

A Comparative Study of the Elements of the Crime of Abuse of Functional Influence in the Legal Systems of Iraq and Iran

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Abstract

The aim of the present study was to conduct a comparative analysis of the elements of the crime of abuse of functional influence in the legal systems of Iraq and Iran. The phenomenon of exploiting occupational influence has become a widespread crime in most countries, especially in developing nations, with its prevalence varying from one country to another. This variation is due to the mechanisms in place to combat this crime, limit its expansion, and enforce the law effectively. The crime of abuse of occupational influence poses a threat to the economic, political, and social security of a country. It fosters an atmosphere of disorder and instability within public institutions, leading to the marginalization and weakening of vulnerable groups, the emergence of extremist ideologies, and the promotion of prejudice, tribalism, terrorist groups, and nepotism. This crime benefits a particular class of individuals at the expense of the broader population. One of the key factors contributing to the expansion of the crime of abuse of occupational influence is the unfair distribution of public economic resources. Additionally, the appointment of unqualified individuals to positions of power and influence, as well as conflicts of interest, often subject government employees or appointees to the demands of influential parties. Consequently, they exploit their occupational influence to fulfill illicit demands, which must be punishable by law. Furthermore, the study concluded that the absence of explicit legal provisions and legislative measures against the perpetrators of this crime in Iraq does not imply that the crime does not occur. The credibility of public figures and officials serves as a recognized governmental benchmark, essential for maintaining public trust between the state and its citizens, as well as ensuring confidence in governmental institutions. However, in Iraq, the penalties for this crime are not substantial, whereas, in Iranian legal texts, strict measures are in place to prevent this crime, imposing the severest penalties on offenders.

Keywords: Crime, abuse of influence, criminal liability, criminal law.

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1. Introduction

The crime of exploiting occupational influence is of great significance. However, despite its importance, the Iraqi legislator has not provided sufficient and satisfactory attention to penalizing individuals who abuse their occupational influence. In contrast, the Islamic Penal Code of Iran has established a deterrent legal provision for this crime. Given these considerations, the research problem relates to the absence of a clear and explicit legal text that criminalizes the exploitation of functional influence. Additionally, there is a lack of distinction between the crime of abuse of influence and the investigation of mechanisms to combat this crime. A key question arises regarding the criminal liability that should be imposed on an employee who abuses their influence. Furthermore, this study examines how the criminal laws of Iraq and Iran address crimes related to the abuse of occupational influence and the perpetrators of such offenses.

The crime of abuse of functional influence is an independent crime characterized by specific elements that distinguish it from other forms of administrative and financial corruption. The significance of this research lies in demonstrating how the Iraqi and Iranian legislators have approached this crime. Additionally, the study explores the feasibility of incorporating criminal provisions related to this offense into Iraqi law to uphold the principles of justice and equality among citizens.

The amended Iraqi Penal Code of 1969 does not establish criminal liability for offenses related to the abuse of functional influence. Since no legal provision explicitly criminalizes this act, there is no basis for criminal liability. This is the focal point of our research, as there is no legal principle explicitly addressing the crime of abuse of functional influence. In Iraq, the legislator alone holds the authority to define actions that should be penalized under criminal law, classifying them as "crimes." Similarly, the legislator determines the corresponding penalties for such offenses. Consequently, a judge cannot classify an act as a crime or impose a penalty on its perpetrators, regardless of how unethical or contrary to public interest the act may be, unless it is explicitly prescribed as a crime in the Penal Code (Owais, 2015).

Every crime must consist of specific elements, and the crime of abuse of functional influence is no exception. If these elements are fulfilled, the act constitutes a crime, and the perpetrator must be punished under the relevant criminal provisions. In the Iraqi Penal Code, offenses related to the abuse of power, such as bribery and embezzlement, are addressed under Article 111 of the Iraqi Penal Code of 1969. However, this provision does not address the exploitation of functional influence for personal or partisan gain. The absence of such provisions is primarily because the law is outdated and does not align with the significant political and social changes Iraq has witnessed, particularly after 2003.

Our study found that the Iraqi Penal Code No. 111 of 1969, under Chapter Six titled "Crimes Violating Professional Duties," only addresses bribery and embezzlement. This provision does not refer to the exploitation of occupational power, which sometimes does not involve financial benefits but rather intangible advantages. For example, a department director who appoints a relative by exploiting his occupational influence cannot be legally penalized, as there is no explicit provision criminalizing such conduct. Since he has neither received a bribe nor engaged in embezzlement from public funds, the law does not recognize his actions as a crime. This gap in the legal framework suggests the necessity of amending the Iraqi Constitution and incorporating relevant legislative provisions.

This study seeks to identify the elements constituting the crime of abuse of functional influence. These elements include the influence itself, the material element, and the moral element. The significance of this research stems from the importance of the issue of occupational influence exploitation and its severe political, social, and economic implications for Iraqi society and the state. This crime plays a major role in spreading corruption and nepotism, necessitating urgent legal measures to combat it. Therefore, the objective of this research is to examine the elements of the crime of abuse of functional influence within the legal systems of Iraq and Iran.

2. The Concept of the Crime of Abuse of Occupational Influence

The crime of abuse of occupational influence, unlike many other influence-related offenses, remains ambiguous in terms of its scope, elements, and unclear legal definitions. It is often conflated with other similar crimes.

The conceptual analysis of any crime varies depending on the perspective of the researcher, who approaches the subject with specific objectives in mind.

