Linguistic and Philosophical Investigations
ISSN: 1841-2394, e-ISSN: 2471-0881
Vol 23 (1), 2024
pp. 1364 - 1371

The Crime of Bribery in Violation Of Public Duty in The Iraqi Penal Code

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Crimes that infringe upon public duties fall under criminal laws that include a range of punitive and preventive measures. These policies aim to uphold the integrity of public duties by ensuring proper professional conduct and preventing the misuse of professional positions for influence or financial gain. Such offenses undermine the proper performance of a job, potentially harming public interest or individual interests, or both. Bribery, one of the most prevalent crimes in Iraq, is among the oldest and most dangerous. Its frequent occurrence, as reported daily, underscores its widespread nature and the threat it poses to society.

To enhance judicial oversight—now considered a crucial and indispensable issue across various domains—efforts have intensified. This profession is dedicated to resolving disputes and providing support in financial matters. Judicial audit has emerged as a key mechanism in preventing, detecting, and mitigating criminal violations related to public performance, which have led to the squandering of financial resources. Weaknesses in supervision have been identified as a contributing factor to these violations.

Crimes related to public performance are seen as significant challenges faced by economies worldwide, especially following financial crises. To oversee public assets, countries assign financial supervision duties to specialized institutions, with names and structures varying according to each country's legal system. In Iraq, numerous laws have been established to combat crimes that undermine public duties. This article will address one such case.

Keywords: crime of bribery, Violator of public duty, Iraqi Penal Code

Received: 12 May 2024 **Revised**: 06 June 2024 **Accepted:** 22 June 2024

Introduction

Offenses that violate public duties Criminal laws include a set of criminal, punitive and preventive criminal policies that aim to preserve the dignity of public duties through the proper use of professional performance and prevent the use of professional position as a tool for abusing influence or obtaining financial benefits. It is against the proper performance of a job that may harm the public interest or the interests of individuals or both .

It is important to note that, despite advancements in methods and technologies that have facilitated the spread of these crimes, the real danger lies not only in the unjust profits gained by some individuals but also in their evolution into organized crimes connected to the economic sphere.

Crimes against public duties are categorized as "crimes against public interests," referring to actions that violate rights established for society as a whole or, in other words, for the state as a legal entity representing societal rights and interests.

In Iraq, the specific offenses related to violations of public duties are outlined in Section 6 of the Iraqi Penal Code No. 111 of 1969 (as amended), particularly in Articles 341 to 307. Given the widespread nature of bribery across various sectors, both private and public, we will first explore the concept and nature of bribery, followed by the corresponding penalties under the Iraqi Penal Code.

The Iraqi legislator addresses bribery in Articles 307 to 314 of the Iraqi Penal Code, while the Iranian legislator covers bribery in Articles 588 to 594 of the Islamic Penal Code.

Definition of the Crime of Bribery

First: Bribery in Linguistic Terms

Bribery has various meanings in linguistic terms, among which the most significant are: it signifies favoritism and also refers to a reward. Some definitions describe it as fulfilling a need through compromise.[1] All these literal meanings share a common concept, which is the act of giving something to achieve a specific goal. "Rashi" is the one who provides something to assist another in committing a wrongful act, "Mortashi" is the recipient of the bribe, and "Raish" is the intermediary who facilitates the exchange to increase or decrease the bribe.[2]

Second: Definitions of Bribery in Legal Terms

Several definitions of bribery exist in legal terms, and these differences arise from the varied perspectives of each jurist and researcher, each examining the crime from a different angle. Consequently, there is no universally accepted comprehensive definition, and no obstacles exist to this variability.[3]

Some jurists define bribery as "the abuse of public office for personal gain and the use of money to achieve personal interests." This definition is somewhat ambiguous in its first part because "abuse of public office" is a broad term encompassing various crimes, such as embezzlement, treason, and abuse of influence.

Bribery is also defined as "the act of an employee trading his power to perform or refrain from performing duties within the scope of his responsibilities." Additionally, some jurists view bribery as a form of contract, where the bribe giver and bribe taker engage in a transaction where positions and authority are bought and sold as commodities.

Despite variations in definitions, jurists generally agree that bribery involves trading authority and office. The underlying principle is that individuals who undertake duties or tasks should perform them without any additional reward beyond the salary or wages provided by their organization. If they accept or request any other form of compensation from beneficiaries in exchange for performing or neglecting their duties, they are deemed to be accepting a bribe. These definitions focus on the bribery from the perspective of the employee, often neglecting the role of the briber.

For bribery to occur, there must be at least two parties: the bribe giver, who provides a bribe to achieve a personal benefit, and the bribe taker, who accepts it. The bribe taker is obligated to receive money only from their own authority and not from other individuals. The act of accepting a bribe or refusing to perform a duty to gain an illegal benefit is central to the crime. Additionally, other individuals may be involved, such as intermediaries who facilitate the exchange and beneficiaries who receive bribes indirectly.

