . ." (Qur'an 2: 56).

²⁴⁵ Allah said: "O you believe! Enter perfectly in Islam and follow not the footsteps of Satan. Verily, he is to you a plain enemy." (Qur'an: 208).

²⁴⁶ Imran Ahsan Khan Nyazee, "Islamic law is International law," available online at: <<http://www.nyazee.org/islaw/international/islnt.pdf>> (last assessed: 19.10.2014), 1.

²⁴⁷ Birgit Krawietz, "Introduction," in *Islam and the rule of law: between sharia and secularization*, ed. Birgit Krawietz and Helmut Reifeld, (Berlin: Konrad-Adenauer-Stiftung, 2008) 9-14. http://www.kas.de/wf/doc/kas_13008-544-2-30.pdf (last accessed: 13.1.214). See also, Sheikh Wahbeh al-Zuhili, "Islam and international law, *International review of the Red Cross* 87, No. 858(2005), 269-283. http://www.icrc.org/eng/assets/files/other/irrc_858_zuhili.pdf (last accessed: 5.4.2014).

Exclusively discussing the monitoring mechanism of the UNCAC, one state is enough for giving another a license to disobey this convention. Moreover, many provisions of the UNCAC cannot be executed without national implementation which is the responsibility of its member states,²⁴⁸ i.e. the provisions of criminalization, preventive measures, and asset recovery of the UNCAC.²⁴⁹ These provisions themselves show and highlight some loopholes in the international law regarding corruption. Many provisions of the convention give an effect that the domestic or national enforcement is better than the international enforcement mechanism.²⁵⁰

Thus, a consensus on a single strategy related to the monitoring mechanism is difficult or sometimes impossible to impose. Therefore, it can be said to comply with this convention depend on the willingness of all states to respect and obey. Otherwise the consequences would be different.²⁵¹

2.5 CONCLUSION

Summing up all entire, the analysis of the UNCAC in the light of *Maqasid* confirms that the standards of the objectives of Islamic law are better and wider in scope in the abolition of the corruption. The Devine revelations, ethical system of the objectives of Islamic law, self accountability factor which enhances the morality and spirituality in the followers beyond the

²⁴⁸Quraishi, "Assessing the relevancy and efficacy of the United Nations Convention against Corruption: a Comparative Analysis," 134.

²⁴⁹The United Nations Convention against corruption: the globalization of anticorruption standards," *Prepared for a Conference of the International Bar Association International Chamber of Commerce Organization for Economic Cooperation and Development "The Awakening Giant of Anticorruption Enforcement"* London, England, 4-5 May 2006. Available online at: <http://archive.transparency.org/global_priorities/international_conventions/readings_conventions#un> (last assessed: 3.11.2014), 4.

²⁵⁰ Quraishi, "Assessing the relevancy and efficacy of the United Nations Convention against Corruption: a Comparative Analysis," 141.

²⁵¹Ibid., 134.

power of punishments present in the legal system, the institution of the *Hisbah*, the principle of morality in economics, the equitable and just distribution of income and comparatively more strict punishments against corruption are quite powerful tools and techniques of the objectives of Islamic law for gaining an effective success in the battle against corruption.

As far as the UNCAC is concerned, it is true for the International law regarding corruption that its current solutions are insufficient and has failed to achieve its targets around the world. Specifically, the UNCAC has tried to establish anti corruption obligations and created a high level of awareness among the people related to corruption. It has many innovations and strengthens international law, nevertheless it is impossible to expect from any anti-corruption legal instrument to completely eradicate the corruption.

CHAPTER 3

MAQASID AL-SHARI'AH AND ANTI CORRUPTION LEGISLATIVE SYSTEM OF ISLAMIC REPUBLIC OF PAKISTAN

3.1 INTRODUCTION

As this thesis has been conducted in the Islamic Republic of Pakistan, therefore, anti-corruption laws and legal instruments of Pakistan are relevant to discuss here. It is also essential to know the causes and effects of corruption in the economy of the Pakistan. Furthermore, loopholes present in these anti-corruption legislations and enforcement crisis are also worth discussing. In addition, effectiveness of the law making policy and enforcement mechanism of Pakistan also comes under the scope of this chapter. While highlighting the problem of corruption and anti-corruption legislations, standards and efforts of Pakistan it is also important to find the solutions of eradicating corruption in Pakistan.

3.1.1 The Situation of corruption in Islamic Republic of Pakistan

It is a sad reality that corruption is worst in Pakistan and whole structure is affected by the financial and political corruption, nepotism and abuse of power. Not even a single public office is immune from the "misuse of entrusted power for private gain." Moreover, the petty

corruption is rampant where as mega corruption is mostly found in development projects and bank loans.²⁵²

This social problem was also addressed by Quaid-e-Azam Muhammad Ali Jinnah, the founder of the Islamic Republic of Pakistan, in his first and historical address to the Constituent Assembly on August 11, 1947. He said that Pakistan inherited corruption as it was existed in its roots at the time of independence.²⁵³ He considered bribery and corruption a “poison” for the nation and he was very determined in tackling this malevolence.²⁵⁴

While giving the data and information, a famous journalist of the Pakistan *Ansar Abbasi* in his article “*TIP 2012 report on corruption may hit Pakistan like a bomb*” discussed the reports of Transparency International and Washington-based World Justice Project (WJP) 2012 Rule of Law index. He wrote that the tenure of Pakistan People’s Party spoiled the reputation of the Pakistan as it has set the new records of corruption in the history. In the year 2008, Pakistan ranked as the 47th most corrupt country in the world, but in 2009 corruption increases in the country and it got a rank 42nd. In 2010 its rank was 34. Report of 2011 was less harmful as compared to 2012 and presents 42nd rank.²⁵⁵

²⁵²Umbreen Javaid, “Corruption and its Deep Impact on Good Governance in Pakistan,” *Pakistan Economic and Social Review* Volume 48, No. 1 (2010), 123-134. <http://pu.edu.pk/images/journal/pesr/PDF-FILES/7%20JAVAID%20Corruption%20and%20its%20Deep%20Impact%20on%20Good%20Governance%2085.pdf>(last accessed; 20.10.2013), 123.