The phrase "exploitation of influence" is a compound term consisting of two distinct words: "exploitation" and "influence." Linguistically, "exploitation" refers to the act of harvesting or reaping benefits from something while preserving its original form (Al-Afriki, 1968).

The term "influence" signifies the ability to enforce actions or commands, representing authority and control (Ibn Manzur, 1968, p. 4496). According to Nabil Abd al-Salam Harun (1994, p. 426), influence refers to power and authority. Thus, linguistically, the term "exploitation of influence" refers to benefiting from the authority or impact that can be exerted in a given situation. Consequently, the linguistic definition of the exploitation of occupational influence refers to the advantages or benefits an individual derives from leveraging a specific position of power (Shaaban, 1983).

The exploitation of occupational influence involves an individual utilizing their authority to gain advantages, benefits, or privileges arising from their functional position. It is the act of leveraging one's professional influence to secure gains, whether tangible or intangible (al-Raikani, 2014, p. 19). The term "exploitation of influence" has historically been associated with individuals soliciting gifts, grants, or donations from public officials for personal gain (Matar, 2015).

2.1. *The Legal Definition of the Crime of Abuse of Influence*

This section presents the legal definitions of the crime of abuse of influence. Generally, laws address this offense differently, and scholars have provided various definitions based on different perspectives. Some have offered broad definitions, while others have provided narrower, statute-based explanations.

For instance, one definition describes the crime as "trafficking in influence to obtain or attempt to obtain benefits from public authority" (Matar, 2015). This definition assumes that an individual does not act outside the limits of their position but exploits their authority to violate public office directives.

Another definition characterizes the exploitation of occupational influence as "the unlawful trade in actual power granted to a perpetrator through public employment" (Habibzadeh & Asadi, 2008).

A broader definition states that the crime involves "the degree of power or influence that a public employee possesses among colleagues or individuals who interact with them professionally, personally, or politically to manipulate decisions or procedures through informal means for material or intangible benefits" (Al-Kubaisi, 2005).

The abuse of occupational influence by a government employee or appointee may not always stem from their job position but can also be linked to their social status, political affiliation, or party connections. Such affiliations may grant them credibility and authority within official circles, enabling them to misuse their influence.

Regarding the concept of "trading in influence," the United Nations Convention Against Corruption defines it as "a public official or a person appointed to public service exploiting their actual influence to obtain an undue advantage" (Al-Fares, 2008).

Exploitation of functional influence involves the perpetrator engaging in transactions based on their authority. From the aforementioned definitions, a broad characterization of this offense can be derived, encompassing the solicitation of gifts, benefits, or advantages (Madani, 2005).

The term "exploitation of occupational influence" is used to describe the use of authority and occupational influence, whether legally or illegally. While most legal scholars recognize this crime, they primarily address the general notion of influence exploitation rather than specifically referring to occupational influence. Instead, they define it as "the pursuit of public officials to obtain benefits beyond the legitimate scope of influential individuals" (Fathi Behnasi, 1969).

Notably, many legal scholars have not examined cases in which the individual exploiting influence is a government employee or public appointee. As observed, the abuse of occupational influence refers to the degree of power an employee holds or their ability to make decisions within the limits of their administrative authority. However, due to legal gaps, such individuals often evade accountability, a prevalent issue in Iraq.

2.2. *The Concept of Criminal Liability in Iranian and Iraqi Law*

Criminal laws in Iraq do not provide a specific definition of criminal liability, leaving this matter to Islamic jurisprudence. The law merely states that criminal liability is removed for individuals who lack willpower, such as the insane and children, as well as for those acting under compulsion. This is because the absence of criminal capacity is the fundamental reason for the lack of criminal liability. The amendments to the Iraqi Penal Code No. 111 of 1969 address criminal liability in Articles 60–65, but they do not establish a general standard for these provisions.

Criminal procedure laws, including those regulating the actions of public officials, serve as instruments for the state to enforce its rights. The state exercises its right to impose punishments as a means of safeguarding the public interest and the integrity of its institutions. Criminal liability is generally defined as "the obligation to bear the legal consequences arising from the existence of the elements of a crime, where the subject of this obligation is either a penalty or a precautionary measure prescribed by law for the offender".

In the amended Iraqi Penal Code of 1969, there is no criminal liability for offenses related to the abuse of functional influence. Since no legal provision explicitly criminalizes this act, there is no established criminal liability. This issue forms the core of our research, as there is no legal principle addressing the crime of abuse of functional influence. In Iraq, the legislator alone possesses the authority to define acts subject to criminal penalties, classifying them as "crimes," and to determine the punishments applicable to offenders. Consequently, a judge cannot categorize an act as a crime or impose a penalty on its perpetrators, no matter how unethical or contrary to public interest the act may be, unless the Penal Code explicitly provides for it (Fathi Sorour, 1962).

Regarding criminal liability in Iranian law, Iran's new Penal Code explicitly links the age of criminal responsibility with the age of maturity as defined in Islamic law. According to Iranian jurisprudence, which follows the lunar calendar, the age of maturity for girls is nine years or eight years and nine months, while for boys, it is fifteen years, equivalent to fourteen years and seven months. This means that a judge may convict and even sentence a boy or girl to the death penalty for committing crimes that fall under the category of retributive justice (qisas), such as murder or sodomy. The Iranian legislator assumes that the child is aware of the consequences of their crime and is, therefore, criminally liable. It is evident that the Iranian legislator has left no room for legal loopholes or manipulations that might undermine social values, allowing crime and corruption to take root in society, even addressing these issues at young ages. This approach contrasts sharply with the situation in Iraq, where many public officials exploit legal loopholes to circumvent the law.

