



Fraud Analysis in Iran and Egypt Law

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Abstract

Fraud is one of the most common crimes in most countries (including Iran and Egypt), the cause of which can be mainly found in the economic motives of the perpetrator which in addition to harm to the victim, society is not immune from harm and for this reason, the Iranian legislature in Article 109 of the Islamic Penal Code adopted in 2013 has explicitly classified fraud as an economic crime. The swindler has deceptive language tools, regardless of fraudulent means. Interestingly, the components and characteristics of a fraudulent personal behavior from the perspective of linguistics are the observance of the principle of etiquette, not insistence on persuading the other party and the appropriate physical context. This crime is considered as (white collar crimes). Fraud is similar to misappropriation of property other than theft and betrayal of a trust, but it has special characteristics which distinguishes it from the above-mentioned crimes, including the use of fraudulent means, deception of property, and the surrender of property by her to the fraudster, is a special feature of fraud that there is not in other crimes. In this study, we will comparatively study the crime of fraud in the law of Iran and Egypt, and in particular, we will examine the indirect fraud and fraudulent study of services in the law of these two countries.

Keywords: *Fraud; Fraudulent Education of Services; Iran; Egypt; Direct or Indirect Fraud*

Introduction

Among the crimes against property, the crime of fraud is a new crime, and in the old days, stealing someone else's property by trickery was not called fraud. With the advancement of science and technology, in addition to fraud taking on more complex forms, we are witnessing a significant increase in the number of perpetrators and an increase in the number of victims. Today, computer fraud and misuse of credit cards and ... have led to the crime of fraud to be called a new crime or (twentieth century crisis). In a general definition, fraud is forcing another to surrender property through trickery. In Islamic jurisprudence, fraud is a kind of false property, that is, eating another's property unjustly and is punishable. It has been said:

A person who commits deception in the property of the people with deceit and fraudulent writings, false testimony, false letters, etc., should be disciplined and punished. And she must fully repay what she has taken, and she deserves the ruler to expose her punishment. According to Iranian law, the criminal act of fraud is a positive material act, which is also emphasized in judicial practice and doctrine.

Fraud is also a constrained crime that requires a connection between the criminal act and its criminal outcome. Fraud has been included in the category (white-collar crimes), but the fact is that we are facing two categories of fraudsters: small fraud and large fraud.

The big scammer often has a high position in the government and society and is supported by political and economic rents, which are considered white-collar workers. But the little swindlers are those who, because they do not have these tools and wish to go for a hundred years overnight, commit fraud and are quickly arrested and punished. Fraud is considered a compound crime, and a compound crime is a crime that requires the performance of various and sometimes complex material acts in order to be realized. It sometimes is even possible for several crimes to occur for a criminal act. Admittedly, fraud is far more complex than street crime. This article is organized into two parts, the first part has three topics and the second part has two topics.

Part One: Definition, Elements and Punishments of Fraud in Iranian and Egyptian Law

Topic One: Defining Fraud

Definition of Fraud in Iranian Law

The word fraud literally means two parts of a hat with a cuff attached to the head, and the second part of the verb means to lift and hold. In general, this term means removing the hat from the head and in the virtual sense means stealing the intellect from a person. And to take off someone's hat means to deceive someone and to seize someone's property or to borrow from another with the intention of not paying. The legal definition of fraud is the use of trickery and fraudulent means to steal another's property. So there is not much difference between the lexical and legal meaning of fraud.

Another definition of Mohammad Jafar Habibzadeh(1985) states that harming another by acquiring property or money, after convincing her that something is not real, Or the act of deceiving another or attempting to deceive him in order to earn money. Some have said in the definition of this crime:

Scam is the taking of another's property through fraudulent means or operations. What is certain, however, is that fraud involves deceiving the victim. By staging and performing fraudulent maneuvers, the scammer deceives the victim of the crime and satisfies her to give rubbing to the scammer. In the absence of this basic condition, the crime of fraud will not occur. Deception is in fact the negligence and ignorance of the owner. Therefore, it is necessary that the loser did not know that the fraudulent devices were fraudulent, and that she was really deceived. Another point, according to what was stated in the definition of fraud, is that resorting to fraudulent means must precede the surrender of the lost property, and fraud will not be realized.

