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Al-Baidar Center For Studies And Planning



# Political Funding and Spending Political Parties Law No. 36 of 2015 in Iraq as a model

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The Center seeks to contribute to developing the state and its institutions, by proposing ideas and practical solutions to the main problems and challenges facing the state, including improving public sector management, policies and strategic planning, using reliable data and best practices. The Center engages the relevant authorities in the state with regular meetings to support this objective and utilises the support of international organizations dedicated to assisting Iraq's development. The Center also seeks to support economic reforms, sustainable development and provide technical assistance to the public and private sectors. The Center also seeks to support development of the private sector to provide job opportunities for citizens through training and upskilling, in a way that reduces dependence on government institutions and contributes to supporting and diversifying the country's economy.

The Center aims to utilise the vast amount of potential in Iraq's human resources by organizing programs to prepare and develop promising young people, including leaders capable of proposing, adopting and implementing visions and future plans that advance society and preserve its value system based on the commitment to a high moral standard and rejection of all types of corruption.

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## Introduction

For the success of democracy, of which elections are the backbone, it is necessary to take into consideration the factors affecting it so that it does not turn into a formal and distorted democracy. The ballot box does not alone make true democracy, but multiple factors must cooperate with it for the purpose of achieving its goals, foremost of which is organizing the process of political financing and spending in order to achieve the principle of justice in political and electoral competition. Political financing is one of the biggest challenges facing the political parties, hence, the role played by gov government support for the political parties has emerged.

The problem of political financing began to be associated with the growth of political life, the emergence of political parties, and the adoption of democracy in access to power, and money took a major role in influencing the political life the balance of political forces and changing the course of election results by influencing the will of voters, which contributed in a wide foreign interference. This necessitated the development of legislation and the necessary solutions to prevent this. There is no doubt that “exposing the sources of funding for parties and politicians is a fundamental right of the state and its citizens”<sup>(1)</sup>.

The issue of political finance stemmed from the experiences of well-established democracies<sup>(2)</sup>, and those countries adopted it to address serious issues that led to fears of deviating those democratic experiences towards slopes and pitfalls with unimaginable consequences. Therefore, calls for the adoption of public political financing by the state appeared in order to avoid these risks. The success of these experiences in those countries goes back to multiple factors, including the appropriate environment for the success of those experiments and the sincere

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1. An objection sentence, Alaa Al-Aswany, Dar Al-Farabi, Beirut, Lebanon, 1, 2014: 10.

2. Some of the experiences of long-standing democracies in the issue of political finance and spending will be discussed in the second section of this study.

intention to reform political life and so on. However, despite that, it faced other challenges that arose, because the public political funding required legislation and laws regulating this process.

Based on that, this study seeks to shed light on the concept of political finance, the sources on which it depends, its role in political life, and the oversight role over funding and spending through the experiences of democratic countries, and to shed light on the Iraqi Parties Law No. 36 of 2015, to find out the extent to which it complies with the international standards.

### **The problem of the study:**

The study seeks to address the issue of political finance and spending by revealing and identifying their great impact on the integrity and transparency of elections and the preservation of political life of the electorate. The legislative aspect occupies great importance, as it includes determining the sources of political finance, spending methods, and the supervisory and penal role in limiting the increasing phenomenon of the influence of political money on the course of political life and its outcomes. So why did democratic countries care about regulating political finance, and does it have that great impact on political life that requires all these legislations and laws? Have these legislations been able to perform the role assigned to them as the legislator wanted by limiting external interference and not manipulating the will of the voters through political money? To what extent does Arab legislation keep pace with legislation in ancient democratic countries, and has it achieved the principle of justice and equality in competition between political parties? And what is the location of the Iraqi legislation from those legislations? And other questions that the research tried to answer.

### **Study methodology:**

The “systems analysis” approach was adopted, a method used in analyzing the phenomenon and the most important problems it faces, as well as identifying its most important characteristics and their affects , by studying the phenomenon of political finance and the most important challenges it faces and its impact on democratic transformation, especially in emerging democracies. The study was descriptive and comparative. This is because the study is about to address how to organize international and Arab legislation, including Iraqi legislation.

### **The importance of the study:**

The importance of the study lies in the fact that it sheds light on the issue of financing and spending in international experiences. Also, knowing the relevant legislation and experiences leads to benefiting from them in order to avoid the problems they faced. And also through them we can show the extent to which the legislator in the Arab countries has been affected by these experiences in general, and the Iraqi legislator in particular, and the extent to which these legislations keep pace with the experiences of democratic countries, especially after the issuance of the Political Parties Law No. 36 of 2015 and through this the extent to which this law relies on some international standards with regard to the financing of political parties , as well as the location of Iraqi legislation and the extent to which it is in line with such legislation, as is the case with the concept of financing political parties in European countries and established democracies.

### **The first topic**

#### **Funding and political spending – its concept and sources –**

Political parties need appropriate funding to perform their basic functions, whether in the elections or during the times in between. Therefore, a distinction should be made between the concept of financing political parties as a general concept aimed at developing and building political life, and the concept of financing electoral campaigns as a concept related to a specific electoral stage, as well as knowing the sources that political parties rely on to finance their party activities and electoral campaigns, so the financing of electoral campaigns falls under the term of the concept of political finance, as it is the most prominent and most important of its types, and that any financial support for the activities of political parties or to support their electoral campaigns falls within the general concept of political finance.

## **The first requirement**

### **The concept of political and electoral finance**

#### **First: Political Finance:**

Political finance is defined as “the method used by parties to finance their routine activities and to finance campaigns, which refers specifically to the funds allocated by a party during the electoral process”<sup>(3)</sup>. This definition indicates that electoral campaigns are part of political financing, which also includes partisan activities of all kinds. Political funding means cash and in-kind contributions in addition to the expenses incurred by political parties in their routine activities, as well as in managing the party, including salaries, renting permanent offices, training party members, holding its internal meetings, setting policies and raising awareness of citizens<sup>(4)</sup>. It refers to the public financing of political parties regardless of the electoral process. While observers focus primarily on campaign finance as it relates directly to the duration of the elections, they must also look at the broader political finance context as it directly affects the ability of parties and candidates to compete<sup>(5)</sup>.

