

**THE CRIME OF BRIBERY BETWEEN SHARIA AND LAW**

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<b>ABSTRACT</b>	<b>KEYWORDS</b>
<p>The crime of bribery is considered one of the most serious crimes of corruption and among the crimes that have negative effects on society. The Iraqi state has sought to combat the crime of bribery through various mechanisms, legal legislation and anti-corruption bodies, but despite that, society has not been spared from this crime. It is necessary to combine efforts and all actors and the presence of a real political administration to combat this crime.</p>	<p>Bribery crime, corruption, anti-bribery.</p>

**Introduction**

Corruption is one of the most important challenges facing societies and is one of the most important issues that are still the subject of global debate. The truth is that it does not exist in societies characterized by corruption, but rather this problem lies in the spread, diversity and expansion of corruption, which negatively affects societies. There is no doubt that the entire world has become one village, as the scope of trade exchange between countries and individuals has increased, whether on behalf of a public or private entity, which has led to the spread of all forms of crime, including bribery. It contributes to the spread of corruption, kills consciences, disrupts the functioning of the government tool and equality between citizens before public facilities, and harms the public interest, as it involves the public employee trading in his job and exploiting it for his own benefit. Bribery raises problems in human relations and wastes prevailing values and customs, and constitutes a threat to state authority and the law, as it is one of the most severe types of corruption that affects the public function. Therefore, laws have sought to combat this scourge in all its forms. For this reason, the Iraqi legislator, like other systems, sought to criminalize various forms of bribery, protect the integrity of the public office, and preserve the government tool from any corruption or defect that may befall it, through the Penal Code. However, as a result of this crime taking another turn, and the inability of the legal texts criminalizing it in the folds of the Penal Code to confront it, it was necessary to enact a law that reorganizes and criminalizes this crime in a manner consistent with the developments taking place in all fields. This law is the law related to the prevention and combating of corruption, which has become a special law that criminalizes a number of corruption crimes, such as the crime of bribery, where we witness the Iraqi legislator's attempt to overthrow all forms and images of this crime in an effort to confront it, punish its perpetrators, and achieve complete deterrence within.

## **Research Objectives**

The aim of this study is to try to know the legal nature of the crime of bribery and to know its forms between Islamic law and the law.

## **The importance of the study**

The importance of this study lies in the fact that it deals with a topic of reality, namely the crime of bribery, which has become the talk of the town, as this crime of bribery has become widespread and rapid, as not a day goes by without us hearing about the spread of this crime in addition to the negative effects this phenomenon has had on the individual and society.

## **The problem of the study**

Many studies have indicated the impact of the crime of bribery on society, and what is interesting is that these studies, with their various methods of analysis, did not give the crime of bribery sufficient attention in the analysis, and perhaps many economists try to tell us that the crime of bribery does not differ much in its impact from manifestations of corruption, but the reality confirms that this crime is the fastest spreading manifestation of corruption and the most supported by employees; in achieving the purposes of illegal gain.

The problem of the study can be identified in the following questions:

- 1- What are the factors that led to the spread of the phenomenon of bribery in society?
- 2- What is the conceptual framework of bribery?
- 3- What are the effects resulting from the phenomenon of bribery?

## **Study Methodology**

The study relied on the analytical approach through analyzing facts and legal texts and stating opinions, observations and suggestions about this phenomenon As well as on the descriptive approach, which is describing the phenomenon studied by describing the problem and identifying its aspects.

## **The concept of bribery crime**

It is very important when studying a specific topic, especially those related to financial corruption, such as the crime of bribery, to define the concept of bribery, as the latter is considered one of the common terms, and it is a form of corruption crimes that have harm to the interests and rights of individuals, and it is also considered one of the most dangerous crimes, because it is committed by people who represent the authority and public positions in the country, as they are public employees or those in their position. We will address the concept of bribery in Islamic law in the first section, and its concept in the law in the second section.

## **The concept of bribery in Islamic law**

In this section, we will discuss the definition of bribery according to Islamic law in the first section, its ruling in the second section, and the forms of the crime of bribery in the third section. And distinguishing it from similar things in the fourth section.

