The impact of whistleblowers in corruption crimes under Iraqi and Egyptian law

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Abstract:

This research aims to study the impact of whistleblowers on corruption crimes in both Iraqi and Egyptian law, focusing on their role in detecting crimes, protecting society and strengthening the rule of law, in addition to highlighting the risks faced by whistleblowers in fulfilling their duties. And he used the comparative method to study the legal texts between Iraq and Egypt, with the help of the descriptive-analytical method to infer judicial rulings and practical decisions related to whistleblowers and whistleblowers, with the aim of revealing the similarities and differences between the legal systems in dealing with whistleblowers and protecting whistleblowers. The results of the research showed several key points: First, that both systems recognize the right of the citizen to report crimes and set specific conditions for the use of this right, but the Egyptian jurisprudence requires the combination of the truth of the incident with a good intention, while in the Iraqi law, it is enough to fulfill one of them only to justify the reporting. Secondly, whistleblowers play an essential role in discovering crimes, seeking justice, and preventing the spread of corruption, either by providing accurate information or by monitoring suspicious activities. Thirdly, the laws face comparative challenges related to the protection of whistleblowers from threats, intimidation or arbitrary dismissal, especially in the private sector, which calls for strengthening legal protection. Fourth, relying on informants only without verifying the evidence and documents may lead to the weakness of the evidence in the courts, as shown by the Iraqi and Egyptian jurisprudence.

Key words: whistleblowers, corruption crimes, Iraqi law, Egyptian law..

Introduction

Corruption is one of the most serious phenomena facing modern states, given its devastating effects on the rule of law, the proper functioning of public services, and public trust in institutions, in addition to its negative repercussions on economic and social development. Due to the clandestine nature of corruption crimes, their detection and proof are among the most complex tasks, which has given whistleblowers a pivotal role in uncovering these crimes and bringing them to the attention of the competent authorities. Modern legislation has recognized the importance of this role and has sought to regulate it legally in a way that achieves a balance between encouraging reporting on the one hand, and protecting individual rights and ensuring that it is not abused on the other.

The research problem lies in the adequacy and effectiveness of the legal regulation of the role of whistleblowers in corruption crimes in Iraqi and Egyptian law, particularly with regard to the conditions for reporting and the resulting legal consequences, and the extent to which these laws are able to provide the necessary protection for whistleblowers and encourage them to report without fear of reprisal or abuse. The research problem stems from a central question: To what extent have whistleblowers contributed to supporting anti-corruption efforts in Iraqi and Egyptian law, and how adequate are the legal conditions and guarantees regulating the reporting process in achieving this goal? This question branches into further inquiries concerning the limits of the legal role of whistleblowers, the consequences of reporting, and the balance

between the requirements of criminal justice and the protection of whistleblowers.
The importance of this research lies in its focus on a vital topic in the field of combating corruption, given the effective role of whistleblowers in initiating criminal proceedings and uncovering crimes that are difficult to detect through traditional means. The study also gains significance from its comparative approach between Iraqi and Egyptian legislation, allowing for an examination of the strengths and weaknesses of each and contributing to the development of the legal framework governing the work of whistleblowers.
The research aims to clarify the legal conditions that must be met for reporting corruption crimes, analyze the role of whistleblowers in achieving criminal justice and building a crime-free society, and highlight the legal and practical risks they may face. This study also aims to assess the effectiveness of legal texts in Iraq and Egypt in encouraging and protecting whistleblowers. The research hypothesis is that whistleblowers are an effective tool in combating corruption crimes, provided there is a clear and balanced legal framework that defines the conditions for reporting and guarantees adequate legal protection for the whistleblower. The inadequacy of this protection leads to individuals' reluctance to report and weakens anti-corruption efforts.
The research employs a descriptive-analytical approach to present and analyze legal texts related to the role of whistleblowers, and a comparative approach to examine the similarities and differences between Iraqi and Egyptian law. This is achieved by tracing judicial applications and scholarly opinions, thus providing a comprehensive understanding of the legal framework governing the reporting of corruption crimes.

