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These for mainstreaming an Anti- Corruption culture : Between the Positivist System and Islamic legislation

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Abstract:

This research addresses the issue of corruption, which is one of the old and ever-evolving topics that various positivist approaches have dealt with by strengthening their legal and institutional frameworks. Recently, there has been increased discussion about this issue. It appears that the lack of clarity in approach and the neglect of the foundational aspect of the topic have contributed to the failure of previous attempts to address it. Therefore, this research, which employed the inductive and analytical methods, aims to review the methods and means of treatment. As a result, Islamic law emerges here as a strong and comprehensive frame of reference to address the problem of corruption, reflecting the importance of integrating religious and moral foundations in efforts to combat the phenomenon.

***Dr Samia Maatouk**

Introduction:

“Two things fill myself with admiration and respect: the starry sky above me and the moral law deep within me”
Emmanuel Kant

The issue of combating financial corruption is one of the major issues that have become the subject of discussion in the scientific and practical arenas. Specialized academic studies have expanded in it, especially since the fight against corruption is linked to a set of related concepts that help to understand the framework of these mechanisms, which consider corruption as a crime with economic accounts, which helps to develop measures and mechanisms to combat corruption in a specific context. This interest has been translated through the crystallization of a set of measures and international legal frameworks to be adopted, in addition to the consolidation of anti-corruption values such asintegrity, transparency and accountability, in an attempt to reach an inclusive framework through which to combat the phenomenon.

On the other hand, we find that since Islamic law is the law of guidance and righteousness, and deals with all aspects of human activity, it is a message to man in all areas of life, and in all fields of human activity, there is no aspect of human life except that it has a position, believing in the Almighty's saying:

﴿**And We have sent down to you the Book making everything clear, as a guidance, and mercy, and glad tidings to those who submit**﴾**.** (Al-Nahl: 89),

as it is able to eliminate corruption through its various legislations, where the investigator finds in Islamic texts what is many centuries earlier than positivist systems in reducing this phenomenon.

Because some are ignorant of Islam's view of corruption, they often attribute the methods of combating it and the means of combating it to modern theories, which varied between intimidation or enticement, and between excessive penalties or excessive sanctions. These strategies may also be either focused on the supervisory, legal or cultural role, and the result does not stop corruption and people refrain from talking about it except in a few countries, which created a state of intellectual and practical confusion in combating it, especially in our Islamic societies.

This dynamic in the relationship between criminalization and prevention imposes on us an existential conflict that makes us stand on one side of the following problem: **What are the most successful ways to combat corruption**

in light of Islamic law and the positive system within the framework of balancing criminalization and prevention?

Research Hypothesis:

The research stems from the assumption that the Islamic Sharia has developed many preventive and curative measures and measures to combat this phenomenon, which are sufficient - if fully applied - to uproot corruption from its roots and rid societies of its evils.

IMPORTANCE OF THE RESEARCH

The importance of this research stems from its response to a dangerous phenomenon that resulted in the disruption of societies and the emergence of conflicts between people, and then provide solutions and means to reduce this dangerous phenomenon that the Islamic Sharia and the positivist system have taken seriously. This research is an initial exercise in an approach to a question that should be intellectual, in the sense of the vocabulary of thought and not in the language of ideological discussions.

Research Objectives

The research aims to study the change and correlation between what was decided by the Islamic regime and the positivist regime, in order to come up with an integrated vision, show and strengthen strengths, discover imbalances and bridge them according to an inherent view that contributes to the efforts exerted to fight corruption.

Research Methodology:

The appropriate approach to this research is the inductive analytical approach, which shows the way the correlation in the change between what is decided by Islamic law and the positivist system with regard to the prevention and fight against corruption.

THE FIRST TOPIC: Mechanisms for Combating Corruption from a Positivist Perspective

There is an urgent need to design more effective strategies to curb the problem of financial corruption. Perhaps one of the obstacles faced by those who design these strategies is the disparity and diversity of its causes and its origins from one society to another, which made the issue of proposing a standard treatment useless. Here, the following question must be asked: **How can effective measures be developed to combat financial corruption?**

To answer this question, it is possible to rely on a simple analytical framework that provides an illustrative picture showing the incentives of

corruption, from the perspective of Robert Kleitgaard, who is a theoretical basis for the theory of incentives, which he expressed through the following equation: (**Klitgaard et al., 2002, p. 30**)

Corruption= Monopoly + Freedom of action - Accountability.