## **Definition of bribery according to Islamic law**

Islamic law has clarified the crime of bribery and set severe penalties for it, in order to achieve the interests of people and not to manipulate them and prevent the harm that could affect the group and public money. Before addressing its definition in Islamic law, you will learn about it in the language first and in jurisprudence second. First - Definition of bribery in the language: Ibn Manzur says: It is a noun from bribery, and the act of bribery: it is said bribery and bribery is favoritism, and bribe him favored him and made him and appeared, and bribe him: he took a bribe from him, it is said: he bribed him with a bribe, meaning he took it, he asked for a bribe, and bribery: the fee, and the plural: bribe, and bribe him, bribe him, bribe him, he gave him a bribe<sup>1</sup>.

Among the meanings of bribery: what is used to reach a need through compromise, such as by doing something for him to do something else for you, or what a person gives to the ruler or someone else to rule in his favor or to make him do what he wants<sup>2</sup>. The briber is the one who pays the bribe, and he is the one who gives to the one who helps him in falsehood, and spends money to reach falsehood. It is said: The bribed is the one who takes, and the mediator is the one who works between them, asking for more for this one and less for that one. The mediator is the intermediary, and the one who works between them increases for this one and decreases for that one. Ibn al-Athir said: Bribery is the connection to a need through compromise, and its origin is from bribery, which is used to reach water.

## **Definition of bribery in Islamic jurisprudence:**

The crime of bribery has become one of the topics of great importance in the modern era, which has made it receive attention from jurists, as many and varied definitions have been given to it.<sup>3</sup>

Ibn Abidin defined it in his commentary as everything that a person gives to a ruler or someone else to rule in his favor or to force him to do what he wants<sup>4</sup>. Al-Sharif al-Jurjani defined it in his book "Al-Ta'rifat al-Jurjaniyyah" and said that bribery is what is given to invalidate a right or to establish falsehood and to reach injustice. In the interpretation of that, it is money that is paid, but on the condition of assistance<sup>5</sup>. Ibn al-Arabi said: Bribery is everything that is paid to buy from someone of influence assistance in what is not permissible. The bribed is the one who receives it, the briber is the one who gives it, the mediator and the intermediary<sup>6</sup>. Al-Bijuri ibn Muhammad al-Shafi'i also defined it by saying: "Bribery is what is given to the judge to rule unjustly or to refrain from ruling unjustly<sup>7</sup>. Bribery and what it entails have many meanings, all of which go back to one meaning, which is to reach something, or in order to help achieve a specific goal, or to reach a specific purpose with money, or it is the trade of a public employee, or someone in his position or who is in charge of public service, by exploiting his position, by requesting, accepting or obtaining On a gift or promise to perform An

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<sup>1</sup> Ibn Manzur, Lisan al-Arab, no edition, Dar al-Jeel for Publishing and Distribution, Lebanon, no year of publication, p. 171.

<sup>2</sup> Muhammad Muhyi al-Din Awad: Bribery in Sharia and System, Subject and Form, First Edition, Al-Walaa Modern Printing Presses, no country of publication, 1999, p. 10.

<sup>3</sup> Yasser Kamal El-Din: Bribery and Abuse of Influence Crimes, First Edition, Maaref Distribution Establishment, 2008, p. 15.

<sup>4</sup> Night Winds, Audio Agencies: Objective Provisions of the Crime of Bribery in the Public Sector, Master's Thesis in Law, Specialization in Private Law and Criminal Sciences, Abdel Rahman Mira University, Bejaia, without publication year.

<sup>5</sup> Hanan Malika, Crimes of Corruption and Embezzlement and the Public Employee's Profits from His Job in Islamic Jurisprudence and Anti-Corruption Law

<sup>6</sup> Ibn Al-Arabi: Aridat Al-Ahwadhi with Explanation of Sahih Al-Tirmidhi, Part Two, Dar Al-Kitab Al-Ilmiyyah, Syria, p. 8

<sup>7</sup> Montaser Al-Nawasiya: The Crime of Bribery in the Jordanian Penal Code, First Edition, Dar Al-Hamed for Publishing and Distribution, Jordan 2012, p. 20.

act of his job or refraining from it or failing in its duties<sup>8</sup>. All Muslim jurists have agreed that bribery is forbidden, and that anyone who deals with it is cursed. Many hadiths have been reported on this matter<sup>9</sup>.