This study seeks to determine the elements that constitute the crime of abuse of functional influence. The three essential elements of this crime are the element of influence, the material element, and the moral element.

3. **The Element of Occupational Influence**

The crime of abuse of functional influence is based on the use of influence, as it forms the core of the offense. The existence of influence must first be established, as exploitation occurs through functional influence or other types of influence. Consequently, the crime of abuse of functional influence can only be committed by an individual who possesses actual influence.

Influence is an appealing and self-validating power, making it evident that every individual in society aspires to exert influence. However, only a particular group of individuals within society wields significant influence. This group particularly includes those with social, political, and partisan influence, many of whom hold high-ranking or even ordinary positions in Iraq. By exploiting their functional influence, they control much of the country's resources and dominate appointments and job transfers in government institutions.

The element of influence is a crucial component of the crime of abuse of functional influence, as it encompasses an individual's capabilities and decision-making power. Those with authority influence decision-making processes according to their personal will and preferences. Influence can be extensive and significant or limited in scope (al-Marsafawi, 1978, p. 70).

Influence is an intrinsic ability within a government employee, a tendency driven by various motivations that enable them to affect matters around them. It is particularly significant in relations with higher-ranking officials, where the individual does not require external assistance but instead leverages their influence to achieve personal gains or other benefits of any kind.

3.1. *The Material Element of the Crime of Abuse of Functional Influence*

The material element of the crime of abuse of functional influence depends on the advantage or benefit derived from the authority vested in a government employee or a public service appointee. The individual's position may range from a department director, a general manager, or the head of an investment agency to a governor, deputy minister, minister, or even vice minister. These high-ranking positions provide significant functional influence, enabling their holders to secure personal, factional, or partisan benefits in exchange for financial rewards or other material gains.

The material element of the crime of abuse of functional influence is established when two key components are present:

3.1.1. *The First Component: Receiving or Accepting Gifts*

Receiving benefits is a purely material act, where an employee (offender) who exploits their occupational influence is rewarded with financial compensation, which they subsequently take ownership of. For example, a department director in Iraq might appoint his sons as clerks or bodyguards in exchange for a specified salary and grant them government jobs. Similarly, he may appoint his relatives or promote them to key positions as department heads. In such cases, the crime of abuse of functional influence is committed, even if no direct financial compensation is involved, as the act is carried out to gain personal advantage or secure favors for specific individuals.

Additionally, a government employee or public service official, holding a rank equivalent to deputy minister, may appoint, transfer, or promote individuals within the ministry as a favor or prearranged agreement. Upon assuming office and acquiring influence, they appoint their associates and close allies, thereby abusing their occupational influence and fulfilling the material element of the crime. Sometimes, this is done in exchange for a specific bank deposit, a vehicle transfer, the receipt of car keys, or the acquisition of an apartment or property. In such cases, the material element of the crime is realized through the exchange of functional influence for tangible benefits.

On the other hand, the commission of the crime of abuse of functional influence is often a unilateral act, as it does not necessarily involve solicitation or acceptance. A government employee or public service appointee may independently decide to misuse their position to obtain personal benefits without involving other parties or receiving material compensation. For instance, an official may exploit government vehicles assigned to them for personal use, transferring them to their children or relatives. Similarly, a judge might acquit a defendant due to personal ties, party affiliations, or pressure from an influential figure. In such cases, the judge abuses their judicial position to grant an unjust acquittal, thereby committing the crime of abuse of functional influence. However, the judge may easily evade punishment due to their high-ranking authority.

1.1.1.1 *Receiving and Accepting Gifts*

Receiving gifts is a purely material act in which an employee (offender) who abuses their positional influence obtains financial compensation, transfers it to their ownership, and issues an appointment order in exchange. The material element is thus fulfilled, as the benefit has been acquired and the crime of abuse of functional influence is committed. For example, a general director of a government department in Iraq may appoint his sons as clerks or bodyguards in exchange for a predetermined salary, assigning them to government positions. Similarly, he may appoint or promote his relatives to key administrative positions, such as department heads. In this scenario, the crime of abuse of functional influence occurs, even if no direct compensation is provided, as the act is committed to securing personal gain or favoritism toward a specific individual.

Likewise, a government employee or a public service officer with the rank of deputy minister may appoint, transfer, or promote individuals within the ministry to which they belong. This could be a favor or an arrangement agreed upon beforehand, where, upon assuming the position and gaining influence, the individual ensures the appointment of certain associates. Such conduct constitutes an abuse of occupational influence and fulfills the material element of the crime. At times, this occurs in exchange for a specific bank deposit, a car return, the receipt of vehicle keys, or the transfer of an apartment or other property. In such cases, the material element of the crime is established through the exploitation of occupational influence.

On the other hand, the commission of the crime of abuse of functional influence is often unilateral, as it does not necessarily involve solicitation or acceptance. A government employee or public service appointee may independently decide to misuse their position to obtain personal benefits without consulting or compensating anyone else. Examples include the unauthorized

use of government vehicles assigned to them as part of their duties, which they then transfer to their children or relatives. Similarly, a judge may acquit a defendant due to personal affiliations, party loyalties, or pressure from an influential figure. In such cases, the judge abuses their judicial position to grant an unjust acquittal, thereby committing the crime of abuse of functional influence. However, given their high-ranking authority, the judge may evade legal consequences with ease.