Through this, it becomes clear that political finance is a general concept that includes the organization of political life from its various aspects and activities. The political parties practice their political activities and develop the capabilities of their members on a regular basis, and their activities are not limited to specific periods or dates, and the fruit of those efforts and activities carried out by political parties are culminated in electoral campaigns and their obtaining the confidence of the voters in the elections. Therefore, the laws of parties in the established and emerging democratic countries regulated political finance in its general form, which includes building the party system correctly in the interest of the country, in addition to regulating electoral funding the role of which is limited to specific periods. Therefore, the Political Parties Financing Law can be defined as “a set of norms regulating the income and expenditure of political parties”<sup>(6)</sup>.

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3. Guidelines for the Regulation of Political Parties, Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe, Poland, Warsaw 2011: 53.

4. See: Electoral Funding Monitoring Handbook, Office for Democratic Institutions and Human Rights, 2015: 11.

5. European Union Handbook for Election Observation, Third Edition, Election Observation and Democracy Support, Brussels, Belgium, 2016: 63.

6. Political Party Financing Regulations, Constitutional Reform After the Arab Spring, Center for Constitutional Transitions at New York University School of Law, International IDEA, Sujit Chaudhry, Catherine Glen Bass et al., 2014: 17.

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## **Second: Electoral finance:**

Campaign finance – which constitutes an element of political finance – refers to all funds that raised and spent for the promotion of candidates, political parties, policies during elections, referendums and initiatives<sup>(7)</sup>. The financing of electoral campaigns includes all cash and in-kind contributions made by political parties and candidates for electoral purposes, such as renting temporary offices, hiring staff, paying the costs of communications and transportation related to the campaign, and holding electoral rallies...<sup>(8)</sup>. In short, electoral finance is “all legitimate national funds<sup>(9)</sup> that fall into the account of the candidate or the political entity to cover the expenses of his electoral campaign, during a legally defined period”<sup>(10)</sup>. Whereas, electoral expenses are defined as “those expenses incurred by the candidate or political party, during the electoral campaign, in order to solicit votes and secure his election, and these expenses are often subject to maximum limits that should not be exceeded”<sup>(11)</sup>.

The term “electoral campaign financing” is defined in the European Union Election Observation Manual as the financing provided to political parties or candidates for the purpose of an election campaign, either through private donations or government funding, and spending by parties or candidates on campaign expenses. It is recognized that the impact of election campaign financing on elections and their results has increased in recent years, and that there is a need to organize the financing of the electoral campaign to ensure a favorable climate for competition<sup>(12)</sup>.

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7. See: Initiative on Open Election Data, website:

[openelectiondata.net/en/guide/key-categories/campaign-finance/](http://openelectiondata.net/en/guide/key-categories/campaign-finance/)

8. See: Electoral Funding Monitoring Guide, previous source: 11.

9. Legitimate national funds mean all funds that fall into the account of the candidate or political entity through public funding of the state, or private funding in the light of what is permitted by the laws in force.

10. See: Crimes of financing and spending in electoral propaganda, a comparative study, Alaa Yasser Hussein, Master's thesis, University of Dhi Qar, College of Law, 2015: 14.

11. See: The Arab Election Monitor, Index of Electoral Terminology, The Arab Network for Election Observation, 2007, [www.intekhabat.org](http://www.intekhabat.org)

12. European Union Election Observation Handbook, previous source: 63.

### **Third: Sections of Political Finance:**

#### 1- Public funding:

It means the financial support provided by the State to the electoral campaigns of the candidates at levels that guarantee the principle of equal opportunities for all candidates, so that relevant legislations set clear and objective guidelines to determine the size of this funding, in addition to setting provisions related to the mechanism of financing electoral campaigns for women and minorities.

#### **Public funding takes several forms, as follows:**

- Tax exemptions for activities that fall within the scope of the electoral campaign activities.

- Get free broadcast time on official media.

- The use of public meeting rooms for campaign activities is free of charge.

- In order to support the participation of women, the State may provide measures for the care of children free of charge.

- Allocating general support to political parties in relevant legislation <sup>(13)</sup>. Public funding is divided into direct and indirect funding, based on the manner in which public resources are provided:

#### **A- Direct funding:**

It includes cash grants provided by the State to parties and candidates in accordance with the general procedures stipulated by law. This is considered as one of the means of improving the relative financial position of small parties due to the balance it creates in the electoral arena, as in the public funding experiment in (Uruguay). Direct funding from the State played a key role in providing the material means for the Left Front to challenge the electoral dominance of its traditional conservative competitors that lasted for a whole century, thus achieving the protection of electoral justice and ensuring the principle of multi-party system in the country<sup>(14)</sup>. Direct financial support provided by the State aims to strengthen parties, increase party competition, reduce corruption, and reduce the influence of

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13. Electoral Campaign Financing, Transparency International Jordan, 2016: 15-16.

14. Towards the transparency of political spending in Yemen, a group of researchers, publications of the Yemeni Organization for the Promotion of Integrity, 1st Edition, Republic of Yemen, Sana'a, 2013: 8-19.



wealthy political donors <sup>(15)</sup>.

### **B – Indirect funding:**

Its scope is generally limited to material resources that governments already own, and indirect funding refers to in-kind resources provided to political parties. The most common form of indirect funding may be free or subsidized access to the media, whether private or state-owned. Other forms of indirect support include tax deductions from individual donors for the political parties, as well as tax breaks for party organizations themselves, providing State-owned facilities for election campaign meetings, free mail, or giving space for displaying the advertising materials <sup>(16)</sup>. In Lebanon, electoral campaigning is exempted from stamp duty, as is the case in Syria, where it is also exempted from judicial and financial fees. In Algeria it is forbidden to use places of worship and primary and secondary education institutions for any purpose of electoral campaigning<sup>(17)</sup>.

### **2- Private funding:**

Private funding for electoral campaigns includes financial and in-kind contributions from individuals and legal entities that are provided directly to political parties and candidates for the purposes of the electoral campaign. Private funding for electoral campaigns may help to achieve the following:

- Engaging voters and encouraging citizen participation in elections.
- Demonstrate the presence of support for the party or candidate among the public.
- Providing a form of free expression of political opinions.
- Minimizing the role of the government or its interference in electoral campaigns.
- Reducing the possibility of political corruption by reducing the extent to which politicians depend on the State.