²⁵³Ahmed Rashid Jamal, “Efficiency of Anti-Corruption Strategies in Afghanistan and Pakistan: What has worked and what hasn’t,” available online at: <<http://archive.atlantic-community.org/app/webroot/files/articlepdf/Anticorruption.pdf>> (last accessed: 14.3.2014), 12.

²⁵⁴Quaid-i-Azam Mahomed Ali Jinnah *Speeches as Governor-General of Pakistan 1947-1948* (Karachi: Pakistan Publications, n.d.), 7. See also Noor ul Haq, Corruption: Causes and Cure, *IPRI Journal* XII, no. 1 (2012): 149-156 <http://ipripak.org/journal/winter2012/Opinion%204.pdf> (last accessed: 22.1.2014).

²⁵⁵Ansar Abbasi, “TIP 2012 report on corruption may hit Pakistan like a bomb,” *The News*, Wednesday, December 05, 2012, available online at: <<http://www.thenews.com.pk/Todays-News-13-19262-TIP-2012-report-on-corruption-may-hit-Pakistan-like-a-bomb>> (last accessed: 30.06.2014).

Furthermore, Transparency International's Annual Global Report 2012 has declared Pakistan as the 7th among the most corrupt and insecure countries.²⁵⁶ However, in the year 2013, Pakistan has improved its ranking in corruption perception index and attained the rank 48th which is a considerable improvement.²⁵⁷

3.1.2 Instances of corruption in Pakistan

The National Accountability Bureau (NAB) has initiated an inquiry against highly significant corruption cases on the order of the Supreme Court of Pakistan. The cases include; corruption in the affairs of Pakistan Railways, ISAF missing containers involving huge losses of duties or taxes worthy of billions of rupees and the corruption and misuse of authority in Oil and Gas Regulatory Authority (OGRA) following the appointment of its last chairman.²⁵⁸ The *hajj* corruption case is also one of the worst corruption cases. Some of the cases are given below;

3.1.2.1 Muhammad Yasin vs. Federation of Pakistan (PLD 2012 SC 132)

In the case of Muhammad Yasin vs. Federation of Pakistan, the matter relates to the appointment of the chairman of Oil and Gas Regulatory Authority (OGRA). In this case the petitioner filed a complaint against the illegal and unlawful appointment of the chairman of (OGRA). The Supreme Court of Pakistan after establishing the jurisdiction to hear the case held that the appointment was void *ab-initio*. Hence the salary, value of perquisites and all

²⁵⁶ Ibid.

²⁵⁷ Dawn.com, “Pakistan improves ranking in TI's 2013 graft index,” updated Dec 03, 2013 10:48 am, available online at: <<http://www.dawn.com/news/1060221/pakistan-improves-ranking-in-tis-2013-graft-index>> (last accessed: 20.05.2014).

²⁵⁸ “NAB probing high-profile corruption cases” available online at <<http://ipaidbribe.pk/new/detail/303>> (last accessed: 3.09.2012).

other benefits availed by the respondent due to this appointment would be recovered from him.²⁵⁹

3.1.2.2 Suo Motu Case No. 7 of 2011 (2012 SCMR 226)

This case is related to non-transparent procedure of the purchase of 150 locomotives by Ministry of Railways from a foreign company without offering tenders to other international companies which were able to provide the same at much lower rates. Consequently, public treasury bore the loss of forty billion rupees. The Supreme Court took the *suo motu* notice of the situation and as a result the secretary railways stated before the Supreme Court that he had cancelled the impugned order of the purchase and would issue fresh tenders to all international manufacturers of locomotives. The Supreme Court disposed of the case with the observations that after floating of fresh tenders, anybody feeling dissatisfied with the specifications of locomotives required to be supplied, could avail appropriate remedy before the competent forum.²⁶⁰

3.1.2.3 Suo Motu Case No. 24 OF 2010 (2015 PLC CS 73)

This case is related to the corruption and embezzlement in the *hajj* arrangements for the year 2010 in which *hajj* pilgrims were overcharged and not provided with the facility of accommodation. Extra money was also taken from them in the name of security. Investigation further revealed that there was involvement of political persons and government officers in looting of money. In this regard the Supreme Court ordered to complete the investigation and trial against all accused persons as early as possible. It further ordered that strict measures should

²⁵⁹ PLD 2012 SC 132.