1.1.1.2 The Subject of the Criminal Act (Benefits)

Most offenses related to the abuse of functional influence revolve around the acquisition of material or intangible benefits. In such cases, a government employee or public service appointee exploits their functional influence to secure advantages in return for their efforts. This might involve issuing an appointment or promotion order, leveraging their influence to grant a military position, or manipulating judicial rulings in legal cases. Such actions warrant criminal liability, as the basis for criminalizing the abuse of functional influence lies in its violation of principles of trust, equality, and justice.

The individual who exploits functional influence seeks personal or financial gain, leveraging their position within provincial departments or public institutions to secure advantages for themselves or others. This occurs when an employee or public official uses their influence to facilitate appointments or transfers, or when they manipulate licensing approvals for import permits in a manner that does not directly benefit them. Instead, they misuse their influence to please close associates or political allies.

3.2. The Mental Element of the Crime of Abuse of Functional Influence

The existence of the crime of abuse of functional influence requires more than just the presence of influence and a material element; it also necessitates the presence of criminal intent, which constitutes the mental element. Since the crime of abuse of functional influence is an intentional offense, it requires deliberate intent on the part of the perpetrator.

The mental element in this crime manifests as criminal intent, as negligence alone does not suffice to establish the offense. It is unreasonable for an employee to unknowingly commit the crime of abuse of functional influence, as the act inherently requires a material action driven by criminal intent to obtain material or intangible benefits. From this, we conclude that for the crime of abuse of functional influence to occur, the perpetrator must be aware of the elements of the offense at the time of its commission. The perpetrator understands that their exploitation of functional influence is directly linked to their acquisition of material or intangible benefits.

Thus, we identify two components necessary for establishing specific criminal intent in the crime of abuse of functional influence:

3.2.1. Awareness and Will

The crime of abuse of functional influence is one that requires general intent, meaning that the perpetrator intends to achieve specific objectives, including personal gain. Since this is an intentional crime, it necessarily involves **will and knowledge**. However, it is not required that "the criminal's intent in exploiting their functional influence be to achieve public interest" (Fathi Sorour, 1962, p. 141).

3.2.2. Existence of Criminal Intent

The crime of abuse of functional influence requires both general and specific criminal intent. The perpetrator deliberately engages in specific conduct by exploiting their occupational influence, intending to derive personal benefits (Jamal, 2008, p. 10).

The second perspective on the crime of abuse of functional influence appears to be the most accurate, asserting that this offense necessitates both specific and general criminal intent. This means that the perpetrator must have both the intent and will to commit a criminal act and to exploit their functional influence for the purpose of obtaining material or intangible compensation. Additionally, we find that the mental element of the crime of abuse of functional influence includes **malice**, as it compels the employee to knowingly engage in wrongful conduct, thereby classifying them as a criminal offender.

4. Types of Functional Influence and Its Sources

It has been observed that there are various forms of functional influence, and they do not necessarily arise from an individual's official position. In some cases, a government employee or a public service appointee cannot exercise any authority unless they receive support from a specific political party or faction.

From a functional perspective, influence stems from one's official position. From a political standpoint, influence arises from political affiliations. Similarly, social influence also plays a role. However, this study focuses on the exploitation of functional influence, meaning that influence originates from one's professional role.

Nonetheless, we have found that most employees who exploit their functional influence in Iraq are politically affiliated or backed by political parties. These affiliations enable them to ascend to key and influential positions within government and public institutions. The various types of influence are as follows:

4.1. *Influence Derived from Position*

This refers to the influence a person derives from their capacity as a government employee or a public service official. This category includes minor employees, general managers, deputies, vice ministers, and ministers. Holding a government position grants an employee authority and influence, providing them with a distinguished status. However, this authority is conferred solely to enable them to fulfill public service duties and governmental functions.

The fundamental principle is that a government employee or a public service appointee should use their influence and authority to serve the country's public interests, as public office exists to achieve these objectives. However, when an official exploits this influence for personal benefit, financial gain, preferential treatment of close associates, the signing of government contracts, or securing other advantages, they commit the crime of abuse of functional influence.

4.2. *Political Influence*

Political influence is exercised by government employees whose power derives from their political positions. This is the most widespread form of exploitation of functional influence in Iraq. It includes the influence enjoyed by members of parliament, ministers, and general directors who are appointed to public service positions. These individuals possess both political and functional influence simultaneously. Their political influence stems from their affiliation with ruling political parties, while their functional influence is derived from their occupation of government positions and high-ranking jobs. This dual influence (political-functional influence) grants them authority and decision-making power within public institutions and enables them to control employees and affiliates of those parties. Such influence allows them to secure undue advantages, seek privileges, make appointments, and achieve various other benefits. Government employees affiliated with political parties exploit their occupational influence to gain specific advantages and interests.

The amended Iraqi Penal Code No. 111 of 1969, in Article 11, states that "the Iraqi Penal Code does not apply to any person who enjoys immunity, whether inside or outside Iraq, if they commit a crime." This provision effectively shields members of parliament, representatives, and ministers from legal accountability for any unlawful or criminal acts they commit, as they enjoy immunity in Iraq. This immunity extends to obtaining diplomatic passports and being exempt from prosecution, ensuring that officials cannot be tried or judged for any crime they commit. This legal immunity represents a serious flaw in Iraq's legal system, as most cases of abuse of occupational influence are committed by senior officials who, under Article 11, are legally protected from prosecution. This raises fundamental questions: Is the law selectively applied to different segments of the population? Is this law consistent with the principle of justice? We have found no convincing explanation for this issue.