Bribery is committed by the contribution of two or sometimes three persons: the bribed person: the person who requests or offers a gift or promise in exchange for performing an act or refraining from performing an act of his job or failing to fulfill his duties, and he is represented by the public employee or someone similar to him, and the briber: the person in need or interest who offers the gift or promise to the public employee, in order for him to perform a service for him, and there may be a third party in the crime, which is: the mediator who mediates between the briber and the bribed, so the crime of bribery may occur directly between the briber and the bribed, or it may occur by the action of the mediator, and the latter is considered a partner in the crime, and the majority of jurists believe that bribery is: the misuse of public office for personal purposes, and the use of money to achieve private interests<sup>10</sup>, and the crime of bribery and all transactions that fall within its scope are considered, by agreement of all jurists, to be among the major sins that God has forbidden to His servants. Researchers have differed on the reasons that led to the spread of this dangerous phenomenon in societies. Some of them focus on the religious and moral dimension, while others attribute it to the material dimension. Among these reasons, we mention the following:

- 1- Administrative corruption, favoritism, and weak oversight.
- 2- Failure to apply strict penalties on the briber, the bribed, and anyone who deals with bribery.
- 3- The abundance of routine procedures, especially low wages for employees.
- 4- Rushing to complete transactions and meet needs.
- 5- Weak faith, lack of religious restraint, low standard of living, and desire for quick wealth

## **The ruling on bribery in Islamic law**

One of the objectives of Islamic law is to preserve necessities. The crime of bribery and its use have been prohibited by evidence from the Qur'an, Sunnah, and consensus. The Shari'a has prohibited it because it is one of the financial crimes forbidden by Islamic law, as it is considered to be eating people's money unjustly and reaching it with money that is not permissible. Islamic law has been keen to preserve people's money and not to eat it unjustly. Bribery in Islamic law is considered one of the disciplinary crimes and has specified penalties for it.

## **Prohibition of bribery in the Holy Quran**

The Almighty said: (And do not consume one another's wealth unjustly or send it (in bribery) to the rulers in order to consume a portion of the wealth of the people in sin while you know)<sup>11</sup>. What is meant by "send it to the rulers" is that do not throw your wealth to the rulers out of flattery and bribe

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<sup>8</sup> Muhammad Ahmad Ghaem: The Legal Framework for Transnational Bribery, without edition, Dar Al-Jamiah Al-Jadida, Alexandria, Egypt, 2001, p. 267. 8

<sup>9</sup> Ali Abdul Qader Al-Qahouji: Penal Code - Special Section - First Edition, Al-Halabi Legal Publications, Beirut, Lebanon 2010, p. 20.

<sup>10</sup> Musa Budhan: The Legal System for Combating Bribery, Dar Al-Huda for Printing, Publishing and Distribution, Iraq, 2010, p. 10.

<sup>11</sup> Surah Al-Baqarah, verse 188.

them to make you decide on more than it<sup>12</sup>. Whoever takes the wealth of another without the permission of the Sharia has consumed it unjustly. The verse is evidence that falsehood in transactions is not permissible. Eating wealth unjustly is consuming one another's wealth unjustly, whether through aggression, plunder, usury, bribery, or betrayal of trust and deposit. This verse prohibits taking people's wealth unjustly. One of the forms of taking it unjustly is bribery, which is used to flatter the rulers. The prohibition here requires prohibition, and thus bribery is prohibited. The Almighty said: (They are listeners to falsehood, devourers of filth. But if they come to you, judge between them or turn away from them)<sup>13</sup>.