Definition of Fraud in Egyptian Law:

The Arabic equivalent of fraud is "al-Nusab" and "al-Ahtial" and the word (al-Nasab) means to bother, make painful and suffer. And the word (installer) is derived from it and means someone who works without an agenda and in common parlance refers to someone who somehow takes people's property and refuses to return it. The word "appointment" is rooted in the words "installation" and "installation" means trickery, deceiver, cheater, swindler. In the Qur'an, the word installation is used to mean suffering, fatigue and disability.

The word (probability) means solution and construction, and is rooted around it, and is also rooted in words such as probability, desire, evolution, and analysis, and means to use cunning and cleverness. In some Arab countries, fraud is used as the word (installation), which is also used in Egypt. And some other word (possibility) is used, such as Syria, which uses this word in the sense of fraud.

According to the definition of Article 336 of the Egyptian Penal Code, it can be seen that the Egyptian legislator, like the Iranian legislator, did not provide a definition of the crime of fraud. According to Article 336 of the Egyptian Penal Code, fraud can be defined as follows: It seems that taking all or part of the funds or other movable property by trickery and fraud). This is a general definition of the concept of fraud in Egyptian law. But the significant point in this definition is that in Egyptian law, the crime of fraud is mentioned as a crime (fraud). And the swindler has been named as (fraudulent), based on which the crime of fraud in the Egyptian Penal Code can be defined as follows: (Taking all or part of the funds and movable property and another account by resorting to trickery and lies.

Topic Two: Scam Elements

Elements of fraud in Iranian law

Legal element

Article 1 of the Law on Intensifying the Punishment of Perpetrators of Bribery, Embezzlement and Fraud approved in 1988, together with its two notes, can be considered as a legal element of the crime of fraud. This article states:

Anyone who deceitfully and fraudulently deceives people into imaginary companies or businesses or factories or institutions or from having illusory property and powers either hope for unreal things or be afraid of unreal events or take a false name or title and educated in one of the above-mentioned means or other means, funds, property or documents and remittances and bills or accounts. And also to take another's property in this way is a fraud in addition to rejecting the property to its owner, she is sentenced to one to seven years in prison and to pay a fine equivalent to the money she has received.

In the event that a person commits an act contrary to the title or position of mission by government or government-affiliated organizations or institutions or government companies or municipalities or revolutionary institutions. In general, it has adopted the three forces, as well as the armed forces, and the institutions in charge of public service or the crime was committed by using public propaganda through mass media such as radio, television, newspapers and magazines or speeches in public or by publishing printed or written advertisements or commits from employees of the government or government institutions and organizations or affiliated with the government or municipalities or revolutionary units or in general from the three forces as well as the armed forces and missions to public service. In addition to rejecting the original property to its owner, she is sentenced to two years and two years of permanent dismissal from government services and payment of a fine equivalent to the money she has received.

Note one: In all the cases mentioned in this article, if there are aspects and qualities of a reduction, the court can reduce the punishment of the perpetrator only to the minimum punishment provided in this article (imprisonment) and permanent dismissal from government services by applying the rules related to mitigation, but it cannot suspend the execution of the sentence.

Note 2: The punishment for committing fraud, depending on the case, will be the minimum punishment prescribed in the same case if the act itself is also a crime, the initiator is also punished for that crime. In addition to the above-mentioned punishment, government employees, if they are in the rank of director general or higher or equal to them will be sentenced to permanent dismissal from government service and, if they are at a lower level, to six months to three years of temporary suspension from government service.

Material Element:

The material element means that a criminal and distasteful thought appears, and the mere criminal thought that has not appeared outside is not punishable. In the case of fraud, the perpetrator must commit a positive act and leave the act even if it is accompanied by malice. It is not considered fraud to deceive the other party and cause her harm. In addition, a positive act alone is not enough. Rather, this act must have caused the victim to be deceived. In addition, a positive act alone is not enough. Rather, this act must have caused the victim to be deceived. Also, just lying, remaining silent and refusing to tell the truth is not a positive act and is not considered fraud. Regarding the material element of the crime of fraud, in addition to the occurrence of a positive act, the use of counterfeit equipment or fraudulent maneuvers before taking the property is unnecessary. It is the responsibility of the prosecutor to prove the defendant's recourse to fraudulent means or fraudulent staging and maneuvering. What is certain is that there is a direct link between resorting to means or fraudulent maneuvers with deceiving the victim and taking her property as a prerequisite for committing the crime of fraud.

