



Received: 12-11-2022

Accepted: 22-12-2022

International Journal of Advanced Multidisciplinary Research and Studies

ISSN: 2583-049X

Incitement to the crime of terrorism and call for reducing it by Sharia and law

¹Dr. Farooq Abbas Nooraldeen, ²Saman Ali Ehsan, ³Dr. Kamal Ibrahim Saeed

^{1, 2, 3}Northern Technical University Kirkuk Technical Institute, Iraq

Corresponding Author: **Dr. Farooq Abbas Nooraldeen**

Abstract

Laboratory Incitement to terrorism is a crime that is prohibited by Sharia and law, and it is a dangerous phenomenon in itself, so there must be a deterrent that deters this phenomenon, and crimes have varied in our time, which led to there being a deterrent and a limit to this phenomenon, and through our study of the subject we found that we work in order to find formulas And various deterrent tools prevent society from having people who commit terrorist crimes without considering the seriousness of this crime, and on this basis, we found that it is necessary for us, as researchers, to do a study in Islamic law and clear the law of all allegations that it falsely accused of inciting terrorism,

and the study was under the title (Incitement to terrorist crime and the call to reduce it legally and legally) and through it an explanation of the nature of incitement to terrorist crime in Sharia and law and the historical origins of incitement to terrorist crime.

In ancient and modern times, and then mentioning the legal and legitimate nature of incitement to terrorist crime in Islamic jurisprudence and in positive law, and then distinguishing incitement from other forms of criminal contribution to terrorist crime, with a conclusion and a set of research results and recommendations with an index of sources and references.

Keywords: Terrorism, Incitement, Jurisprudence

Incitement to terrorism is a crime that is prohibited by Sharia and law, and it is a dangerous phenomenon in itself, so there must be a deterrent that deters this phenomenon, and crimes have varied in our time, which led to there being a deterrent and a limit to this phenomenon, and through our study of the subject we found that we work in order to find formulas And various deterrent tools prevent society from having people who carry out terrorist crimes without considering the seriousness of this crime, and on this basis We found that we, as researchers, must do a study in Islamic law and clear the law of all allegations that it falsely accused of inciting terrorism. Historical origins of incitement to terrorist crime.

In ancient and modern times, and then mentioning the legal and legitimate nature of incitement to terrorist crime in Islamic jurisprudence and in positive law, and then distinguishing incitement from other forms of criminal contribution to terrorist crime, with a conclusion and a set of results and recommendations of the research with an index of sources and references.

Introduction

Terrorism is a crime that has become practiced against peoples and a disgrace in society. It is shameful that Islamic societies are described as terrorists. Indeed, the West has begun to describe Muslims as terrorists. Islam is the one who fights the terrorist concept in all its meanings, and for that, we have seen many researches denouncing the concept that is contrary to terrorism that they call upon Muslims. And the terrorists, especially our Iraqi society, which suffers from terrorism, and martyrs and victims fell as a result of it. To study this topic consists of contents.

The study Problem

Societies with all their classes view the concept of terrorism as stemming from Islamic thought, in general, and from its sources in particular, and we show through this study that incitement, mere incitement, is a crime by itself in Sharia law, and that it is delusional to say that terrorism emanates from Sharia.

The importance of studying

The importance of the research lies in the statement of what is the incitement to terrorism, and it shows that terrorism is a crime, but that incitement to it is considered a crime in itself, and through this study it becomes clear through this study the origins of the terrorist crime, and the history of the incitement to the terrorist crime, and the importance of research is shown

through the punishment and comparison between its Sharia and law.

Objectives of the study

1. Statement of the innocence of Islamic law from terrorism and incitement to it.
2. It is clear through this research to the historical rooting of the terrorist crime.
3. Through the research, it was shown how to criminalize incitement to terrorism in Sharia and compare it with the law.
4. Through this research, we show the legal nature of the criminalization of incitement.
5. Moreover, Nen through him the legal nature of the criminalization of incitement.

What is incitement to terrorist crime?

Because of the developments that the region is going through on the political and economic levels, we note that extremist ideology, which resulted in the commission of terrorist crimes that exceeded the limits of human thought in its ugliness, was not confined within the borders of a country itself, but rather extended to include wide geographical areas, and modern technical means such as the Internet and communication sites have greatly helped Social media in particular, such as Twitter and Facebook, has contributed to the spread of these extremist ideas, which have turned from mere ideas into a tangible reality, representing terrorist crimes in their worst forms. The social networking site (Twitter) and other websites have helped, directly or indirectly, to spread incitement to commit such crimes. Crossing the spatial and temporal boundaries of the crime, as the number of sympathizers or those who incite the commission of terrorist crimes reached forty thousand users, and this indicates the seriousness of modern technical means in washing the minds of young people and spreading terrorism. The question that arises here; Is it possible to apply the provisions of the Penal Code with regard to incitement to terrorist crimes using modern technology? Especially since the Jordanian Penal Code of 1960 punishes incitement as a crime independent of the crime committed (Article 80/1/b), meaning that if the crime was not committed based on the incitement, the instigator remains criminally responsible for the crime of incitement, unlike the Iraqi Penal Code No. 111 For the amended year of 1969, which punishes incitement to commit a crime if it occurs based on this incitement (Article 48/1) Their conviction that its goal is the perfect solution to reach their goal, no matter how different this goal is or the motive for committing it. This research comes to shed light on incitement to commit terrorist crimes using modern technology, and a presentation of the problems facing the legislator in this type of crime and trying to find ways to combat it and come up with recommendations that lead to Improving the level of national and international control over the Internet, which in turn will be reflected in improving and increasing stability and security in countries affected by electronic terrorism.

