

The Socio-Environmental Perspective of Financial Buy-Off Contemporary: Jurisprudential Applications Comparison with Anti-Corruption Laws in the Kingdom of Saudi Arabia

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Abstract: *Jurists have mentioned that bribery is what is given to invalidate a right or justify falsehood, and it is considered one of the major sins. Exceptions are made for those who bought off with his money in cases of necessity, and the sin then falls on the receiver unjustly, not on the compelled giver. They exemplified buy-off by lifting the aggression of an oppressor, a highwayman, or someone threatened with murder, and contemporaries have likened it to the arbitrariness of customs officials, and the like in buy-off applications. This research highlights this term while monitoring the most important jurisprudential rulings related to it.*

The Kingdom of Saudi Arabia has made significant progress in eradicating corruption in all its forms, including financial corruption, and is striving towards a clean, clear, and transparent financial economy. Every financial buy-off that breaches the regulations of Sharia and civil laws is subject to monitoring by the competent authorities.

The Research Objectives included primarily:

1. *Preserving the rights of those who feared their loss or diminishment due to coercion or arbitrariness.*
2. *Clarifying the concept of bribery and monitoring exceptional cases that do not fall under it.*
3. *Explaining the controls of financial buy-off, its types, and its rulings in Islamic jurisprudence, and anti-corruption laws in the Kingdom of Saudi Arabia.*
4. *Demonstrating the capability of Sharia to find suitable solutions for the people's emergent issues in life.*

This research concluded with a set of scientific results detailed at the end of the research.

The research also concluded with significant recommendations listed at its conclusion, related to and connected with the field of this research.

Keywords: *Buy-off – Bribery – Rights – Arbitrariness*

INTRODUCTION

All praise shall exclusively be due to Allah alone, and may Allah's prayers and peace be upon the one after whom there is no prophet.

To begin with: The established principle known among jurists is the prohibition of offering bribery, and the texts regarding this matter are exceedingly strict, particularly those which indicate the imposition of divine curse upon the briber or the bribed. The course of bribery is considered one of the prohibited means of acquisition in Sharia, and it is among the major sins. However, there exist exceptional circumstances affecting the rightful, righteous person, who is not accustomed to bribery, and who is afflicted by one who seeks to take his rightful property, whether money, merchandise, real estate, or other assets. He exerts effort to prevent the loss of the aforementioned right, and due to his weakness, lack of means, or absence of influence, he is compelled to buy off with some of his little money in order to safeguard his abundant wealth. He pays it unwillingly, resentfully, and whilst seeking forgiveness, and thus the sin does not fall upon him in this consideration, but rather upon the one who accepts this financial buy-off from the rightful owner, and perhaps made it a means of gain and grew accustomed to

it. This research observes a set of circumstances and rulings related to this buy-off from its corrupt instigator and its compelled righteous actor.

RESEARCH PROBLEMS AND QUESTIONS

This research addresses a fundamental question, namely:

What is meant by buy-off with money, and from this principal question arises a set of subsidiary questions closely related to observing a number of situations encountered by the rightful owner of money, real estate, or otherwise, in the event of fear of its loss due to a highwayman, a threatening coercer, or a tyrannical person of influence, so he buys off to them with some money unwillingly in order to safeguard the rest of his money or property which he requires for his livelihood.

REASONS FOR SELECTING THE RESEARCH TOPIC

The reasons may be confined to two matters:

First: The pressing desire to observe a number of rulings and regulations related to financial buy-off in exceptional circumstances.

Second: The abundance of disputes observed in the corridors of the judiciary concerning cases of bribery, its causes, circumstances, and adverse effects upon individuals and society.

RESEARCH OBJECTIVES

It may be stated that the primary objectives sought by this research were as follows:

1. The contribution of such research to the dissemination of the culture of rights.
2. To clarify that financial buy-off under the compulsion of necessity does not mean that the Payee has acquired anything through a legitimate means, but rather may have taken the right of another through an unsatisfactory manner.
3. To explain the regulations, types, and rulings of financial buy-off in Islamic jurisprudence, and anti-corruption laws in the Kingdom of Saudi Arabia.
4. To compile what is dispersed of the matters of this research in one place.
5. To demonstrate the capability of Sharia to resolve disputes between litigants in cases of bribery and financial buy-off that contravene the laws of Sharia.