Bribery is one of the oldest crimes, emerging with the advent of governments, and is considered one of the most damaging offenses against governmental integrity. It signifies corruption and injustice, whether between individuals or government institutions. Bribery has become an international issue due to increased global trade and substantial financial transactions.

In essence, bribery occurs when an employee, through an agreement or understanding with another person, receives money or gifts in exchange for performing or refraining from performing duties within their authority.

The crime of bribery involves two parties: an employee who solicits or accepts a sum or promise in exchange for action or inaction related to their duties (referred to as the "bribe taker") and a person with vested interests (the "bribe giver"). Bribery is deemed to have occurred when the employee accepts the bribe offer, regardless of the other party's seriousness. The crucial factor is the employee's conduct, not the bribe giver's. Bribery is realized when the employee accepts the offer sincerely, even if the bribe giver is not earnest. However, if the employee only pretends to accept the bribe to expose the bribe giver, the bribe is not considered to have occurred.

According to the Iraqi Penal Code, Article 307 explicitly defines bribery: "Any employee or person appointed to public service who, in order to perform or refrain from performing a duty, or due to a deficiency in their duties, requests or accepts gifts, benefits, concessions, or promises for themselves or others, has committed the crime of bribery."

The research indicates that factors contributing to the prevalence of bribery include a weak administrative system and a lack of reward and punishment principles, leading to mistrust between government officials and citizens. This undermines the government structure and poses significant risks to society. The American occupation of Iraq exacerbated this issue by creating opportunities for bribery, involving numerous government agencies, and leading to the sale of government positions to inept individuals seeking financial gain and power. This situation negatively impacted human rights, with some individuals having to pay bribes to receive their legal entitlements.

Elements of the Crime of Bribery

The crime of bribery consists of three main elements:

1. Special Pillar (Hypothetical Pillar):

Bribery is characterized by a special quality in its perpetrator, referred to as the "presumptive element." This quality is a necessary condition for the crime's realization and must exist before the material and spiritual elements. Although it is not part of the crime's core elements, its presence is crucial for the crime of bribery to occur.

2. Material Element:

This element involves the criminal activities associated with committing bribery. It pertains to the actions that fall within the scope of the crime of bribery.

3. Spiritual Pillar:

This element refers to the criminal intent of the perpetrator, expressing their motivation to commit the crime of bribery. Some jurists consider this a "special element of crime" due to its significant role in the commission of the crime. Its absence would mean the crime cannot be considered bribery.[4]

A presumptive condition, or hypothetical element, which is generally governed by non-criminal legal systems, must be proven using evidence specified in relevant laws. For instance, the status and qualifications of a public employee are determined by administrative laws unless the legislature defines a different concept for a specific crime.[5]

To commit the crime of bribery, the hypothetical condition includes two essential elements:

- **Being a Public Employee:** The individual must be a public employee.

- **Qualification of the Public Employee:** The employee must possess legal competence and authority in their area of work.[6]

The crime of bribery requires the presence of a "special element," and without this, it cannot be classified as bribery. This hypothetical pillar encompasses several components:

- **Attribute of the Perpetrator:** The crime of bribery necessitates that the perpetrator be an employee or someone with public responsibility. According to Article 19 of the Iraqi Penal Code, "obliged to serve the public" includes any employee, servant, or worker involved in public service for government or semi-government entities, regardless of whether they are salaried or unpaid. This definition also includes those who are prosecuted for bribery committed during their service or responsibility.[7]

- **Time of Realization of the Attribute:** Bribery is realized only when the perpetrator is a public employee at the time of the criminal act. If the individual loses their public employee status before the crime occurs—due to dismissal or the end of their responsibility—they cannot be prosecuted for bribery. If someone is not a public employee when committing a crime, other offenses such as fraud may apply, provided other elements of those crimes are met. Additionally, to fulfill the status of a public employee, the hiring or appointment must be legally correct, issued by a ompetent authority, and in accordance with the law. If the appointment is flawed and invalid, bribery is not realized due to the lack of fulfillment of the public employee attribute.[8]

- **Allocation in Action:** This refers to the legal authority of a public servant to perform specific actions required by law. In bribery cases, the legislator requires competence in performing duties, which can be real, alleged, or based on false belief:

  - **Real Assignment:** Involves actions within the employee's legal authority according to laws, regulations, and orders.

  - **Claim of Competence:** The legislator does not require actual competence but considers the claim or mistaken belief of competence. Article 308 of the Iraqi Penal Code stipulates that any employee who accepts requests for gifts, benefits, or promises to perform or refrain from actions outside their duties, while claiming or mistakenly believing it to be within their competence, is punishable by up to seven years of imprisonment and conditional monetary penalties.[9]

These explanations illustrate that bribery is related to the misuse of public duties and the abuse of authority.