Spiritual or Psychological Element

The spiritual element of a crime is to commit a behavior that is recognized under criminal law with "criminal intent" or in which the perpetrator has conducted (criminal misconduct and guilt). In other words, the spiritual element is the psychological relationship between the offender and the perpetrator behavior. The psychological element is also referred to as (Sunnah). The malice is divided into general malice and specific malice. The general malice in the crime of fraud is that the perpetrator intends to commit fraud (with the intention of resorting to fraudulent means) Special malice also means (intention to take someone else's property) by the perpetrator, which is why it has been said. If the perpetrator intends to resort to fraudulent means to take her property out of another's possession, it is not a fraud and the crime has not been committed because it has been in retaliation, it is necessary to deceive the addressee of the deceptive operation. The condition of deception is ignorance of the forgery of the means used. In return for committing the crime of forgery of the means of the universe, if the perpetrator makes a thematic mistake in using counterfeit equipment, the crime has not been committed.

Elements of Fraud in Egyptian Law:

Legal Element:

Article 336 of the Egyptian Arab Penal Code is the legal element of the crime of fraud in this country. This article states: (Anyone who tricks and deceives people into having false plans or plans or unrealistic things or creating hope of making false profits, or receiving unrealized and unrealistic and fraudulent arrears, or the existence of documents and fictitious powers or documents of Mafasa fake account or to seize and own movable or immovable property that does not belong to her. Either she has no right to possess them or she hopes and deceives by adopting a fake and unreal name and title. In this way, adding funds or property or documents, or immediately accessing another person's account or any movable property and taking all or part of them, will be sentenced to imprisonment. Anyone who commits fraud and the crime is not completed shall be sentenced to imprisonment for a term not exceeding one year. The court may, if repeated in the crime, place the perpetrator in custody of not less than one year and not more than two years under the supervision of the police).

In the above-mentioned article, the Egyptian legislator has provided only the punishment of imprisonment for this crime, and has not made it difficult to reject property and fines, and has limited itself to simple fraud. This article also considers fraud to be the taking of immovable property belonging to another and does not mention the taking of immovable property belonging to another through deception. Other forms of fraud in Egyptian criminal law are set out in Article 338 of the Egyptian Penal Code. According to this article: (Anyone using the need or weakness of the soul or whims of a person who has not reached the age of twenty-one or a verdict has been issued against her in these matters. To borrow, cash, or any movable property, or to reduce the value of commercial or non-commercial securities, or to obtain any writings which give rise to her obligation; if she has used trickery and fraud, she shall be sentenced to imprisonment for a term not exceeding two years. In addition, the court can sentence her to a fine not exceeding the Egyptian yen. If the perpetrator is the guardian or he is a convicted person, the punishment for the perpetrator is from three to seven years in prison). This article refers to the punishment for fraud (which is done through trickery and fraud against people under twenty-one years old).

Material Element:

The criminal behavior of the perpetrator in committing the crime of fraud in Egyptian law like in Iran is positive material act and leaving the act or silence of the scammer or just lying without the combination of a positive material act will not be enough to realize the scam. According to the logic of Article 336 of the Egyptian Penal Code, resorting to trickery and fraud, of which fraudulent means and fraudulent maneuvers are a clear example. And the taking of other people's property by it is the basic basis of the material element of this crime. In addition, Article 336 of the Egyptian Penal Code considers the existence of a direct connection between a fraudulent device and the deception of a victim and the taking of her property as a necessary condition for committing the crime of fraud. According to this article, resorting to fraudulent means must precede the acquisition of another's property. Fraud is a constrained crime in Egyptian law, as in Iran.