Moreover, this immunity extends to judges and the president of the Supreme Judicial Council, meaning that if one of them commits an offense by abusing their position, they will not be held accountable due to their immunity. In contrast, the Iranian Code of Conduct for Judges, enacted in 2011, explicitly punishes judges who abuse their functional influence, as stipulated in Paragraph 2 of Article 2. Furthermore, the Iranian legal system is more stringent, as demonstrated in Article 47 of the 2013 Penal Code, where Paragraph 1 of Article 1 states that "in cases related to corruption, drug trafficking, economic crimes, and crimes harming national interests inside or outside the country, the suspension and postponement of sentences are not

permitted." This means that for corruption-related offenses and crimes that damage national interests, regardless of whether they are committed inside or outside Iran, no leniency is allowed in sentencing.

In contrast, the Iraqi Penal Code does not criminalize the exploitation of influence when it harms national interests, thereby undermining the principles of equal opportunities, justice, and fairness. Iraqi law does, however, criminalize offenses committed by Iraqi nationals abroad.

Our investigation into this matter also revealed that the 1969 amendment to the Iraqi Penal Code, in Articles 338, 340, and 341, states that "the penalty for harming government interests or damaging public funds through the abuse of official positions includes imprisonment for at least one year and/or a fine not exceeding 200 dinars." This provision implies that any employee who inflicts financial harm on public funds while in service may face imprisonment of up to one year or a fine of 200 dinars. However, we find no reference to the criminalization of exploiting occupational influence for signing government contracts, securing personal benefits, making appointments, transferring individuals, or granting unjustified promotions. Is it reasonable to assume that government employees exploit their positions solely for financial gain?

The fine of 200 dinars is a trivial penalty, as this amount is insufficient even to purchase a box of matches, which costs more. This outdated punishment is wholly disproportionate to the severity of the crime committed and the administrative corruption that employees perpetrate within government institutions. Furthermore, no explicit legal provision criminalizes the various forms of exploitation of functional influence mentioned in Articles 338, 340, and 341. Instead, these articles address offenses related to the abuse of power, embezzlement, and financial misappropriation rather than the specific crime of exploiting functional influence.

Based on these findings, we conclude that there is no specific legal provision that criminalizes the abuse of functional influence in Iraq. This legal vacuum has led to the widespread prevalence of such crimes in the country, as there is no legislative text prohibiting these actions. In contrast, Iran's 2013 Penal Code, in Paragraph A of Article 126, explicitly criminalizes the abuse of power and the exploitation of any form of functional influence.

5. The Crime of Abuse of Functional Influence in Islamic Law

At first glance, one might assume that the crime of abuse of functional influence is a modern phenomenon and that Islamic law does not address it. However, upon examining the Qur'an and Islamic jurisprudence, it becomes clear that divine rulings comprehensively and precisely govern this issue. The prohibition of this crime is explicitly mentioned in the Qur'an:

"And do not consume one another's wealth unjustly or send it [in bribery] to the rulers in order that they might aid you [to] consume a portion of the wealth of the people in sin, while you know [it is unlawful]" (Surah Al-Baqarah, 2:188).

Similarly, the prohibition against abusing influence is evident in the Sunnah of the Prophet (PBUH), who stated: *"The nations before you were destroyed because if their noblemen stole, they were left unpunished, but if their weak committed theft, they were punished."* This hadith explicitly condemns the misuse of influence and highlights the unfair privileges granted to those in positions of power.

The principles of justice upheld by the Ahl al-Bayt (AS) further reinforce this stance. Imam Ali (AS) distinguished himself with a governance philosophy characterized by wisdom, rationality, and a reliance on logical principles. His administrative approach was unique in its breadth, as he managed the Islamic government with a comprehensive, realistic, and humane perspective, ensuring the protection of public resources from theft and abuse of influence.

During the rule of Imam Ali (AS), justice prevailed, and government officials were provided with generous wages to deter them from accepting bribes or misusing public resources. This policy prevented officials from exploiting their positions for personal gain. Imam Ali (AS) was known for his unwavering stance against corruption, dismissing officials who misappropriated public funds and punishing those who used their positions for nepotism. He famously declared, *"O Allah, You are my witness that I have not wronged Your creation, nor have I forsaken Your right."* (Al-Rayshahri, 2004).

Imam Ali (AS) also rejected intercession on behalf of those who misused their influence and functionally exploited their positions. His firm stance established a culture of accountability and wise governance, ensuring that all individuals were subject to the law. This principle remains a fundamental tenet of Islamic justice.

Furthermore, Imam Ali (AS) prohibited government officials from accepting gifts, recognizing that such practices could lead to administrative corruption. He closely monitored public servants, as reflected in his letter to Ka'b ibn Malik, in which he

emphasized the need to verify the integrity and conduct of government employees (Al-Rayshahri, 2004). The guarantee of an official's honesty and reputation was essential for their appointment in the Islamic state. Imam Ali (AS) prioritized competence and credibility over favoritism and political affiliations.

His government continuously monitored officials and governors to ensure accountability, as he firmly believed that constant oversight of public institutions was necessary to prevent administrative corruption and the exploitation of functional influence. This perspective underscores the current challenges in Iraq, where the absence of legal deterrents and ineffective oversight mechanisms have contributed to the rampant abuse of functional influence.

6. The Crime of Abuse of Influence and Its Specific Laws in Iraq

As previously mentioned, the exploitation of functional influence refers to the unlawful and illegitimate use of occupational authority and influence. This occurs when an individual leverages the powers and privileges granted to them, not for the interests of the state or legal purposes but for personal gain or in response to external requests. This is arguably the worst form of abuse of power, particularly when the employee themselves initiates the exploitation without external coercion. Such misconduct severely disrupts the structure of public institutions and harms society.

