

Terrorist crime in Islam and positive law



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Submission date: 20/02/2022 Acceptance date: 08/12/2022 Publication date: 29/12/2022

Abstract:

Terrorism is a serious crime that dates back to the first societies, and its disastrous effects of terrorism have grown today in the light of what is known as globalization, where it has internal and external tensions and hardly any culture, identity, state or religion. While the Arab states in general and The Islamic states in particular are more accused of being fair to extremism and extremism, they are in fact the most affected by it, given the serious damage caused by the spread of this phenomenon, even though their religion denies this phenomenon and even deprives it and criminalizes it.

key words: *extremism, terrorism, haraba, combating terrorism.*

ملخص: الإرهاب جريمة خطيرة تعود أصولها إلى المجتمعات الأولى، كما أن آثاره –الإرهاب- الوخيمة تنامت في وقتنا الراهن في ظل ما يعرف بالعمولة، أين أضحت له تجاذبات داخلية وخارجية كما لا تكاد تسلم منها ثقافة أو هوية أو دولة أو دين. وإذا كانت الدول العربية عموما والإسلامية منها خصوصا الأكثر اتهاما باتصافها بالتطرف والغلو، إلا أنها في الحقيقة الأشد تأثرا منه نظرا لما لحق بأكثرها من أضرار جسيمة جراء تفشي هذه الظاهرة رغم أن دينهم الإسلامي الحنيف ينكر هذه الظاهرة بل ويحرمها ويجرمها.

الكلمات المفتاحية: التطرف، الإرهاب، الحراية، مكافحة الإرهاب.

Introduction:

Extremism is a dangerous social phenomenon that has its origins in former societies and civilizations. Its disastrous effects are unacceptable to the other. It does not recognize diversity. It seeks to impose opinions by force and violence, which have grown in late times and in the present time. While the Arab States in general and the Islamic States in particular are those most accused of being characterized by extremism and fanaticism, they are, in fact, particularly affected by this phenomenon in the present time, owing to the serious damage caused to most of them by the spread of this phenomenon, despite the fact that their religious religion denies it and even prohibits it and criminalizes it.

Because extremism and radicalism usually result in the imposition of opinion by force and by all possible means, which for the most part carry an infringement on the rights and freedoms of others and even the loss of their lives. For these and other reasons, Islamic criminal legislation, as well as various positive criminal laws, have established as a terrorist offence any criminal act or conduct that intimidates persons, intimidates them, harms their property and attacks their lives, punishable by the most severe penalties.

Since the terrorist crime is so serious, we will seek through this study to find out what it really is in both Islamic law and positive laws, trying to answer the problem it poses: **how did both Islamic law and positive laws address the phenomenon of terrorism?**

To answer this problem, we considered the adoption of the descriptive analytical approach to determine what terrorist crime is in both Islamic law and positive law, and to analyze the various legal and legal texts that addressed this dangerous phenomenon. To that end, we followed the following plan:

The first topic: terrorist crime in Islamic law.

Demand 1: The concept of terrorist crime in Islamic law.

Demand II: Images of terrorist crime in Islamic law.

The second topic: terrorist crime in positive law

Demand 1: The concept of terrorist crime in positive law

Demand II: Images of terrorist crime in positive law.

terrorist crime in Islamic law

Since religion is indispensable in the lives of individuals because of the validity of their religion and world, it includes a harmonious social system that regulates the relations of individuals with their Creator, on the one hand, and their relationship with each other, so it must be properly understood by those who addressed it in order to achieve the purpose for which God sent the apostles and prophets.

Therefore, the misinterpretation of its provisions and ignorance of its purposes were a major cause of the extremism of religious people, especially the youth group, and took the texts without knowledge and understanding and following the advocates of astray all factors that helped to the emergence of extremism and the spread of extremism leading to terrorist¹. Through what will come, we will try to address the provisions of terrorist crime in Islamic law.