²⁶⁰ Suo Motu Case No. 7 of 2011 (2012 SCMR 226).

also be adopted in future and government should issue guidelines related to the *hajj* arrangements. Constitution petition was disposed of accordingly.²⁶¹

3.1.2.4 Suo Motu Case No. 13 of 2009 (PLD 2011 SC 619)

This case relates to the joint - venture agreement between CDA and Multi-Professional Corporative Housing Society (MPCHS) for development of land in Sector E-11 Islamabad. The Supreme Court of Pakistan held that two parties out of three did not submit the required proposals along with their bids, meaning thereby no competition was there and only a single party was in the field. In addition, authorities did not advertise for tender, thus deprived others with the advantage of competitive bidding which is against the Article 18 of the Constitution of Pakistan 1973. As a result, a huge loss was suffered by the public exchequer. The non-transparent transactions by the CDA were also a violation of Article 9 of the constitution. Consequently, the agreement was declared to be inoperative and ineffective by the Supreme Court.²⁶²

3.2 AN OVERVIEW OF ANTI-CORRUPTION LEGISLATIVE EFFORTS OF ISLAMIC REPUBLIC OF PAKISTAN

Since independence, many administrative and legislative measures have been taken to make the condition of corruption better in Pakistan. But the consequences remain the same.²⁶³ Thus, it

²⁶¹ Suo Motu Case No. 24 of 2010 (2015 PLC CS 73)

²⁶² Suo Motu Case No. 13 of 2009 (PLD 2011 SC 619).

²⁶³ "Anticorruption and its Discontents: Anti-corruption in Post Independence Colonial Bureaucracies," *Prepared for presentation at IPMN conference: Innovations in Public Management for Controlling Corruption*, June 27-29, 2012 (Honolulu, Hawaii: 2012), available online at: <http://www.google.com.pk/url?url=http://www.ipmn.net/index.php/archives/ipmj-free-archive/doc_download/153-ipmn-2012anticorruptionanditsdiscontents2&rct=j&frm=1&q=&esrc=s&sa=U&ved=0CBIQFjAAhUKEwiD19eI7o3JAhWGthQKHQnRBWA&usg=AFQjCNEiOIMAFGV_4ZlqryEueB1jKhZ7-w (Last accessed: 14.4.2015), 2,3.

is vital to address here, why these anti-corruption measures failed, for the analysis of the Pakistan's critical condition. For this purpose this section will give a brief analysis of legislative measures taken by the governments of Pakistan.

Pakistan signed the (UNCAC) on 9 December, 2003 and ratified it on 31st August 2007, but with reservation.²⁶⁴ After the ratification Pakistan comes under the responsibilities imposed by the UNCAC so that Pakistan can also take benefit from the convention.²⁶⁵ *Ahmer Bilal Soofi* considers the National Accountability Bureau Ordinance 1999 insufficient. Comparing both legislations he declared that the UNCAC is much wider in scope. He further added that the NAB ordinance has failed to implement the obligations imposed by the UNCAC in Pakistan therefore it needs to be replaced with a more comprehensive legislation.²⁶⁶

Apart from regular laws against crime and fraud enshrined in the Criminal Procedure Code (CrPC) 1898 and Pakistan Penal Code (PPC) 1860 specific anti-corruption laws in Pakistan include the Prevention of Corruption Act 1947 and National Accountability Bureau Ordinance 1999.²⁶⁷

²⁶⁴ "United Nations Convention against Corruption" available online at <http://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-14&chapter=18&lang=en> (last accessed: 13.11.2012). The reservation of Pakistan was "The Government of the Islamic Republic of Pakistan declares that, pursuant to Article 66, Paragraph 3 of the Convention, it does not consider itself bound by the provisions of paragraph 2 of this Article." Declarations and Reservations," available online at: <<http://www.unodc.org/documents/treaties/UNCAC/ReservationsDeclarations/DeclarationsAndReservations14Aug2008.pdf>> (last accessed: 22.05.2014).

²⁶⁵ Ahmer Bilal Soofi, "Accountability law & UN convention," Dawn, available on line at: <<http://www.google.com.pk/url?url=http://www.absco.pk/site/wp-content/uploads/Accountability-Law-UN-Convention.pdf&rct=j&frm=1&q=&esrc=s&sa=U&ved=0CCoQFjAEahUKEwiYePpqtIAhXCnqYKHaVpAaU&usg=AFQjCNEiJFnnAJnXXWwv7JaEtIY7xkTeA>> (last assessed: 1.5.2015).

²⁶⁶ Ibid.

²⁶⁷ Asad Sayeed, "The nature of corruption and anti-corruption strategies in Pakistan" available online at: <<http://www.humanrights.asia/resources/journals-magazines/article2/0901/06the-nature-of-corruption-and-anti-corruption-strategies-in-pakistan>> (last accessed: 05.07.2012).

offenses. At first, its application was limited only to the civil servants, but later through an amendment, it also covered public servants employed by the state corporations.²⁷⁰

This Act was a model for the subsequent laws related to the corruption of public servants. Legislators always have been attached to the basic structure of that law in their later legislations. One of the flaws of this legislation is the requirement of special permission of the head of department for pursuing a case and for the initiation of the investigation. This is a time taking phenomena and makes an offender cautious before the time of investigation or persecution. It makes the process of prosecution difficult as well.²⁷¹

Section 5 (1) (a), (b), (c), (d) (e) of Prevention of Corruption Act, 1947 describes criminal misconduct and the second clause of the same section has mentioned the punishment of the criminal misconduct;

1) A public servant is said to commit the offence of criminal misconduct.

- a) if he accepts or obtains, or agrees to accept or attempts to obtain from any person for himself or for any other person, any gratification (other than legal remuneration) as a motive or reward such as is mentioned in Section 161 of the Pakistan Penal Code, or
- b) if he accepts or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business, transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, or

²⁷⁰Masood Khan, Niaz A Kakakhel and Mel Dubnick, "Prosecuting Corruption: The Case of Pakistan," Working Paper, American Society for Public Administration 26-27, March, 2004, available online at<<http://www.qub.ie/schools/SchoolofLaw/Research/InstituteofGovernance/Publications/briefingpapers/Filetoupload.47644,en.pdf>> (last accessed: 5.04.2014), 5.