What is incitement to crime in Islamic law?

In view of the different aspects in which the suggestion of a certain crime can occur and its impact on the psyche of the inspired, it was necessary to distinguish between mere criminal thoughts that occur to a person in the presence of

another human being, and which are not liable to pose that danger to society, as if they were a positive action aimed at creating The criminal idea of those who did not have it, and then forced him in various ways to implement it. Expressing criminal thoughts is one thing, and creating the criminal idea is something else that is more dangerous. This last situation is what the legislator wanted to criminalize when he stipulated punishment for incitement¹.

And also in the Almighty's saying: "O Prophet, incite the believers to fight"² and what is meant by it is to motivate, motivate, and repel in any way and on any face.

There are also some terms close to the meaning of incitement, but they are not considered incitement in the linguistic sense, which lies in creating the idea of crime in an empty-minded person. Among these terms close to the meaning of incitement are as follows³.

1. Da'wah: It is the encouragement and encouragement to commit an act.
2. Allusion: is to point to something without a statement.
3. Appreciation: Anything that he sees as acceptable is preferred.
4. Advice: advise him, that is, guide him and exhort him
5. Encouragement: Encourage him to do it, make him do it.
6. Endeavor: to work on something.

The position of Islamic law on the definition of incitement: Islamic law jurists dealt with the issue of incitement to crime when they talked about participation in crime, and divided it into two types: the first type is direct participation, and the second type is participation by causing, and the basis for this distinction is that the type is the material element of the crime, while the type The second is the one who causes the first, who proceeds to implement the crime by his agreement, incitement, or providing assistance), far from the implementation of the material element of the crime, as they considered incitement as a form of participation in causing, which is agreement, incitement, and aid⁴

Some Islamic jurisprudence defined incitement as influencing others and pushing them towards committing a crime, whether it was a promise or temptation to do so, from everything that is considered evil and falls under this heading of sin. Imam Muslim singled out a chapter in his Sahih on incitement Killing the Kharijites⁵.

The Islamic Sharia differentiated between the punishment of the direct partner and the causative partner, because the general rule in Islamic Sharia is that hudud crimes and retribution are applied to the original perpetrator⁶ while the instigator is punished with the punishment that is not assessed by Sharia, which is the punishment and the wisdom

¹ Mustafa Al-Awji, Criminal Responsibility, Part Two, p. 101.

² Surah Al-Anfal verse No. 51.

³ Gibran Masoud, Lexicon of Al-Raed, first edition, Beirut, House of Knowledge for Millions, 1858, p. 910.

⁴ Abdel Qader Odeh, Islamic Criminal Legislation Compared to Positive Law, Fifth Edition, Beirut, Al-Risala Foundation, 1859, p. 311.

⁵ Ghaith Mahmoud Al-Fakhri, Criminal Participation in Islamic Jurisprudence, first edition, Benghazi, Libya, Qar Yunis University, 1883, p. 118.

⁶ Imam Muslim al-Nisaburi, Sahih Muslim with an explanation of al-Nawawi, Volume Four, Part Seven, Book of Zakat, Chapter on Incitement to Kill Kharijites, p. 118.

in applying the penalties assessed to the perpetrator in that these The penalties are extremely severe and harsh, as they are imposed only on those who directly committed the crime, while we find the instigator does not carry out the crime himself, which is considered in Islam, and since the punishments are repelled by suspicions, the punishment cannot be imposed on the instigator, and his punishment is limited to punishment only⁷.

What is incitement to terrorist crime in law?

It is the creation of the determination and determination to commit and carry out the crime, and another meaning is the creation of the idea of crime in the instigator with the intention of pushing him to commit the crime.

In the beginning, the old man-made legislation did not define a specific definition of incitement, and therefore it is intended to be what is usually understood from this term. Certain has a definite effect⁹ by looking at the Arab criminal legislation regarding incitement⁸.

We note that some of these legislations have expanded in defining the concept of incitement and therefore used different terms that do not match the linguistic meaning of the word incitement. For example, the Sudanese legislation considered incitement images that do not fall within the meaning of incitement, such as association with one or more persons and assistance⁹.

Whereas, incitement was defined by Article 25 of the Sudanese Criminal Code issued in 1991 as the temptation of a person to others to commit a crime or ordering a person charged under his authority to commit it.

Incitement, which is punishable by Sudanese law, is by enticing a person to commit a crime or ordering him to commit it, and it may be with assistance, encouragement, or payment, and it may be in the form of a gift, promise, intimidation, deceit, or intrigue, and in general everything that irritates the feeling of the perpetrator and pushes him to commit the crime and incitement intended by Sudanese law By temptation or order is what precedes the act and does not explain the failure of the person even if he is legally obligated to deny the act or object to it as inciting to commit it if he does not deny it or contain it. The reference or allusion must be related to the actual subject of the incitement¹⁰.