Subheading 1: The concept of terrorist crime in Islamic law:

The term terrorism is a source of act that terrorizes, in the sense of fear, scaring, scares, and scared a true scare for saying all in its top: "... by which you may terrify the enemy of Allah and your enemy and others besides them whom you do not know [but] whom Allah knows"....²

In fact, there is a difference between islamic scholars in their definition of the term terrorism and its meaning, due to differences in vision, views, view of each other and their vision of different motives that may be used as a pretext for committing acts and behaviours described as terrorism.

One of the comprehensive definitions provided in this regard is that terrorism is: "Aggression by individuals, groups or states in a prostitute's way against a person carries with him an attack on his religion, blood, display, mind or money, including the types of intimidation, harm, threats, unlawful killing and related images of hirrabah, fear of the road and the cutting off. Any violence or threat aimed at carrying out an individual or collective criminal enterprise sows terror, terrorizes, harms or endangers their lives, freedom or security. Among its manifestations is the harm to the environment or to one of the public and even private facilities all of this is a form of corruption in the land that God Almighty has forbidden Muslims from by His saying:" But seek, through that which Allah has given you, the home of the Hereafter; and [yet], do not forget your share of the world. And do good as Allah has done good to you. And desire not corruption in the land. Indeed, Allah does not like corrupters."³

Terrorism is intended here to corrupt the land of any kind, color or form, such as bombings, scarecrowing or violence against people, encroaching on them, usurping, looting and looting their property, and attacking their material

and moral rights, and the loss of their lives is considered the highest degree and forms of terrorism. From this point of view, it is necessary to distinguish between the legitimate terrorism that is due to the Muslim, which is jihad for the sake of God, to uphold the word of truth in the true words of Allah: "And prepare against them whatever you are able of power and of steeds of war by which you may terrify the enemy of Allah and your enemy and others besides them whom you do not know [but] whom Allah knows. And whatever you spend in the cause of Allah will be fully repaid to you, and you will not be wronged"⁴, Between the reprehensible terrorism of sowing terror and violating rights, freedoms and lives without a face, which ALLAH has promised him is greatly tormented, as he said: "Indeed, the penalty for those who wage war against Allah and His Messenger and strive upon earth [to cause] corruption is none but that they be killed or crucified or that their hands and feet be cut off from opposite sides or that they be exiled from the land. That is for them a disgrace in this world; and for them in the Hereafter is a great punishment, And fighting ⁵" means counter-and contravention, and it is sincere on disbelief and on cutting off the road and scaring the way, and corruption in the land is called kinds of evil, for many of the predecessors, including Said bin Al-Musayib, who sees that the loan of dirhams and dinars from corruption in the land, and ALLAH said in that : "And when he turns away (from you "O Muhammad SAW "), his effort in the land is to make mischief therein and to destroy the crops and the cattle, and Allah likes not mischief"⁶.

Subheading 2: Images of terrorist crime in Islamic law:

For more than fourteen centuries, our Islamic law has known the crime of terrorism committed for political ends or that would sow terror among individuals, and the most severe punishment sought for it, because of the prohibition and criminalization of acts of prostitutes and hirrabah. Scholars and specialists differed in identifying any of these acts related to terrorism, due to their differences in the main element and the motive for the commission of this crime. Whoever considers that the motive for committing it is a political objective, considers that the crime of prostitute stipulated in Islamic law is synonymous with terrorism and one of its manifestations, While the majority consider that sowing terror and spreading chaos among individuals is the primary objective and the distinctive element of terrorist acts, they therefore consider the crime of wars to be synonymous with terrorism and one of its forms.⁷

Firstly: The Crime of the Prostitute

Prostitute is a political crime committed against power based on the political interpretation of the political spacing in the law, and the jurists distinguish between the prostitute rightly and the prostitute unjustly, which is described as a crime. If, as in the last case, the interpretation of prostitutes is not urgent, and therefore it is invalid, which necessitates the war of the tyrants if they meet in a certain place to return them to their senses, and we don't have to fight them only if they do it first, and in that ALLAH says : "If two parties among the Believers fall into a quarrel, make ye peace between them: but if one of them transgresses beyond bounds against the other, then fight ye (all) against the one that transgresses until it complies with the command of Allah; but if it complies, then make peace between them with justice, and be fair: for Allah loves those who are fair (and just)."⁸

There are those who know the prostitute as being an unjust departure from the just ruler, and in the sense of violation, if it is a right to go out, it is not considered a prostitute, while others consider the prostitute to be going out on the ruler even if it is unfair according to the view of the outsiders, i.e. the prostitutes, which we believe.

