

Iran's Majlis Approach to Non-Criminal Legislations in Curbing Corruption

Afshin Nouraei, PhD Student, Public Law Department, Department of Law,
Islamic Azad University, Tehran, Iran, afshin.nouraei@gmail.com

Mohammad Bahadori Jahromi, Associate Professor of Law, Tarbiat Modarres
University, Tehran, Iran, m.bahadori@modares.ac.ir

Seyed Hojjatullah Alam al-Huda, Consultant Professor, Head of Judiciary
Research Institute, Tehran, Iran, hojjatalamalhoda@Gmail.com

In past decades, the mainstream anti-corruption strategies of different countries have mainly revolved around criminal approaches. This has been remarkably changed in recent years and non-criminal perspectives in different areas of policy-making including law making domain, has been signified more than before. Current literature on the role of laws in curbing corruption emphasizes on the existing of a balance among preventive and penal legislations. The rules related to openness, checks and balances, privatization, freedom of media and press, the right to access information and so on are the areas that don't necessarily have direct bearing on corruption as such, but are critical elements to contain corruption.

Based on this theoretical approach, transparency and the right of access to information and conflict of interest are criteria employed for the purpose of this study. By employing these indications and some other sub-indication of budget transparency, the officials' assets and whistleblowers' support, the study aims to evaluate the role of Iran's Islamic Consultative Assembly in setting a social environment less prone to corruption. The research concludes that despite the legislative attempts in the drafting and passing the relevant bills, the current legislations have proved insufficient to prevent corrupt practices and accordingly they have not brought about the desired effects.

Keywords: Corruption, Anti-corruption legislations, Majlis,
Transparency, Conflict of Interests,

1- Introduction and statement of the problem

Administrative and economic corruption is currently one of the major obstacles to achieving progress and development in Iran. Numerous policies have been put into force in the last decades to manage this phenomenon by legislators, particularly in the Islamic Consultative Assembly. In addition to the principles of the constitution, many anti-corruption legislations have been drafted and approved in the Iranian legislative system but all of the measures have been proved to be inefficient since the most recent country's rank in global index of Transparency International demonstrates that corruption in public sector is continuously exacerbating.

In analyzing different aspect of widespread corruption in Iran, major part of the present literature in Farsi has mainly focused on the executive and judicial branches of government but this study intends to investigate the role of Iran's Majlis, the main legislative body, in combating corruption.

Legislative branch in each country enjoys the authority to set the required legal framework to reduce corruption. Three main categories of anti-corruption laws are proposed in the current literature which include both preventive and punishing aspects of corruption. Criminal laws are key to deter and punish any corrupt act but aside from that there are series of law that allow creating an environment in which corrupt behaviors are less likely to occur. New mainstream of anti-corrupt policies introduced by international instruments such as United Nations Convention against Corruption (UNCAC) primarily revolve around such non-criminal approach and preventive aspects.

With regard to importance of this approach, the study seeks to answer the question of to what extent Iran's Majlis has taken non-criminal legislations into consideration in fulfilling its law-making responsibility. In order to investigate performance of the legislative branch, the study particularly focuses on three main criteria of transparency, the right to access information on one hand, and conflicts of interest, on the other hand. The logic behind the selection of these indications is that unlike the criminal laws these topics pave the way for an anti-corrupt atmosphere where less corrupt acts occur.

For each of these criteria, few sub-indicators have been applied for the purpose of this study. Under the issue of transparency and right to access information, in addition to the related bills and legislations approved by Majlis, budget transparency and right to access to budget information will be discussed. Moreover, the issue of assets' declaration by public officials and whistleblowers' protection are two topics which will be investigated under the conflict of interest.

The main hypothesis of this research is that despite the legislative attempts to pass non-criminal bills, the legislative body of the country has failed to adopt non-criminal legislations in an effective way that practically reduce and control corruption in the country. As we will see, this failure is either due to weaknesses

in the text of laws or incomplete implementation of them which in both cases demonstrate failure of Majlis in fulfilling its parliamentary responsibilities.

This paper relied essentially on a secondary source of information. It is based first and foremost on academic and media texts written in Farsi and English. Materials used were collected in an eclectic manner from published outlets such as journal publications, books, online sources and newspaper reports. Official documents and statutes such as the country's constitutions and development plans were also used to investigate the study's main question.