Section One: Conditions for Reporting

The Egyptian legislator established the general rule for reporting crimes in Articles (25) and (26) of the Code of Criminal Procedure, based on the constitutional principle stipulated in Article (63) of the previous Egyptian Constitution of 1971 and Article (85) of the current Constitution of 2014. This establishes an inherent right for every citizen to report crimes punishable by law, without requiring that the reporter be the victim, a relative, in-law, or anyone connected to them. It is an absolute right for all. The Iraqi legislator shared this principle in Article (47) of the Code of Criminal Procedure. However, neither legislator intended to leave the right to report crimes unrestricted, and thus stipulated several conditions for its exercise.

The first requirement: Submitting reports to the competent judicial and administrative authorities.

By "authorities" here, we mean all entities that are originally or exceptionally competent to receive or accept reports concerning criminal offenses. These entities include judicial officers, investigating judges, investigators, public prosecutors, and administrative authority centers. These administrative centers are the bodies related to the administration responsible for receiving reports concerning disciplinary offenses, and they include the Presidency of the Republic, the Council of Ministers, heads of departments, and authorized officials appointed by ministers.
The competent authority refers to the judicial body entrusted with receiving or accepting reports concerning criminal offenses. The Iraqi legislator also addressed the identification of the competent authorities for receiving reports of crimes in the first paragraph of Article (47) of the Code of Criminal Procedure. Article (41) of the same law clarifies the jurisdiction of judicial officers to accept reports of crimes, stating that judicial officers are tasked, within their respective jurisdictions, with investigating crimes and accepting reports and complaints received concerning them. They are obligated to provide assistance to investigating judges and investigators, as well as to the authorities, police officers, and their commissioners, and to supply them with any information they receive about crimes, apprehend perpetrators, and hand them over to the competent authorities. They must document all procedures they undertake in signed reports, both signed by themselves and those present, indicating the time and place of the procedures. They must then immediately send reports, complaints, reports, other documents, and seized materials to the investigating judge.

Article (39) of the same law defines the members of the judicial police as the following persons: (Police officers, station commanders and commissioners, the village and neighborhood headman in reporting crimes, apprehending the accused, and protecting persons who must be protected, the railway station manager and his assistant, the train conductor, the person in charge of managing the seaport or airport, the ship or aircraft captain and his assistant in crimes committed therein, the head of the government department or agency or official and semi-official institution in crimes committed therein, and persons entrusted with a public service who are granted the authority to investigate crimes and take action regarding them within the limits of what they have been authorized to do by virtue of the law

The third requirement: The report must pertain to an act punishable by law.

The report must include an attribution of an act to another person which, if true, would warrant punishment for that person. In other words, it must report a criminal act punishable by law. It is worth noting that the term "crime" in both Articles (25 and 26) of the Egyptian Code of Criminal Procedure, and Article (47) of the Iraqi