## Prohibition of bribery in the Sunnah

Many hadiths have been reported in explaining the perpetrator of the crime of bribery, including what was reported in a hadith on the authority of Ibn Jarir on the authority of Abu Omar, may God be pleased with them both, on the authority of the Prophet, may God's prayers and peace be upon him, who said: "Every flesh that grows from ill-gotten gains, the Fire is more deserving of it." He said: "What is ill-gotten gains?" He said: "Bribery in judgment."<sup>14</sup> And on the authority of Abdullah bin Omar bin Al-Aas, may God be pleased with them both, he said: "The Messenger of God, may God's prayers and peace be upon him, cursed the briber and the bribed." And in the hadith of Abu Hurairah, may God be pleased with him, he said: "The Messenger of God, may God's prayers and peace be upon him, cursed the briber and the bribed in judgment<sup>15</sup>. And on the authority of Ahmad in the hadith of Thawban, with the wording: "The Messenger of God, may God's prayers and peace be upon him, cursed the briber, the bribed, and the mediator." The mediator is the one who walks between them, meaning the ambassador between the payer and the taker, even if he does not take a fee for his embassy. The briber and the bribed deserve the curse together, because the briber uses his money to achieve what is false, and the bribed to achieve a judgment in his favor without right, or to establish falsehood and nullify a right. On the authority of Abu Humayd al-Sa`idi, may God be pleased with him, who said: The Prophet, may God bless him and grant him peace, appointed a man from Azd called Ibn al-Latibiyah to collect the alms tax. When he arrived, he said: This is for you and this was given to me.

The Messenger of God, may God bless him and grant him peace, stood up, praised God and thanked Him, then said: What is the matter with an agent whom I send and he says: This is for you and this was given to me? Why does he not sit in his father's house or in his mother's house until he sees whether he will be given a gift or not? By the One in Whose Hand is the soul of Muhammad, none of you will take anything from it except that he will come on the Day of Resurrection carrying it on his neck, a camel that roars, or a cow that moos, or a sheep that bleats. Then he raised his hands until we saw the whiteness of his armpits, then he said: O God, have I conveyed the message?<sup>16</sup> Thirdly, the prohibition of bribery by consensus: All those whose words are considered from the scholars of the Muslims, past and present, have agreed that accepting a bribe is prohibited in general, and this applies equally to the

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<sup>12</sup> Eid Allah bin Abdul Mohsen Al-Tariqi: The crime of bribery in Islamic law, third edition, without publishing house, Riyadh, Saudi Arabia, 1988 AD.

<sup>13</sup> Surah Al-Ma'idah, verse 42.

<sup>14</sup> Ibn Issa Muhammad ibn Issa al-Tirmidhi: The Book of Purification and Prayer, the Great Collection, edited by Bashar Awad Marouf, the first volume, without an edition, Dar al-Maghrib al-Islami, Beirut, 1996, p. 601.

<sup>15</sup> Ammar Tawfiq Ahmad Badawi: Bribery in its forms and rulings, first edition 1985 Jerusalem, supplement to the magazine Haza al-Islam, issued by the Jerusalem Endowments, the third electronic edition, year 1435/2014.

<sup>16</sup> The website [www.Islamweb.net](http://www.Islamweb.net). Accessed on: 08/03/2019

one who takes, the one who gives, and the one who mediates, whether it is for the ruler, the worker, the judge, or the employee<sup>17</sup>.

## **Images of the crime of bribery in Islamic law**

In the third section, we will discuss the images of the crime of bribery according to its activity first and according to the images of its ruling second.

### **First - Images of activity in the crime of bribery:**

Bribery has many images and different types, and the jurists and religious scholars agreed to prohibit it in all its forms and shapes, and among the images on which the activity in the crime of bribery is based are the following:

1\_ Taking: which is the employee obtaining the benefit that represents the consideration in the bribe, and the method of obtaining it is not important, as it may be by obtaining it personally or it may be by obtaining the beneficiary whom the employee appointed for the bribe, whether he is a relative of the employee or someone else, and the employee may take this consideration or the consideration for the bribe may be placed at his disposal as if he placed the bribe amount in his personal account in a bank.

2\_Acceptance: Unlike taking, in which the employee obtains the consideration for the bribe immediately, he agrees to the promise of the bribe, but if there is a giving of the benefit and the bribed accepts it, then the matter is taken at the image of taking, which is the first image of bribery.

Accordingly, obtaining benefit is not an element of the crime. Bribery occurs by simply accepting a promise of bribery. Rather, the crime occurs even if the perpetrator intends to fulfill his obligation towards the briber, i.e. his intention was not to do what was required. 3\_ Request: What is meant by the request here is the offer issued by the employee and which reaches the person in need in the form of an offer to perform services related to his job in exchange for a certain amount. The request is considered the most dangerous form of bribery, as the employee has reached the point of requesting the amount himself to perform a job function or to disrupt the work of that job.