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15. Electoral Knowledge Network.

16. See: Political Parties Financing Systems, Constitutional Reform After the Arab Spring, previous source: 45.

17. Towards the transparency of political spending in Yemen, previous source: 15.

- Reducing the extent of dependence on government funding <sup>(18)</sup>.

Private funding is the financing provided by non-governmental organizations of all kinds. The sources of this financing are as follows:

- Party membership fees.
- The parties' income as a result of the work they undertake.
- The candidate's personal resources.
- Special contributions <sup>(19)</sup>.

Political finance of all kinds and forms is considered as one of the most important factors that have a great impact on political life. Therefore, the countries that went through democratic experiments in the early stages paid great attention to this aspect in order to get rid of the negative effects that accompanied the emergence of political parties and the penetration of those with financial influence and their control over the political life. The types of political funding that political parties and candidates can receive have been determined by preventing certain subsidies that political parties can receive and imposing penalties on violators, till the issue of political funding and its sources and spending mechanisms has become one of the most important issues that have received increasing attention by democratic countries, as this represented a real threat to the entire political life.

### **The second requirement**

#### **Political finance – its sources and its role in political life–**

##### **First, the sources of political funding:**

Political parties have an important role in building democracy, as they are a pillar of the rotation of power and political upbringing. Therefore, the effectiveness of these parties, their survival and their competitive ability to perform their democratic functions depend on their financial ability. Therefore, this funding should be subject to clear controls and limitations in order to create a competitive political environment based on justice and equality; In order to achieve the principle of equal opportunities, this can only be achieved through controlling and regulating

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18. See: Electoral Funding Monitoring Guide, previous source: 12.

19. See: Financing Electoral Campaigns, Transparency International Jordan, 2016: 14-15.

the sources of political funding.

The main sources of funding for political parties are:

1- Members' subscriptions.

2- Donations from individuals or companies provided that they are made public, and that they come from a legitimate source, as laws criminalize the donation of gambling revenue or any illegal trade.

3- The State provides support for each party in proportion to the value of the subscriptions, as well as the number of votes it obtains in the elections<sup>(20)</sup>.

In general, most of the sources of funding for political parties in the democratic countries of the world can be limited to several sources:

1- The money of the candidate himself.

2- Funds of the party to which the candidate or candidates belong.

3- Subsidies and donations from loyal and supportive individuals.

4- State aid and facilities regulated by law<sup>(21)</sup>.

### **Second: The Objectives of the Political Finance Policy**

Political parties have an effective and central role in contemporary political systems, given the great deal they enjoy in organizing political groups, raising their awareness and educating them, and building the system of governance on solid foundations. Political finance has long-term strategic goals and interim goals that pertain to a particular electoral stage. Its strategic dimension involves its attempt to build solid partisan institutions based on correct methodological foundations, since those partisan institutions through which they emerge and generate governments that lead the future of every democratic country, and there is no doubt that these dimensions are among the priorities of democratic countries through the policy of public political financing of various kinds, as well as for the purpose of cutting control of external interference in internal affairs through political money, in order to build a sound political environment based on the foundations of integrity,

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20. Political Parties (Importance - Inception - Activity), Souad Al-Sharqawi, People's Assembly, General Secretariat, 2005: 64.

21. See: Political Parties Financing Systems, Constitutional Reform After the Arab Spring, previous source: 25.

impartiality and equal opportunities among all political parties.

Many countries have resorted to the principle of government funding after the means of electoral propaganda have developed and adopted modern methods represented by opinion polls and resorting to offices of political expertise to organize electoral campaigns, and this is what the election laws in Poland, Bulgaria, Kazakhstan and others adopted. In the 1994 in Kazakhstan elections, the law stipulated that all electoral campaigns receive equal amounts of funding from the government, and the law forbids candidates to subsidize government funding by raising funds from other sources.<sup>(22)</sup>

Political parties need adequate funding to perform their basic functions during and between election periods. Regulating the financing of political parties is a necessity in order to ensure the parties' independence from any undue influence on the part of the donors. Also, to ensure that the parties have the opportunity to compete in accordance with the principle of equal opportunities, and to provide transparency in political funding<sup>(23)</sup>. Countries in transition to democratic systems must address issues related to how to regulate the financing of political parties, and political parties, which are effective and pivotal bodies in the activation and strengthening of democratic systems, must spend funds to spread their message and strengthen their regulatory bodies<sup>(24)</sup>. This is what some international experiences have worked on, as many of the countries participating in the Organization for Security and Cooperation in Europe provide general support to the parties at all times <sup>(25)</sup>. One of the most progressive reforms in Colombia provides 5% of all public support funds to be distributed to parties based on the number of young people each party has elected for positions, and an additional 5% based on the number of women elected, and 15% at least of the money received by each party should be spent for research centers, political training and election campaign training<sup>(26)</sup>.

In order to get out of the negative effects of illegal financing, many countries have worked on financial support for parties and political life, and government or public funding for political parties represents a mechanism through which

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22. See: The General Theory of Electoral Crimes: 201.

23. Guidelines for Regulating Political Parties, previous source: 53.

24. Political Parties Financing Systems, Constitutional Reform After the Arab Spring, previous source: 9.

25. See: Guidelines for Regulating Political Parties, previous source: 53-54.

26. Previous source: 48-49.

transparency and equality between competing parties can be achieved, and thus achieves and establishes democratic rules and foundations, and helps parties to play their role in the field of regulating political life, as well as preventing parties and candidates from resorting to illegal methods in the field of political and electoral finance, especially after experiences have proven the role of money and its impact on political life.

Providing public support from the State treasury is a well-known and popular political financing approach in more than 79% of countries in the world, and it takes several forms, including: subsidies provided by the State treasury to political parties and/or candidates and tax exemptions such as tax cuts or credits for donations to parties or candidates, as well as free or subsidized media broadcasts for the benefit of political parties and candidates, and in-kind subsidies (other than bulletins in the media) such as free or reduced postage, rent, or printing costs <sup>(27)</sup>.