Spiritual Element:

Since fraud is a deliberate crime, there is no psychological difference between Iranian and Egyptian law. And in addition to the general malice, that is, the knowledge that the device is counterfeit and intentionally resorting to it, there must be a specific intention to take other people's property. It does not mean the intention to take another's property and the intention of a special property or a certain amount of a certain personal property.

Topic 3: Punishment of Fraud

In Iranian law, Article 1 of the Law on Intensifying the Punishment of Perpetrators of Bribery, Embezzlement and Fraud stipulates the main punishment for simple fraud is imprisonment for one to seven years and a fine equivalent to the confiscated property. And the court cannot rule on just one of them. It also emphasizes the rejection of property to its owner. And in note one of this article, it is mentioned that if there are aspects and qualities of a reduction, the court can reduce the punishment of the perpetrators only to the minimum punishment provided in this article.

by applying the rules related to discount. The Iranian legislature has aggravated the punishment for aggravated fraud in Article 1 of the law:

"... If the perpetrator is contrary to the title or position of mission by government or government-affiliated organizations or institutions ... "In addition to rejecting the original property to its owner, she is sentenced to two to ten years and permanent dismissal from government services and payment of a fine equivalent to the money she has received."

Compared to simple fraud, the punishment is aggravated in two ways:

- 1- In terms of increasing the minimum and maximum amount of imprisonment.
- 2- In terms of the sentence of permanent separation from government services

It should be noted that according to the law on reducing penal punishments approved on 2020, if the property taken in the fraud is up to one billion rials (one hundred million tomans). It is considered a forgivable crime and with the complaint of the private plaintiff, the investigation will start and with her pardon, the investigation will end. And if the confiscated property is more than one billion Rials, it is one of the unforgivable crimes and with the plaintiff's complaint, the investigation will start but with her forgiveness, the investigation will not be stopped. Article 336 of the Egyptian Penal Code, which deals with fraud, does not mention the amount of imprisonment or aggravation of punishment. However, Article 338 of the same law, which is an example of fraud, states: If the perpetrator is the guardian or guardian of the innocent person, the punishment for the perpetrator is 3 to 7 years in prison.

Anyone using the need or weakness of the soul or whims of a person who has not reached the age of twenty-one or a verdict has been issued against her, to her detriment, writings or documents sealed or sealed account of debt or borrowing or cash or something of movable property or devaluation of commercial papers and documents or non-commercial or any writings that oblige him to take from him, if he has used fraud and deception will be sentenced to imprisonment for a term not exceeding two years. In addition, the court can sentence her to a fine of no more than 100 Egyptian yen. "If the perpetrator is a guardian or a personal guardian, the punishment for the perpetrator is from three to seven years." The punishment for committing fraud in Egypt, according to Article 336 of the Penal Code of this country is:

(... Anyone who commits fraud and the crime is not completed will be sentenced to imprisonment for not more than one year ...)

The punishment for committing fraud in Iran, according to Note 2 of Article 2 of a law intensifying the punishment for perpetrators of bribery, embezzlement and fraud, is:

The punishment for committing fraud will be the minimum punishment prescribed in the same case, and if the act itself is a crime. The initiator is also punished for that crime. In addition to the above-mentioned punishment, government employees, if they are in the rank of general manager or higher or equal to them, they will be sentenced to permanent dismissal from public service and, if they are at a lower level, to six months to three years of temporary suspension from public service.

Part 2: How to Study Services Fraudulently and Fraud Through Mediation in Iranian and Egyptian Law

Topic 1: Fraudulent Study of Services

In fact, the question is whether fraudulent acquisition of services (such as fraudulent use of the services of lawyers, doctors, psychologists, etc.) can also be considered as a crime of fraud?

There are three different perspectives on this question:

First view - no criminal act due to lack of legal element:

Some believe that due to the lack of clarification of the law and the need for narrow interpretation and penal texts, it is unlikely that these cases can be considered (taking another's property) and considered

it as fraud, because the subject of fraud is taking property "both movable and immovable" .And property means which is material and can be acquired and traded while the services have a spiritual aspect and do not have a material aspect and trade, on the other hand, if we consider the use of the services as fraud. In two of the three fraudulent punishments (ie, rejection of the original property and a fine equivalent to the property obtained), we will face a problem. Observance of the principle of legality of crimes and punishments and interpretation of criminal law in favor of the accused and the principle of immorality all lead to the acceptance of this view.