Purpose of Bribery versus Interest

The Iraqi legislator has delineated several forms of interest in the context of bribery:

A. Performing the Work: This involves an employee performing a task, whether it is consistent with their job duties or contrary to them. For example, a judge might receive a bribe to deliver a verdict of acquittal due to a lack of connection between the accused and the crime. An employee could be bribed to expedite notifying the parties of a trial date. The work in question must be clearly defined, whether it is a specific task or a written document. The act must relate to the employee's actual jurisdiction. For instance, if a judicial police member accepts a bribe to solve a crime or if an investigating judge accepts a bribe to reject a complaint, this constitutes a violation of the law.[10]

B. Abstaining from Work: This involves an employee refraining from performing duties that they are otherwise required to perform. An example would be a police officer accepting a bribe to not report a murder. The delay in performing a duty, such as postponing the submission of evidence to a judge to delay a decision, also constitutes bribery.[11]

C. Violating Job Duties: Bribery often involves an employee violating their job duties, such as performing or avoiding actions contrary to legal regulations. This could involve doing something illegal, like changing statements about an arrest in exchange for a bribe. It might also include misusing authority, such as offering financial assistance to appoint someone who does not meet legal requirements. For example, if a tax department employee performs or avoids certain procedures contrary to legal stipulations due to bribery, this constitutes a violation of their job duties.[12]

Third: The Moral Element (Criminal Intent)

Bribery is an intentional crime that requires both knowledge and will on the part of the employee.

1. **Knowledge:** The employee must be aware that their actions, such as accepting a bribe, are intended to achieve a specific goal for the bribe giver. If an employee mistakenly believes that the compensation is unrelated to their duties or is not aware of the purpose of the bribe, this might negate the criminal intent. For instance, if an employee receives a gift without knowing it is in exchange for their actions, or if the gift is given due to a close relationship rather than as a bribe, the criminal intent may be questioned.[13]

2. **Will:** The employee's intention must be to agree to perform or refrain from performing a duty in exchange for the benefit. The crime of bribery necessitates that the employee's will aligns with receiving a bribe in exchange for actions related to their job. If the employee is unaware or mistakenly believes that they are required to perform or abstain from an action due to the bribe, it does not negate the crime. Even if the employee's intent is not directly to perform or violate a duty but is to accept a bribe, it fulfills the criminal intent requirement.[14]

Legal Comparison:

Article 30 of the current Penal Law suggests that bribery is defined by the act of requesting or accepting a bribe. It does not require that the bribery leads to the performance of the action but only that the request or acceptance occurs. This implies that bribery is not necessarily a formal crime dependent on the outcome but on the act of soliciting or accepting a bribe.[15]

In contrast, Article 594 of the Islamic Penal Law of Iran stipulates that bribery in all cases is punishable by a minimum prescribed penalty, indicating a more explicit approach to criminalizing and penalizing bribery. This highlights a difference in how bribery is approached and penalized in different legal systems.[16]

Punishment for Bribery

The legislator has established penalties for bribery, which include three types of punishment: primary, secondary, and supplementary. These penalties can be as severe as ten years of imprisonment, accompanied by a fine. The fine must be no less than the amount solicited, received, or promised, and cannot exceed 500 dinars, provided the employee is genuinely an expert in their field.

For cases where the bribery involves a request or acceptance after the completion of the work or the violation of job duties with the intent of receiving payment, imprisonment can extend up to seven years.

Recent amendments have revised the fine structures. Under the new provisions, any employee or public servant who accepts expensive gifts, salaries, or other benefits in exchange for performing or failing to perform job duties is subject to severe penalties. This includes life imprisonment, confiscation of both movable and immovable property, and permanent disqualification from public service. If the bribe is not accepted, imprisonment still applies.

The law also stipulates that individuals convicted of bribery, embezzlement, and theft will face dismissal from their positions and will be barred from reemployment in government or public sector roles.[17]

Accused individuals will remain in custody until a final verdict is issued, encompassing both investigation and trial phases.[18]

The law considers embezzlement a serious crime, with imprisonment being the harshest penalty. In addition to the primary punishment, supplementary penalties include deprivation of certain rights and benefits as outlined in Article 96 of the Penal Code. This may involve restrictions on voting rights, eligibility for public office, or managerial positions.

Further, under Article 108 of the Iraqi Penal Code, a bribe-taker may face police surveillance for up to five years following their sentence, similar to the duration of a conditional punishment.

Additional fines may also be imposed, including proportional forfeitures. These fines are typically less than the bribe amount and cannot exceed 500 dinars. They apply jointly to all perpetrators of the crime.[19]

Conclusion

Bribery is one of the oldest and most damaging crimes, undermining governmental integrity and manifesting as a clear indicator of corruption and injustice. This issue transcends national borders and has become an international concern. In Iraq, the prevalence of bribery is fueled by weaknesses in the administrative system and the absence of effective reward and punishment mechanisms. This results in diminished trust between officials and citizens, weakening the government structure and posing serious risks to society. The American occupation exacerbated these issues, leading to widespread bribery within government agencies and the sale of positions to inept individuals seeking personal gain. This situation adversely impacted human rights, and in some cases, individuals had to bribe officials to secure their legal rights.

To address these problems, Iraqi penal law prescribes severe punishments for bribery, including main, secondary, and supplementary penalties. These measures aim to significantly curb bribery and alert potential offenders to the serious consequences of engaging in such corrupt practices.

Footnotes

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