Code of Criminal Procedure, is used in an absolute sense. Therefore, the reported crime need not be classified as a felony or a misdemeanor; it is sufficient that it falls under the description of a crime for which the law prescribes a punishment, whatever that punishment may be.
This condition is natural, as the right to report only permits crimes. Other acts are inherently permissible. Therefore, the report must include an attribution of a specific act to another person that, if true, would subject them to punishment. The term "punishment" here is not limited to criminal penalties but also includes disciplinary measures, such as those stipulated in the Iraqi Public Employees Discipline Law No. 14 of 1991. With all the aforementioned conditions met, it can be said that the reporter's action does not entail any legal liability, as it is permissible. Consequently, the reporter is not subject to any criminal prosecution, whether for defamation or false reporting. Anyone who participated as a perpetrator or accomplice also benefits from this permissibility, because, as is well known, the reason for permissibility strips the criminal act of its criminal nature and transforms it into a permissible act, that is, to its natural state. Finally, exercising the right to report a crime is conditional upon the crime not being one for which the law requires a complaint or request as a restriction on the Public Prosecution's right to initiate criminal proceedings (Article 26 of the Egyptian Code of Criminal Procedure and Article 47/1 of the Iraqi Code of Criminal Procedure). Examples include adultery and theft between ascendants and descendants, where the legislator requires the victim to file a complaint with the Public Prosecution before it can initiate criminal proceedings against the perpetrators. Similarly, crimes specified in Articles 8 and 9 of the Egyptian Code of Criminal Procedure require a request from the Minister of Justice or the head of the relevant authority or department before the Public Prosecution can initiate criminal proceedings.
This condition aligns with the legislator's rationale for restricting the initiation of criminal proceedings in specific crimes to a complaint or request. Regarding complaints, the law stipulates that the report of the crime must come solely from the victim. The victim is defined as the individual or entity against whom the legally punishable act or omission is committed, whether a natural or legal person. This report by the victim differs from ordinary reporting, which can be made by anyone who becomes aware of the crime (Article 25 of the Egyptian Code of Criminal Procedure). A complaint, however, has only one source: the victim.
Both complaints and requests share the fundamental purpose of protecting the victim, but they differ in the nature of the victim. In the case of a complaint, the victim is an individual, while in the case of a request, it is a state entity. This similarity between the two has led to some overlap in certain legal provisions. Just as the legislator may require a complaint from the victim to initiate criminal proceedings for certain crimes, they may also make the initiation of proceedings for other crimes contingent upon a request from a specific body. This request expresses the will to initiate criminal proceedings for crimes where the law requires, for prosecution to proceed, an expression from the party that was wronged, or from the entity best positioned to understand the circumstances of the incident and weigh the considerations of whether or not to initiate proceedings.
In this regard, legal scholars distinguish between two types of plurality of crimes: the first is conceptual or formal plurality, and the second is material or actual plurality.
Regarding conceptual plurality: this occurs when the perpetrator commits a single act that, in the eyes of the law, constitutes more than one crime and falls under more than one legal description. One of these descriptions may qualify for a complaint, while the other does not. In this case, there is no actual plurality despite the multiple descriptions; therefore, only one crime exists, the one with the most serious description. Consequently, if initiating criminal proceedings for this more serious crime is contingent upon a complaint or request from the victim or the relevant body, the prosecution's freedom to initiate proceedings is restricted. However, if the more serious offense is not subject to a complaint, the Public Prosecution may initiate criminal proceedings for it.
Regarding material multiplicity: Considering the distinction between two types of crimes—first, crimes that are inextricably linked, and second, crimes that are unrelated or only inextricably linked—we agree with the legal opinion that the Public Prosecution's freedom to initiate criminal proceedings in such cases is limited only by the boundaries stipulated by law. Otherwise, the Public Prosecution would be unduly restricted and without legal basis. Therefore, whether the incident involves crimes that are inextricably linked, unrelated, or only inextricably linked, the Public Prosecution is not restricted in initiating criminal proceedings for crimes for which the law does not limit its freedom to do so.
This is derived from Article (24) of the Egyptian Code of Criminal Procedure, which stipulates that judicial officers must accept reports and complaints received concerning crimes and immediately forward them to the Public Prosecution. They and their subordinates must obtain all necessary clarifications and conduct the required inspections to facilitate the investigation of the facts reported to them or which they become aware of in any way. They must take all necessary precautionary measures to preserve evidence of the crime. All procedures carried out by judicial officers must be documented in signed reports indicating the time and place