That the use of services can not be considered fraud and if it deceives another person to do something, it is a legal matter, not fraud.

The Second View - Adaptation to the Mass of Extortion

These people also believe that the fraudulent use of other services is not a scam, but is consistent with the crime of robbery and is an example of this crime. In Article 712 of the Islamic Penal Code, the legislator has referred to the crime of extortion, but has not provided a definition of it. Lawyers, taking money by insisting on others or illegally obtaining funds or property or documents or using other services Knowing the absolute impossibility of compensating them or refusing to fulfill a reciprocal obligation with a previous decision such as renting a room in a hotel or eating in a restaurant or using means of transportation, they have defined the knowledge of their absolute inability to pay. It seems that according to the beginning of Article 712 and that in order to commit a crime, it is necessary for the perpetrator to make it her profession. And to make a living in this way (crime out of habit), the use of services by deception can not be considered a kind of struggle especially when the fraudulent use of other services is not done habitually and the person has not made it her profession.

Third View - The Adequacy of the Legal Element and Compliance with the Crime of Fraud

Some other legal scholars consider fraudulent use of services to be fraudulent and state their arguments as follows:

1- It is true that the legislator in article one of the law of intensification mentions education (funds) or (property) or (documents) or (remittances) or (bills) or (account balance) and does not explicitly mention (services). But according to the phrase (... and the like) in the continuation of the text, we find that the mentioned cases are allegorical and not exclusive.

- It is true that in the past the word (property) was specific to material goods, but the progress of current life has gradually removed it from its limited and primitive meaning.

In such a way that today all the various elements of assets are also called property. (Such as: claims and financial rights, copyright, goodwill, etc.) Therefore, the application (property) in the phrase (... and in this way take another property ...) mentioned in the text of Article 1 of the aggravation law, also includes services as an example of its examples.

2- If we accept that the legislator's care in drafting laws is in line with the needs of society and public opinion. Therefore, the drafting of a law to intensify the punishment for fraud was taken from the needs of society and the will of the people to confront and control the phenomenon of fraud. Otherwise, there is no need to intensify the punishment. Fraudulent knowledge of fraudulent service education will be both in line with legislative intent and with public opinion.

3-Regarding (rejection of property) in fraud, knowing the fraudulent use of other services is not a problem, because here, the property is not taken away (services). Rather (the fee belongs to those services) which can be easily calculated according to the previous agreement of the parties or referring to custom or legal tariff or by referring to an expert and the equivalent will be as a fine

4. As stated here, the issue here is not mere (services) but (fees belonging to those services) who has been deceived by another that this fee is a property, so it can be a scam. According to the author, the third view is stronger and more consistent with reality, and it can be concluded that benefiting from the services of others by deception and (and not paying for it). As an example of Article 1 of the Law on intensification of Fraud. In particular, the legislator in Article 741 of the Islamic Penal Code and in the statement (computer-related fraud) explicitly mentions the crime of fraudulent acquisition of services as an example of fraud and there is no doubt about (the possibility of applying the penalty of rejection of property) against the student of the services of others. But in the Arab Republic of Egypt, with regard to Article 336 of the Punishment Law, it seems that fraudulent acquisition of services is not criminalized because there is no reference to services in this article.

Topic 2: Intermediary Fraud:

The question is, can resorting to fraudulent means to steal another's property through intermediaries and indirectly also be an example of fraud? For example, if someone uses a fraudulent device (such as a forged document) or performs a fraudulent maneuver to deceive a judge and seize another's property by obtaining an erroneous verdict, fraud is committed.