It is evident that Iraqi law does not contain explicit legal provisions criminalizing what is currently taking place in Iraq. There is widespread violation of individuals' rights, and justice and equality are disregarded as unqualified individuals assume positions of power, prioritizing personal and political interests over national or citizen welfare. Consequently, the exploitation of functional influence is rampant across government institutions in its most blatant forms, with no legal deterrents in place. This absence of legislative measures can be attributed to the Iraqi legislature's inability to draft new laws that align with the country's present conditions. Instead, the legal system continues to rely on the outdated Penal Code amendment of 1969, which no longer addresses the current realities of Iraq.

Law exists to regulate people's lives and ensure justice. However, in the absence of proper legislation, a lawless state emerges, where the powerful prey on the weak. Several provisions within Iraqi law remain incomplete in addressing the punishment of those who exploit their functional influence, as administrative corruption offenses are categorized under "crimes violating professional duties." The intended scope of such violations primarily includes instances where employees misuse subordinates for personal tasks or seize part or all of their rightful compensation. This is outlined in Article 320 of the Iraqi Penal Code of 1969. However, can this be considered a true form of abuse of influence?

Such crimes have long lost their significance in the eyes of employees and society, as forced labor has long been eradicated in Iraq. Consequently, this provision is ineffective and obsolete, especially in comparison to the contemporary forms of functional influence exploitation, such as currency smuggling, drug trafficking, political appointments, and other illicit abuses of influence.

Additionally, the Iraqi legislator has failed to address the exploitation of power in controlling and acquiring state-owned lands by senior government officials, including those at the rank of deputy ministers, vice ministers, and even full ministers. There is also no reference to their involvement in corruption cases or manipulation of currency auctions due to their functional influence. As a result, the existing legal provisions fail to address the realities of contemporary Iraq. These laws lack realism, methodological rigor, and accuracy in judgment.

7. The Crime of Abuse of Influence and Legal Legislation in Iranian Law

Due to the limited awareness of Arab scholars regarding Iranian laws and legislation, this study aims to highlight the legislative differences between Iraqi and Iranian legal systems through an analysis of the 2013 Iranian Penal Code. An examination of Iranian criminal law reveals that Paragraph (A) of Article 126 states: *"Anyone who encourages, threatens, entices, or instigates the commission of a crime, conspires, deceives, or exploits their power to facilitate its occurrence, or guides the perpetrator in committing the offense, is considered an accomplice in the crime."* This provision demonstrates a meticulous legislative approach, as anyone who contributes to a crime is held criminally responsible. The ease with which crimes are committed necessitates legal provisions that explicitly criminalize such acts. However, in Iraq, there are no specific laws criminalizing these offenses, despite the fact that most high-ranking officials enable corruption and abuse of influence by

lower-ranking employees while absolving themselves of responsibility. These senior officials are often the masterminds behind such crimes.

Furthermore, Paragraph (B) of Article 126 of the 2013 Iranian Penal Code states: *"Anyone who assists in the commission of a crime shall be punished in accordance with their level of involvement and intent."* This provision emphasizes the necessity of criminal intent. From this, it becomes evident that most cases of abuse of functional influence involve collaboration between higher-ranking officials and lower-level employees. Examples include crimes related to procurement fraud, money laundering, and other offenses that cannot be committed by a single individual. These crimes require multiple approvals and the cooperation of several employees to facilitate the misconduct. Under Iranian law, these forms of corruption are explicitly criminalized.

Additionally, Article 36 of the 2013 Iranian Penal Code stipulates: *"Upon a final conviction for crimes including corruption, drug trafficking, economic crimes, and crimes against national interests, penalties shall include fines of up to one billion Iranian rials, and final convictions for the following crimes must be publicly announced through national media or widely circulated newspapers."* These crimes include bribery, embezzlement, abuse of influence in legal and governmental systems, and the involvement of ministers, deputy ministers, and government employees in public contracts and transactions.

This demonstrates the severity of penalties under Iranian criminal law. The law prevents ministers, deputy ministers, and government employees from interfering in public affairs and imposes substantial financial penalties, which can reach up to one billion Iranian rials.

Given that courts are intended to uphold justice and judges are regarded as custodians of fairness, it is essential to examine the judicial aspect of these laws. There is no Iraqi legal provision that holds judges accountable or criminalizes their misconduct. Instead, they are treated as sacred figures within the judicial system, perceived as incapable of error. However, judges, like all individuals, are prone to mistakes, including favoritism toward relatives or close associates.

In contrast, Iranian criminal law does not exempt any individual from legal accountability, regardless of their position or job title. While Iranian law grants judicial immunity to judges out of respect for their office and status, it does not protect them from prosecution if they abuse their functional influence. According to Article 164 of the Constitution of the Islamic Republic of Iran, *"A judge may not be removed from their position, whether temporarily or permanently, unless they are convicted of an offense or misconduct that justifies their dismissal."*

This indicates that judicial conduct is closely monitored, and judges operate under state regulations. They are not permitted to act unilaterally or exploit their occupational influence. If a judge commits an offense and is deemed deserving of punishment, they are subject to legal proceedings.