This equation suggests that corruption has a direct correlation with both the degree of monopoly and the breadth of freedom of action, and an inverse correlation with the degree of accountability; corrupt officials can use their discretion to increase the bargainable benefits of corruption payments. Accordingly, according to this equation, corruption revolves - first and foremost - with a crime related to calculations, as individuals tend to engage in corruption when the risks of committing the crime are limited and the penalties are light.

This is expressed from the perspective of the match model as the "**problem** of **collective action**", as one of the symptoms of this problem is that individuals choose a strategy that ensures that they maximize their gains without caring about what other actors will do, and this happens when their confidence in the commitment of others to the agreed rules of conduct decreases. Bribery and embezzlement are one of the manifestations of financial corruption that arise due to the dilemma of collective action, but when they spread, the matter turns into a social trap that is difficult to escape, and this reflects a situation in which corruption is permissible and natural, and even individuals are unable to imagine that they can run their lives without some manifestations of financial corruption. **(Ziani & Zaqqaq, 2009, p. 66)**

According to this perspective, individuals vary in their acceptance of corrupt practices not because their motives are different, but because their gains and costs are different. Therefore, the conditions that encourage individuals to deal with corruption can be summarized in the following equation: **(hah & Huther, 2000, p. 23)**

$$EB = n \times E(G) - Prob(P) \times (P) > 0$$

Whereas:

EB= Potential dealers.

n= Number of corrupt transactions.

E(G)= Profit of the trade.

Prob(P)= Possible penalties.

(P)= Penalty for corrupt transactions.

Thus, one of the basic incentives for corruption is to have at the disposal of public officials the elements of reward and punishment. This perspective emerges

within the framework of a contemporary economic model of crime, developed by Gary Becker, who called the model "**crime and punishment: an economic approach."** Crime and punishment theory states that we put ourselves in the place of a public official or a bureaucratic or elected government official. According to Becker, any individual who has an opportunity to commit acts of corruption evaluates the potential (marginal) benefits of his actions against the expected (marginal) price in case he is discovered and punished. **(Becker, 1974, p. 16)**

Assuming that the marginal benefits of acts of corruption increase and the marginal price diminishes, the public official will be vulnerable to the temptation to engage in acts of corruption as long as the marginal benefits realized exceed the marginal price expected to be paid, and will remain vulnerable to this temptation even to the extent that the marginal benefits are equivalent to the marginal price, and here Becker justifies that "**individuals become criminals because of the financial and other revenues they receive from the crime compared to the legal work taking into account arrest**, **conviction and the severity of the punishment**". **(Becker, 1974, p. 10)**

This approach is an insightful analytical tool for any effective anti-corruption strategy , but the absence of the moral part in it is clearly noted, and here it seems that both Robert Klitgaard and Gary Baker were more mechanical. If the situation can be changed by reducing gains and strengthening penalties, then everyone who thinks about practicing corruption will be forced to look at the increased chances of being arrested (and punished in this case), and will refrain for this reason, whether he is convinced of moral value or not. It should be noted here that the most successful countries in the fight against corruption (Singapore and Hong Kong) have made the moral education of children part of their approach. (**Holloway, 2011, p. 74**) On this basis, Baker's framework was later expanded to include the moral price of crime, so the price expected to be paid by a public official consists of two elements. **(Center for Human Rights and Democracy, 2023)**

Expected Price = Moral Burden + Expected Punishment.

According to this equation, there are two main factors that help reduce corruption of elected officials and government employees. The first factor is culturally known as the "**moral burden**", if individuals consider acts of corruption immoral, this would prevent the commission of corrupt acts. The second main factor is the "**expected punishment**", if individuals consider their

actions illegal, and if they are punished as soon asthey are discovered , this would also prevent the commission of corrupt acts, which was expressed by Susan Rose-Ackerman in the following equation: **(Rose-Ackerman, 2003, p. 202)**

Expected punishment = (probability of being caught) X**(probability** of **conviction)**X **(penalty imposed).**

Potential gains from committing a corrupt act depend on the amount of resources under the control and discretion of the public official and are influenced by the level of transparency and accountability.