²⁷¹ Ibid.

- c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any person to do so, or
- d) if he, by corrupt or illegal means, or by otherwise abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage, or
- e) if he, or any of his dependants, is in possession, for which the public servant cannot reasonably account of pecuniary resources or of property disproportionate to his known sources of income.²⁷²

The above mentioned section describes some acts which come under the ambit of criminal misconduct, according to the Prevention of Corruption Act, 1947. These acts include bribery, fraud, abuse of power, and misappropriation. The second clause of the section 5 of the same act imposes the punishment of criminal misconduct as;

5 (2) Any public servant who commits or attempts to commit criminal misconduct shall be punishable with imprisonment for a term which may extend to seven years or with fine or with both.²⁷³

If any public servant, being a part of the state machinery and also responsible to protect the rights of the governments and citizens, commits criminal misconduct, should be punished with punishment more severe than mentioned in this section.

²⁷² Section 5(1) (a), (b), (c), (d) (e) of Prevention of Corruption Act, 1947.

²⁷³ Ibid., 5 (2).

It may be deduced that although this act successfully fought against corruption at a minor level, but its inherent flaw of requiring permission of the head of the department for “initiation, investigation, and prosecution” made it ineffective.²⁷⁴

3.2.2 The Public Representatives (Disqualification) Act, 1949 and the Elected Bodies (Disqualification) Ordinance, 1959

The Public Representatives (Disqualification) Act, 1949 and the Elected Bodies (Disqualification) Ordinance, 1959 were made, but failed to achieve success in the abolition of corruption. Many anti-corruption agencies also have been a part of the fight against corruption and corrupt practices like Provincial Anti Corruption Establishments (ACEs) and the Federal Investigation Agency (FIA).²⁷⁵ All these agencies and organizations did not bring about the desired results because of complicated procedures and political involvements. Hence, they did not change the situation of corruption in Pakistan.²⁷⁶

3.2.3 The Ehtesab Ordinance 1996

The Ehtesab Ordinance 1996 was made for the “corruption and corrupt practices from public offices and to provide effective measures for persecution and speedy disposal of cases involving corruption.”²⁷⁷ In addition, politicians and bureaucrats even presidents and prime

²⁷⁴ Masood Khan et al., “Prosecuting Corruption: The Case of Pakistan,” 5.

²⁷⁵ The West Pakistan Anti Corruption Establishment 1961 created the provincial Anti Corruption Establishments (ACEs). The Federal Investigation Agency (FIA) replaced the Pakistan Special Police Establishment (PSPE) in 1975. See, Amjad Mahmood, “Pakistan’s National Anti Corruption Strategy: Background, Status, Opportunities and Challenges.” See: <http://158.37.161.167/training/incountry-open/pakistan-materials/national-ac-strategy-pakistan.pdf>. (Last accessed 4.4.2014).

²⁷⁶ “National Anti-Corruption Strategy (NACS) Islamabad – Pakistan 2002,” Available online at: <<http://www.nab.gov.pk/Downloads/Doc/NACS.pdf>> (last assessed: 24.07.2014).11-14.

²⁷⁷ Masood Khan, et al., “Prosecuting Corruption: The Case of Pakistan,” 7.

ministers all come under the scope of this legislation. Investigation of assets, according to the proportion of the sources of income was also a part of that bureau's responsibilities.²⁷⁸

3.2.4 The Ehtesab Act 1997

The Establishment of the Ehtesab Commission was the first serious effort made by the caretaker government in 1996.²⁷⁹ In 1997, the commission was supplemented by Ehtesab Bureau, which was responsible for the investigation and Ehtesab Commission hold the task of the prosecution.²⁸⁰

The Ehtesab Act 1997 lost its credibility just because the reason of targeting only leading political opponents. Consequently, the Ehtesab Bureau also declared to be an unsuccessful organization because of the adoption of an unfair mechanism.²⁸¹

After the disappointment from the Bureau, the government made the National Accountability Bureau (NAB) in 1999 which was backed by the National Accountability Bureau (NAB) Ordinance 1999.

3.2.5 The National Accountability Bureau Ordinance, 1999

The National Accountability Bureau Ordinance (NAB) of 1999 is a major contribution towards an effective anti-corruption legislation in Pakistan and gives wide powers to the National Accountability Bureau and its chairman.²⁸² The aim of the legislation is the "effective

²⁷⁸ National Anti-Corruption Strategy (NACS) Islamabad – Pakistan 2002," 11-14.

²⁷⁹Javaid, "Corruption and its Deep Impact on Good Governance in Pakistan," 129.

²⁸⁰ "National Anti-Corruption Strategy (NACS) Islamabad – Pakistan 2002." 11-14.

²⁸¹Ibid.