Iranian judges are also periodically transferred according to standardized legal provisions (Ashouri, 1965). This periodic reassignment prevents long-term accumulation of influence and ensures a smooth workflow and operational efficiency. In contrast, Iraq's judiciary operates as an independent authority, unaffiliated with any constitutional framework since the repeal of the 1970 Constitution. As an independent entity, Iraq's judiciary functions without oversight, allowing judges to act without accountability. No institution has the authority to regulate or intervene in judicial activities. Furthermore, it has been observed that many judges in Iraq maintain political affiliations, which influence their decisions. Therefore, there is a pressing need for legislation that prohibits judges from joining political parties to prevent the judiciary from serving partisan interests. A judge swayed by personal biases is likely to overlook citizen rights and national interests.

The Iraqi judiciary is simultaneously influenced by both the legislative and executive branches. Reforming the judiciary is essential for societal progress. Judicial oversight, similar to Iran's system, must be established in Iraq. For instance, Article 13 of Iran's 2010 Judicial Conduct Law stipulates penalties for judges who exploit their professional influence or abuse their power. These penalties include:

1. A written reprimand without entry in the employee's record.
2. A written reprimand with entry in the employee's record.
3. A salary reduction of up to one-third for six months.
4. A salary reduction of up to one-third for six months to one year.
5. Demotion in rank.
6. Temporary suspension for up to six months.
7. Temporary suspension for up to one year.
8. Termination of employment with retirement benefits after at least 25 years of service.

9. Reassignment to an administrative role if the judge holds a military position, revocation of judicial authority, and reassignment to their original military unit.

These provisions illustrate that Iran's judiciary is regulated by laws ensuring accountability, and all public officials in the Islamic Republic of Iran are subject to legal provisions governing their conduct in state institutions. Consequently, the abuse of functional influence is not tolerated without punishment.

Conversely, Iraqi law faces a critical crisis. In addition to the loophole enabling the abuse of functional influence, numerous legal gaps exist. Most cases of abuse of influence in Iraq remain unpunished, even among lower-ranking government employees and public service appointees.

8. Reasons for the Expansion of the Crime of Abuse of Functional Influence in Iraq

The expansion of this phenomenon is attributed to multiple factors, including administrative, legal, social, and economic causes. Its widespread presence has had numerous negative consequences for society, as well as for the political and economic structures of the state. The reasons behind the proliferation of this crime in Iraqi society can be categorized as follows:

8.1. Administrative Reasons

Undoubtedly, administrative policies play a crucial role in determining the success or failure of government institutions and their employees. These policies can either contribute to the enhancement of institutional performance or facilitate the spread of administrative corruption.

8.1.1. Employment of Public Officials Based on Incorrect Criteria

The appointment of government employees or public service officials is an integral part of the administrative operations of state institutions. The efficiency of employees directly influences the success of these institutions. Therefore, the selection of government employees should be based on objective criteria, emphasizing merit and competence, to ensure the effective functioning of public institutions. An employee's motivation and professional efficiency are significantly affected by the extent to which their qualifications align with the nature of their job and whether their academic background matches their administrative position within government institutions. Furthermore, a cohesive relationship between employees and their colleagues, as well as between managers and subordinates, is essential for maintaining workplace harmony and productivity.

However, when appointments are made based on improper criteria such as nepotism, favoritism, mediation, and bribery, this leads to the spread of administrative corruption in government positions. Individuals seeking employment resort to illegal methods to secure positions, thereby reinforcing the prevalence of this phenomenon. Additionally, this issue negatively impacts those dealing with government institutions, as they often encounter unqualified employees who lack the necessary expertise for their roles. Consequently, this reduces the efficiency of administrative institutions, disrupts public services, and compels individuals to resort to unethical means, such as bribery or using influential intermediaries, to expedite their transactions. This, in turn, exacerbates administrative corruption, including the abuse of functional influence (Habibzadeh & Asadi, 2008).

8.1.2. Complexity of Administrative Procedures

The bureaucratic procedures within government institutions and administrative bodies in Iraq have become excessively complicated to the extent that they have turned into an "organizational disease" (Al-Kubaisi, 2005). The inefficiency of government offices, coupled with procedural obstacles in handling administrative transactions, has contributed to the sluggish performance of public institutions. The centralization of most ministries and government departments in Baghdad further exacerbates the slow pace of administrative operations. This situation has led to increased public dissatisfaction with government agencies, prompting citizens to seek alternative, often illegal, means to complete their transactions. Consequently, the phenomenon of abuse of functional influence has become increasingly prevalent in government offices, as it provides a means for citizens to expedite their transactions through unlawful channels.

8.1.3. *Weak Oversight in Government Institutions*

There is no doubt that effective oversight within government institutions is essential for ensuring the smooth and regulated operation of public services. Such oversight may be conducted internally by department managers or externally by regulatory bodies.

However, as observed in many Iraqi government institutions, oversight mechanisms are weak, resulting in the failure to detect numerous cases of abuse of functional influence and other forms of administrative corruption. The absence of explicit legal provisions criminalizing high-ranking officials, particularly those who enjoy legal immunity and protection, has allowed corruption to persist. Consequently, corrupt individuals continue to exploit their occupational influence for personal gain without fear of repercussions.

This underscores the necessity for Iraqi legislators to implement strict legal penalties against government employees and public service officials who abuse their functional influence. Such measures would deter employees from engaging in corrupt practices and discourage them from considering any form of administrative misconduct.

8.2. *Economic Reasons*

Economic factors play a significant role in the emergence of most crimes and instances of professional misconduct, particularly concerning low public sector salaries, rising living costs, and increasing financial pressures. These conditions often drive individuals to exploit their functional influence to secure additional financial benefits through illegal means.