LITERATURE REVIEW

Following precise research and investigation by the researcher, and within the limits of his sources, he found some fragments of fatwas related to the subject [1], but they do not rise to the level and content of this research, which has gathered the scattered issues in one place.

RESEARCH METHODOLOGY

The nature of the research necessitated that I follow an inductive analytical method, based on revealing the circumstances and rulings of buy-off with money in the light of the words of jurists and their principles.

RESEARCH STRUCTURE AND PROCEDURES

The research consisted of an introductory introduction, three topics, a conclusion, recommendations, and an index of sources and references, as follows:

Introduction: In which there is a summary of the research idea, a statement of its importance, problems and questions, reasons for its selection, its objectives, Literature Review thereof, its methodology, and its plan.

Topic One: Clarification of the terms of the research title

Topic Two: Evidences for the permissibility of buy-off with money in cases of necessity

Topic Three: Regulations of financial buy-off

Topic Four: Types of financial buy-off

Topic Five: The ruling of financial buy-off under the anti-corruption laws in the Kingdom of Saudi Arabia.

Conclusion: In which are the most important Research Findings and its recommendations.

Index of sources and references.

Topic One: Clarification of the terms of the research title

The proposed title of this research is: Financial Buy-off – Contemporary Jurisprudential Applications, and this necessitates clarification of the terms comprising this title.

1. Buy-off: This is a source word of the form *mufa'ala*, its original root is trilateral (ša-na-'a). Ibn Faris said: "Šād, nūn, and 'ayn constitute a sound original root, and it denotes the act of making something by craftsmanship" [2]. This indicates that *ṣun'* implies the invention of things by way of craft, composition, and creation by a maker, after it had not existed. This craftsmanship necessitates the existence of a maker, a thing made, and a person for whom it is made, for the process of making to be completed with its three pillars that establish its reality. The language dictionaries have enriched the word buy-off with several synonyms, some of which have fallen into disuse, such as: *al-murāshāh*, *al-mulākhāh*, *al-musānāh*, and *alkaltab* [3], and other terms which are all linguistic interpretations synonymous with buy-off, some of which are obsolete or rarely used.

In all of the foregoing linguistic insights, the most important indication is: the existence of several human elements that constitute the scene of buy-off, as there is a Payor and a Payee, and something that is made by the former for the latter, namely a sum of money or similar item of value, which he uses to placate the latter in order to achieve a benefit for himself or to avert harm from himself.

As for buy-off in terms of the technical Sharia definition, it is the payment of money to attain a right threatened with deprivation, or to repel the aggression of an oppressor, or to prevent it before it occurs, or to avert great harm that is about to befall a relative of the money owner; in all of the foregoing, the sin falls upon the receiver, not the giver.

If this is established, it may be said that the pillars of buy-off are three:

First: the Payor, who is the person that pays part of his wealth in order to rescue the remainder of his cash assets or tangible properties, and he bears no sin in making the payment.

Second: the Payee, who is the person who seeks to collect the money of buy-off from the one who has paid it under compulsion, and he is sinful for accepting it.

Third: the form of payment, which is most often money but may be a tangible item from his properties, and they both exit his possession under compulsion.

Topic Two: Evidences for the permissibility of buy-off with money in cases of necessity

The principle concerning financial buy-off by way of bribery is prohibition, whether it be given to a judge to invalidate a right or validate falsehood, or whether it be given to an oppressor, a highwayman, a tyrannical official, a greedy customs officer, or others who consume the wealth of people unjustly, or who pay it to obtain a position unlawfully or similar worldly posts, thereby depriving those more entitled and deserving through the bribery buy-off. This is by consensus of the jurists, and more than one scholar has narrated this consensus.

Ibn Qudamah said: "As for bribery in judgement and bribery of the official, it is prohibited without disagreement." [4].

This consensus is based on numerous texts that have been narrated prohibiting bribery, and there is no

room now to enumerate them here due to their fame on the one hand, and due to the sufficiency of the aforementioned consensus narrated by Ibn Hazm and others on the other hand.

Excluded from this principle of prohibition is financial buy-off not for the purpose of bribery to invalidate a right or validate falsehood, but for the preservation of a right belonging to a person threatened with loss, destruction, plunder, embezzlement, usurpation, theft, arbitrary detention, or to avert harm to oneself due to the threat of a criminal killer, or buy-off of an enemy with money to secure the release of a captive, or other such means threatening lives, wealth, and property.