2- Theoretical Concept and Framework

2-1 The concept of Corruption

The concept of corruption may cover a broad range of definitions. As a global phenomenon, corruption is widely defined as "abuse of public power for private benefits" (World Bank, 1997; Transparency International Website). This is the definition that is relatively agreed by different theorists and researchers. In any definition for this concept, there are some common levels: level of observation (individual, organization, sector and government), the nature of relevant political regime (democratic versus despotic) and variety of other factors such as the extent of government intervention in the market and the function of that government in different areas such as education, regulation and so on. (Pippidi and Heywood, 2020: 13). In this research, the same meaning of corruption is employed.

2-2 Theoretical Framework; role of legislative power in curbing corruption

A great body of the current literature on corruption has mainly concentrated on the role of executive and judicial branches in curbing corruption. The law-making branch of the country primarily has the authority to set the required legal framework to reduce corruption. Theoretically, the key responsibilities of parliament in most of countries are legislation, oversight and representation, but how these factors are defined in relation to corruption.

The core responsibility of parliament is the legislative role. In fact, the power of legislature to control their own budget and to pass legislation is correlated at a significant level with the reduction of corruption. Through enactment of laws, the representatives investigate the corrupt behaviors of citizens and organizations, passing the surveillance and penalties. (Stapenhurst, 2006, 3)

A better legal framework would improve the problem of corruption in the condition that the parliament representatives reflect the genuine interest of citizens and are not captured by any other forces. (Stapenhurst et al., 2006: 4) In other word, sufficient autonomy regarding policy-making is a vital condition, otherwise parliament may be easily put under pressure to impede the enactment of certain legislation.

Another key responsibility of parliament is oversight role which allows parliament to hold the executive power accountable. Parliament has to be able to supervise the implementation of laws by the executive branch. Effective participation in the budgetary process, parliament's corruption commissions and close cooperation with audit institutions are different channels through which the parliament fulfil this function. (Stapenhurst et al., 2006: 4)

Representation is the last main function of parliament. It is a combination of public deliberation, consensus building and the participation of citizens on the public policy-making. In compared to other two functions noted above, it is less tangible but is an essential element in building integrity. (Stapenhurst et al., 2006: 5) In simple words, representatives are elected by the people to represent concerns of their constituents' citizens. They are mandated to include concerns of their constituents in adoption of any anti-corruption policies and oversee their impacts and implications.

Aside from the representation aspect, the importance of broad coalition with civil society should not be neglected. As Michael Johnston emphasizes, the interests and concerns of civil society may be directed into the public debates, passing of legislation, and creation of political will to curb corruption. These acts allow parliament to achieve the necessary credibility and legitimacy in the eyes of citizens. (Johnston, 2006: 157-158)

How parliament can effectively engage in anti-corruption practices through law-making task? As mentioned earlier, the essential role played by parliament is enacting laws, monitoring the enforcement and implementation of them which often are fulfilled through committees.

In general, there are contradicting views regarding the role of laws in anti-corruption policies. As Jeremy Pope reiterates, the problem of corruption is less related to anti-corruption legislation and it is more related to the formulation and implementation of such laws. (Pope, 2006, 51) Thus, the role of laws in curbing corruption should not be overstated. Even though the appropriate laws are the vital component of anti-corruption policies, it is never a sufficient element since it is a cost-free way to appear to take sufficient measures but no serious change is done in reality.

Some other see enacting laws as a primary step toward curbing corruption. As a result of this viewpoint, the laws to punish bribery and other various forms of corruption have considerably extended around the world. The attention to such types of laws has often been paid at the expense of other preventing laws and measures. (Pope, 2006, 51)

The anti-corruption laws cover a wide field, but there are three main categories to discuss here:

- Laws that punish corruption

- Laws that affect the administrative and social environment where corruption is less likely to occur
- Laws related to some vulnerable areas such as procurement and welfare payment to citizens. These are the areas which corrupt action would be likely to occur. (Pope, 2006: 51-52)

Criminal laws are deterrent in fighting against corruption and are, however, relevant only if there is the likelihood of laws enforcement. Thus, when there are existing laws that are not enforced, passing new laws appears to be meaningless. (Pope, 2006: 52)

Aside from criminal law there are series of law that allow creating an environment in which corrupt behaviors are less likely to appear. The laws related to the right to access to information, the disclosure of assets by public officials and freedom of press and expression are instances of second group of anti-corruption laws. (Pope, 2006: 52)