Accordingly, this approach goes beyond easy answers to fight corruption; it is often said that the reason for the corruption of government officials is their low salaries, and that this reason is a major reason for financial corruption. But in fact, salary increases rarely lead to a decline in corruption, which makes us assert that what drives people to engage in corrupt business practices and seek to increase their low salaries is their certainty that they will not be arrested or punished, and that many others are in a similar situation, and therefore, thesmall risk of exposing their corruption is worth the large profit that can be made.

I.THE SECOND TOPIC: Milestones of the Islamic approach to combating corruption

Islam has come and put in its priorities the fight against corruption and the pursuit of spoilers; God does not love corruption and does not reform the work of spoilers, and He has made the abode of the Hereafter the lot of those who seek righteousness and reform: ﴿**That home of the Hereafter We assign to those who do not desire exaltedness upon the earth or corruption. And the [best] outcome is for the righteous**﴾. **(**Al-Qasas:83**)**, and He says**:**
﴿**Rather, seek the ˹reward˺ of the Hereafter by means of what Allah has granted you, without forgetting your share of this world. And be good ˹to others˺ as Allah has been good to you. Do not seek to spread corruption in the land, for Allah certainly does not like the corruptors**﴾ (Al-Qasasas:77**)**, and His Exalted Saying ﴿**And when they had thrown, Moses said, "What you have brought is [only] magic. Indeed, Allah will expose its worthlessness. Indeed, Allah does not amend the work of corrupters**﴾.: (Yunus 81).

Accordingly, Islam has taken care to raise the motives of goodness in the human soul, to love it in goodness, and to repel it from evil. There is no greater evidence than that the texts of Sharia are* more in the field of criminalization and repulsion from corruption than the texts in the field of penalties, and to look at the application of Islamic Sharia to the rule (no crime or punishment except by text)

in the crimes of hudud and qisas. For example, it is clear to us that priority is not given to the punitive aspect, but rather the priority is given to the criminal repudiation aspect, so we find that addressing the conscience, and mobilizing the religious scruples in the believer is the one who receives care in the texts of Sharia as prevention is better than cure. We can divide the measures brought about by Islam into two parts:

- **Preventive measures:** Prevent and warn against corruption before falling into it.
- **Remedial measures:** Deterrence of corruption is achieved after it occurs.

First requirement:Preventive measures to combat corruption from an Islamic perspective

The Islamic religion - a doctrine, Sharia and a way of life- is the main pillar that governs the premises, objectives, means and mechanisms of preventing and combating corruption. It considers every action that would deviate the public and private function from its legitimate and regular path, which has been found to serve it as corruption and a punishable crime in this world and the Hereafter. Islamic Sharia has precedence in this field, preventing it, working to reduce its manifestations and warning of its consequences. One of the most important rules of Sharia (preventing corruption) and its meaning is: blocking and preventing every means that leads to corruption and the spread of the prohibited **(Muslim, 2013, p. 148)** This is what prompted Sharia scholars to say that God took care of endings more than taking care of enjoys. Accordingly, one of the most important components of the purposive approach that was generated by Sharia was comparative concepts that feed the previous understanding of preventive policy, such as: "**preventing corruption**", "**bringing interest**", " **paying harm**" and "**bringing benefit**". Whatever the use, "**warding off**" and "**defending**" as well as " **fetching** " and "**attracting**" is related to the preservation process that precedes the areas worthy of preservation in human activity (preservation of religion, preservation of the soul, preservation of the mind, preservation of offspring, preservation of money). **(Fattah, p. 113)** In general, not only as a preventive policy against corruption, but also because of its centrality in building its civilizational and urban movement. The most prominent preventive measures are represented in the following points:

First section: Instilling the motive or the aspect of faith in souls

Since the crime of corruption is an explicit violation of the divine commands and what is stated in the Book of Allah and the Sunnah of His Prophet, which is

contrary to his conscience or absence, it is evidence of the weakness of the religious scruples of the corrupt and the mafia. Therefore, Islam works to develop and strengthen the religious aspect of all members of society so that the religious aspect is the one that prevents one from practicing corruption and committing his crimes. He narrated from the Messenger of Allah, may Allah's peace and blessings be upon him, that he said**: ((The lawful is clear, and the forbidden is clear, and between them is a similitude that many people do not know. Therefore, the similites are pious and the similites are hindered, and if you hinder, they hinder, they hinder, they hinder, and if they hinder, they hinder, and if they hinder, they hinder, and if they hinder, they hinder, and if they hinder, they hinder, and if they hinder.) (Reported by Bukhari and Muslim)**