²⁸²Ahmed Rashid Jamal, "Efficiency of Anti-Corruption Strategies in Afghanistan and Pakistan: What has worked and what hasn't," available online at :<<http://archive.atlantic-community.org/app/webroot/files/articlepdf/Anticorruption.pdf>> (last accessed: 14.3.2014), 14.

measures for the detection, investigation, speedy disposal of cases of corruption, corrupt practices and misuse or abuse of power.”²⁸³ Through this law the punishment of corruption and corrupt practices is fourteen years rigorous imprisonment and the definition of corruption includes all public office holders, politicians or any other corrupt person.²⁸⁴

In 2002, this ordinance was amended and made responsible for creating awareness regarding corruption and its prevention through campaigns, media and educational sector. On the basis of human rights violations (arrest without warrant, plea bargaining judiciary) and provisions based on the exemption of the armed forces from NAB because of the existence of their internal mechanisms of accountability, this legislation had also received immense criticism.²⁸⁵

The Section 9 of the National Accountability Ordinance, 1999 also discussed corruption and corrupt practices. Furthermore, Section 10 of the same ordinance describes the punishment for corruption and corrupt practices in the first clause which states that;

A person who commits the offence of corruption and corrupt practices shall be punishable with imprisonment for a term which may extend to 14 years, or with fine, or with both, and such of the assets and property of such person which is found to be disproportionate to the known sources of his income or which is acquired by money obtained through corruption and corrupt practices whether in his name or in the name of any of his dependents, or benamidars shall be liable to be forfeited to the appropriate Government.²⁸⁶

²⁸³Preamble of NAB 1999, 1.

²⁸⁴Masood Khan et al., “Prosecuting Corruption: The Case of Pakistan,” 8.

²⁸⁵Sumaira Samad, “Combating Corruption: The case of the National Accountability Bureau, Pakistan,” *Journal of Administration & Governance JOAAG*, Vol. 3. No.1, (2008). http://joaag.com/uploads/9_SamadFinal.pdf (Last accessed: 20.10.2013). 93-95.

²⁸⁶ Section 10(1) of the National Accountability Ordinance, 1999.

The Punishment of a crime mentioned in this section is not enough for handling the dilemma of corruption in Pakistan. As this crime has spread widely and badly infringed the rights of the state as well as its people, therefore, the punishment should be more severe.

Although this ordinance received great criticism, however, it is not wrong to say that it is more credible legislation than any other anti-corruption legislation in the history of Pakistan. It replaced the Ehtesab Act and consequently the Ehtesab Bureau also got replaced by the National Accountability Bureau (NAB).²⁸⁷

3.2.6 Pakistan's National Anticorruption Strategy 2002

Pakistan's National Anticorruption Strategy 2002 gives a complete framework for combating corruption which covers, reviews, and assesses the causes, nature, extent and effects of corruption in Pakistan. Moreover, prevention and enforcement measures are also a part of this strategy. It also incorporated "TI's integrity pacts"²⁸⁸ in all contracts for goods and services.²⁸⁹ But unfortunately, that strategy also did not make any difference.²⁹⁰

²⁸⁷ Samad, "Combating Corruption: The case of the National Accountability Bureau, Pakistan," 93-95.

²⁸⁸ The integrity pact is a tool aimed at preventing corruption in public contracting with a formal non bribery commitment. It stipulates the rights and obligations to the effect that neither side will: pay, offer, demand or accept bribes; collude with competitors to obtain the contract; or engage in such abuses while executing the contract. See, Brian P. Loughman and Richard A. Sibery, *Bribery and Corruption: Navigating the Global Risks*, (New Jersey: John Wiley & Sons Inc., 2012) 258. <http://books.google.com.pk/books?id=GcISzOZtaVcC&pg=PA257&dq=anticorruption+legislation+of+pakistan&hl=en&sa=X&ei=MI4-VMzJFlmxadCagdgL&ved=0CD0Q6AEwBQ#v=onepage&q=anticorruption%20legislation%20of%20pakistan&f=false> (last assessed: 15.10.2014).

²⁸⁹ P. Loughman and A. Sibery, *Bribery and Corruption: Navigating the Global Risks*, 258.

²⁹⁰ Asad Sayeed, "The nature of corruption and anti-corruption strategies in Pakistan" available online at: <<http://www.humanrights.asia/resources/journals-magazines/article2/0901/06the-nature-of-corruption-and-anti-corruption-strategies-in-pakistan>> (last accessed: 05.07.2012).

3.2.7 The National Reconciliation Ordinance (NRO) 2007

The National Reconciliation Ordinance (NRO) 2007 proved all previous accountability efforts useless. It not only legalized the mega corruption, but also affected the whole accountability structure. It was like a hurdle in the success of anti-corruption efforts. Thus, all anti-corruption efforts lost their credibility after the promulgation of this ordinance.²⁹¹

Fatima Bhutto deeply criticized this ordinance by saying that this ordinance is made for clearing the criminal record of the “dirty politicians.” This ordinance cannot be justified by saying that in this way “Pakistan can move forward into the future.”²⁹² She said;

How then do we Pakistanis justify our government's promulgation of the ethically repellent National Reconciliation Ordinance? With what authority can a state proclaim that all politicians, bureaucrats, and (via nepotism) certain friends and relatives accused of 'political misconduct' or murder and 'economic misappropriation' or stealing for the last twenty years are to be immediately absolved of their crimes? With what conscience can we as citizens stand by and allow this to happen?²⁹³

She further added that “Previously, corruption took place under the table. Now, safeguarded by an odious and illegal ordinance it will take place firmly on the table.” Hence this ordinance welcomes the corrupt politicians and economic exploiters in the country with “open

²⁹¹ Javaid, “Corruption and its Deep Impact on Good Governance in Pakistan,” 131.

