

## The Habit of Tribal Dukka in Iraqi Society: A Comparative Study Between Iraqi Law and Islamic Jurisprudence

Mostafa Bakhtiar Wand, Sajjad Thamer Makbesh Nashmi.

University of Qom, Iran

[sajjad.thamer@qu.edu.iq](mailto:sajjad.thamer@qu.edu.iq)

[m.bakhtiarvand@qom.ac.ir](mailto:m.bakhtiarvand@qom.ac.ir)

### Summary:

The importance of the research lies in explaining a societal phenomenon that has turned into a disease that gnaws at the body of the society and threatens its existence. The Iraqi Penal Code dealt with the issue of threats in Chapter III of the Iraqi Penal Code No. 111 of 1969, and as a result of the widespread phenomenon of tribal dukkah, the Supreme Judicial Council increased the punishment by issuing its final decision considering tribal dukkah as terrorism, and Islamic law prohibits Assault on lives and private property, taking people's money falsely, and forbidding the intimidation of the safe, and we followed the descriptive-analytical comparative approach to reach the results of the research.

**Keywords:** Habit of Dukka, Attacks, Clans, Opponents, Terror.

### Abstract:

Tribal customs have long played, and continue to play, a significant role in the life of Iraqi society, particularly in the realm of legal relationships between individuals. Among these customs is the practice of tribal "Dakka." The importance of this research lies in shedding light on a societal phenomenon that has transformed into a malady eating away at the fabric of society and threatening its very existence. It is therefore imperative for researchers to address this phenomenon and clarify its legal and jurisprudential rulings in service to society.

The tribal "Dakka" custom involves armed attacks on the homes of adversaries from other tribes as a severe form of intimidation to compel

them to submit to tribal rulings. This practice has spread widely in Iraq due to the proliferation of illegally obtained weapons. The Iraqi Penal Code addressed the issue of intimidation in Chapter Three of Law No. 111 of 1969. In response to the widespread prevalence of the tribal "Dakka" phenomenon, the Supreme Judicial Council has intensified penalties by issuing a final decision classifying tribal "Dakka" as an act of terrorism. Islamic law prohibits aggression against individuals and private property, the unlawful seizure of others' wealth, and the terrorization of innocent people. In this study, a comparative analytical descriptive approach was adopted to arrive at the research findings.

**Keywords:** Dakka custom, attacks, tribes, adversaries, intimidation.

## Introduction

The customs and traditions of the tribes and tribes in Iraqi society stipulate the support of the weak and the oppressed, but it is an old saying that does not exist today in Iraq, but the rule of the tribes has become a sword that no one has been able to escape because of their power and influence that exceeds the authority of the law and the security services. Among these customs is the "tribal dukkah", which is contrary to the law and the provisions of Islamic law<sup>1</sup>.

Many tribal customs contrary to the provisions of the Islamic Shari'ah have spread in Iraqi society, which have had a negative impact on individuals, the family and the Iraqi Muslim community in general, and have harmed private and public rights and the authority of the judiciary to carry out its duties.<sup>2</sup>

The phenomenon of tribal dukkah, which has spread in Iraq, and is one of the prevailing tribal customs in Iraq, appeared in Iraq in the 1960s, but it has spread significantly in the recent years after 2003, and has become a clear phenomenon in Iraqi society and has its clear effects on it.

---

1 Tawfiq, Obaida Amer, The Tribal Dikkah and its Effects on Iraqi Society, A Jurisprudential Legal Study, Journal of the Faculty of Education for Girls, Iraqi University, Issue 14, Question 8, Part 1, 2021, p. 180.

2 Abbas, Bakr Ali, Ahmed Fadhil Hussein, Abdul Basit Abdul Rahim Abbas, Tribal Customs under the Iraqi Constitution and Laws, Journal of Politics and Law, No. 15, June 2016, p. 627.

Tribal dukkah is one of the dangerous social customs in Iraq, as it is a traditional social phenomenon practiced by some tribes in Iraq, especially in the central and southern regions, using tribal dukkah as a means of restoring rights or resolving disputes between individuals or tribes without resorting to government or judicial authorities.

This phenomenon involves members of the clan gathering in front of the house of the targeted person and shooting in the air or carrying out threatening acts to force him to comply with their demands.<sup>1</sup>

The 2"tribal dukkah" is one of the prevailing norms in southern Iraq, and it expanded before the American occupation of the country, as the clan does not recognize the legal contexts and resorts to attacking the clan with which it disputes over water or agricultural land, and other disputes, some of which are not worth fighting<sup>3</sup>.

### **Importance of the Research:**

Its importance lies in the explanation of a societal phenomenon that has turned into a disease that gnaws at the body of the society and threatens its existence, so it was necessary for Sharia researchers to confront this phenomenon and explain the legal and Sharia ruling for it in the service of the Muslim community, especially since there are no previous studies that have talked about it, as well as explaining the truth of the phenomenon and the consequences of it in terms of clear damage that must be treated and removed.

### **Research Objectives:**

This research aims to shed light on the tribal habit of the Dukkah because of its effects that caused chaos, fear and a threat to the societal peace and the state of citizenship, in order to show the legal and jurisprudential ruling of this custom, in the hope that it will be beneficial for students of science and for the people.