Evidencing the permissibility of financial buy-off in these exceptional cases of necessity, and the absence of sin upon the giver, in contrast to the receiver, are several proofs, including the following:

1. **It was narrated by Abu Sa'id al-Khudri who said:** “‘Umar said: O Messenger of Allah, I heard so-and-so speak well, mentioning that you gave him two dinars. He said: But so-and-so does not say that, nor does he praise with it; indeed, I gave him between ten to one hundred – or he said: to two hundred – and indeed one of them asks me for a need, and I give it to him, so he goes out carrying it under his arm, and it is nothing but fire for them. ‘Umar said: O Messenger of Allah, why do you give them? He said: They refuse except to ask me, and Allah refuses for me miserliness.” [5].

The point of evidence from the hadith is that the Prophet [SAW] gave a man a little, and he praised and spoke well, and he gave another man much, yet he neither praised nor spoke well. Rather, he gave the latter a buy-off with money to avert something the Prophet [SAW] knew of his greed for wealth and his persistence in seeking more of it, and the Prophet [SAW] gave it by his own choice, not by coercion from anyone. Thus, the giver under compulsion to preserve his wealth is more deserving of permissibility.

2. And because the buy-off under necessity with part of the wealth is a means to preserve the remainder from loss, it is permitted in a state of necessity. If he did not buy off in this situation, his wealth would be lost, and the wasting of wealth is an act prohibited in Sharia. It is akin to “handing it over to one who is not of sound judgement, being exposed to loss in sales and similar transactions, and poor management of one’s possessions such as slaves, livestock and the like, which, if not properly cared for, will be lost. Included in the prohibition of wasting wealth is the division of what the co-sharer cannot benefit from if his share is separated, such as a pearl, a sword, a pigeon, a mill and the like; division in all these is invalid, as it constitutes waste of wealth, producing no benefit, nor yielding any good.” [6].
3. And because prohibition concerning human beings, if it pertains to one side, does not extend to the other side. This is an important principle clarified by Shaykh al-Islam Ibn Taymiyyah when he discussed the person compelled to financial buy-off, and he gave several examples thereof. [7].

Topic Three: Regulations of financial buy-off

Financial buy-off has a set of Sharia regulations that place it within its correct framework and do not allow it to devolve into unchecked behaviour in which the unlawful is not avoided nor the lawful sought. The most important of these regulations may be summarised as follows:

First regulation: That the financial buy-off be measured according to its need

Because “the ruling established for the sake of necessity only permits that amount which removes the necessity; if the necessity ends and is removed, the ruling returns to what it was before.” [8]

Second regulation: That the financial buy-off is not to be considered as a legal zakat

Because this is akin to giving the impure of one’s wealth in zakat, and Allah Almighty has said: “**And do not aim at the impure from it, spending thereof.**” [Al-Baqarah: 267].

Third regulation: That the Payor does not adopt it as a regular practice in agreement with the Payee

As is done by a number of merchants with several customs officers, especially if the latter is a relative, neighbour, or companion.

Fourth regulation: That the financial buy-off does not cause harm to others

Because the financial buy-off pertains specifically to its owner, and it is not permissible that it results in harm befalling others.

Fifth regulation: The Payor must repudiate the financial buy-off, even by the lowest degree of repudiation

Because "It is permissible for the merchant to buy off with his wealth in case of necessity, with the sin falling upon the receiver, not the giver; however, he ought to detest the act and repudiate the doer, even by the lowest degree of repudiation, lest he be regarded as consenting or transgressing." [9]

Sixth regulation: That the cause of the financial buy-off is necessity, not the pursuit of luxuries which carry no harm in abstaining from

Because luxuries entail no hardship in their omission by the obligated, and "hardship permits ease if there is necessity or need, not mere pursuit of luxury." [10]

Seventh regulation: If the Payor finds a means to save his wealth without buy-off, he must pursue it

Eighth regulation: That the financial buy-off be characterised by truth, not falsehood, such as financial buy-off to obtain a forged educational certificate

Imām al-Nawawī, may Allah have mercy upon him, said: "As for the giver – that is, of bribery – if he attains through it a rightful claim, it is not prohibited for him to pay it; but if he attains through it falsehood or the invalidation of a right, then it is prohibited for him." [11]

Topic Four: Types of financial buy-off

The researcher observes the prevalence of the concept of buy-off in several jurisprudential categories, and it is possible to adopt a form combining an adjective and a noun as a linguistic template denoting a jurisprudential meaning encompassing a legal ruling.