The request may be verbal or written, explicit or implicit, whether the perpetrator requests the amount for himself or for someone else, and whether he requests it himself or another person initiates it in his name or on his behalf<sup>18</sup>. The crime occurs as soon as this request is made, even before the employee obtains the benefit. The Court of Cassation ruled that the crime occurs as soon as the employee requests a bribe, and the crime occurs as soon as this request is made, even before the employee obtains the benefit. The receipt of the amount after that is only a result of what was agreed upon between them, and the crime of bribery occurs even before the person in need agrees to this offer from the employee. This does not prevent the crime from occurring, and the person in need may refuse to give the required amount after the request is issued by the employee. The request may be made directly, or it may be made indirectly, meaning that it may be made directly or through an intermediary<sup>19</sup>. The employee is called a bribe-taker, and the person in interest is called a bribe-taker. If he accepts to perform what the

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<sup>17</sup> Abdul Wahhab Muhammad Jami' Ilshn: The rulings on bribery in Islamic law, the magazine of Sharia and Islamic studies, issue 21, spring

<sup>18</sup> Ahsan Bou Siqaa: A Brief Introduction to Special Criminal Law, Corruption Crimes, Money and Business Crimes, Forgery Crimes, Part Two, Third Edition, Dar Houma for Publishing and Distribution, Iraq, 2006.

<sup>19</sup> Website: [www.m.ahewar.org](http://www.m.ahewar.org), accessed on 03/15/2019 at 18:20.

employee requests or submits the offer, he accepts it<sup>20</sup>, and the occurrence of the crime does not affect the employee's intention not to perform the work he promised<sup>21</sup>.

## **The forms of the ruling in the crime of bribery**

The forms of the ruling in the crime of bribery are represented in its prohibition in consideration of its cause and in consideration of the union of the ruling in it, which is what we will discuss below.

1- Bribery in terms of its ruling: It includes bribery in order to establish falsehood or nullify a right: by which the ruling of Sharia is changed, and it is bribery in ruling, such as bribery to be appointed to a public position, bribery in order to obtain a right or to avert harm or to avert injustice, and bribery.

2- Bribery according to its cause: Among the divisions mentioned by the jurists for the types of bribery is what was mentioned in the etiquette of the judge for the briber in his saying: Then bribery is not without four aspects: If he bribes him because he has frightened him, so he gives him the bribe to remove the fear from himself, or bribes him to settle his matter in the hands of the ruler and seeks to do so, or bribes him to take over the judiciary from the authorities, or bribes the judge to rule in his favor. Bribery in ruling is the bribe of the person responsible for a forbidden act without dispute and it is one of the major sins, and bribing the ruler is forbidden together.

Abdullah bin Omar narrated that he said: "The Messenger of God, may God bless him and grant him peace, cursed the briber and the bribed," and in another narration there is an addition: "and the mediator." It is forbidden to ask for a bribe, give it, and accept it, just as it is forbidden to act as a mediator between the briber and the bribed. However, according to the majority of scholars, it is permissible for a person to pay a bribe to obtain a right or to remove injustice or harm, and the sin is on the briber and not the bribed. Abu al-Layth al-Samarqandi said: There is nothing wrong with a man defending himself and his money. By bribery<sup>22</sup>.

3 - Bribery in consideration of the union of the ruling: From the divisions that scholars have mentioned, it is represented in what is forbidden from both sides: One of them is if he assumes the judiciary with bribery, then he does not become a judge, and the bribe is forbidden for the judge to take it, and from it if he pays a bribe to the judge to rule in his favor, and this bribe is forbidden from both sides, whether the ruling is right or wrong if he pays the bribe out of fear for his money or himself<sup>23</sup>.

If paying a bribe to repel injustice or to fulfill a right or repel harm, opinions differed about its prohibition: The first opinion holds that by apparent analogy it is not permissible for him to pay a bribe, because it is a forbidden crime, according to the Book, the Sunnah, and consensus, as previously mentioned, and it is a matter that is not debatable. Based on this: It is not permissible to pay or take a bribe under any circumstances, even if the one paying the bribe is forced to obtain one of his rights<sup>24</sup>.