**Third:** Public political finance between rejection and acceptance  
The political opinion on the issue of public political finance followed two tracks, and each track had its own arguments and evidence supporting its opinion. These two directions can be summarized as follows:

**The first track:**

The direction that supports the provision of public political financing  
Political finance laws can attempt to bring about justice in the field of political competition and increase competition between parties in democratic systems, thus facilitating the ability of parties to play their real role. Parties that do not have sufficient resources cannot build popular participation; therefore, the provision of public funds plays an important role in building democracy in general. Public funding can help parties expand their social base and support their efforts in organizing and mobilizing, and this can lead to stronger and more institutionalized parties and achieve greater competition between parties <sup>(28)</sup>.

Public funding has been a prominent factor in transitions from one-party or dominant-party systems, as in Mexico and Japan where the position of dominant parties has diminished with the rise of opposition parties aided in part by public

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27. See: Electoral Knowledge Network.

28. Political Parties Financing Systems, Constitutional Reform After the Arab Spring, previous source: 29.

funding, which has produced more competitive political systems <sup>(29)</sup>. The vast majority of the world's countries provide some kind of public funds to political parties and/or candidates. The most important arguments and evidence for those claiming public political funding can be summarized as follows:

- Public financing is a natural and necessary cost of democracy.
- Public finance can reduce the impact of money, which helps reduce corruption.
- The state, through public funding, can encourage or compel political parties to undertake reforms, or to hold internal elections.
- Public funding can increase the level of transparency in the financing of parties and candidates and thus help reduce corruption.
- If political parties and candidates receive a large part of their income from the state, it becomes very easy to ask them to disclose their income and expenditures.
- If parties and candidates are financed from private financial sources only, economic inequalities in society may translate into political inequalities in government.
- Political parties and candidates need support in facing the rising costs of electoral campaigns.
- In societies with high levels of poverty, citizens cannot be expected to donate large sums of money to political parties or candidates <sup>(30)</sup>.

The second track:

Those who refuse to provide public political funding

Those who are against providing political finance, from their point of view, political parties cannot be an effective vehicle for popular opinion from the grassroots unless they maintain their independence from the State, whereby obtaining donations becomes a necessary condition for maintaining such independence, and if the party cannot guarantee adequate financial support for its activities by contributions and donations, it does not deserve our attention to make it reach to power <sup>(31)</sup>.

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29. Previous source: 46-47.

30. See: Electoral Knowledge Network.

31. See: Introduction to Democracy, Free and Fair Elections, previous source: 36.

There are widespread suspicions against public financing of parties that it separates the parties from their bases and makes them more dependent on the State<sup>(32)</sup>. Hence, parties and candidates will become increasingly independent of their members and supporters. This independence runs the risk of their tendency not to listen to their members and supporters on matters of leadership selection and political decision-making<sup>(33)</sup>.

Those who reject public funding rely on the following arguments:

- Public finance increases apartment spacing and the distance between political elites and ordinary citizens.
- Public finance maintains the status quo by keeping established parties in power.
- Through public funds, taxpayers are forced to support political parties and candidates who do not share their opinion.
- Giving public money to political parties and candidates means taking money away from meeting the needs of schools and hospitals and giving it to rich politicians.
- Political parties and candidates make the decisions, and they also make money.
- Political parties risk becoming organs and instruments of the State, rather than being parts of civil society, and thus losing their relationships with the public and civil society.
- Public funding is an unnecessary and undesirable expense, especially since political parties are widely seen as corrupt or self-interested<sup>(34)</sup>.

Through the evidence of the two teams, it is clear that each party has its own evidence to support or reject public political funding. There is no doubt that the circumstances that each country is going through have a great impact on the success or failure of this policy. Therefore, in order for every country to succeed in the issue of public finance, it is necessary to provide the objective conditions for its success from all sides; Because it is not possible to take international experiences in democratic countries and apply them in emerging democracies without creating

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32. Political Parties Financing Systems, Constitutional Reform After the Arab Spring, previous source: 49.

33. Electoral Knowledge Network.

34. See: Political Parties Financing Systems, Constitutional Reform After the Arab Spring, previous source: 43-44.

the appropriate objective conditions, and studying the factors that help those experiments succeed, so that the issue of political finance does not turn into another problem that burdens the public budget without achieving its desired goals.

#### Fourth: The role of money in political life

Political parties constitute the cornerstone of every democratic society. It brings together the interests of the nation, and expresses it by proposing public policies and securing the necessary structures for political participation. In addition, parties train political leaders and compete in elections to gain a degree of control over government institutions <sup>(35)</sup>. Therefore, contemporary legislation sought to regulate the financing of these parties for their great role in organizing and building political life.

The issue of political funding emerged from a real need imposed by the substantive conditions in democratic countries. Those countries have gone through various experiences and struggles, which enabled them to reach the best ways to build a rational political system, until the issue of funding for political parties and financing electoral campaigns became one of the concerns of the democratic process in order to preserve on equal conditions for the competitors, and to prevent the influence of financial interests and those with financial influence.

The issue of political and electoral finance has taken more dangerous directions than it was in the past because of its significant impact in resolving the results of competition between candidates and political parties, which led to the widening of financial spending significantly, and the danger in this matter lies in the lack of equality and equal opportunities among candidates due to the discrepancy in their financial ability in spending and propaganda financing, which would bring them into the circle of winning loyalties to those who give them and provide them with the necessary financial coverage to run in the elections, as well as lead to a serious distortion of the electoral participation process. This situation necessitated the intervention of the legislator to set limits on the amounts that can be spent by the candidates, in order to allow the competent candidates who lack the financial means to run in the elections on an equal basis with the wealthy candidates <sup>(36)</sup>.

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35. Political Parties and Democracy in Theory and Practice, Parliamentary Groups, Norm Kelly, Sivakur Ishiyagpur, National Democratic Institute: 3.

36. See: Guarantees of Freedom and Integrity of Elections (a comparative study), Saad Mazloum Abdullah Al-Abdali, Master Thesis, Babylon University, 2007: 148.\



Therefore, money plays a major role in the conduct of political life in general, and electoral campaigns in particular, and the financial disparity may lead to a breach of the principle of equal opportunities, which made the legislator regulate the financing of political life and electoral campaigns, starting with the sources of funding, passing through the stages of spending and the oversight role, and ending With deterrence by penalties for violations.