In modern criminal legislation, it focused on defining the concept of incitement. Among these definitions, incitement is defined as pushing others to commit a crime, and it is equivalent to that the incitement creates the idea of crime in others, which did not exist before, or the incitement is represented in encouraging others to commit a crime. Achieving it¹¹. As for others, the idea of crime, which existed in him before the incitement, defined incitement as

creating the idea of crime in a person and then consolidating it in order for it to transform, or as creating the idea of crime and insisting on it to commit it in it with the intention of committing it in a mind that was originally empty, or it is the act of suggestion or Hesitating to others with a criminal act in general, or pushing him to do a dangerous act¹².

In the end, the crime of incitement to commit a crime can be defined in general as follows: it is an instruction that includes creating the determination to commit a crime in another person with the intention of pushing him to carry it out, or merely trying to create the determination in him. Anyone who encourages, pushes, intimidates or attempts to encourage, pushes or intimidates a person, by any means, to commit a crime is considered an instigator.

Historical origins of incitement to terrorist crime

It is not possible to understand the current criminal legislation that criminalizes terrorism without referring to its historical origins in order to shed light on the manner in which these legislations were established and trace their development, with the aim of knowing what impact the social and political development had on these legislations, and the amount of modifications that occurred during the successive eras until they arrived. Studying how societies dealt with the problem of terrorism in their current, ancient state¹³ and how the legislation in that era dealt with combating this crime, by reviewing the most important features of the legislative policy of those societies in confronting the crime of terrorism, as it is noted that the crime of terrorism ranged in ages The ancient between infringement of national feeling, and infringement of the greatness of rulers and emperors, and we will present terrorism in ancient times by showing that in the ancient Pharaonic civilization, then terrorism in the Greek civilization, the Roman era, and even the modern era, as follows:

Historical origins of incitement to terrorist crime in ancient times

It is noted that terrorism in the era of primitive societies was considered a violation in Pharaonic Egypt¹⁴. Violation of the national feeling must be punished with heavy penalties, whose legislation dealt with many activities that were considered terrorist crimes, and among the systems that the ancients knew¹⁵.

The gods criminalized the crimes of high treason, and fleeing from the Egyptian soldier, distinguishing between public crimes and private crimes, and the kings used to look at those who stirred up anxiety and strife with a look full of cruelty and mercilessness, as the perpetrators of it in¹⁶

⁷ Abdul Qadir Odeh, Islamic Criminal Legislation, Part One, previous reference, p. 351 et seq.

⁸ Ali Rashid, Principles of Criminal Law, Dar Al-Nahda Al-Arabiya, Cairo, 1974, p. 330.

⁹ Muhammad Muhyiddin Awad, The Sudanese Penal Code, commenting on the globalization, 1810, p. 113.

¹⁰ Appeal of Special Courts, The Sudanese Encyclopedia of Judgments and Judicial Precedents, No. 1991, The Government of Sudan v. Ali Abu Anja Al-Mutt and others, MT / A / SM / 181 / X81.

¹¹ Mamoun Salama, Penal Code, General Section, Dar Al-Fikr Al-Arabi, Cairo, 1979, pg. 425.

¹² Mahmoud Naguib Hosni, Explanation of the Penal Code, General Section, General Theory of Crime, 13th Edition, Dar Al-Nahda Al-Arabiya, Cairo, 1891, p. 810.

¹³ Magdy Moheb Hafez: Criminal Protection of State Secrets, Egyptian General Book Organization, without a printing year, p. 17.

¹⁴ Abd al-Rahim Sidqi: Terrorism, Dar Shams al-Maarifa, 1995, p. 13.

¹⁵ Soldier Abd al-Malik: The Criminal Encyclopedia, Cairo, Al-Itemad Press, first edition, Part Five, 1942, pg. 483.

¹⁶ Raouf Obeid: The Criminal Justice of the Pharaohs, research published in the ancient judicial magazine, Volume One, Issue 3, November 1958, p. 55.

primitive times of the Pharaohs were punished with the death penalty to his knowledge of the existence of a conspiracy against the system of government He and his family were not informed of the crucifixion, and they were forming exceptional courts¹⁷.

Those who disclose state secrets shall be punished by having their tongue cut off in cases of crimes affecting the security of the king or the kingdom, especially during the reign of Ramses III, when the courts that considered these crimes were composed of twelve judges, some of whom were chosen from the army. The Public Prosecution was usually named after the judges, and this representative was the one who appointed the judges in the name of the king and then appointed himself after them¹⁸.

He was authorized by the king to exercise that power of terrorism in Greek civilization. Stoning was the usual punishment for all state crimes, and they were considered such as state crimes, sacrilegiousness, treason, treachery, revolution, and other crimes that threaten public interests. The crime of "treason" is considered one of the most serious political crimes in Greece. The cities of ancient Greece, and the traitor was punished with death, confiscation of his money, and keeping his corpse outside the borders of the state, and these penalties - except for execution - were implemented even if his crime was discovered after his death, and that view of this group of crimes did not change despite the intervention to reduce penalties, especially with regard to crimes of treason and crimes that threaten national interests, and the writings of "Solon" in that era had a clear impact on mitigating the harshness of those penalties, so they were mostly limited to exile, but after the end of Solon's era, cruelty returned to an essential feature in ancient Greek legislation, and everyone who cared about thinking became in the heart of The regime is an enemy of all "Athens", and it must be executed, its money confiscated, and its children exiled. In the Roman era, it was referred to as "crimes of violating greatness", and its basic concept revolved around protecting the Romans from the enemies of the Republic and the enemies of the people. With the security of the state, conspiring against it, deceiving the enemy against the homeland, or cooperating with him, or helping him, and striving for tyranny¹⁹.