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<sup>20</sup> Ahmed Mohamed Khalil: Supreme State Security Crimes - Bribery without edition, Modern University Office, Alexandria, Egypt, 2009, p. 132. .199 - 2012

<sup>21</sup> Wassim Hossam El-Din Ahmed: The Crime of Bribery in Arab Legislation, First Edition, Al-Halabi Legal Publications, Beirut, Lebanon

<sup>22</sup> Ali Ahmed Abdel-Ali Al-Tahtawi: Al-Fatawa Al-Nadiya on the difference between bribery and gifts, Muhammad Ali Baydoun Publications for Publishing. Sunnah and Community Books, Dar Al-Kotob Al-Ilmiyyah, Beirut, Lebanon, without year of publication, pp. 324, 325 12

<sup>23</sup> Zainab Miloudi: The Crime of Bribery in Islamic Jurisprudence and Iraqi Criminal Law, Graduation Thesis as part of the requirements for obtaining a Master's degree in Islamic Sciences, specializing in Sharia and Law, University of Martyr Hama Lakhdar, El Oued 2014/2015.

<sup>24</sup> Rasim Muhammad Abdul Karim: Istihsan in Islamic law, its position among the circumstances of legislation and its applications in contemporary jurisprudence, no edition, Dar Al-Kutub Al-Ilmiyyah, Beirut, no year of publication.

because the person who is forced to take a bribe in a certain job can change his job with the intention of pleasing God Almighty and fearing God Almighty, and God Almighty must open up goodness for him in the new job. God Almighty said: "And whoever fears God - He will make for him a way out and will provide for him from where he does not expect"<sup>25</sup>.

## **Distinguishing the crime of bribery from similar crimes:**

The crime of bribery is distinguished from a number of similar crimes. Among these images, we will discuss each of the favors, gifts, donations, and charity, and we will explain the difference between them and bribery.

### **First, favors:**

It is to do something for someone else so that someone else will give you something in return. It may be a metaphor for bribery. In the proverb: Whoever favors money is not ashamed to ask for something. As for ill-gotten gains, it is the forbidden thing that is not permissible to earn, because it takes away the blessing, and bribery is called ill-gotten gains<sup>26</sup>.

### **Second, the gift:**

It is what you give to someone else or what you send to someone as an honor. In the revelation, God Almighty said: "And indeed, I am sending to them a gift, so I will see what the messengers return"<sup>27</sup>."

It was said that: The bribe is what is given after the request, while the gift comes before it, meaning the gift comes before the request.

The difference between a gift and a bribe, even if they are confused in form and intent, is that the briber's intent with the bribe is to nullify a right or achieve falsehood, so this briber is cursed by the tongue of the Messenger of Allah, may Allah bless him and grant him peace. If he bribes to ward off injustice from himself, then the one who receives the bribe alone is cursed<sup>28</sup>.

**Thirdly, the gift:** Linguistically: It is a donation or a gift without compensation. Ibn al-Atheer said: A gift is a process that is free of symptoms and symptoms, so if it is frequent, its owner is called a donor. Technically: It is a person's donation of his money during his life without compensation, and it may be for compensation, so it is called a gift of reward. The connection between bribery and a gift is that each of them is a means of conveying benefit to others, even if the absence of compensation is apparent in a gift, but in bribery, benefit is expected, which is the compensation.

**Fourth: Charity:** It is what a person gives from his money as an act of worship, such as zakat. However, charity is originally said to someone who volunteers it, while zakat is for what is obligatory. What is obligatory may be called charity if the person who gives it is sincere in his action. Ibn Qudamah said: The meanings of a gift, charity, present, and donation are similar, and they are all giving

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<sup>25</sup> Surah At-Talaq, verse 3.2

<sup>26</sup> Ali Ahmed Abdel-Ali Al-Tahtawi: Al-Fatawa Al-Nadiyah on the difference between bribery and gifts, previous reference, p. 323

<sup>27</sup> Surat Al-Naml, verse 35.

<sup>28</sup> Books of the Sunnah and the Community, Dar Al-Kutub Al-Ilmiyyah, Beirut, Lebanon, without the year of publication, pp. 324, 325 12



ownership in life without compensation. The difference between bribery and charity is that charity is given seeking the pleasure of God Almighty, while bribery is given to achieve an urgent worldly purpose. From what was previously mentioned, it becomes clear that bribery may come in different forms, but the common denominator in them is that it comes with the intention of deceiving the system and tampering with rights to establish falsehood or invalidate an established right.