The integrity of the electoral process requires the development of societal and legal ways to achieve this goal, and there is no doubt that the impact of money on the political and electoral process has appeared in many countries of the world in different stages and circumstances, which necessitated the development of urgent solutions to escape its influence and its great impact on the course of the political process especially after the spread of modern means of communication, which has become in need of huge funds for the purpose of covering the costs of the elections. Money plays a pivotal role in politics and in determining the results of elections, and there is no difference in that between the democratically established countries and those undergoing a democratic transition<sup>(37)</sup>.

Money greatly affects the will of the electorate and directs them towards the destination desired by its owners or financiers, and the matter did not stop at distorting and changing the will of the voter, but rather it transgressed against the candidate who will undoubtedly owe allegiance to those who finance him, which leads to the control of the owners of money and influence over political life and the course of the electoral process. Thus, opportunities are lost or diminished in front of other candidates who do not have financial support and influence<sup>(38)</sup>.

Regulating the flow of money into politics can help establish a more stable party system, and make it more capable of representing the will of the people. Public funding of political parties has contributed to creating more open party systems and facilitating the process of participation, which is one of the reasons for the popularity of this system in the rest of the world<sup>(39)</sup>. This requires an understanding of the role played by the various regulatory bodies in regulating the political spending process through the money obtained by political parties from the sources permitted

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37. See: Policy Paper, State Contribution in Financing Political Parties in Jordan, Prepared by: Muhammad Al-Husseini, Publisher, Friedrich Ebert Foundation, Amman Office, 2012, Jordan: 4.

38. See: Electoral bribery as one of the crimes of influencing the voter's will, Counselor Fahr Abdel Azim Saleh, Legal Research, Arab Legal Information Network.

39. Political Parties Financing Systems, Constitutional Reform After the Arab Spring, previous source: 21.

by legislation, as well as knowledge of international experiences in the field of political finance, in addition to shedding light on the Iraqi legislator's organization of the issue of political financing to show the extent to which they comply with international legislation, and this will be clarified in the second section of this study.

### **The second topic**

#### **International political finance experiences and the effectiveness of the supervisory and regulatory role**

##### **The first requirement**

#### **The impact of the supervisory role and its effectiveness in regulating political finance and spending**

In all democratic countries, external financing for political purposes is criminalized, and it is a criminal political crime that democratic countries have noticed, because the flow of illegal and unknown funds undermines an important principle in democracy, which is equal opportunities. The fair elections do not only be achieved as a lack of fraud, but are achieved when all the candidates are given a fair and equal opportunity for them to present their programs and ideas, and when the voter chooses his candidate freely from electoral bribes, as well as when the voter knows the source of each candidate's money and how he obtained it. The parties' use of funds of unknown source destroys the sovereignty and dignity of the State and endangers it; Because it allows external parties to control the course of things, as happened when money flowed into Lebanon from foreign parties since the seventies of the last century to reshape Lebanon as the financing parties like until Lebanon ended in civil war <sup>(40)</sup>.

There is no doubt that there are actors that have a great role in enhancing the transparency of funding and political spending, whether these parties are political parties and their role in the integrity of political life, or civil society organizations that work with full professionalism, or honest media, as well as the great role played by international organizations and bodies for the purpose of achieving the principle of transparency in financing and political spending, and getting rid of financial corruption in the elections, which has multiple facets, the most prominent of which is electoral bribery of various kinds, whether they are cash by paying money directly to the voter in order to vote for a particular candidate or party, or they are

40. See: Interrogative sentence, previous source: 14.

in-kind by giving gifts in order to vote for a particular candidate. Or by promising to hire people in return for their votes, as well as by solving problems, which are promises from the candidate to the voters to provide some basic services to the constituency in return for obtaining their votes.

### **First: Regulating funding and political spending**

The Political Parties Financing Law can be defined as a set of norms regulating the income and expenditure of political parties<sup>(41)</sup>. On this basis, the Political Parties Financing Law can be divided into five basic areas: providing public funds to parties and their electoral campaigns; placing limits on party income; placing limits on party spending; Disclosure of party finances, assets, and expenditures to the public; And the application of the Political Parties Financing Law<sup>(42)</sup>.

The Organization for Security and Cooperation in Europe has adopted a set of guiding principles related to political finance. These principles include the following:

- Imposing restrictions and limits on private contributions.
- Achieving a balance between private and public finance.
- Restrictions on the use of state resources.
- Equitable criteria for allocating public financial support.
- Imposing spending limits on electoral campaigns.
- Requirements that increase the transparency of party financing and the credibility of financial reports.
- Independent regulatory mechanisms and appropriate penalties for legal violations<sup>(43)</sup>.

The role of capital in political activity can be regulated through the use of a variety of legal mechanisms and tools that control the electoral finance system, and it is represented in a set of rules that deal with the inevitable flow of funds to

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41.Political Parties Financing Systems, Constitutional Reform After the Arab Spring, previous source: 17.

42.Previous source: 10.

43.Guidelines for Regulating Political Parties, previous source: 53.

and from the political system, and provide a framework within which parties and candidates can work legally to obtain and spend the money needed for their electoral activities, the legal tools for organizing electoral financing activities include lists of funding sources for candidates and parties, political expenditures, and regulations for transparency in financial reporting in addition to sanctions and penalties<sup>(44)</sup>.

Wealth and influence play a major role in directing the elections, and they turn into a major threat to the fairness of the electoral process.

Therefore, strict limits must be set on the amount of money that a candidate or party can spend on his electoral campaign, and everyone should have free access to state media and use them according to the policy which is clearly subject to the oversight of the electoral authorities concerned<sup>(45)</sup>.

Constraints for separate parties are imposed for equality in political competition and to ease the cost-related obstacles to the political ring, reduce the overall spending on elections, fighting political corruption and buying votes. The restrictions on parties spending and their implementation can be monitored more effectively when restrictions are placed on a specific and clear category, such as media spending<sup>(46)</sup>.