²⁹² Fatima Bhutto, “A hundred beats: A national shame,” The News International, October 14, 2007, available online at: http://www.google.com.pk/url?url=http://fatimabutto.com.pk/articles/local/A%2520national%2520shame%25200-0-%25202014%2520Oct%25202007.pdf&rct=j&frm=1&q=&esrc=s&sa=U&ved=0CDQQFjAGahUKEwjP5NKvot_1AhXhGaYKHVQkD_8&usg=AFQjCNEit-x6AROXH1tetj_3eewaufUM5w (last accessed: 26.7.2015).

²⁹³ Ibid.

arms.”²⁹⁴ Now the current status of this law is that it has annulled by the Supreme Court (SC) of Pakistan in 2009.²⁹⁵

3.2.8 The Pakistan Penal Code 1860

Section 161 to 165-A of Pakistan Penal Code, 1860 provides the punishment for public servant taking, agreeing or attempting to take bribes.²⁹⁶ The Section 161 of PPC 1860 deal with the public servant taking gratification other than legal remuneration in respect of an official act;

Whoever, being or expecting to be a public servant, accepts or obtains, agrees to accept, or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person, with the Federal, or any Provincial Government or Legislature or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years or with fine or with both.²⁹⁷

This section of the PPC imposes the punishment of three years, which should be reformed and replaced with a harsh and more severe punishment in order to attain good governance and corruption free society. In addition, section 162 of the PPC states that:

²⁹⁴ Ibid.

²⁹⁵ Javaid, “Corruption and its Deep Impact on Good Governance in Pakistan,” 131.

²⁹⁶ Sections 162- 165-A of the PPC deal with Public servant taking gratification, in order, by corrupt or illegal means, to influence public servant (Sec 162) Taking gratification, for exercise of personal influence with public servant(Sec 163) Punishment for abetment by Public Servant of offenses defined in Section 162 or 163 (Sec 164) Public servant obtaining valuable thing, without consideration from Person concerned in proceeding or business transacted by such public servant(sec165) and Punishment for abetment of offenses defined in Sections 161 and 165.[(sec 165 (a)]

²⁹⁷ Section 161 of Pakistan Penal Code, 1860.

Whoever accepts or obtains, or agrees to accept, or attempts to obtain from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Federal or any Provincial Government or Legislature, or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.²⁹⁸

The punishment prescribed by this section is much less for the heinous crime of corruption and bribery which also does not fulfill the required expectations and standards of the purposes of Islamic law including *Hifz al-mal*. Furthermore the section 163 of the PPC states that;

Whoever accepts or obtains or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Federal or any Provincial Government or Legislature, or with any public servant, as such, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.²⁹⁹

It may be emphasized that less punishments encourage offenders to commit the crime again and again without considering the severity of the crime. Hence the punishment prescribed for this crime should be enhanced.

²⁹⁸ Ibid., 162.

²⁹⁹ Ibid., 163.

In spite of all laws and agencies discussed above, the general perception in Pakistan is that the corruption has increased rather than decreased. Moreover, serious analysts do not consider anti-corruption mechanisms doing well in Pakistan. They consider these laws and agencies discriminatory. Another criticism is that, these laws excluded the military, the judiciary and Islamic clergy from their scope and boundaries. Other complaints include lack of capacity and intent issues, lack of adequate training, duplication of effort across bureaus, lack of audit controls, interference from the executive, etc. The National Anti-Corruption Strategy that was unveiled in 2002 has also remained ineffective.³⁰⁰

Furthermore, "lack of political leadership" and "absence of a legitimate political process for anti-corruption policies" are the main hurdles in eradication of corruption in Pakistan.³⁰¹ At the moment, in spite of all these above mentioned laws and efforts, there is no accountability law in operation at the national level.³⁰²

3.3 THE IMPLEMENTATION OF THE OBJECTIVES OF ISLAMIC LAW AND THE ANTI-CORRUPTION LEGISLATION OF PAKISTAN

Pakistan was made for the sole purpose of the establishment and implementation of Islamic order, but, unfortunately till the regime of General Zia-ul-Haq it was "never institutionalized politically and militarily."³⁰³ It is a very important question to discuss that what

³⁰⁰ Asad Sayeed, "The nature of corruption and anti-corruption strategies in Pakistan" available online at: <http://www.humanrights.asia/resources/journals-magazines/article2/0901/06the-nature-of-corruption-and-anti-corruption-strategies-in-pakistan> (last accessed: 05.07.2012).

³⁰¹ Brian P. Loughman and Richard A. Sibery. *Bribery and Corruption: Navigating the Global Risks*, 258.

³⁰² Javaid, "Corruption and its Deep Impact on Good Governance in Pakistan," 132.

³⁰³ Jamal Shah, "Zia-Ul-Haque and the Proliferation of Religion in Pakistan," *International Journal of Business and Social Science*, Vol. 3, No. 21, November 2012, 310-323. http://www.google.com.pk/url?url=http://ijbssnet.com/journals/Vol_3_No_21_November_2012/33.pdf&rct=j&frm=1&q=&esrc=s&sa=U&ved=0CCYQFjAEahUKEwilptHH-vHIAhVBOogKHRe7Cno&usg=AFQjCNFPII3BooI941mAsUdAe5a_LSebnw (last accessed: 16.6.215).

should be the law of Pakistan. “Whether an Islamic order should be enforced or whether the country should be allowed to develop along secular lines as a modern nation state.” In Pakistan there has always been a conflict among “traditionalists” and “non traditionalists” over the law of Pakistan.³⁰⁴