1. **Retributive buy-off:** Wealth paid by the offender against an inviolable life upon the waiver by the heirs of the victim.
2. **Orphan's buy-off:** Wealth paid by the guardian of the orphan to safeguard the remainder of his wealth and property in the event of fear of aggression against them by an oppressor.
3. **Conciliatory buy-off:** What a person pays to another of wealth or property, buying off to him with it, seeking affection, love, and harmony, not to use it as a means to invalidate a right or validate falsehood. This clearly illustrates the difference between prohibited bribery and recommended gift-giving.

Topic Five: The ruling of financial buy-off under the anti-corruption laws in the Kingdom of Saudi Arabia

It is certain that financial buy-off is a manifestation of corruption, and the laws in the Kingdom of Saudi Arabia have prescribed deterrent punishments for it, such as imprisonment for periods ranging from five to ten years, and financial fines reaching up to one million riyals. Among the signs of the state's strictness is its persistent endeavour to combat all forms of corruption, including financial corruption which affects the functioning of the state's economy, and indeed inevitably impacts the balance of the state's general budget due to large-scale embezzlements, or smuggling and laundering of funds, or the counterfeiting of the state's currency. The jurists of political Sharia have greatly emphasised the significance of the decisiveness of the ruler in eradicating manifestations of financial corruption, and the judiciary has legislated deterrent discretionary punishments for all who dare to pursue illicit wealth through suspicious financial transactions conducted secretly among criminal syndicates, or persons of influence from among those managing the major institutions of the state, whom the state has entrusted with the administration of the vast financial budget with clarity, transparency, and justice.

One who contemplates the Law of the Oversight and Anti-Corruption Authority observes a clear strictness in the provisions of the law, which are provisions that prevent financial corruption for one

who reflects and considers, and they, on the other hand, clearly indicate the punishments that befall all those who engage in such corruption. The provisions of the law are very numerous. [12]

RESEARCH FINDINGS

The research concluded with a set of findings, the most important of which are as follows:

- Bribery is what the briber gives to the bribed in order to invalidate a right or validate falsehood, and it is among the major sins. Jurists have exempted from this one who bought off with his wealth in cases of necessity, and the sin then falls upon the unjust receiver, not the compelled giver.
- The Sharia texts have been strict in addressing the major sin of bribery due to its adverse effects on society; hence the jurists have classified it among the major sins.
- The language dictionaries have enriched the word buy-off with several synonyms, some of which have become obsolete in use and are now considered rare in language. Among these are: *al-mulākhāh*, *al-musānāh*, *al-muṣādāh*, *al-mudālāt*, *al-mudājāt*, *al-kaltab*, *al-qandalah*, and *al-bartalah*...
- The researchers have innovated a comprehensive and suitable definition for buy-off, which is: the payment of wealth to attain a right threatened with deprivation, or to repel the aggression of an oppressor, or to prevent it before it occurs, or to avert great harm that is about to befall a relative of the wealth owner. In all of the above, the sin falls upon the receiver, not the giver.
- The pillars of buy-off are three: the Payor, the Payee, and the form of payment.
- The principle concerning financial buy-off by way of bribery is prohibition, whether it be from a judge to invalidate a right or validate falsehood, or from an oppressor, a highwayman, a tyrannical official, or a greedy customs officer.
- There are several Sharia evidences indicating the permissibility of financial buy-off in exceptional cases of necessity and the absence of sin upon the giver, in contrast to the receiver.
- Financial buy-off has important regulations, seven of which were detailed in the research.
- Every bribery is a buy-off, even if for falsehood, but not every buy-off is of the nature of bribery; among financial buy-offs are those that are permissible with no sin upon the giver.
- The Kingdom of Saudi Arabia – may Allah preserve it – possesses high-level laws for combating corruption in all its forms, foremost among them financial corruption. The Law of the Oversight and Anti-Corruption Authority, through its precise provisions, has clarified the gravity of financial and administrative corruption and has classified buy-off by prohibited bribery as one of the manifestations of financial corruption.

RESEARCH RECOMMENDATIONS:

Through the content of this research, a set of recommendations have become apparent to me, with grounds for writing thereon, namely:

1. Financial embezzlement: Contemporary jurisprudential concepts.
2. Arbitrary threat to wealth and property: A contemporary jurisprudential study.

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