Second section: Selection of people of honesty and competence to take over the functions

Islamic thought refers to preventive mechanisms, related to the selection of qualified people for the position, and the self-censorship of the public servant.On the one hand, corruption is linked to the absence of two basic characteristics of successful leadership, namely: Strength and honesty. The Holy Quran stipulates that﴿**The best employee for you is the strong and trustworthy**﴾ (Al-Qasas:26), and the choice is according to the rule of the fittest and the most fittest. The jurists of Islam decide here that the guardian must appoint the most capable and reformed Muslims to work in compliance with God's command ﴿**Allah orders you all to hand back trusts to their owners**﴾ The origin is not kinship or social status, nor any other criterion. Validity here means the ability to bear the burdens of the job, and this is evidenced by what happened to Abu Dharr al-Ghafari, may God be pleased with him. It was stated in the correct hadith that Abu Dharr, may God be pleased with him, said: I said: O Messenger of God, do you not use me? Then he struck with his hand against my shoulder, and then said: "Father, offspring, you are weak, and it is trustworthy, and it is a day of resurrection, a disgrace and remorse, except for those who took it for its truth, and performed the duty of those who are against it". **(Ghadhab, 2008, p. 108)**

With this guidance of the Qur 'an and the guidance of the Prophet, came Islamic thought and application, where the characteristics of workers are determined in two qualities: competence at work and honesty. In this, Al-Mawardi says in the conditions required for workers to work in the state. "The second chapter is the one who is entitled to take over employment, which is: whoever is independent enough, and trusted his honesty," which is confirmed by another

scientist, Abu Yusuf, in his report to Harun al-Rashid to reform the state, where he says: "I saw that you take a people of righteousness, religion and honesty to take over the abscess." He also confirms this by saying: "If it is not fair, it is an honest trust, so do not trust money". **(Omar, 2000, p. 13)**

There is no doubt that the failure to select employees on the previous bases will result in all the manifestations of corruption that we see and hear about. Abu Hurairah (may Allah be pleased with him) said: The Messenger of Allah (peace and blessings of Allah be upon him) said: "If the trust is lost, wait for the hour, it was said: How did you lose it? He said, "If the matter is assigned to someone other than his family, wait for the Hour." (Narrated by Al-Bukhari).

A.Determining the Rules of Functional Conduct

In the context of preventive measures to combat financial and administrative corruption, it is important for the employee to be aware of the importance of the work he/she has undertaken, the rights he/she has, the duties he/she has, the prohibitions he/she must stay away from, and the sanctions he/she will be subject to in the event of violation. This is what is included in the **"Codes of Functional Conduct**" in contemporary governments as one of the preventive measures stipulated in the United Nations Convention against Corruption. The importance of the "**Codes of Functional Conduct**" lies in the fact that they include the values, principles and standards governing the employee's behavior. Therefore, they are published and circulated to all employees; so that the vision is clear, and the argument is based on everyone; and so that the penalties and penal procedures are in accordance with the regulations and in a manner that ensures the exclusion of the psychological factor's impact and personal inclinations.

It is known that there are jobs that have special requirements imposed by the nature of the job, as well as there are institutions in the public and private sectors that may require their employees to have conditions that are not required by the rest of the institutions, and these requirements must be clear and known to all, and written within the " **Codes of Functional Conduct** " and the Holy Quran draws our attention to the importance of all this, as in the saying.

﴿**David, We have made you a caliph in the earth. Judge with justice among people and do not yield to your own preference in case it should lead you from the Path of Allah. Surely, a terrible punishment awaits those who stray from the Path of Allah, because they forget the Day of Reckoning**﴾ (sad:26),this generous verse included - briefly - the most important elements required in " **Functional Conduct** ", as it may include: **(Al-Salahi., 2018, p. 99)**

- Introducing the nature and importance of work: O David, we have made you a successor on earth.
- Definition of duty: Judge between people with the right.
- Definition of the Prohibited: Do not follow the whim, it will lead you away from the path of Allah.
- Statement of the penalty in case of violation: Those who go astray from the path of Allah will have a severe punishment for forgetting the Day of Resurrection.