.of the procedures. These reports must include additional details

Conclusion: From the foregoing, it is clear that reporting corruption crimes is a fundamental pillar of the criminal justice system and an effective tool for uncovering crimes that are often characterized by secrecy, organization, and institutional entanglement, particularly economic and administrative crimes where evidence is difficult to obtain through traditional means. A comparative analysis of the positions of Iraqi and Egyptian legislators reveals that both recognize the importance of reporting and grant it legitimacy when its legal requirements are met. However, the difference in the scope of protection and guarantees afforded to whistleblowers directly impacts the effectiveness of this vital role. While honest or well-intentioned reporting contributes to supporting investigative authorities, expediting the detection of crimes and the apprehension of perpetrators, and strengthening public trust in the rule of law, the risks to which whistleblowers are exposed—including threats, intimidation, and professional or social retaliation—can render this right practically meaningless if it is not accompanied by comprehensive legislative and judicial protection. Furthermore, judicial interpretation, particularly in Iraq, has contributed to establishing the principle that whistleblower statements alone are insufficient for conviction unless corroborated by other evidence or circumstantial proof. This aims to achieve a balance between the requirements of combating corruption and the guarantees of a fair trial. Thus, it is confirmed that the effectiveness of the whistleblowing system does not depend merely on recognizing the right to report, but rather on building a balanced legal framework that achieves general deterrence, encourages individuals to report without fear, and simultaneously protects the rights of the accused. This ultimately leads to the consolidation of a societal culture that opposes corruption and promotes integrity and transparency in state institutions and the private sector.

First: Results:

1. Both Iraqi and Egyptian law grant individuals the right to report crimes. However, Egyptian law stipulates that to avoid liability, the report must be truthful and made in good faith, while Iraqi law requires only one of these conditions: either the veracity of the incident or the good faith of the reporter. This makes the scope of protection in Iraq broader.
2. Both legislators identified the judicial and administrative bodies authorized to receive reports. However, Egyptian legislation detailed the role of judicial officers and the categories of individuals exercising jurisdiction at the local and national levels, while Iraqi law left the specific procedures to further judicial interpretation.
3. Both laws stipulated that a report must pertain to punishable offenses. However, the Egyptian law emphasizes that the report must concern crimes for which the Public Prosecution is authorized to initiate proceedings, whereas the Iraqi law broadened this requirement to encompass all crimes without restricting the initiation of proceedings except in specific cases such as espionage and terrorism.
4. Both laws agree on protecting whistleblowers if the report is truthful or made in good faith. However, the Iraqi law does not require both conditions to be met, as is the case in Egyptian law, thus making the scope of protection broader and more flexible in Iraq.
5. In Egypt, the law clearly outlines the procedures for judicial officers to receive, investigate, and forward reports to the Public Prosecution. In Iraq, the law grants greater flexibility in relying on whistleblower statements, provided they are corroborated by evidence during the trial. 6. Iraqi law explicitly recognizes confidential informants and guides in investigations, while Egyptian law does not regulate their role, although judicial precedent has established the legitimacy of using confidential informants when necessary.
7. Iraq stipulates the protection of whistleblowers in the private sector from dismissal and threats, though judicial implementation is deficient. Egyptian law, on the other hand, lacks specific provisions for the protection of whistleblowers in the private sector, indicating a weakness in practical protection.
8. Both legal systems agree that reporting contributes to uncovering crimes and promoting justice. However, Iraqi law has implemented judicial guidance to prevent courts from relying solely on whistleblower testimonies, reflecting a greater awareness of the need to balance protecting society with the rights of the accused.
9. Iraqi law expands the scope of reporting to include crimes in the private sector and public services, while Egyptian law focuses on general and specific criminal offenses in the public sector. This makes Iraqi law more comprehensive in combating corruption in state institutions and the private sector. Second: Recommendations:

1. Propose amending the texts of Iraqi and Egyptian laws to guarantee comprehensive protection for whistleblowers from any retaliation or discrimination, including in the private sector, while establishing clear mechanisms for confidentiality and legal and administrative protection to encourage individuals to report crimes without fear.
2. Establish unified and clear mechanisms for receiving and verifying reports, whether through the Public Prosecution or oversight bodies, with defined timeframes for response and investigation, to minimize delays and ensure the effectiveness of reporting.

3. Amend legislation to encompass all forms of financial and administrative corruption and crimes related to the private and public sectors, thereby ensuring a comprehensive fight against corruption and strengthening the role of whistleblowers in protecting public funds and public trust.

Develop specialized training programs for judges, judicial officers, and oversight bodies on how to deal with .4 whistleblowers, assess the credibility of reports, and ensure a balance between protecting whistleblowers and .the rights of the accused, thereby enhancing the efficiency of the legal system in combating corruption

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