The rules regulating the income of parties are generally classified into two categories: First: The prohibition of specific sources of private donations, such as the ban on foreign donations, and, Second: Restrictions on certain sources or types of donations, such as placing a ceiling on donations that can be accepted from people<sup>(47)</sup>. The process of controlling electoral finance and spending is one of the most important guarantees of the integrity and legitimacy of elections, and it is one of the most important means of restricting the phenomenon of excessive use of money in the electoral process, especially after the great development in communication systems and databases that have overcome many of the difficulties they were facing in effective and continuous control of the of the spending ceiling and its sources in electoral campaigns<sup>(48)</sup>.

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44. See: Towards the transparency of political spending in Yemen, previous source: 16–17.

45. See: Introduction to Democracy, Free and Fair Elections, previous source: 34–35.

46. Political Parties Financing Systems, Constitutional Reform After the Arab Spring, previous source: 11.

47. See: Political Parties Financing Systems, Constitutional Reform After the Arab Spring, previous source: 53.

48. See: Democracy and Elections in the Arab World, Arab Organization for Human Rights, Proceedings of the International Conference on Democracy and Elections in the Arab World, Cairo, 2014, 1, 185:1.

Second: The effectiveness of the supervisory role in combating financing and political spending crimes

Any electoral entitlement must be preceded by a period of presentation of programs, ideas and directions by parties and candidates, and because of the seriousness of this stage, which is called the electoral campaign, the legislator paid great attention by controlling and organizing it by enacting laws and regulatory texts, and there is no doubt that political money is the main driver in the activity and management of the electoral campaign; therefore, the legislator worked on defining and setting the legal controls that govern the spending process. After he exercised his role in following up the sources of funding, he completed his work by monitoring the spending process for the purpose of achieving the principle of equality between the competitors by setting the maximum limits for spending and the legal organization of electoral campaigns, in order to create a sound political environment.

Concerns surrounding the process of political and electoral financing and spending led to legislation regulating and creating a circle of restrictions on it in order to limit the illegal practices of candidates and political entities, and the United Kingdom was a pioneer in this area through the Anti-Corruption and Illegal Practices Act of 1884, followed by the United States of America To regulate the financing of electoral propaganda through the Tillman Act of 1907 and other states<sup>(49)</sup>.

Legal and regulatory frameworks are key tools to fight political corruption and other matters, and for the purpose of achieving the principle of transparency and integrity, which govern funding and spending rules, most of the laws have been criminalized, and the first start was in England with the first legislation to fight illicit spending in 1845<sup>(50)</sup>.

The guarantee of reducing the use of political money is public and full detection, disclosure of financial and policy information and making them available to inspection and analysis by the public. Civil society organizations can exercise effective control of political money and spending on electoral campaigns by

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49. See: Crimes of financing and spending in electoral propaganda, a comparative study, previous source: 9.

50. See: Criminal Protection of the Principles Governing Political Election in its Different Phases, Dr. Hossam El-Din Mohamed Ahmed, Dar Al-Nahda Al-Arabiya, Cairo, 1, 2003: 166.

activating their role properly, and organizations' reports on these facts needs to be precise, clear, documented, and reliable <sup>(51)</sup>.

The oversight role takes two forms. The first aspect relates to sources and sides of funding, and the second relates to the ways of political spending and spending mechanisms on regular party activities or electoral campaigns. Oversight must be undertaken by specialized bodies that monitor the work of parties from these aspects and monitor violations in light of the laws in force.

### **1- Control of political finance**

Legislations in democratic countries banned certain sources because of the threat they represent to the functioning and success of the democratic process. Various methods have been adopted for this purpose, including restricting grants and donations from suspicious sources, or banning them entirely. Funding through contributions from members and supporters may be the only type of funding allowed in all cases. As for the prohibited sources of funding, they mostly include funds from abroad or foreign sources <sup>(52)</sup>.

In any effective system for financing political parties, some basic requirements must be met, i.e., to create equal opportunities for the contestants in the elections, to protect representatives of political parties from the corrupting influences of unwanted donors, and to prevent spoiling the elections by buying votes or monopolizing the electoral process. It is necessary to prevent the partisan and partisan use of mechanisms for implementing party financing laws on political opponents, and also for political parties and their candidates to be transparent about how they collect and spend their money<sup>(53)</sup>.

### **2- Monitoring political spending**

The measures taken to monitor funding are important to ensure accountability and transparency. Through the submitted reports, the extent to which the parties comply with the required rules is identified, and helps inform the public about the sources of political parties and candidates obtaining financial support, as well as

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51. See: The role of civil society organizations in monitoring political money, previous source.

52. See: Political Parties Financing Systems, Constitutional Reform After the Arab Spring, previous source: 25.

53. See: Regulating the Financing of Political Parties in Iraq, Draft Political Parties Law for Iraq, previous source: 2.

contributing to enhancing transparency and accountability in the campaign finance system election<sup>(54)</sup>.

Political finance violations can be detected through direct monitoring, external complaints, and/or referral by government agencies. Law enforcement agencies should have available a range of sanctions to hold the parties accountable in order to encourage complaints. Fines are the most common form of punishment<sup>(55)</sup>. Violations can be detected in three ways: monitoring by the enforcement body; external complaints; and referral by other government agencies<sup>(56)</sup>.

The second requirement for funding and political spending in international legislation and experiments targets funding systems to ensure that all political parties are able to compete in the elections according to the principle of equal opportunities, promoting political pluralism and helps to ensure the integrity of democratic institutions.

Legislation should generally be aimed at creating a balance between public and private contributions as sources of funding for political parties, and general funding should not be allocated in any case to restrict the independence of a political party or interfere<sup>(57)</sup>. It is remarkable that parties' assistance programs look similar to a similar basis on the ground around the world, regardless of the contrast of political contexts and traditions of the country implemented by those programs.

### **First: The experiences of political finance in Western countries**

Political parties are one of the most important channels of political participation as a fundamental issue, and the state's contribution to the financing of political life and the electoral campaign is today in democracies based on a constitutional basis. Therefore, public financing of electoral campaigns in future democracies is based on a constitutional basis, as is the case with Article 4 of the French Constitution of 1958, Article 21 of the German Constitution of 1949, and Article 49 of the Italian Constitution of 1947, which emphasized that political parties and groups are entities recognized by the Constitution. With its existence, it officially participates in universal suffrage as a public utility within the public utilities or a task of public

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54. See: Electoral Funding Monitoring Guide, previous source: 13.