Third category of anti-corruption legislations are laws relevant to areas more vulnerable to corruption. These areas should be corruption proofed in order to nip any corrupt measure in the bud. Public procurement project is a classic example of areas with potential risk of corruption and endangering public interest. Corruption risk within customs administration is another atmosphere due to the very nature of custom work. (World Custom Organization, 2015)

In recent decades, the mainstream anti-corruption approach has mainly revolved around criminal laws and rules. But as Sandgren points out, overstressing on criminal law suggests a misunderstanding of the role of law. The rules related to openness, checks and balances, privatization, freedom of media and press, the right to access information and so on are the ones that doesn't necessarily have direct bearing on corruption as such, but are essential elements to contain corruption. (Sandgren, 2005 :726-727)

As a matter of the fact, one feature of clean countries is that they have a strong legal system not a system of harsh penal laws. This is mainly because effective anti-corruption policies primarily focus on institutions not individuals and that's why criminal law are of less importance compared to other non-criminal anti-corruption rules. Thus, in formulation of anti-corruption laws, besides the punitive and criminal legislations the parliament should emphasize other non-criminal laws. Due to significance of the non-criminal approach in constraining corruption, this study intends to assess performance of Iran's Majlis based on these criteria.

3- Majlis performance in non-criminal legislations

In this section, the research assesses Majlis performance in drafting and approving non-criminal legislations. For that purpose, the study specifically concentrates on transparency, the right to access information on one hand, and conflicts of interest, on the other hand. Some other sub-indicators will be addressed under each topic.

3-1 Transparency

A large body of corruption literature has addressed the issue of transparency and its economic, social and political significance in reducing corruption. It is closely linked with the right to access information, as a fundamental democratic right. (Fox, 2007: 663-664) In fact, the right to know is a precondition to achieve transparency there is a general consensus that transparency connotes the right to know and open access to information. This is why the study has proposed two concepts under a single indicator. No need to say that successful countries in managing corruption experience a relatively high rate of transparency.

The issue of transparency, accountability and information access are clearly expressed in provisions of Iran's constitution. In addition, Iranian senior officials consistently spoke out about the right to information and transparency particularly, emphasizing "the need to all go inside a glass room so that people can see every measure we take". (Almasi, 1397: 5) Yet, despite the constitutional requirement and the officials' clear remarks, except the Majlis sessions and minutes that are made public, no other state information is accessible for the public.

In order to understand the extent to which the issue of transparency has gained the attention of Majlis a brief overview of laws enacted in relation to transparency would be beneficial. In recent years, some legislative attempts have been made to promote transparency particularly in public sector. "Law on Improving Health of the Administrative System and Combating Corruption" enacted in Ordibehesht 1390 (May 2011) is one of the rare legislations that has taken into account the principle of transparency and is based on a preventive and non-criminal approach. (Dadkhodaei, 1392: 223) There are some other rules, however, that either have been left unimplemented or were unable to implement due to the weaknesses in text of the law. (Transparency for Iran Think Tank, 1398)

An example of an unimplemented law is the "transparency legislation of public officials' salary, payments and benefits" as required by the article 29 of Iran's Six Development Plan" in 1396. According to this rule, Iran's government was pledged to establish a transparent mechanism to provide all financial information related to the officials' benefits and salaries for the public and supervisory bodies. While this mechanism had to be enforced and implemented by the end of 1396, no steps had been taken to that effect and hence, Majlis has failed to undertake its main responsibility in oversighting the enactment of laws. (Khabaronline, 1398)

According to state media, since 1397, the government has been drafting a bill called the "Comprehensive Transparency Bill" in collaboration with researchers. This seeks to turn iron houses into glass houses and fill the existing gaps in the past legislations such as the law on promotion of the health of the administrative system (approved in 2011) and the Law on Dissemination and Free Access to Information (adopted in 2008). In 1398, this bill submitted to Majlis for legal proceedings (National Information Database of Country Laws and Regulations,

1398) but has been left unconsidered as few other relevant bills. (Khabaronline, 1399)

In a general overview, current legislations on transparency can be summarized as the following:

- Article 55 of Iran's constitution enacted in 1358 by Majlis: It stresses the need for inspection and audition of all public institutions and companies to ensure that no expenditure exceeds the allocation approved and that all sums are spent for the specified purpose.
- The law of "publication and free access to information" enacted by Majlis in 1387 (2009): this legislation not only hold the government responsible in corruption but also provides the citizens the right to access to information. (Aziznejhad, 1398: 213)

These legislations clearly aim to control corruption by establishing transparency and free access to information, instead of penal codes and punishment. Despite this legal framework for transparency and free access to information, the weaknesses in legislations and data infrastructures are undeniable. Currently there is no independent channel for data collecting and reporting by non-state organizations and all of the existing entities are affiliating with the state and hence, the data they provide are not reliable. (Bennett and Pyman, 2018)

There are also several other laws that entail transparency principle among which are the fifth plan of Economic Development, the law on Permanent Provisions of Country Development Plans, Law on the Establishment of Non-Governmental Educational Centers and so on. (Transparency for Iran Think Tank, 1398) But as the focus of this study is essentially transparency in larger areas of decision-making, the laws contenting general areas of decision-making have particularly been taken in to account. Budget transparency is an example that is chosen to be analyzed specifically in this research.

3-1-1 Budget Transparency

With the lack of transparency in whole political structure of Iran, it is not surprising to see legal weaknesses in budget transparency, as a critical component of good governance concept. Regarding this debate and to make clear the situation of budget transparency in Iran, referring a credible international ranking on measuring the government practices in budget transparency is beneficial. According to Open Budget Survey 2015, the data related to more than 110 countries were collected and analyzed to conduct this survey, while there was no information related to Iran's budget transparency. Several reasons are involved here: budget allocation information is not published in a public and transparent manner and such information is published with a delay. Non-inclusion in credible international ranking also suggests a lack of transparency in the information related to the annual budget of the country and the lack of public access to it; the

situation that may lead to severe damage to the country's economic credibility. (Aziznejhad, 1398: 221)

From an internal perspective, the country's annual budget suffers from problems of ambiguity. These ambiguities, in turn, eliminate the possibility of effective enforcement of the rules and will worsen the present economic and financial corruption. (Aziznejhad, 1398: 221) A considerable share of current shortcoming in the country's budget system can be improved by passing a budget transparency law. Therefore, the role and responsibility of the Islamic Consultative Assembly in passing legislation related to transparency in the country's budget system is undeniable.

As many other parliaments, Majlis is responsible for approving the executive budget proposal and ensuring that the budget reflects citizens' preferences while being aligned with fiscal constraints. Thus, the exigency of such a law can be explained in the legal role of the Islamic Consultative Assembly in approving and supervising the allocation of national budget.

3-2 Conflict of Interest

Majlis may take significant anti-corruption measures considering the conflict of interest. The issue of conflict of interest is a breeding ground for corruption since any case of corrupt act is inherently a case of conflict of interest. There has been an increasing consensus that managing the conflicts is highly effective in curbing corruption.

One of the most basic definition of the term is the conflict between a public official's interest as a citizen and his duty as a public or civil servant. (OECD, 2005: 13) Although there are laws and regulations in this regard in Iran, but this does not imply that such a concept is well established in the Iranian legal system. In fact, the concept has not yet emerged as legal concept and hence, the process of conflict management in our country and our legal and judicial system is still incomplete. (Vakilian and Derakhshan, 1399: 271) In what follows, Majlis legal initiatives to prevent and enforce framework to address this phenomenon will be briefly explained.

In the area of conflict of interest, laws have been passed by the Islamic Consultative Assembly that will help control and manage conflicts of interest to some extent. Declaring the financial interests of officials and their personal incomes, acknowledging conflicts of interest during the tenure of responsibilities, and imposing restrictions on employees in government positions are among such laws (Almasi, 1397: 9) The most significant attempt by Majlis is the conflict-of-interest's bill that has been proposed in fall of 1398 but no decision has been made on that after nearly three years. (Almasi, 1397: 9) Similar to the issue of transparency in the country's budget system, no action has been taken by Majlis to review and go through the legal process of this law. (Irna, 1399)

The issues of announcing public officials' assets and supporting whistleblowers are two key areas under conflict of interests which will be reviewed in the following sections.