Imam Abdul Aziz bin Baz, may God rest his soul, believes that it is not permissible to go out on two conditions, one of which is the presence of KafrBouah with proof from God, and the second condition is the ability to remove the ruler without any greater evil than him, otherwise it is not permissible. . The rule of sharia is that evil should not be removed from what is more evil than it is, but that evil must be prevented by removing or mitigating it. As for preventing evil from more human beings, it is not permissible by consensus of Muslims, If a sect wants to remove the sultan who has done kufr with a swastack, then she has the ability to remove it, and she puts a good and good imam without this resulting in major corruption on Muslims, and a greater evil than the evil of this sultan, that's fine. But if exit results in great corruption, insecurity, injustice of the people and the assassination of those who do not deserve assassination to other great corruption, this is not permissible, but it is not permissible, but patience, hearing and obedience in the known, advising the guardians and calling for them good, and diligence in alleviating and reducing evil and increasing good.⁹

Therefore, the terrorist crime cannot be limited to the acts of the prostitute, although some of the perpetrators have their own opinions and interpretations, as the killing, scare, abduction and detention of civilians for ransom and the destruction of private and public property are not intended to isolate the unjust ruler, Especially if these acts are committed against foreigners or exceed the boundaries of the territory of the State in the sense that they have taken on an international character, which does not apply and the meaning of the prostitute,

which is required to be within the territory of the State as long as it aims to isolate its leader¹⁰.

Secondly: The Crime of ALHIRABA:

The four free-term scholars are known for different definitions, but they all agree in essence that there is a consensus that the Hirabah is to go out to scare passers-by from the people, Killing souls and taking money, and any other goal of these is enough to consider the act as a Hirabah, as long as the warriors have come out. It should be noted that there is a difference in the conditions for achieving freedom. Where it's seen- Alhirraba- The hanafi school sees it as they cut off the road for passers-by to take money as a way to fight on a face that prevents them from going out and cuts whether the pieces are from a group or from one after it has the power of cutting. . The Malikis see it as cutting off the road to prevent passers-by's behavior, or taking money in a way that cannot be relieved. . When it is for the Shafiis, it means emerging to take money, to kill or to be suspicious depending on the fork and to stay away from relief. And as the Hiraba speaks of a group that a single individual might do, he will be able to do it, The hanafi and Hanbala require that the combatants use weapons and their rule, such as sticks, stone, etc., which is not a condition for the crime of haraba in other shafi'i, financial and virtual ¹¹.

Hiraba is considered a great one of the greatest sins in our Islamic religion, punishing it with the most severe punishments, because it carries the intimidation and terror of people and spreading chaos and cutting off the road to them and may even amount to killing them as well as the violation of the decisions of the guardian and disobedience.

The evidence for the sanctity of enmity is the saying of ALLAH: The punishment of those who wage war against Allah and His Messenger, and strive with might and main for mischief through the land is: execution, or crucifixion, or the cutting off of hands and feet from opposite sides, or exile from the land: that is their disgrace in this world, and a heavy punishment is theirs in the Hereafter”¹²

And from the prophetic sunnah, what the venerable Sahabi Abu Hurira said, May Allah be pleased with him, is that the Prophet of God, peace be upon him, said” Whoever came out of obedience, left the group dead, died dead ignorant, and whoever fought under an blind banner angers a gang, calls for a league, or triumphs a league, is killed, and killed ignorant killers, and whoever goes out on my nation, hits her righteousness and immorality, and does not avoid those who believe in her, and does not fulfill the covenant of his reign, not from me and not from him”¹³.