These four elements, which are included in the Holy Verse, are a summary of what should be included in the "**Code of Functional Conduct**", so that the vision is clear to everyone who undertakes an act of public service.

B.Social Justice

It is to give everyone what he deserves, to distribute material benefits in society, and to provide equal provision for basic needs. It also means equality of opportunity; that is, everyone has the opportunity to rise socially, and no sane person doubts that the lack of this social justice in any society leads to corruption; no matter how strict the laws are, the penalties are severe, and governments are firm in implementing the law, so it is necessary and inevitable for any country that wants to eliminate corruption to address this problem.

C. Community Surveillance

Contrary to the belief in the responsibility of governments alone, and that they are able to do everything to fight corruption and confront spoilers, and that the end of what members of society can do in support of the state is to fully comply with laws and regulations and not to violate them, contrary to the belief that prevailed and whose effects remain in the collective consciousness of many sectors until these days, we saw Islam emphasize the community partnership and the responsibility of society in solidarity in the face of spoilers, and one of the most wonderful things that this portrays is the words of the Prophet, peace be upon him: Like the one who is on the borders of God and who is located in them like a people who were inspired on a ship, so some of them hit the top and some of them hit the

bottom, so those who were underneath it if they derived from water passed over them, they said: If we had breached our lot in a breach and we were not harmed from above us ". **(Maabreh, 2011, p. 294)**

Muslims, inspired by their religion, realized early on the importance of the role of society in combating corruption. Islam obligated everyone in society to order the good and forbid the evil. Our Lord, the Almighty, said

﴿**and let there be [arising] from you a nation inviting to [all that is] good, enjoining what is right and forbidding what is wrong, and those will be the successful**﴾ (Surat Al-Imran: 104), and may Allah's peace and blessings be upon him said: "Whoever of you sees evil, let him change it with his hand, and if he cannot, let him change it with his tongue. If he cannot, let him change it with his heart, and that is the weakest faith" (Akhir Muslim).

Based on this understanding, the responsibility of society in combating corruption means, first, the awareness of society of its role in facing the risks that threaten its existence and hinder its progress and development. Secondly, it means that society does not make the fight against corruption in the hands of the existing authorities alone, but it contributes effectively, with its members and its civil and civil institutions, to combating corruption, and forming public opinion that pressures the authorities, if they fail, slacken, or neglect to combat corruption and take at the hands of the corrupt.

Second requirement: **Deterrent Measures to Combat Corruption from an Islamic Perspective**

First section: Establishing the principle of accountability

Since one of the reasons for corruption is the absence of the issue and the weakness of the effectiveness of the control bodies over the work of employees, this matter is followed by the Holy Quran in its saying in Surat Al-Tawbah

﴿**Say, "Act. Allah will see your actions, as will His Messenger and the believers. Then you will be returned to the Knower of secrets and declarations, and He will inform you of what you used to do**﴾ **(**Al-Tawbah: 105**)**.

Accordingly**,** Islam has approved the principle of accountability of employees in general, and their accountability for public money in particular. The Prophet, may God bless him and grant him peace, in his dealings with employees and officials, has set the principle **of "Where do you get this?** "Where it was mentioned in one of the narrations of Ibn al-Litbiyah's previous hadith about Abu Hamid al-Saadi, may Allah be pleased with him, he said: "The Messenger of

Allah, may Allah's peace and blessings be upon him, sent a man from the people of Yemen on her zakat, and he came in a lot of blackness, and if she sends him who dies from it, he says: This is for me and this is for you, and if he is asked where do you get this? He said: "It was given to me, so if it was true, it was given to him, while he was in the house of his father or mother." (Narrated by Ibn Khuzaymah in Sahih). Abu Sa 'id al-Khudri (may Allah be pleased with him) said: "Bilal (may Allah be pleased with him) came to the Messenger of Allah (may Allah's peace and blessings be upon him) with a good date. The Prophet (peace and blessings of Allah be upon him) said to him: Where did you get this? Bilal said: We had a bad date, so I sent two fingerlings of it to feed the Prophet (peace and blessings of Allaah be upon him). The Prophet (peace and blessings of Allaah be upon him) said at that time: Oh, oh - a word that is brought to pain - the eye of usury, the eye of the usury, do not do. But if you want to buy, sell dates with another sale, then buy with it"(narrated by Muslim).