However, in Iraq, this rationale does not entirely hold, as government employees receive relatively high salaries that align with the country's economic reality. Notably, most cases of abuse of functional influence are committed by senior government officials, including general directors, agents, ministers, deputies, and other high-ranking officials. Many of these individuals are already financially well-off, possessing luxurious residences and substantial bank accounts. Their actions are not driven by financial need but rather by the normalization of corrupt practices within society.

Moreover, the prevalence of corrupt values in society encourages such behavior. Professional satisfaction is crucial for government employees and public service officials, yet it is often neglected. Contentment and ethical integrity are invaluable assets, but the propagation of corrupt norms within Iraqi society has led to a culture where individuals seek personal gain at the expense of public interests.

8.3. *Social Reasons*

Social factors also play a major role in the expansion of the abuse of functional influence. Among these factors is the widespread acceptance of certain corrupt values that have recently become deeply ingrained in Iraqi society. These include the exploitation of opportunities, misuse of professional positions, deception, and illicit profiteering. Many individuals justify these behaviors by claiming they are compensating for past injustices or oppression.

This mindset has significantly contributed to the rise of abuse of occupational influence in Iraq, as employees—who are themselves members of this society—have adopted these corrupt ideologies. Many officials misuse their professional influence to secure financial gains or establish personal connections. Additionally, many employees rationalize their actions, which exacerbates the problem.

A significant number of public officials perceive their exploitation of government positions and misappropriation of public funds as a means of reclaiming what they consider their rightful share. They view mediation and favoritism as a form of cooperation and assistance rather than corruption. Some even interpret bribery as a form of gifting, while others see the abuse of functional influence as a demonstration of "social intelligence." Such justifications contribute to the entrenchment of a corrupt culture within government institutions.

Furthermore, the weakening of religious faith is another social factor that has facilitated the spread of abuse of functional influence. Religion inherently opposes all forms of unethical behavior and discourages individuals from succumbing to their desires and greed. A strong sense of religious commitment helps individuals resist corruption and unethical conduct. However, weak religious faith among some public employees has led them to engage in corrupt practices without considering the consequences in this world or the hereafter.

Employment is a trust, and according to Islamic teachings, individuals are accountable for how they fulfill their professional responsibilities. As the Qur'an states, *"Indeed, We offered the Trust to the heavens and the earth and the mountains, and they declined to bear it and feared it; but man [undertook to] bear it. Indeed, he was unjust and ignorant."* (Surah Al-Ahzab, 33:72). This verse underscores the responsibility of individuals in positions of power and the necessity for them to act justly.

Ultimately, those who exploit their positions for personal gain will be held accountable before their Creator on the Day of Judgment. Hence, addressing the abuse of functional influence in Iraq requires not only legal and administrative reforms but also a fundamental shift in societal values and ethical principles.

9. Conclusion

This study aimed to conduct a comparative analysis of the elements of the crime of abuse of functional influence in the legal systems of Iraq and Iran. Based on the findings, it was concluded that the absence of legal provisions and legislation criminalizing this offense does not imply its non-existence. The reputation of officials and public figures, as well as the preservation of trust between the government and its citizens, necessitate the enforcement of laws against this crime. However, in Iraq, no significant penalties are imposed, whereas Iranian legal texts actively prevent this offense and impose the strictest punishments on its perpetrators.

It was determined that government employees or public service officials exploit their occupational influence to obtain benefits that are not necessarily financial in nature. These individuals leverage managerial privileges and power to secure advantages such as commissions, contracts, and appointments. They act with the knowledge that no explicit legal provision exists to penalize them, particularly if they are granted immunity, as is the case with deputies, ministers, deputy ministers, and general directors who receive political backing. Government employees understand that there are insufficient mechanisms to hold them accountable for the abuse of their influence. Moreover, even when penalties or fines exist, they are inadequate as deterrents for the crime of abuse of functional influence. Punishments, if enforced, fail to contribute to crime detection, which is crucial for deterrence.

Through further investigation, it was found that the likelihood of detecting the crime of abuse of functional influence depends on the willingness of one of the corrupt individuals or parties involved to report the offense. However, the crime itself operates similarly to offenses such as prostitution and clandestine dealings, where corruption benefits all involved parties, leaving no specific victim to report the crime. Consequently, all actors in such cases are complicit, with no clear victim to initiate legal action.

It was also established that the abuse of functional influence, much like a disease, thrives where government and administrative institutions permit it. It escalates when an environment conducive to its existence is provided—namely, when officials and employees are granted unchecked authority to distribute positions, privileges, and contracts with foreign companies. The absence of legal provisions holding them accountable enables them to act corruptly, leading to the exploitation of functional influence for personal gain or to benefit their relatives and associates.

Furthermore, it was concluded that the severe consequences of the abuse of functional influence manifest over time, ultimately weakening the rule of law and diminishing public trust in government institutions. This degradation fosters public disregard for administrative procedures and facilitates the expansion of administrative corruption. As the abuse of functional influence becomes more widespread, it gains greater social acceptance, making it increasingly dangerous. The more experienced individuals become at maneuvering through corruption, the easier it becomes for them to evade detection, weakening efforts to expose such crimes. Over time, the exploitation of influence will become a normalized aspect of governance, as is currently the case in Iraq.

Additionally, an analysis of this crime revealed that anti-corruption institutions, such as the Integrity Commission, function as little more than ceremonial entities. These institutions pose no real threat to criminals engaged in financial corruption involving public funds, government positions, and state institutions. Their inefficacy is primarily due to the presence of incompetent individuals within these organizations, rendering them incapable of achieving their objectives.

Ethical Considerations

All procedures performed in this study were under the ethical standards.

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Conflict of Interest

The authors report no conflict of interest.

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