From the above, it is clear that the crime of HIRABA in Islam is largely consistent with the crime of terrorism established in comparative positive laws as a "HIRABA" in its entirety. The perpetrator of the HIRABA crime uses weapons that provide him with force and fork to achieve his purposes by exposing people and robbing them of their property, the same as the perpetrator of the terrorist crime, which is used by means such as explosive materials, bombs and firearms that provide him with the power and ability to achieve his criminal purposes¹⁴.

terrorist crime in positive law

The terrorist crime has received great attention from jurists of both international and criminal law, given the serious threat posed by these shameful behaviours to the security, safety and stability of society through its barbarity, brutality and assault on innocent women of various segments, women ,children and old people . If this criminal phenomenon has its social and economic causes, violating the provisions of religion and positive laws and breaking it is a strong reason for its increase and spread. In fact, before the terrorist crime was embodied on the ground, it was merely ideas and guesses and the law does not criminalize ideas unless they are realistically embodied, This is why the various comparative legal systems do not intervene to criminalize and punish the phenomenon until it has found itself confronted¹⁵. Therefore, jurists of all orientations have tried and worked hard to develop definitions of terrorism and the various acts that fall into this description, as well as international and regional conventions regulated and combated, the same situation has extended to the internal legislation and laws of States.

The concept of terrorist crime in positive law

Firstly: The Doctrinal Concept of Terrorist Crime

There is a great doctrinal difference about giving a concept of terrorism between supporters and opponents, as for the trend opposed to the definition of terrorism, its owners believe that the phenomenon or rather the terrorist crime is easier to describe than to define it, Since we can all understand what is considered terrorism, but it is difficult for us to define it, it is not appropriate for them to develop an inclusive definition of terrorism¹⁶, Another trend suggests the need to provide a specific and precise definition of the term terrorism to demystify it on the one hand, and to try to find solutions to a dangerous phenomenon that has occupied everyone's concern on the other. A definition of terrorism would also

facilitate its fight, both domestically and internationally¹⁷. In this regard, there are three trends in defining terrorism:

Descriptive trend: Its supporters, who say it is difficult to give a specific definition of the term terrorism and if they do not refuse to define it, focus on highlighting the characteristics of terrorist operations and elements of terrorism, which would facilitate its identification - terrorism - based on the fact that the description of terrorism is easier than its definition¹⁸.

- **Analytical trend:** Its supporters focus on giving a definition that defines the various behaviours that can be described as terrorism, regardless of the characteristics and motives of those responsible, they focus on the magnitude of the act and the means used to commit a terrorist crime, and therefore do not consider terrorism according to them any violence unless it is of a degree of gravity and seriousness¹⁹.

- **Exclusive trend:** Its owners say that a series of criminal behaviours and acts that are involved in the description of terrorism, such as kidnapping and hostage-taking of persons, the transfer of aircraft, the assassination of officials and representatives of States, thus focusing on identifying what is considered terrorism regardless of the circumstances and reasons for the commission of the crime and the losses and damage it has caused²⁰.

Terrorism expert Walter Laqueur defines terrorism as "an illegal use of force for political purposes, when victims are innocent people."

Sandler & Enders argued that terrorism is: "the deliberate use or threat of unusual violence or atrocities by groups, to achieve political, religious, or ideological objectives, by intimidating a large number of the public, usually not directly directed against decision makers - power - on whom terrorists seek to influence."

Mohammed Al-Sharif Bassiouni defines terrorism as: "An internationally prohibited strategy of violence, motivated by ideological motives and aimed at creating terrifying violence within a particular segment of a particular society to gain access to power or to publicize a demand or a grievance regardless of whether the perpetrators of violence are acting for themselves, on their behalf or on behalf of a State"²¹.

While the jurist Saldana believes that terrorism has a broad and narrow meaning, the broad concept of terrorism is: "Any political or social crime or misdemeanour that results from its implementation or expression is generally alarming because of its nature that creates a general danger", while the narrow concept of terrorism is reduced: "Criminal acts whose primary objective is to

spread fear and terror - as a personal element, using means that can create a state of public danger - as a material element" ²².