In answer to the above question, there is disagreement among jurists. Some believe that there is a direct and decisive relationship between resorting to fraudulent means and deceiving the victim by taking her property (without the intervention of an independent third party), is a necessary condition for committing the crime of fraud. Others believe that the basis of fraud is that someone uses fraudulent means to steal another's property. Whether the victim has been deceived or the victim's property has been deceived by a third party (intermediary). On the other hand, in Article 1 of the Law on Intensification of Punishment for Perpetrators of Embezzlement, Bribery and Fraud, the legislator has used the word (people) and it does not refer to the victim, and it seems that what is important from the legislative point of view (taking another's property by deceiving a human being). It is very clear that the deceived person must have some kind of control over the stolen property. Therefore, it can include judges, government officials, trustees, and so on. Therefore, considering the general word (people) in the law of aggravation, it seems that the intention is for a person to be deceived and neglected. It is not just (the victim) but it is basically a scam to deceive the people (the victim or the intermediary) and take the victim's property by fraudulent means. In addition, the Iranian legislature has explicitly accepted Article 741 of the Islamic Penal Code, which deals with computer fraud. Computer fraud may be committed without the victim being deceived and by interfering with computer data or the operation of the victim's computer system. And perhaps in other words, the legislature has accepted that in the computer fraud of this system (intermediary) which has been deceived and scammed by (computer) and indirectly located. However, this article of the law is specific to computer fraud and its extension to traditional fraud is controversial. In Article 336 of the Egyptian Penal Code, which is specific to fraud, the legislator has also used the general word (people) (whoever deceives the people by trickery and fraud ...) According to what has been said before, the word (people) indicates that the third deception and as a result taking the victim's property by trickery and fraud can be an example of fraud in this country. In fact, the word (people) indicates that the loser does not need to be directly deceived. Rather, the deception of the intermediary (she is part of the people) and taking the victim's property is enough to carry out fraud in this Arab country.

Conclusion

The crime of fraud is one of the crimes against property and is one of the important issues of criminal law in the criminal law of Iran and Egypt. The definition of this crime in Iranian law is briefly: (taking another's property through the use of fraudulent means or operations). And according to Egyptian jurisprudence, the definition of fraud is: a lie that is accompanied by foreign events. The subject of fraud

in Iranian law is both movable and immovable property, but in Egyptian criminal law it is limited to movable property. Fraud through the acquisition of services by resorting to fraudulent means or operations is accepted in Iranian law (Article 174 of the Islamic Penal Code). However, it is specific to computer-related fraud, while the fraudulent acquisition of services is not accepted as fraud in Egyptian law.

The legal element of this crime in Iranian criminal law is Article 1 of the Law on Intensifying the Punishment of Perpetrators of Embezzlement, Bribery and Fraud, approved by the Expediency Council on December 6, 1988. In this article, simple and severe fraud is mentioned. In addition to Article 741 of the Islamic Penal Code, but in Egyptian criminal law, the legislator in Article 336 of the Penal Code of the Arab Republic has limited himself to expressing simple fraud. Material element: The crime of fraud is in Iranian and Egyptian law (positive material act) and will not be committed by abandoning the act of fraud. Psychological element: The crime of fraud consists of two components: general malice (intent to commit a crime) and specific malice (intent to obtain a result). Given that recourse to fraudulent devices or operations is unlimited and incalculable. In this regard, unlike Egypt, the Iranian legislature has envisaged several aggravated cases to combat this criminal phenomenon. Fraud is a compound offense, and a competent court is a court where the second part (taking another's property) has taken place.

However, if the second part is not realized, it can be considered as the beginning of a crime in the court of the same place where the first part took place. Indirect fraud with regard to the mention of the word (people) in the Law on Intensification of Punishment for Perpetrators of Embezzlement, Bribery and Fraud approved in 1988. Also, mentioning the word (people) in Article 336 of the Egyptian Penal Code has been realized and accepted in both the Iranian and Egyptian legal systems. However, with respect to the rule of narrow interpretation and interpretation in favor of the accused in criminal matters, the acceptance of intermediate fraud is a matter of debate and disagreement. Because in such cases, the victim is not deceived, but this person is the mediator who has been deceived. However, with regard to Article 741 of the Islamic Penal Code and the acceptance of fraud through (indirect) means, ie through the computer (through interference in computer data) Such as (changing, erasing, creating or stopping data or disrupting the system) and taking property other than the Iranian legislature. And, of course, the word (people) in the Law on Intensification of the Punishment of Fraud in 1988, it may be acknowledged that the Iranian legislator did not mean the word (deception) in the matter of fraud, only the deception of the victim.

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