## **Chapter Two:**

### **Combating the Crime of Bribery**

Section One: Preventive Measures Against the Crime of Bribery,

Section Two: Remedial Measures Against the Crime of Bribery in Iraqi Law

#### **Section One:**

##### **Preventive Measures Against the Crime of Bribery**

Both Islamic law and Iraqi law have addressed the phenomenon of bribery by creating several mechanisms and measures to prevent it, and an attempt to confront it. Accordingly, in this section we will address the mechanisms and preventive measures against the crime of bribery in Islamic law - the first requirement, and in the law - the second requirement.

##### **Requirement One: Measures to Prevent Bribery in Islamic law**

Islamic law came with a set of foundations to prevent financial corruption and combat it in all its forms, which are represented in particular in the effect of belief and worship, the first section, the necessity of good selection to assume public positions, the second section, and the imposition of oversight, the third section.

The first branch: The effect of belief and worship (1) <sup>29</sup>

Islamic belief is the basis of Islamic systems, and its primary goal is to achieve spiritual elevation for the individual and to link his relationship with God Almighty and control his orientations, in order to establish justice and equality among people and organize relations between them. This is also based on cooperation and love, and because Islamic belief instills divine supervision in the souls of individuals, considering that man is part of the universe, he is affected by this supervision and directs his behavior and actions with wisdom and righteousness, integrity and discipline and staying away from corruption and hating it. As for worship, God Almighty made it the goal of human existence, God Almighty said: "And I did not create the jinn and mankind except to worship Me. I do not want from them any provision, nor do I want them to feed Me"<sup>30</sup>. It elevates the psychological and spiritual aspects of the individual, and reminds him of his true position and the basis of his existence in the universe.

##### **The second branch: Providing the necessary sufficiency and immunity for members of society.**

Due to the spread of the phenomenon of poverty in societies, and the absence of fair distribution of national wealth, is one of the reasons that also leads to the spread of the phenomenon of bribery, so it was necessary for the worker's wage to be equal to the value required of him and his family at the lowest possible wage, Islam has set what is called the sufficiency limit, which is what guarantees the

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<sup>29</sup> Zainab Miloudi: The crime of bribery in Islamic jurisprudence and Algerian criminal law, previous reference, p. 64.

<sup>30</sup> Surat Adh-Dhariyat, verses 56-57

worker the minimum of a decent life, the Messenger of God, may God bless him and grant him peace, said: "If we have a worker, let him acquire a wife, and if he does not have a servant, let him acquire a servant, and if he does not have a home, let him acquire a home" (1)<sup>31</sup>

## Section Two

### **Therapeutic measures for the crime of bribery in Iraqi law**

These methods aim to protect society from some categories of criminals in society, and this is done by adopting the appropriate method in confronting the criminal person with the intention of treating him, and in the event that he suffers from a mental illness, he is placed in one of the treatment clinics, and among these criminals are deviants and addicts, so the convicts are freed from the factors that weaken or reduce his ability to perceive, distinguish and choose, as they are subject to special treatment by isolating them from the environment to which they belong.

### **Education and religious refinement:**

Ignorance is considered one of the factors driving criminal behavior, so raising the prisoner can broaden his horizons and develop his psychological capabilities, which helps him to understand things better and evaluate their consequences, which allows him to adapt to his human surroundings. In addition, education opens the door to crime and is the door to work to help him reintegrate into society and eliminate the risk of crime.<sup>32</sup>

## Chapter Three

### **The Concept of Bribery and its Elements in the Iraqi Criminal Law**

#### **Where bribery is defined**

It is the employee's trading in authority to do something or refrain from doing something within the jurisdiction of his job and requires the presence of two people Or bribery is trading in the work of the job or service Bribery is an agreement between a person and an employee or someone in his position for a benefit in exchange for performing a work or refraining from a work that falls within the job of the briber or his mission Bribery is a type of employee trading in the work of the job or exploiting it in a certain way Bribery is an offer from one party and acceptance from the other party for a benefit or gift or promise in exchange for the employee performing a work or refraining from a work of the job or service contrary to what is required by laws, regulations and instructions Bribery is a crime specific to the public employee or the person charged with a public service.