Secondly: The Legal Concept of Terrorist Crime

1-in international legislation

Terrorism was first defined on the occasion of the convening of the Third Congress for the Unification of the Penal Code in Brussels in 1930: "A deliberate use of means capable of creating a tool to commit an act that endangers the lives of individuals, regardless of their nationality, at risk and destruction, as well as their health and safety in general, and destroys material property, causing heavy losses.

These acts include burning, detonating, dumping, burning of suffocating or harmful substances, causing chaos in transportation and transportation, vandalism of public and private property without distinction, obstruction of utility services, deliberate contamination of water by poisoning rivers, terrorizing or injecting fruit with toxic substances and the resulting diseases and deaths of humans and animals"²³.

The Geneva Convention on the Prevention and Resistance of Terrorism of 1937 is the first international treaty in the field of legalization of terrorism, providing two definitions of terrorism, the first descriptive describing the terrorist act in general, and the second numerically defining conduct it considers terrorist acts.

Terrorism is known as "criminal facts against a state whose purpose or nature is to terrorize specific personalities in groups or in the public", and called for the establishment of an international criminal court for crimes of international terrorism. But since it was not given a precise definition of terrorism, it ratified the agreement drawn up by 24 countries except India ²⁴.

The European Convention on the Prevention of Terrorism of 1977 defined it as:

- Any serious act of violence directed against people's lives, physical integrity or freedoms
- Any violent act directed at property if it would create a collective danger"

The 1998 Arab Convention against Terrorism, under which terrorism is defined in its first article as: "Any act of violence or threat of violence, whatever its motives and purposes, is carried out in the implementation of an individual or collective criminal enterprise .

It aims to terrorize, intimidate or endanger people's lives or security, harm, damage, disrupt or seize a public or private facility or property, or endanger a national resource²⁵.

2-in National legislation

The Algerian Penal Code defined the terrorist crime as: "It is considered a terrorist or subversive act in the concept of this matter, every act aimed at state security, national unity, territorial integrity, stability of institutions and their normal functioning through any act whose purpose is the following:

- Terrorizing the population and creating an atmosphere of insecurity through moral or physical abuse of persons, endangering their lives, freedom, security or property.

- Blocking traffic or freedom of movement on roads, gathering or sit-ins in public squares

- Attacking the symbols of the nation and the Republic and exhuming or desecrating graves

Attacking, acquiring or occupying public and private transport and private property without legal justification.

- Attacking the ocean, inserting or leaking a substance into the atmosphere or underground, or throwing it into it or in water, including territorial waters, would put human, animal or natural health at risk.

- Obstructing the work of public authorities or freedom of worship, public freedoms and the functioning of institutions assisting the public facility.

- Obstructing the functioning of public institutions, attacking the lives or property of their agents or obstructing the application of laws and regulations

- Diversion of aircraft, ships or any other means of transport

- Damage to air, maritime or land navigation facilities, sabotage or destruction of means of communication, hostage-taking, assault using explosives, biological, chemical, nuclear or radioactive materials, terrorist financing or terrorist organization²⁶.

In Egypt, the legislator passed a new anti-terrorism law No. 94 of 2015 defining the terrorist act as: "Any use of force, violence, intimidation or intimidation at home or abroad for the purpose of disturbing public order, Or endanger the safety, interests or security of society, harm individuals, terrorize them, expose their lives, freedoms, public or private rights or security to danger, or other freedoms and rights. guaranteed by the Constitution and the law, harming national unity, social peace or national security, or harming the environment, medical resources, antiquities, funds, buildings or public or private property, or occupying or taking over them, Or to prevent or obstruct public authorities, judicial entities, judicial entities, government interests, local units, places of worship, hospitals, institutions and institutes of science, diplomatic missions, consuls, organizations, religious and state entities in Egypt, from carrying out their work or exercising all or some of their activities, resistance, or

disruption of the application of any provisions of the Constitution, laws or regulations....²⁷.