55. Political Parties Financing Systems, Constitutional Reform After the Arab Spring, previous source: 12.

56. Previous source: 87.

57. Guidelines for Regulating Political Parties, previous source: 56.

interest, and the issue of its financing is only one of the elements enacted by the constitution, and the state, as a guarantor of liberties, including the freedom to form parties and participate in elections, must guarantee Minimum financial resources for these parties<sup>(58)</sup>. Within the framework of international organizations, paragraph (3) of Article (7) of the United Nations Convention against Corruption stipulates that “each state party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this agreement and in accordance with the basic principles of its internal law, to enhance transparency in financing nominations for the election of public office holders and in financing political parties, where applicable”<sup>(59)</sup>.

### **The Swedish Experience:**

Sweden is considered as one of the first countries to turn to public funding for elections in the framework of regulating electoral spending in 1966, which was based on three basic rules:

- 1- Funding provided to serious parties that have a real political presence.
- 2- Financial support based on a reasoned request from the party or candidate.
- 3- Electoral funding in proportion to the parliamentary size of each of the political blocs<sup>(60)</sup>.

### **The British Experience:**

Britain followed the path of other countries that started to finance electoral campaigns when it passed a law recognizing the financing of these campaigns in 1984, through which campaign expenses for a single party were set at 100,000 pounds after concerns raised by foreign funding. Because of the growing role of money in political life, and in the context of the British legislator’s endeavor to enhance the ethics of the electoral process in general and those related to electoral spending in particular, a committee called (Nolan Commission) was formed,

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58. See: The Electoral System in the Algerian Constitutional Experience – An Approach to Political Participation and Competition in the Algerian Political System – Master’s Thesis, Abdel-Moumen Abdel-Wahab, Faculty of Law, University of the Brothers Mentouri Constantine, 2007:121-122.

59. Towards the transparency of political spending in Yemen, previous source: 12. Quoted from: United Nations Convention against Corruption, United Nations Office on Drugs and Crime Vienna, United Nations, New York, 2004, p. 11.

60. Public financing of electoral campaigns. A comparative study of Moroccan legislation and international experiences, previous source.



which formulated fixed standards that can be applied and modified permanently with the change of political or economic reality. Its work has played a key role in the issuance of the 2000 law on (political parties, elections and referendums), and this law regulates the criteria for donations and the need to register parties, and obligates the monitoring of electoral spending related to the allowed ceiling during electoral benefits <sup>(61)</sup>.

### **The French experience:**

France adopted the principle of public financing for electoral campaigns late in comparison with Britain and other countries, as it did not have clear rules and assets regarding political financing, which led the electoral campaigns to the tunnel of illegal ways, which prompted the French legislator to set a ceiling for electoral financing; For the purpose of refining the behavior of the competing candidates, there was a great need to issue a law regulating the financing of political parties. The first law was promulgated in 1988, which determined the electoral spending ceiling and the mechanism for monitoring it. Then, in 1990, two laws were issued, one of them defining new mechanisms for controlling electoral spending and financing, and the second stipulating the publication of the names of donating legal personalities and the publication of the financial accounts of political parties. The electoral process has increased public funding, and the process of declaring the financial disclosure of the winning candidates has become mandatory, after it was previously optional <sup>(62)</sup>.

### **Second: The experiences of political finance in Arab countries**

After the signs of democracy began in some Arab countries, based on the experiences of ancient Western countries in the field of democracy, and for the purpose of organizing the work of emerging parties in terms of their financial sources and spending doors, those countries began working on enacting laws that regulate the parties' work, especially from their financial side. It is not possible to study this issue in the Arab reality without knowing its international dimensions, because Arab legislation has been greatly affected by the tracks of those legislation, especially Western ones. In order for the picture to become more clear about the experiences of Arab countries in the issue of public funding for political parties, we will shed light on some Arab experiences in this field:

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61. Previous source.

62. Ibid.

The Algerian experience:

The organic law for elections in Algeria regulated the sources of funding for electoral campaigns and methods of disbursement. The electoral campaign is financed by means of resources issued by:

- Involvement of political parties.
- Possible aid from the State , provided on the basis of equity.
- The candidate's income.

Article 191 of the law prohibits any candidate for any national or local elections from receiving, directly or indirectly, gifts in cash or in kind or any other contribution, whatever its form, from any foreign country. Article 193 gives the right, within the limits of real expenses, to a lump sum compensation of 10%. When the candidates for the presidential elections achieve a percentage greater than 10% and less than or equal to 20% of the votes cast, this compensation shall be raised to 20% of the expenses actually disbursed and within the authorized maximum. The percentage of compensation shall be raised to 30% for the candidate who obtains more than 20% of the votes cast <sup>(63)</sup>.

### **The Tunisian Experience:**

Decree No. (35) of 2011 provided direct public funding for elections, and placed restrictions on the use of private funds for the purposes of electoral campaigns. The public funding system was based on the number of votes in a particular electoral district and was distributed equally among all lists in the district. The Independent High Electoral Commission was granted broad powers to establish a fair system for allocating state-owned media to parties <sup>(64)</sup>.

The rules for granting public aid to the candidate lists were defined in Chapter 53, whereby public aid is given to any list, on the basis of a value determined for each thousand voters in the electoral district. Public funding is allocated in two installments; So that the first installment of 50% before the start of the electoral campaign is distributed equally among all lists, while the second installment of public aid 50% is distributed during the electoral campaign. This chapter also

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63.The Organic Law of August 28, 2016 Relating to Political Parties, Official Gazette of the Algerian Republic, No. 50, 2016.

64.Political Party Financing Systems, Constitutional Reform After the Arab Spring, previous source: 51-52.

stipulates that the lists that did not obtain 3% of the votes in the electoral district pay half of the assistance provided to them <sup>(65)</sup>.