One of the characteristics of the crimes of "insulting greatness" among the Romans was that it deviated from the general rules and reasonable logical rulings approved by penal legislation in other crimes. The judge has absolute freedom to assess the facts that constitute a crime of offenses against greatness, and criminalization was not limited to physical acts, but rather It includes communications, sayings and ideas that a person has. The law known as "Julia's Law" also included crimes of aggression against Rome, or against the king, and other major sins, and punished them with death or deprivation,

and then execution became burning or being thrown into the mouths of predatory beasts²⁰.

As for the money of the convict, they were all confiscated, and the ruling dealt with his children with him, and decided that they were not eligible to accept an inheritance, a will, or a gift. It focused, for quite some time, on confronting crimes related to the external security of the state²¹.

That is, against the "traitors." The traditional Roman legislator did not see in the political crime anything but a crime directed against the safety of the homeland from outside. At a later time, another legislation concerned with the internal security of the state appeared, and its most prominent form was manifested through the crime of "provoking riots." The crimes affecting the internal security of the state included two types of crimes. Illegal exploitation of public power²².

It seems that the basis of Roman legislation's interest in crimes of internal state security is justified in their beliefs, as they believed that the "god Janus", which represents war from their point of view, has two sides: the first face looks at the borders of the state in defiance of the external enemy, and the second face looks at the interior in defiance of the enemy The citizen, and this means that the Romans were afraid of external enemies as they feared internal enemies, and during the royal period of the Roman era, crimes were divided into a list of serious crimes such as plotting against the safety of the state, stirring the enemy against the homeland, assisting this enemy in its aggressive projects, extending a helping hand to them and fighting religion And issues that endanger the security of the state, such as plotting against the state, aspiring to usurp power, using violence against a ruler, and attempting to infringe on the life or freedom of Roman citizens, and the idea of the external enemy and the internal citizen enemy in this way among the Romans can be considered the first indication of the distinction between internal security The group and its external security have terrorism during the era of feudalism after the collapse of the structure of the Roman state²³, and its dismemberment came as a result of that the era of feudalism, when the concept of crimes of "violating greatness" is no longer in harmony With the new social structure, which became based on the duties of loyalty, aid, and mutual protection between governors. In England, the king controlled everything²⁴. The chief of the feudal lords, and in this capacity he used these charges against his enemies. If a priest is accused of treason, he loses his pension, but if a feudal lord is accused, all his property is transferred to the king instead of being transferred to the feudal lord who follows him. Therefore, the rulers of the king (judges) were biased in the interest of their master, who is the king, so they began to expand the interpretation of crimes affecting the security of the state (Treason crimes) until it became one of the greatest and most dangerous crimes, until deer hunting in the king's forests was considered a crime of treason against the British crown, and

¹⁷ Jundi Abd al-Malik, reference previously mentioned, pg. 483.

¹⁸ Fathi Al-Marsafawi: History of Egyptian Law, Cairo, Dar Al-Fikr Al-Arabi, 1987, p. 171.

¹⁹ Muhammad Al-Fadil: Crimes Against the State, Part One, Damascus University Press, third edition, 1965, pg. 36 et seq.

²⁰ Muhammad Mahmoud Saeed: Terrorism Crimes: Their Objective Rulings and Procedures for Prosecuting Them, Dar Al-Fikr Al-Arabi, first edition, 1995, p. 10.

²¹ Al-Fadil, reference previously mentioned, p. 37.

²² Sidqi, reference previously mentioned, p. 62 et seq.

²³ Saad Al-Azami, Encyclopedia of Crimes Against Internal State Security, Baghdad, first edition, 2000, p. 12.

²⁴ Al-Fadil, reference previously mentioned, p. 38.

as a result, the feudal lords succeeded, after effort and struggle with the king, in issuing a law in 1351 through which the actions that could be considered treason were determined. It is the law of "Edward III", which is an important event in which the legal guarantees they contained were identified in seven types^{25, 26}.

The King, or the Treasurer, or one of the King's justices, or the county judges, or the governors of the High Court, or other judges empowered to adjudicate and adjudicate. Assaulting the chastity of the king's wife, or his unmarried eldest daughter, and the wife of the heir to the throne.

Although there are differences in punishment in some acts, as some of them reach the death penalty in addition to other varying penalties, such as flaying the skin of the offender, burning, confiscation, and demolishing and destroying the offender's house, these penalties were also imposed on those who did not inform the authorities of the existence of a conspiracy. On the other hand, the "informer" or the "guider" enjoyed rewards even if he was involved in this conspiracy as long as his reporting of the political conspiracy led to its thwarting. Rather, the son had the right to report the political crime that his father was committing to, and no one had the right to intercede. In punishment for the political criminal²⁷.