3-2-1 Assets' declaration for public officials

A primary tool to prevent conflict of interests and accordingly the very phenomenon of corruption is declaration of public officials' assets. In this regard, legislators in Article 142 of Iran's constitution have addressed the issue of the assets of the senior officials and the prevention of corruption, including the supreme leader, the president and her deputies, ministers as well as their spouses and offspring. This examination would cover before and after their terms of the office and the judicial power is responsible to ensure that their assets have not increased in a manner contrary to the rules. (Islamic Republic of Iran's Constitutions, 1979)

Despite taking this measure, financial oversight of officials' assets faces various challenges including the impossibility of overseeing officials during their terms of service, failing to anticipate proper verification mechanisms and formulating effective guarantees, and failing to consider financial transparency and accountability. (Taghizadeh and Behrouzinejad, 1397: 84)

Despite the constitutional command on the issue of assets of officials, the limited scope of oversight in this article and lack of any specific law to investigate it have caused series of legislative efforts to pass a new framework. One of the most recent and important efforts of the Islamic Consultative Assembly was to pass laws to oversee the property of officials in the late 1380s. Finally, after several amendments, this was approved by the parliament in 1391 and sent to the Expediency Council. The law was finally approved in 1394 and its bylaws were enforced by the judiciary in 1398. (Taghizadeh and Behrouzinejad, 1397: 84)

Despite several strengths, this law only provides for the property of the authorities and their affiliated families. This limitation may exempt a child outside their custody and other relatives of officials from this supervision. Restricting the officials' property only to the beginning and end of service by the law also allow officials not to disclose all of their assets before their office. They may also transfer the property's ownership to someone else in order to avoid audition. Legal sanctions foreseen by the law regarding no declaration of property and incorrect declaration, whether intentional or inadvertent, has many ambiguities and there is no mechanism to verify the accuracy of the declared information. (Taghizadeh and Behrouzinejad, 1397: 109-107)

3-2-2 Whistleblowing support

Another important and common dimension in the debate of conflict of interest is the issue of whistleblowers which conveys disclosure of information about any corrupt acts. As an effective way to detect and prevent corruption or any other

relevant malpractices, the act of whistle blowing requires legal protection and, in this section, legal measures taken by Iran's Majlis will be reviewed.

The issue of protection of people who report illegality, fraud or any corrupt act to the public health and safety is also considered by the United Nations Convention against Corruption. Article 32 of the convention contains practical recommendations to ensure effective protection of whistleblowers and to facilitate corruption reporting.

In Iran's domestic law and the constitution in 8th article, the issue of Enjoining to Good [Ma'ruf] and Forbidding from Evil [Munkar] has been considered. In the current situation that the country is facing widespread corruption, it can be a legal ground for disclosure of corruption and declaration of conflict of interest. (Vakilian and Derakhshan, 1396: 281) Such protection of whistleblowers is insufficient and suggesting the legislators' minimum attention to this strategy in managing conflicts of interest and, consequently, reduce corruption.

The Islamic Consultative Assembly has adopted few policies and legislations to protect whistleblowers, but they have been largely failed. Efforts by numbers of representative of the 10th course of Majlis to pass a bill called "Support for Corruption Reporters" was disapproved due to disagreement of the majority of representatives.

Current representative of the 11th parliament in the fall of 1399 put a similar bill on the agenda, which contains a law to protect the reporters of corruption and the single urgency of this bill was approved and no further measure has been taken to fully approve and implement this law since then. This legislation, however, contains fundamental flaws that need to be amended. It lacks precise definition of the person reporting corruption, no mechanism for obliging the authority receiving the corruption report to provide a continuous report on the process of reviewing documents, and reference to the confidentiality of the corruption reporters' identity and several other flaws. (Tasnim, 1399)

The bill was approved despite fundamental shortcomings. In addition, no attempt was made to eliminate the possible inconsistencies of this law with law of "Punishment for Disclosure of Confidential Documents". Two laws clearly set the contradictory standards of behavior in a way that compliance of one constitutes non-compliance with the other.

Until the current law to penalize the release of classified documents is reviewed and amended, any attempt to pass the law to protect whistleblowers will be ineffective in practice because disclosure of any corrupt act could be subject to the confidentiality legislation. Hence, the adoption of standards for whistleblower protection measures has to ensure that, when implemented, new legislation does not inadvertently expose those who report misconduct, fraud, or illegality to retaliation.