Omar bin Al-Khattab, may God be pleased with him, has established the principle of "Where did you get this?" Al-Shafi 'i narrated from Malik about Zaid bin Aslam about his father that a man came to pass bin Al-Khattab, may Allah be pleased with him, with milk, so he drank it and liked it. He said, "Where did you get this?" He said: I passed the vaccine of charity - the camel of zakat, which is of public money - so they gave it to me, so I put it in my watering place, and it was extracted by Omar, may God be pleased with him. (Narrated by Al-Bayhaqi in The People of Faith). (Ahmed, 2024, p. 76)

Second section: Legislation of deterrent penalties for anyone who infringes on public funds

The purpose of punishments in Islamic jurisprudence is twofold: to protect society from vice, and the second is the public benefit. There is no rule in Islam except for the benefit of society. Therefore, Almighty Allah says:

﴿**People, an admonition has now come to you from your Lord, and a healing for what is in the chests, a guide and a mercy to believers**﴾ (YUNUS 57) In essence, punitive legislation represents due care for the maintenance of the systems of human societies and the protection necessary to protect people from imbalance, delinquency and falling into the sins that they have been deprived of.

- **Subjective penalties**: If the Muslim official is correct in his belief, he takes into account God's control over him and does not commit corruption. If his conscience is sometimes weakened, and he commits this, he feels heavy guilt as the Prophet (peace and blessings of Allaah be upon him) says, **"The**

believer sees his guilt above him as a mountain that he is afraid to fall on him, and the hypocrite sees his guilt as a fly that passed over his nose and framed him." God Almighty opened the door to him for repentance, which requires repentance of injustices and determination not to return to guilt.

- **Sharia penalties**: **administrative** or legal, which is represented in the limits of Sharia and condolences, in addition to the incorporation of the spoiler of the money taken. We will give one example of the punishments prescribed by Islam to combat crimes and corruption in society. We stand at the punishment of the crime of moharebeh, which is one of the serious crimes in society, which God called " corruption on earth." the Exalted, said ﴿**The recompense of those who wage war against Allah and His Messenger and do mischief in the land is only that they shall be killed or crucified or their hands and their feet be cut off on the opposite sides, or be exiled from the land. That is their disgrace in this world, and a great torment is theirs in the Hereafter**﴾ (Surat Al-Ma 'idah 33)
- **Divine punishments**: If the corruptor without a religious conscience deters him and repents, or he can escape the control of humans, he cannot and will not escape the control of God Almighty. The legal limits here are estimated punishments imposed on God Almighty, so it is not permissible to intercede, and the legal punishments are zawajar and jawaber at the same time, as they are zawajar that prevents people from committing crimes, and if they commit them, they actually fall on them and return to commit them again. They are Jawaber in the sense that their implementation in this world against the perpetrator protects him from the punishment of the Hereafter. **(Al-Jazzar, 2021, p. 1775)**

One of the means of Islamic law in preventing falling into this great sin and serious crime is the establishment of specialized anti-corruption bodies in society, such as the Office of Hisbah and Grievances, to other means and ways through which corruption can be prevented and combated, in addition to deterrent means such as the establishment of hudud, punishments, and penalties for violations. They are the most prominent goals of the establishment of the Islamic State, and for this importance, Omar bin Al-Khattab, may God be pleased with him, established a "**The System of Hisbah**", and this system is based in essence on protecting the taboos of God Almighty to be violated, and maintaining the symptoms of people, and the calculator had all the powers to confront corruption and spoilers, monitor the state's public facilities and collect its resources, and

monitor public markets, balances, sales, types of fraud, fraud, monopoly and usurious transactions. (Maabreh, 2011, p. 283)

As well as **the Board of Grievances** and its supervisory task is to consider the infringement of the guardians on the parish, and the injustice of workers in what they owe from the parish in excess of the funds owed to them, either to themselves or to the House of Money, and to control the book of the bureaux of what they meet and fulfill, and to consider the grievance of workers against the lack of wages or delay from them, and to supervise the endowments and take into account the apparent worship, and finally to consider what the guardians of the account in the public interests and the implementation of the judgments of the judiciary for the weakness of judges for implementation, and in general its supervisory role is to monitor the work of the public administration at all levels and it had the authority and prestige to implement its judgments immediately and without delay. **(Omar, 2000, p. 24)**

THE THIRD TOPIC: Reflections on Combating Corruption: Between positivist and Islamic perspective