In the era of the French Revolution, the principles of the revolution made the state a moral personality independent of the ruling persons, and the meaning of protection in the penal texts that punish offenses against the state is the state itself, and protection is no longer intended for the persons of the rulers. Thus, the concept of "crimes against the security of the state" replaced the crimes of "violating greatness." One of the other things brought about by the jurisprudence of the revolution was that it distinguished between crimes against the external security of the state and crimes against the internal security of the state. Except for state apparatuses such as the form of their governments and institutions that carry out the burdens of power. As a result of political developments, they aim to change the government, not to prejudice the entity of the state, which took place in Europe, which changed many systems of government. assassinations, bombings, and the emergence of a class of international political criminals²⁸, so we find that civilized countries agreed among themselves to suppress such crimes and limit their spread on an international scale, so laws were enacted to punish chaotic movements and communist groups and to control dynamite factories²⁹ and bombs, and held many Treaties in this regard, however, it is noted that the term terrorism was not used to denote a political and legal meaning until the end of the eighteenth century. 1947 A.D.³⁰ and after the execution of the death sentence against Robespierre as a terrorist, he used terror and terror as a

²⁵ Al-Adhami, reference previously mentioned, p. 14.

²⁶ Al-Adhami, reference previously mentioned, pg. 14 et seq.

²⁷ Sidqi, reference previously mentioned, p. 67.

²⁸ Qutb: Massacres and Crimes of the Inquisition, reference previously mentioned, pg. 70.

²⁹ Fawaz Al-Baqour: Emerging Espionage in Jordanian Legislation, A Comparative Study, First Edition, Amman, 1993, pg. 7.

³⁰ Mustafa Mesbah Debara: Terrorism, its concept and most important crimes in international criminal law, Garyounis University publications, Benghazi, Libya, 1990, p. 31.

methodology for his rule after the French Revolution, where he knew this and some believe that the period of the rule of terror in France during the era of Robespierre is a realistic picture of state terrorism in the modern era. Or whatever we might call it."

Terror of the powerful³¹. It is also noted that terrorism, while some call it "state dictatorship" in its well-known concept, did not appear except in the form of "state terrorism", which caused terrorism of another kind, namely "terrorism of individuals" or "political groups", which began to transform from an act monopolized by The ruling authorities refer to a common action practiced by individuals, but this does not mean that individual terrorism and political groups were not present throughout the ages, but what is meant is that this type of terrorism did not appear in the political field except with the emergence of the nation-state and the accompanying idea of absolute sovereignty. Two movements appeared in that period, which were paved later, and the intense centralization³².

These two movements are the nihilistic movement and the chaotic movement of organized terrorism. For the first movement, it established a terrorist theory based on intimidating men of thought, philosophy and literature, and among the most prominent organizations that appeared in application³³.

Historical origins of incitement to terrorist crime in modern times

After the end of World War II, terrorism appeared in a way that differed from the previous images, as it began to not recognize borders by taking advantage of the tremendous scientific development in various fields, including media and means of communication, that facilitated the task of this group in exporting this crime outside its borders, and this terrorism became transcontinental terrorism in the full sense of the word. It is noticeable from this period that extends to our time that there is a radical shift in the use of terrorism, whether in terms of its methods, forms, support, or technology bases in the September 11 attacks in the United States of America³⁴, but the matter may not be needed in many cases. To move tanks or fly planes, but small groups carry highly explosive materials, and use the most recent state-of-the-art technology to cause the largest amount of losses in order to achieve the widest area of propaganda and spread, so it is unfortunate that the terrorist may benefit from technology before the state, and it is unfortunate That the response technology does not develop until after the terrorist attack.

Political and social changes and the emergence of new regional powers. Terrorism has taken on new dimensions at the local and international levels, both in terms of its wide spread and the support of some countries for it and accusing them of supporting terrorism, or in terms of the remarkable

³¹ Nabil Ahmed Helmy, International Terrorism According to the Rules of Public International Law, Dar Al-Nahda International, Cairo, p.6.

³² Izz al-Din, reference previously mentioned, p. 91.

³³ Muhammad Mu'nis Moheb al-Din, Terrorism, Egyptian Public Security Magazine, Issue 94, Year 24 July 1981, p. 8.

³⁴ Imam Hassanein Khalil, Terrorism and the Legal Structure of Crime, PhD thesis, Cairo University, 2000, p. 23.

activity of international and regional groupings in combating it. Following the collapse of totalitarian regimes in European and American countries (Fascism and Nazism), which posed a serious threat not only on the human level, but also with regard to the basic political tendencies and the defense of the state, as some very dangerous terrorist groups with contradictory tendencies appeared in the same country, so right-wing terrorism appeared in Italy at the hands of the (New Order) group in 1950, And the National Vanguard Group 1959, and this was formulated during the period from 1945-1968 and began strongly with the Piazza Fontana incident, just as the terrorism of 1968 appeared³⁵, and witnessed a remarkable defeat in the beginning of 1980 the left in Italy at the hands of the (Red Brigades) organization whose goal was limited In carrying out terrorist acts against the judicial, administrative and political system to achieve revolutionary goals, and one of the most important actions of this organization was the kidnapping and killing of the Italian Prime Minister (Al Domoro) in 1919. 78³⁶.