Conclusion

Despite economic prosperities of countries in different regions, corruption has remained a major challenge to the development by intensifying inequalities and so many other consequences. To curb corruption, each country drafts an anti-corruption comprehensive strategy to coordinate and unify the national anti-corruption measures. In fact, the prospects of a successful fight against corruption have improved greatly over the last decade or two and there are numerous examples of countries with fruitful measures against corruption.

In order to establish an effective national strategy to fight corruption, countries adopt either preventive or punishing legal measures with different extent. As the current literature confirms anti-corruption legislations consists of three main categories of laws which reflect both preventive and criminal approach: laws that punish corruption, laws that affect the administrative and social environment and finally the laws related to some vulnerable areas such as procurement and welfare payment to citizens.

The notion of prevention through different tools such as legislations, raising awareness and education is enshrined in the UNCAC and in "clean" countries anti-corruption strategies. The prosperous countries are not clean for their harsh penal codes, but because they have strong legal system in prevention of corrupt acts.

In line with the importance of a balanced approach to both criminal and non-criminal areas in fighting corruption the study intends to address non-criminal approach of Iran's legislative power in combating corruption. The main question of this research is to what extent the legislature of the Islamic Republic, as the main legislative body in the country, has noted non-criminal areas of law. By selecting few indicators, including transparency, the right to access information and the issue of conflict of interest, the legislative performance has been examined.

In recent years laws related to transparency and its promotion in the country's decision-making system has been put in the agenda. Some of these laws, however, are still not implemented and some other have not been approved. Transparency law of public officials' salary, payments and benefits" required by the article 29 of Iran's Six Development Plan" in 1396, "Comprehensive Transparency Bill" are among the laws that have been left unaddressed. In fact, Majlis has failed to undertake its main responsibility in full passing and enacting these laws.

In addition, despite the constitutional requirement and the officials' clear remarks on significance of transparency and free access to state information, no official data and statistics is accessible for the public, except the Majlis sessions and minutes. The issue of government control and lack of transparency in the production of data and statistics in Iran is a serious problem and seems to be present in many levels and sectors of the society including budget transparency.

The annual budget of the country suffers from severe problems of ambiguity, and no legislation protects the public right to access budget information and budget transparency. Regarding the issue of budget transparency, the survey of credible international rankings such as "Open Budget Survey 2015" is considerable because no information related to budget transparency in Iran has been reflected in this global ranking. It clearly is another indication that budget information is not published in a public and transparent manner and unlike the current legislations, there is no public access to such information.

In addition to the Comprehensive Transparency Bill, the Non-Conflict Bill is one of the other bills pending in the Islamic Consultative Assembly. The issue of conflict of interest and two sub-indicators of officials' assets disclosure and protection of whistleblowers are other criteria the study adopts to answer the main question.

Iran's parliament, as other countries around the world have introduced a legal systems of asset declaration for public officials in order to prevent or combat corruption. It has approved the law of asset declaration of public officials with one urgency. This has been a significant step in removing the conflict of interest but the serious weaknesses such as the impossibility of overseeing officials during their terms of service, failing to anticipate proper verification mechanisms and formulating effective guarantees has hampered effective implementation of the law and so far no attempt has been made by Majlis to amend the weaknesses.

In order to reduce the legal obstacles to disclosure of corruption, last year Majlis has passed a bill with a single urgency but it is yet to be fully approved. The ambiguities in the text of the law, no attempt to amend the law and its clear inconsistencies with the Punishment for Disclosure of Classified Document law indicates that there is still a long way to go to fully implement the law.

Thus, as it appears there have been attempts to address non-criminal laws on corruption on behalf of legislative power but, by and large, related initiatives appear not to have given the expected results for a range of reasons. Almost in all indications, transparency, access free to information, declaration of assets and whistleblower support the parliament has taken steps to address these non-criminal law-making but they are either have not fully approved to become a law or they are pending to be enacted.

The current legislations have proved insufficient to prevent corrupt practices from continuing and flourishing since they have not brought about the desired effects. For example, the current protection system from whistleblowers doesn't guarantee enough protection in case of disclosure and it is in clear inconsistency with some other laws. Thus, as mentioned in the theoretical section of the study, legislative power of the country has failed to balance criminal and non-criminal approach in its anti-corrupt legislative policies. The research also concludes that the mainstream anti-corruption approach of Majlis has mainly revolved around

criminal laws and rules and preventive measures still are being neglected by the law makers.

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