#### **1- An employee trading in his authority (the briber)**

#### **2- An interested party (the briber)**

Bribery is not completed except by obtaining the offer from one of them and acceptance from the other, so for the crime of bribery to be realized, these two crimes must be realized, and one of them was agreed upon at the beginning and the other is absent . The legislator considered the attempt to commit the bribery crime a complete crime punishable by the same penalty as the complete crime. The

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<sup>31</sup> The crime of bribery in Islamic jurisprudence and criminal law Algeria Stay from 66 Zainab Miloudi

<sup>32</sup> Al-Haidari, Jamal Ibrahim, Explanation of the Provisions of the Special Section of the Iraqi Penal Code, 1st ed., Al-Faeq Publishing House, Baghdad, 2008, Vol. 1, p. 145.

punishment of the briber if the bribed employee does not accept what the briber offered is a lighter penalty than the penalty for the complete crime, but it is nevertheless considered a complete crime.

### **(307) The crime of the briber**

Any employee or person charged with a public service who requests or accepts for himself or for another a gift, benefit, advantage or promise of something of that sort in order to perform a job function or refrain from it or to breach the duties of the job shall be punished by imprisonment and a fine, provided that it is not less than what was requested, given or promised and shall not exceed in any case 500 dinars. The penalty shall be imprisonment for a period not exceeding 7 years or imprisonment if the above occurred after performing the job or refraining from it or after breaching the duties of the job with the intention of reward.

### **Punishment for the crime of bribery according to Iraqi law**

#### **Original penalties for the crime of bribery**

The original penalty is the basic penalty stipulated and estimated by the legislator for the crime, and the judge must rule on it when the accused is proven guilty, and it cannot be executed on the convict unless the judge explicitly stipulates it in his ruling, and the ruling may be limited to it because it is the penalty imposed by law for crimes to achieve the intended purposes of punishment<sup>33</sup>.

It was also said that it is the basic penalty for the crime and the ruling must pronounce it and specify its duration, and it may be imposed alone or a hypothetical or additional penalty may be imposed alongside it<sup>34</sup>.

### **Conclusions**

- 1- Expanding the scope of convictions and penalties on legislators to include some acts related to bribery crimes can reduce this phenomenon, and the nature of legislators' expansion is considered a positive feature of deterrence between the public and private sectors.
- 2- In terms of aligning the preventive measures taken by Iraq with the preventive framework of international agreements. Research has shown that Iraq's ratification of a set of preventive measures prior to these agreements and the establishment of independent bodies dedicated to combating corruption, such as the Integrity Commission and the establishment of the Inspector General, has significantly reduced the misuse of bribery.
- 3- Corruption is considered a very dangerous phenomenon due to its nature, social and economic impact, and corruption. Violation of ethical and legal standards of behavior, including violations of public obligations and transactions that deviate from ethical standards, which are then illegal on the one hand and illegal on the other hand.

### **Recommendations**

- 1- Work to tighten the original penalties stipulated for the crime of bribery.
- 2- Work to activate the procedures for investigation and inquiry provided by the Anti-Corruption Law.
- 3- The need to establish oversight bodies within institutions.

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<sup>33</sup> - Al-Khalaf, Ali Hussein and others, General Principles in the Penal Code, Vol. 2, Legal Library for Printing and Publishing, Baghdad, 4/14/2015 2

<sup>34</sup> Al-Kassasiya, Fahd Yousef, The Function of the Alawite and Its Role in Reform and Rehabilitation, 1st ed., Wael Publishing and Distribution House, Amman, 2010, Vol. 55

- 4 - Ensure the complete independence of the National Anti-Corruption Commission and activate its role in reality to perform its role to the fullest.
- 5 - Develop electronic work within institutions and departments to reduce the citizen's interaction with the employee.
- 6 - Activate the role of Parliament in combating corruption by monitoring and holding the government accountable for its failure to manage and administer public funds.
- 7 - Develop international and regional cooperation between security and judicial agencies to contain and develop the phenomenon of corruption.
- 8- Work on establishing a special mechanism that works on a periodic and coordinated calculation of the gains, incomes, money and property of employees, especially those responsible among them, to investigate their legitimacy and determine their sources and course, which allows the authorities to work on the principle of (where did you get this from) "" which most third world countries lack.

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