Accordingly, and based on the above, we find that whenever it is necessary to combat corruption, Western concepts and experience are often recalled. While recognizing that wisdom is a misguided believer, there is nothing wrong with benefiting from the experiences of other nations and peoples in combating the phenomenon, but we should not neglect the experience and experience of Islamic civilization. Rather, from a civilizational perspective, we must reflect on our cultural heritage and trust in the first place and be inspired by our historical experience in this field. Islam has its own unique preventive and therapeutic policy and that the Sharia of Islam has taken many actions and measures to combat corruption, and it is completely different in its starting points, means and effects from the positivist perspective.

In the context of clarifying the evidence of the need to adopt a positive and proactive approach that puts in the souls of good practices instead of fear of the law, we find that there are fundamental differences between the positive economy and the Islamic economy, whether in the way of dealing or the way of treatment. The first difference lies in the fact that the positivist approaches link corruption to irregularities and economic crimes, considering it a legal issue in the first place. On the other hand, Islamic political thought treats it from a more comprehensive perspective; moral, economic, legal and social, based on downward origins, as it

includes as an invalid behavior in the economic, political, administrative and social aspects. As a result, attempts to combat the phenomenon from the positivist perspective have focused on remedial measures through the perspective of legal and institutional enforcement in particular at the expense of the preventive approach based on the moral burden. Therefore, efforts to combat corruption include arrangements that focus initially on eliminating the idea of impunity. In order to burn this culture, Robert Klitgaard sees the need to "**fry the big fish**", as a sign of seriousness to fight corruption and give credibility to the reforms, as corrupt people must be named and punished - especially those in senior positions - for pessimists of change to believe that the anti-corruption campaign is more than just words, because people tend to measure effectiveness by status. It is appropriate here to compare the situation to health policies, where individual cases of serious diseases must be addressed, but prevention deserves to be a priority in the long term. **(Klitgaard et al., 2002, p. 74)**

While we find that the priority in Islam is to develop values and focus on the moral dimension in the fight against corruption, because most cases of corruption are carried out in secrecy, so it is difficult to develop legislation and laws on all types of corruption completely under this secrecy. As a result, we find that Islam, with its focus on education or recommendation, was distinguished by the fact that it did not rely much on borders in reforming and evaluating society, because penalties may limit the apparent crime, but they may not limit the deviation that is obscured by walls, or disappear in the folds of hearts and within souls. This means that the method of education and recommendation is one of the most important methods on which Islamic theory relied in reforming society and reducing all types of deviation. Thus, Islam states very clearly that the goodness of the human soul is the key to goodness and integrity in life, and that real change begins with changing what is in the soul, in truth to the Almighty's saying:

﴿**Allah does not change what is in a nation unless they change what is in themselves. Whenever Allah wants evil for a nation, none can ward it off. Other than Him, they have no guardian**﴾ (Ar-Ra 'd:11)

However, the differences between the Islamic Sharia and the positive regimes within the framework of combating corruption did not stop at the limits of the content or elements of the approach, but they are, moreover, differences in the preventive reference of each of them, especially in its moral aspect, which can be included within the framework of the following problematic: What ensures the

effectiveness of reform based on moral obligation in the process of social control in Western and Islamic society alike?

To answer this problem, we preferred to consult the thought of Malik bin Nabi, who devoted an entire chapter in his book "**The Problem of Ideas in the Islamic World**", entitled "**Vital Energy and Ideas"**, to talk about the impact of the vital energy of the individual on the development of society. It confirms to us the fact that the idea does not play its role in social change, except insofar as it adheres to its metaphysical values, in the sense that it expresses our view of the aftermath of earthly things; it is the relationship – according to him - between God and man that creates the earthly relationship. **(Bennabi, 2013, p. 49)**

To prove this, Malik bin Nabi compares the Muslim community at the beginning of its formation with the American community after the Second World War in their attempt to legislate a law to fight alcohol, and this is to know the ability of the two legislatures to adapt, assuming that they passed through the same stages. He concludes that the prohibition of alcohol in American society led to a wave of violence and rejection that eventually resulted in the repeal of the law and the final eradication of the idea of prohibition from the world of culture in American society. On the other hand, we find that the idea did not provoke any shock in the emerging Islamic society, and that despite its current decline, it has not expelled it from its cultural world, and it still plays a role in social compulsion, although it did not have the force of law as in Western countries. Accordingly, as an answer to the problem posed, we find that what distinguishes the moral divide between the West and the East is that belief in the other life in Islam is one of the most important foundations on which the moral aspect is built and in the process of adhering to it. Without it, morality loses its sanctity and strong impact on man. **(Bennabi, 2013, pp. 54-55)**