Images of terrorist crime in positive law

One of the most prominent obstacles faced by those who developed an inclusive definition and a resistance to the terrorist act is the multiplicity of criminal behaviours and acts that constitute it, as well as the diversity of images and forms of terrorist crime, where the crime of terrorism has been classified in terms of the perpetrators and the means used, to the terrorism of individuals, groups and state terrorism, and in terms of the extension of the crime there is domestic terrorism and international terrorism²⁸.

Firstly: Images of terrorist crime according to its scope

1- national terrorism

Is the kind of terrorism practiced by groups with limited objectives within the state that are not beyond its territorial boundaries, through which perpetrators seek to try to change the system of government and gain power, Or to detract from its launch, which is thus internal terrorism, has no external association in any way, it is internal violence that does not target nationals of foreign countries and does not affect their interests²⁹. This type of terrorism is characterized by the practice of individuals and groups against the ruling power of their state, The state may also practice it against its citizens³⁰.

2- International terrorism

International terrorism and domestic terrorism are similar in their own nature, both of which are the use of acts of violence for the purpose of creating fear and panic among a particular person or group of victims, or assaulting them or robbing them of their property, . It is a kind of terrorism that affects a public international service or international facility such as attacks on international land, sea and air transport, or acts of violence against internationally protected figures such as heads of State and Government, Members of diplomatic and consular missions, or who are of multinational or victims of different nationalities, or that terrorist crime is planned and prepared in one country while criminal conduct is carried out in another, where this type of terrorism can cause unrest in international relations³¹.

Secondly: Images of terrorist crime according to the perpetrators

1- The government terrorism

Despite the controversy over whether or not the State can commit terrorist crimes, opinion is stable on the existence of such a serious crime, which is known to those who specialize in institutional terrorism or authoritarian terrorism involving the state's systematic use of violence to terrorize citizens and suppress opponents for political purposes of retaining power, and the authority may resort to it if its peaceful methods of achieving its purposes are unable to achieve its purposes. Such state violence may target civilians within the state itself or even within another state, and therefore state terrorism as it may be internal may be international or global³².

2- terrorism of individuals

The violence perpetrated by the State against its citizens may cause a counter-violent reaction on the part of these people, so that this model is the first form of individual terrorism, which is terrorism committed by individuals for a variety of reasons, such as the aim of changing the existing system of government better than another, This type of criminality ends either by achieving its objectives by changing the system of government, and may end with the latter controlling its opponents. Some also define it as: "Crimes committed outside a regulatory framework, although this does not prevent crimes from being committed in the context of an individual or collective criminal enterprise or on the basis of a criminal agreement"³³.

Conclusion: Since terrorist crime, like various other forms of criminality, is as old as humanity, it has recently evolved through the adoption of technology and its sophisticated techniques that have helped criminals commit it on a large scale without having any effects on them, making it difficult for States to track them, reach their perpetrators and impose legally prescribed sanctions on them, Therefore, there must be international cooperation and cooperation to confront them, as they are crimes from which no state, no matter how powerful and potential, can be spared. It should be noted that the various findings of the study are:

-Terrorism is a very dangerous phenomenon, targeting various human groups, including innocent civilians and public and private property, and is one of the most serious forms of criminality that threatens world peace and security.

-- Since our tolerant Islamic religion is a religion of security, security and moderation, it thus rejects the various forms of extremism and terrorism that are the main reasons for the emergence and spread of violence.

-The term terrorism, known in positive legislation, is defined in Islamic legislation within the framework of what is known as prostitutes and thieves in all their forms and forms.

-The concept of terrorism in positive criminal legislation focuses on the political nature of the terrorist act, which has not been the case with Islamic legislation.

-There is no universal definition of terrorism, due to the multiplicity of criminal behaviours and acts that constitute it, as well as the diversity of images and forms of terrorist crime.

Margins:

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- 3- Surat Al-kassas 77.
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- 5- Surat al-maida aya 33.
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