#### The Egyptian Experience:

The issue of electoral advertising expenditures in Egypt has been given special importance by the legislature since 1977, when the legislator was keen to set a higher ceiling for spending on advertising, which he obliged candidates to observe, since the first elections were held in 1979<sup>(66)</sup>. The Egyptian Presidential Elections Law No. 174 of 2005 affirmed in Article 21/7 the obligation to prohibit spending public funds and the funds of public sector companies and the public business sector for the purposes of electoral campaigning. And in Article (27), “ it is prohibited to receive any contributions or support in cash or in kind, for the electoral campaign from any Egyptian or foreign legal person, or from any country, foreign entity, international organization, or from any entity in the capital of which a foreigner person contributed or it is from a foreigner ” <sup>(67)</sup>.

#### Third: Political Finance in the Light of Political Parties Law No. 36 of 2015

The matter differed in Iraq after the issuance of the Political Parties Law No. (36) of 2015, which organized political financing and spending in detail, and gave the power to organize and monitor this to the Department of Parties and Political Organizations Affairs, which is responsible for following up the work and activities of political parties, evaluating their compliance with the provisions of the law, as well as monitoring violations issued by political parties and investigating them.

The law defined the sources of funding in chapter eight in Articles (33–45), and we find Article (33) of this law dealing with the party's resources and its funding sources and identified them as follows:

First: the subscriptions of its members.

Second: Donations and internal grants.

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65. Towards the transparency of political spending in Yemen, previous source: 80.

66. See: Guarantees of Freedom and Integrity of Elections (comparative study), previous source: 151, on: Dr. Ikram Badr El-Din, Election abuses 1995, research published in the book: Parliamentary Elections in the Southern Countries, Center for Studies and Research of Developing Countries, Cairo University Faculty of Economics and Political Science, 1997: 293.

67. See: The General Theory of Electoral Crimes (a comparative study), Daa Abdullah Abboud, PhD thesis, University of Babylon, 2007.

Third: Returns from investing its money in accordance with this law.

Fourth: Financial aids from the State's general budget in accordance with the criteria set forth in this law.

As for Article (37), it forbids accepting any donation, advantage or benefit from self-financed public institutions and companies, and from commercial and banking companies whose capital is part of the State, or receiving donations sent from foreigner people, states or organizations. This matter was also addressed in the Iraqi Parliament Elections Law No. (9) of 2020 in Article (9) of chapter nine on electoral campaigns, where that article states: It is prohibited to spend on electoral campaigns from public funds, ministries' budgets, endowment funds, or from external support funds.

Article (41) prohibits the party or political organization from:

First: Accepting money in kind or cash from any party, association, organization, person or any foreign entity, except with the approval of the Parties Department.

Second: Sending money or sums to associations or organizations or to any foreign body without the approval of the Parties Department.

According to Article (32) in paragraph III, the aid proposed by the State for any political party or political organization is withheld for a period of six months at a reasoned request from the Parties Department and based on a judicial decision in the event that it commits one of the following cases:

a- Undertaking an act that would infringe the rights and freedoms of the State institutions, other parties, unions, and non-governmental organizations.

B - Interfering in the internal affairs of other countries to the detriment of the higher interests of Iraq.

Article 42 states that political parties receive an annual financial aid from the State budget, and it is transferred to each party's account by the Ministry of Finance. In Article (43) the Ministry of Finance is responsible for approving the annual estimate of the total amount of financial aid provided by the State to the parties, and submits a proposal to that effect to the Council of Ministers for decision and inclusion in the State's draft general budget.

It is noticeable that the law did not address setting a higher ceiling for what the political party receives in terms of cash or in-kind donations. In addition to the previous articles, we find that Article (44) confirms that there will be a support from the State for the political parties, as the amount of government support is proposed by the Department of Parties and Political Organizations Affairs and submitted to the Ministry of Finance, which estimates the amount of the subsidy, and thus submits a proposal to the Council of Ministers for the purpose of Deciding on it and including it in the draft general budget, and the Department of Parties distributes the total amount of financial aid to the parties according to the following proportions:

First: 20% equally to the political parties registered in accordance with the provisions of this law.

Second: 80% to the parties represented in the House of Representatives based on the number of seats their candidates won in the parliamentary elections.

Article 40 states that it is not permissible to spend the money of a party or a political organization for other than its purposes and objectives in accordance with the rules and procedures regulated by its internal system.

There is no doubt that the issuance of the Political Parties Law in Iraq represents an important step in the right direction, as it regulates the work of political parties in general and the regulation of financial funding in particular, especially after international experiences have proven the large and pivotal role that funding plays in the movement of political life. The stage of legislation and the issuance of the law is the first stage, and the second stage remains represented by implementation, which is an important criterion in evaluating the extent of success and failure in accordance with international standards in well-established democracies, because the issue of correct and professional application is one of the most important challenges of this law. This role is entrusted to the Department of Parties and Political Organizations of the Independent High Electoral Commission. Hence, it gives it a large space of freedom to work and monitor all aspects of deviation in funding with its various types and forms, whether in terms of the ways and sources of support, or in terms of expenditures according to what the law allows, in order to achieve the desired goal, represented by building a sound political life in accordance with international standards.

## **Conclusion**

The issue of political finance has become a global phenomenon because of the dangerous role it plays in directing political life. Therefore, democratic countries worked to determine the sources of funding after the effectiveness of political money was revealed through those with financial influence and their control over political life or through external interventions. Legislation was the means, the most prominent one to address this political phenomenon and mitigate its impact by imposing deterrent penalties and determining the financial sources of political parties.

At the same time, these countries worked on financial support for political life, and this matter opened the door to other problems for which legislations put various solutions. Therefore, the legislations restricted spending of public money on political activities, for the purpose of building a correct political system through the establishment of research centers and training the political cadres, and other things that have a great impact in directing political life. When the political finance achieves its goals in building a sound political life and lead to just governments, the money that is spent to achieve this goal will become worthless. But if political finance becomes a new means of enrichment and increase political corruption, and consolidating the influence and control of influential parties, it will be another tool for complicating the political reality and draining and wasting public money.

There is no doubt that the issuance of Political Parties Law No. 36 of 2015 regulating the work and establishment of political parties represents an important stage and a step in the right direction to establish the foundations and pillars of democracy, which is an advanced stage towards moving to applying the international standards in this field. Political finance, in term of its sources and methods of spending is one of the most important pillars through which the principle of credibility is achieved, which is based on transparency and integrity in the electoral process, in order to achieve the principle of equal opportunities and justice between political parties and candidates.

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