Leaving aside the decisive difference in the moral reference between the Islamic and the positivist, another problem arises, related to the extent to which ideas can be borrowed from other cultures or, more precisely, the extent of the success of reform projects, given the different patterns related to these mechanisms according to the different historical, political and social contexts of countries. The development of these patterns in Western countries is not like their situation in Muslim countries, which makes the chances of failure great. In an analytical reading of the ideas of Malik bin Nabi, we find that he warned in his book **"The Problem of Ideas"** of the danger of ideas borrowed from other cultures without filtering and without considering their social value, and termed

them "**deadly ideas". (Bennabi, 2013, p. 153)** He pointed out in his book "**The Destination of the Islamic World "** that **"The developing countries suffer from confusion and chaos in the intellectual and moral fields or in the fields of politics, but as a result of that confusion in dead ideas, those unfilated remains, and borrowed ideas, whose danger is magnified whenever they are separated from their historical and mental framework**". **(Bennabi, 2013, p. 44)** This is not due to an implementation problem. But the real problem lies much earlier, that is, it is related to the design of these initiatives, and this is what Richard Heeks pointed out in his study entitled "**Understanding the Success and Failure of Anti-Corruption Initiatives**" that after studying several examples of failures of anti-corruption initiatives, it was found that there is a common feature that unites them, which is a large gap between theory and practice. **(Heeks, 2012, p. 543)**

This type of movable (imported) ideas that are effective in their Western civilizational context. However, it lacks its effectiveness when it is transmitted to the Islamic civilizational context, because it was transmitted by "**accumulation**" and not by "**construction**" in the words of Malik bin Nabi, or because it is in itself ideas that carry counter-values to the medium transmitted to him, that is, the Islamic medium, so there is a vacuum of awareness and confusion in thought, and a distortion in perception, and Malik bin Nabi continues - as a kind of generalization - saying: "Any scheme or project that we think about the ideas of others and try to achieve by other means is inevitably liable to failure". (Bennabi, Between Guidance and Perplexity, 2006, p. 151)

In the face of this debate, we find that there are those who go further and decide that it is not possible for us to carry out a reform process without a self-aware identity, without an identity that is full of positive elements that motivate it and push it to jump towards the future. In this context, Mohammed Abed Al-Jabri points out: "It is necessary to be filled with Arab culture and Arab-Islamic heritage when delving into modern European modernity and its issues and the possibility of adopting or quoting something from it. Filling with Arab-Islamic culture, which is our national culture, is the fullness of identity and without an identity full of its elements, the opening to other cultures, especially the dominant ones, is an invitation to slide towards falling prey to extortion and penetration". **(Al-Jabri, 2002, p. 177)**

Therefore, the lesson learned here is that the possibility of combating corruption in all countries cannot be recognized with a unified strategy that is

thought to be valid for generalization in different places and times due to different environments, societies and civilizations on the one hand. The ability of the phenomenon to adapt to these conditions in different forms and methods on the other hand.

Conclusion:

The jurisprudence and premises on confronting corruption and the methods of confronting and combating it vary according to the analyzing philosophies of its sources and sources. With this holistic logic, the philosophy behind many of the measures discussed above was to eliminate opportunities for corruption by changing incentives, by closing gaps and eliminating misconceptions that encourage corrupt behavior. But an approach that focuses only on changing the rules and incentives, accompanied by a sufficiently severe penalty for breaking the rules, is likely to be far more effective if its premise is the moral basis of human behavior. This is what the measures related to combating corruption are based on from an Islamic perspective, which does not depend on the past, but rather looks to the future through a comprehensive reform process with a preventive character that seeks to prevent the repetition of acts committed previously, putting before its eyes the need to reach a civilizational project that balances mind and spirit, regulates the relationship between the rich and the poor, and regulates the relationship between the strong and the weak. All of this starts from internal control guarded by the doctrine of retribution and the eschatological account and the observation of God Almighty in secret and in public.

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