There is no doubt that terrorism has become, in our time, the most terrifying crime, especially since this phenomenon does not recognize borders and is not restricted to a specific nationality, gender, age or affiliation. Without any rules, laws, or restrictions that regulate it, not even a minimum level of morality, and this is what prompted some jurists to say that terrorism has become valid, as terrorism may be used to stir up events, some for the use of an alternative to international conventional wars, and to raise tension and the state of readiness and anticipation of the hostile state³⁷.

The aim is to achieve security and due precaution in this aspect, and this prompts it to allocate part of its budget, funds, and resources to protect itself, and terrorism does not cost states the exorbitant costs of conventional war, and at the same time it greatly affects the morale of the citizens of the population of the hostile state because of the terror, fear, and expectation that accompanies it. Terrorist operations in any location or place in the country. On the other hand, the terrorist phenomenon in general in this era is characterized by the use of tremendous scientific progress in the media on the part of the terrorist groups, whose operations are transmitted by the media via satellites and television screens for all to see. Saying that terrorism is not now and, in all cases, directed at one specific country, but rather at the entire international system. Terrorism in its modern meaning is based on creating a state of terror and fear among others. Although international law in the current era has failed so far to find an objective definition of the concept of terrorism as a result of the conflicting interests of influential countries and double standards, and this is due to the fact that the issue of terrorism is always linked to foreign policy, there is an international consensus on some acts that constitute terrorism and it was agreed on Condemning and combating terrorism because it threatens international peace and

³⁵ Muhammad Abu al-Fath Ghannam, *Terrorism and Combating Legislation in Democratic Countries*, 1991 edition, pg. 150 et seq.

³⁶ Amal Singh, the most famous terrorist organization in the world, Dar Al-Rasheed, Al-Iman Foundation, Beirut, first edition, 1966.

³⁷ Khader Al-Hawari, *The Spread of International Terrorism*, International Policy Journal, Issue 77, July 1984, p. 141.

security. Among the acts and deeds that have become common forms of terrorism are hijackings, air piracy, hostage-taking, assassinations of diplomats and internationally protected persons, bombing buildings, placing bombs on means of transportation, assassinating kings, presidents, prime ministers, ministers and government officials, as well as attacks on civilians. Disarmament, placing explosives in the mail and means of communication. Indeed, it has come to the point that any place no longer has its own character or sanctity for terrorist groups, even if a wedding ceremony is held in a hotel, as happened in Amman.

However, it is very difficult to restrict the terrorist act to this list alone, which will not be inclusive of all these images and actions, especially since the rapid technological development of the world may produce other acts that are not included in that list, but that meet the generally accepted criteria by virtue of what these new innovative acts produce. Horror and fear in the minds of people have the same effect as actions recognized as terrorist and that require combat.

The legal and legitimate nature of incitement to terrorist crime

The legal nature of incitement to terrorist crime in Islamic jurisprudence

Incitement means the temptation to commit the crime, and it is assumed that the temptation is what prompted the person to commit his crime, and therefore, if he had a form of temptation, he would commit the crime, even if there were no objection or temptation. If it is permissible, according to the rules of Islamic law, that the punishment for incitement is carried out independently, and coercion by killing affects the choice of the compelled person who is compelled to commit the crime or to accept the risks of coercion because of his failure to comply with the will of the compelled³⁸. Participation by contribution means the case in which each partner carries out one of the elements of the material crime or part of it, or in other words, it is in which the work of each partner is a stage of the execution of the crime and has two forms of participation by fulfilment and participation by agreement³⁹.

The imams of the Muslims agree that the commander is not considered a direct perpetrator unless he has authority over the commanded and the commanded is indiscriminate so that he becomes like a tool in his hand, otherwise the commander is considered a mere ordinary instigator who is subject to nothing but a disciplinary punishment.

But if the commanded is not young, insane, or insane, and the commander has no authority over him, then the commander is only an ordinary agitated person whose incitement may or may not produce an effect⁴⁰.

It is worth mentioning here that the Islamic law agrees with manufactured systems in not punishing the two stages of thinking and preparing for the crime and punishment is limited to the implementation stage⁴¹.

³⁸ Abdul Qadir Odeh, *Islamic Criminal Legislation*, previous reference, Part 1, pg. 318.

³⁹ Ghaith Mahmoud Al-Fakhri, *Subscribing to Islamic Jurisprudence*, Garyounis University Publications, Benghazi, 1993 AD, 1st Edition, p. 122.

⁴⁰ Abdul Qadir Odeh, the previous one, p. 319.

⁴¹ Ahmed Abdullah bin Qudamah, *Al-Mughni*, vol. 7, pg. 646.

With regard to the legal nature of the various forms of incitement:

We find that Islamic jurisprudence gives images of incitement represented in cases that fall under its concept, namely:

Command, coercion, testimony, and issuance of judgments unjustly. These images are distinguished with the description of the instigator as an accomplice in the crime that occurred based on his instigation⁴².

Coercion is in the general rule for each of the Maliki, Hanbali, Hanafi and Dhahiri states

Retribution must be imposed on the perpetrator and the cause of coercion to kill or harm in connection with the commission of crimes of self-assault and coercion.

Incitement to perjury

So, the most correct opinion in jurisprudence, which is the opinion of the majority of jurists among the Shafi' is, Hanbal is and others, went to the obligation of retribution for those who incited or testified to something other than the truth, so the witness was sentenced by the judge based on that testimony to a penalty, then he retracted from that testimony⁴³.