In 1979, the head of the state General Zia-ul-Haq declared Pakistan an Islamic state and defined the purpose of its creation. As a result of this declaration Federal *Shari’at* Court (1980) and *Shari’at* benches in every provincial High Court were established in the country.³⁰⁵ Furthermore, *Hudood*, *Qisas*, and *Diyat* were also introduced in the legal system of the country. Thus, during the rule of Zia-ul-Haq, Pakistan experienced “an intense process of re-islamization.”³⁰⁶

In Pakistan, Islamization includes the replacement of western codes with Islamic laws and “new institutions of the state, laws and constitution” can also be made according to the command and dictates of the Islamic law.³⁰⁷ But “numerous constitutions” of Pakistan also

³⁰⁴ Tahir wasti, *The Application of Islamic Criminal Law in Pakistan: Sharia in Practice* (Netherlands: Brill, 2009), 3 available online at: https://books.google.com.pk/books?id=88-XutlkJAQC&pg=PA6&lpg=PA6&dq=the+objectives+of+islamic+law+and+pakistan&source=bl&ots=QT9hu0JCWx&sig=_RczV2n9zVVppRucv8l4N3Ypr4c&hl=en&sa=X&ved=0CCgQ6AEwBWoVChMIu5eP5a3fyAlVhtYUCh3wOwkr#v=onepage&q=the%20objectives%20of%20islamic%20law%20and%20pakistan&f=false (last accessed: 27.7.2015).

³⁰⁵ Ibid., 4.

³⁰⁶ Malik Mohammad Tariq, “The rise and impact of Islamic Fundamentalism in Pakistan after the Soviet Invasion in Afghanistan with special reference to Kpk and Balochistan,” *Bi-Annual Research Journal “Balochistan Review”* ISSN 1810-2174, Vol. XXIV No.1, 2011, http://www.google.com.pk/url?url=http://www.uob.edu.pk/journals/THE%2520RISE%2520AND%2520IMPACT%2520OF%2520ISLAMIC%2520FUNDAMENTALISM.pdf&rct=j&frm=1&q=&esrc=s&sa=U&ved=0CDcQFjAHahUKEwilptHH-vHIAhVBOogKRe7Cno&usg=AFQjCNGPitsUIU_250aMa-2jDU629_EAYQ (last accessed: 12.5.2015).

³⁰⁷ Tahir wasti quoted the definition of islamization by *Al-Muhairi* which is generally used “islamic countries to refer to the official program of replacing laws of “western origin” with laws based on the ‘Islamic sources.’ See, Tahir wasti, *The Application of Islamic Criminal Law in Pakistan: Sharia in Practice*, 3.

possesses the “basic structure of inherent laws” i.e., the law of the British India existed before independence.³⁰⁸

The constitution of Pakistan 1973 is a compromise between the traditionalists and non traditionalists. It has some Islamic provisions, but some of its provisions are only made for the intention of non-implementation. They are only “paper rules” which may be implemented according to the “dominant section of the government.”³⁰⁹ In addition, the Islamic ideology council has only an advisory role and does not possess any “inherent jurisdiction” to ensure its recommendations to be acted upon by the parliament.³¹⁰ Article 31 (1) of the constitution of the Pakistan, 1973 states that;

Steps shall be taken to enable the Muslims of Pakistan, individually and collectively, to order their lives in accordance with the fundamental principles and basic concepts of Islam and to provide facilities whereby they may be enabled to understand the meaning of life according to the Holy Quran and Sunnah.³¹¹

³⁰⁸ Martin Lau, *The Role of Islam in the Legal System of Pakistan* (Netherlands: Martinus Nijhoff Publishers, 2006), 6, available online at: <<https://books.google.com.pk/books?id=Yy2dPvefMHcC&pg=PA18&lpg=PA18&dq=the+objectives+of+islamic+law+and+pakistan&source=bl&ots=vhT-DO8rli&sig=cYvI9SU9VuzTU8hSpt8BB3ARNIw&hl=en&sa=X&ved=0CCUQ6AEwBGoVChMIyeDSm7ffyAIVJOKmCh0JzQNm#v=onepage&q=the%20objectives%20of%20islamic%20law%20and%20pakistan&f=false>> (last accessed: 21. 6.2015).

³⁰⁹ Rubya Mehdi, *The Islamization of the Law in Pakistan (RLE Politics of Islam)* (Abingdon, Oxon: Routledge 2013), 96, available online at: <<https://books.google.com.pk/books?id=X91zeacwHTkC&pg=PA105&lpg=PA105&dq=the+objectives+of+islamic+law+and+pakistan&source=bl&ots=rrpxQmLXE7&sig=1bEQjyvufVlxpkgTKDJvcaFqh6E&hl=en&sa=X&ved=0CBwQ6AEwAmoVChMI9biCqr7fyAIV5ximCh3oGg9F#v=onepage&q=the%20objectives%20of%20islamic%20law%20and%20pakistan&f=false>> (last accessed: 6.1.2015).

³¹⁰ Martin Lau, *The Role of Islam in the Legal System of Pakistan*, 8.

³¹¹ Article 31 (1) of the Constitution of Pakistan, 1973.

Article 31 of the constitution of Pakistan, 1973 maintains that the state is under a strict duty to provide opportunities through which the fundamental principles, basic concepts and moral standards of the Islamic law can be observed.