The legal nature of incitement to terrorist crime in positive law

jurisprudence and the reason for this difference in positive jurisprudence, that incitement activity is not characterized by a fixed nature, but rather it is a variable activity that varies between strength and weakness, sometimes leading to the creation of the idea of crime, and sometimes it may stop at encouraging an already existing criminal idea. Its owner and therefore an absolute ruling cannot be established for him, which is what made the first group of jurisprudence make exceptions to its doctrine in which the provocative activity is considered to be of a pure nature in the crime and punishes the instigator as a specific perpetrator, while the team found that the report is not always at one level of seriousness that adds Despite his original nature of activity, he was sometimes considered an accomplice to the crime, not the perpetrator of it⁴⁴.

Here we review the application of positive jurisprudence to these theories that relate to the legal nature of forms of incitement according to the concept of positive jurisprudence as follows:

1. Attitude theory: This theory believes that the partner is the one whose will tend to return participation in the action, that is, he has the intention of the partner, while the original actor is the one whose will tends to acquire the attribute of the actor, and that is, he has the intention of the actor⁴⁵.
2. Interest and goal theory: This is not based on a trend that the perpetrator sees in distinguishing between the

original and accessory contributors, and depends on the basis of interest in committing the crime.

3. The theory of the seriousness of the criminal role: And adopted by the Italian Penal Code, which is based on the seriousness of the criminal role, which is not measured on the basis of the physical acts of the offender only, but according to the seriousness of his criminal will as well.
4. master verb theory: And this is based on the fact that he is considered a perpetrator of the crime among the many persons who participated in it, who among them was the master in control of the act that is determined in the personality of the personal and material elements of the crime. He stops it or by letting it proceed to its goal, as he acts in a way that suggests that he is the absolute master in the criminal situation.

Distinguish incitement from other forms of criminal participation in the terrorist crime

It can be said that incitement is distinguished from other forms of criminal participation in the terrorist crime as follows:

1. It has a dual legal nature, which makes it distinct from all other forms of criminal participation in the terrorist crime, whether contributing directly or contributing by causation: Incitement may be a means of participation in causation, and it may be a means of participation in directness, if the instigator appears at the scene of a terrorist crime, which does not have such a dual legal nature in the description.
2. The incitement differs from the other forms of contributing to the cause, which are agreement and aid. Incitement includes everything that would influence others and push them towards committing the crime, and therefore the instigator either creates the fear of the crime in others or encourages others to commit the crime except based on the induction that has arisen in his head but he He did not take the decision to commit the crime except on the basis of incitement to it under the influence of incitement⁴⁶.
3. Incitement as a means of participation in causing a crime differs from the means of direct participation in the crime, which is represented in the two forms of participation by fullness and participation by agreement. Incitement is considered a means that influences others and pushes them towards committing the crime.
4. The importance of discrimination is focused on incitement as a means of participation in causing and direct participation in that the penalties assessed by Shari'a are applied only to the direct and not the one who caused it⁴⁷.

Distinguishing incitement from other forms of criminal contribution in positive jurisprudence:

1. Positive jurisprudence distinguishes between incitement and other forms of consequential participation in the crime, as they consider incitement to spread the idea of

⁴² Ghaith Mahmoud Al-Fakhri, Criminal Participation in Islamic Jurisprudence, p. 220.

⁴³ Ghaith Mahmoud Al-Fakhri, Subscribing to Jurisprudence, previous reference, p. 245.

⁴⁴ Ahmed Ali Al-Majdoub, incitement to crime, previous reference, p. 48.

⁴⁵ Ahmed Fathi Sorour, Fundamentals of Penal Code, General Section, General Theory of Crime, p. 518.

⁴⁶ Abdul Qadir Odeh, Islamic Criminal Legislation, previous reference, Part 1, pg. 318.

⁴⁷ Muhammad Abu Zahra, Crime and Punishment in Islamic Jurisprudence, previous reference, p. 414.

- crime in the mind of the perpetrator or encourage him to commit it⁴⁸.
2. Incitement as a form of collateral participation in the crime differs from the original perpetrator or contributor to the crime, who plays the main role in executing the material element of the crime⁴⁹.
 3. The importance of distinguishing between incitement as a secondary means of contribution and considering it as an original means of contribution or a form of private contribution is that:
 - a. Some legislations decide a reduced penalty for the accomplice of the original perpetrator, and the reason for this difference is the difference in the legal nature of the role of the perpetrator, given that his role is main in the crime, and the role of the accomplice as a secondary and ancillary role, not a major one.
 - b. The importance of distinguishing between the perpetrator and the accomplice appears in the existence of crimes for which the law stipulates the characteristic of a specific page in the perpetrator, so that only a person with a specific capacity commits them, and therefore this capacity becomes a pillar of those crimes.

Conclusion

The study focused on the issue of incitement to crime against the terrorist crime, which involves punishing the most important crime affecting the life of mankind in the current era, and holding accountable the most dangerous one that involves punishing the most important crime affecting the life of mankind in the current era, and holding accountable the most dangerous group of misguided groups in enjoyment from the transgressors and vandals of Muslims on Equally, and the seriousness of the instigators of the commission of the crime is represented by the mastermind of the terrorist groups and those responsible for their formation, which requires severe punishment in order to be a deterrent to others from taking the initiative to establish and establish these terrorist organizations.