Moreover, the clause (2) sub-clause (b) of the Article 31 of the constitution of the Pakistan, 1973 mentioned the responsibility of the state “to promote unity and the observance of the Islamic moral standards.”³¹² Through the combined effect of the article 31 and the article 37 of the constitution, which is related to the “promotion of social justice and eradication of social evils,”³¹³ the state is under a strict responsibility to eradicate all social evils i.e., corruption under the commands of the Islamic law.

Another important article 227 (1) of the constitution, which also binds the legislators that the legislations on all matters must be made according to the instructions and guidelines of Islamic law. The Article 227 (1) states that “All existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah, in this Part referred to as the Injunctions of Islam, and no law shall be enacted which is repugnant to such injunctions.”³¹⁴ Thus the legislator is under a strict duty or bound to the principles and objectives of *shari'ah* while making any new law in the country. Hence, it is the responsibility of the government of Pakistan that all the social problems present in the country must be resolved in the light of objectives of Islamic law.

For making anti-corruption laws of Pakistan compatible with the objectives of Islamic law the punishments of corruption and criminal practices prescribed by different provisions of the anti-corruption laws of Pakistan should be reviewed and amended in the light of the punishments

³¹² Ibid., 31 (2) (b).

³¹³ Ibid., 37.

³¹⁴ Ibid., 227.

prescribed by the standards of the objectives of Islamic law including *Hifz al-mal*. Principles of transparency and accountability should also be considered according to the values of Islamic law.

According to the *siyasah* punishments the punishment of imprisonment and banishment should be added as a penalty in the anti-corruption laws of Pakistan. Moreover, in accordance with the *ta'zir* punishment prescribed by the Islamic law, the punishment given through the anti-corruption laws of Pakistan must be between the ranges from a reprimand to the death penalty.³¹⁵

3.4 CONCLUSION

The present terrible condition of the Pakistan and the presence of corruption in almost every public and private sector show that currently the corruption is one of the major troubles of Pakistan. Despite all administrative, legislative and preventive measures, the Pakistan has failed to control corruption which results that the corruption is rampant and its graph is continuously rising day by day. Furthermore, the general perception shows that the present anti-corruption mechanism has proved to be unsuccessful.

It has proved that one of the reasons for this rapid increase in the corruption in Pakistan is the law and order situation, lack of accountability and Political corruption. Furthermore, the punishments are much less and not according to the punishments and standards prescribed by the objectives of Islamic law. So, the punishments mentioned in the section 5 (2) of the Prevention of Corruption Act, 1947, Section 10 (1) of the NAB ordinance 1999 and section 161-165 of the PPC must be enhanced in order to discourage offenders.

³¹⁵This range of punishment includes punishment of flogging, public rebuke, exposed to public scorn (*tashh'ir*), banishment and imprisonment until repentance etc. See Peters, *Crime and Punishment in Islamic law*, 65-67.

CONCLUSION AND RECOMMENDATIONS

CONCLUSION:

The analysis, examination, assessment and findings of this thesis show that corruption badly affects the civil, political, social, economical and cultural rights of the people of the world, therefore, international law and *shari'ah* both provide protection against the menace of corruption, but Islamic law is more effective, beneficial in nature and have many doctrines, principles, ethical and moral standards, legal norms, techniques and characteristics which make the Islamic law eligible for becoming a part of modern anti-corruption legislations. Hence, in order to tackle the problem of corruption around the world, there is a need to make anti-corruption legislations including the UNCAC and anti-corruption laws of Pakistan compatible with the purposes of Islamic law including *hifz-al-mal*.

After assessing both legal systems it may be declared that Islamic law standards of protection of wealth or *hifz al-mal* are wider in scope. The doctrine of *maqasid* considers the punishment of death penalty as *maslahah* of the people against corruption. As far as the UNCAC is concerned, this convention is unable to defend all the victim nations because of many "escape hatches" present in it. Hence, it should be reformed and reviewed with respect to anti-corruption standards.

RECOMMENDATIONS:

According to the findings, this thesis recommends;

TO THE UNITED NATIONS:

1. The United Nations should consider that the international law regarding corruption including the UNCAC, needs to be reformed, properly enforced and reviewed with respect to the military and economic punishments, non-binding nature or effects, enforcement mechanisms and empowerment of international law in the case of a clash between domestic and international enforcement.
2. Death punishment must be added in international anti-corruption legislations including the UNCAC, as a punishment for the heinous crime of corruption.
3. The International community should consider the fact that the religious or moral modifications and adaptations should also be a part of any legislation of the global effect.

TO THE GOVERNMENT OF PAKISTAN:

1. The government of Pakistan or political authorities should eradicate the political corruption and make the participation of jurists and religious scholars possible in legislative and administrative processes so that anti-corruption laws can be made compatible with the principles of *maqasid al-shari'ah* and *maslahah*. Thus, the government should find solutions and remedies of all social problems, according to the objectives of Islamic law.
2. The government of Pakistan must obey and fulfill the requirements of the Article 31 and 37 of the Constitution of Pakistan, 1973. Furthermore, the legislators must consider Article 227 (1) of the constitution in all legislative matters.

3. The Government of Pakistan should review the provisions based on the punishments of corruption and criminal practices prescribed in the Section 5 (2) of the Prevention of Corruption Act, 1947, Section 10 (1) of the NAB ordinance, 1999 and Section 161-165 of the PPC and amend them in the light of the punishments prescribed by the objectives of Islamic law. Thus, the punishment of the corruption must be between the ranges from a reprimand to the death penalty. Moreover, the punishment of imprisonment, banishment and death penalty should also be added in the anti-corruption laws of Pakistan.

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