In order to reach this result, it was necessary to address the statement of incitement and its relationship to contributing to the terrorist crime and its historical origins in the first chapter of this study in order to understand the meaning of incitement to terrorist crimes in Islamic jurisprudence and positive law, and then to identify terrorism through different ages, starting from ancient times and passing through the ages. Middle to modern times.

Results

Through the study, the following results emerged:

1. The Islamic Sharia has fought terrorism and incitement to it for more than one thousand four hundred years, so it has legislated deterrent penalties for the perpetrator, which it applies to achieve security and stability for individuals and society at the same time.
2. The concept of the crime of terrorism in Islamic law is broader than its concept in positivist jurisprudence, and that all forms of terrorism fall under the crime of moharebeh, which is often associated with the crime of transgression.

3. Forms of incitement to terrorist crime according to Islamic jurisprudence are clearer than them according to positive law, as it is considered incitement in Islamic jurisprudence everything that influences others and pushes them towards committing a crime.

Recommendations

Through the study in the study of the recommendations:

1. Emphasizing the importance of defining incitement to terrorism and its demonstration without specifying its countless means that are in permanent and continuous development, which is what the Arab Convention for Combating Terrorism defines, which stipulates the exclusion of acts of armed struggle from terrorist acts.
2. The need to intensify the punishment for the moral perpetrator of the crime, as the perpetrator of the crime is yet a tool or means in his hand, which increases the degree of his danger to be used by a madman or a person who has an impediment to liability.
3. The need to educate the younger generation through education and education through all awareness platforms.
4. The necessity of urging the importance of repentance that removes all major sins and the most important forms of incitement to terrorism, and to energize the terrorists' resolve to carry out their crimes.

References

1. The Holy Quran.
2. Mustafa Al-Awji. Criminal Responsibility, Part Two.
3. Gibran Masoud. Lexicon of Al-Raed, first edition, Beirut, House of Knowledge for Millions, 1858.
4. Abdul Qadir Odeh. Islamic Criminal Legislation Compared to Positive Law, Fifth Edition, Beirut, Al-Risala Foundation, 1859.
5. Ghaith Mahmoud Al-Fakhri. Criminal Participation in Islamic Jurisprudence, first edition, Benghazi, Libya, Qar Yunis University, 1883.
6. Ali Rashid. Principles of Criminal Law, Dar Al-Nahda Al-Arabiya, Cairo, 1974.
7. Muhammed Muhyiddin Awad. The Sudanese Penal Code commenting on the world, 1810.
8. Mamoun Salama. Penal Code, General Section, Dar Al-Fikr Al-Arabi, Cairo, 1979.
9. Mahmoud Naguib Hosni. Explanation of the Penal Code, the general section, the general theory of crime, 13th edition, Dar Al-Nahda Al-Arabiya, Cairo, 1891.
10. Magdy Moheb Hafez. Criminal Protection of State Secrets, Egyptian General Book Organization, without a year of printing.
11. Abd al-Rahim Sidqi. Terrorism, Dar Shams al-Maarifa, 1995.
12. Soldier Abd al-Malik. The Criminal Encyclopedia, Cairo, Al-Etemad Press, first edition, Part Five, 1942.
13. Raouf Ebeid. The Criminal Justice of the Pharaohs, research published in the ancient judicial magazine, Volume One, Issue 3, November 1958.
14. Fathi Al-Marsafawi. History of Egyptian Law, Cairo, Dar Al-Fikr Al-Arabi, 1987.
15. Muhammad Al-Fadil. Crimes Against the State, Part One, Damascus University Press, third edition, 1965.
16. Muhammad Mahmoud Saed. Terrorism Crimes: Their Objective Rulings and Procedures for Prosecuting Them, Dar Al-Fikr Al-Arabi, first edition, 1995.

⁴⁸ Suleiman Abdel Moneim, The General Theory of Penal Law, p. 651.

⁴⁹ Mahmoud Naguib Hosni, Criminal Contribution to Arab Legislation, previous reference, p. 102.

17. Mustafa Mesbah Debara. Terrorism, its concept and most important crimes in international criminal law, Garyounis University Publications, Benghazi, Libya, 1990.
18. Nabil Ahmed Helmy, International Terrorism According to the Rules of Public International Law, International Renaissance House, Cairo.
19. Muhammad Mu'nis Moheb al-Din, Terrorism, Egyptian Public Security Magazine, Issue 94, Year 24 July 1981.
20. Imam Hassanein Khalil. Terrorism and the Legal Structure of Crime, Ph.D. Thesis, Cairo University, 2000.
21. Muhammad Abu al-Fath Ghannam. Terrorism and Combating Legislation in Democratic Countries, 1991 edition.
22. Amal Singh. The Most Famous Terrorist Organization in the World, Dar Al-Rasheed, Al-Iman Foundation, Beirut, first edition, 1966.
23. Khader Al-Hawari. The Spread of International Terrorism, International Policy Journal, Issue 77, July 1984.
24. Ghaith Mahmoud Al-Fakhri. Subscribing to Islamic Jurisprudence, Garyounis University Publications, Benghazi, 1993 AD, 1st edition.