---

1 Tawfiq, Obaida Amer, op. cit., p. 180.

2 See: Amer Saleh, Tribal Dikka, Terrorism and the Reproduction of the Clan, Al-Naba Information Network, 2018.

3 Al-Rawabet Center for Research and Strategic Studies, (2019), Is the Tribal Dikkah Ending in Iraq?, article published on the website <https://rawabetcenter.com/archives/96304>

### **Research Problem:**

The problem of the research is to try to answer the following question: What is meant by the tribal dukkah? What is the legal and jurisprudential adaptation to it?

### **Research Methodology:**

In this research, we followed the descriptive-analytical-comparative approach by presenting and analyzing the Iraqi legal texts that dealt with the tribal dukkah and comparing them with the provisions of Islamic jurisprudence to reach the results of the research.

### **Research Plan:**

The First Requirement: The Concept of Tribal Dukkah

The Second Demand: The Tribal Dikkah in Iraqi Law

The Third Requirement: The Tribal Dukkah in Islamic Jurisprudence

The fourth demand: A comparison between Iraqi law and Islamic jurisprudence on the custom of tribal dukkah.

## **The first requirement**

### **The concept of tribal dukkah**

Tribal dukkahs are one of the dangerous social customs that emerged in Iraq, specifically in Baghdad and the southern region of the country, specifically after 2003.

The Dukkah is an armed raid by one party against another party to sit in the tribal judiciary, through which the party that performs the Dukka tries to present itself as a powerful party that imposes its authority and power on the other party, and that the latter has to sit in a tribal session that imposes a punishment on it, which is represented in imposing a large financial fine on the other party on which the tribal Dukkah was signed.

### **First: Definition of Dikkah:**

<sup>12</sup> As for the dukkah legally, we have not noticed a definition of dukkah in the law, specifically the Penal Code, in order to confront this crime legally, which is what some have called for the definition of tribal dukkah as "a frightening raid launched by the complainant's family on the complainant's house, throwing his house with untargeted bullets, intended to summon the complainant to tribal negotiations and warn him In order to resolve the dispute between them, if the summoner does not respond to the negotiations, he may be harmed by murder, robbery or expulsion from his town.<sup>3</sup>

Others also see it as "a stern warning to push the target clan to sit down, negotiate and settle the dispute, and if the target party does not agree, things will escalate into a clash, which may lead to casualties on both sides<sup>4</sup>."

We can also define the concept of dukkah: a material or moral tribal threat carried out by one person or a group of people against another, with the intention of pushing for negotiation and sitting before the tribal judiciary against his will and under the threat, which is often armed and using various types of light and heavy weapons.

### **Second: The Negative Effects of Tribal Dikkah in Iraq:**

The strength of the tribes is that the state and the law are weak, and the tribal dukkah is a form of dominance of tribal customs over the rule of law and the judiciary.<sup>5</sup>

---

1 Muhammad ibn Yaqoub al-Firouzabadi, The Surrounding Dictionary, Dar al-Hadith, Cairo, 2013, p. 321.

2 Ibrahim Anis, The Intermediate Dictionary, Al-Shorouk International Library, Cairo, 2004, p. 544.

3 Research published on the website: Ar.m.wikipedia.org

4 Ait, Iftan Sarra, Adaptation of the Accusation and its Impact on the Stages of Public Proceedings, Ph.D. Thesis, University of Djilali Liabes-Sidi Bel Abbes, Faculty of Law and Political Science, 2017-2018, p. 4.

5 Al-Rawabet Center for Research and Strategic Studies, 2019, Is the Tribal Dikkah Ending in Iraq?, article published on the website <https://rawabetcenter.com/archives/96304>

- The spread of injustice and corruption, the assault on the rights of innocent people, and the assault on themselves, their money, their property and their usual human freedoms.
- Threatening and dismantling the original values of Iraqi society, such as treating patients and defending public property, has generated fear among doctors of treating patients in some cases.
- The emergence of armed groups outside the law, which do not fear the law and extort and intimidate citizens at gunpoint<sup>1</sup>.
- The displacement of many families from their areas of residence to other areas for fear of the effects of these crackdowns, which led to the emergence of a state of imbalance in the social and psychological relations of these relations, and the violation of their human rights.
- spreading chaos, fear, and insecurity, which was reflected in the negative impact on the weakness of state institutions at the level of their various sectors.

## **The second requirement**

### **Tribal Rule in Iraqi Law**

Due to the danger of tribal dukkah in Iraq, we find that the Iraqi Penal Code No. 11 of 1969 dealt with the issue of tribal dukkah from Chapter III Threat, where the acts of tribal dukkah represent one of the forms of threat that affect a person in himself and his property, as life cannot be straightened under a state of threat, any life that an individual can live in light of the presence of an executable threat by throwing bullets at his house, so this dangerous habit threatens the security and stability of the person who performs it. In view of their seriousness, the Iraqi Penal Code has criminalized them and prescribed deterrent penalties for them, in order to help achieve stability and security for society<sup>2</sup>.

Article 430 first states: "Anyone who threatens another to commit a felony against himself or his property or against the life or property of another, or by attributing or disclosing matters that are dishonorable, whether accompanied by a request, an order, or refraining from an act or intended

---

1 Tawfiq, Obaida Amer, op. cit., p. 185.

2 Tawfiq, Obaida Amer, op. cit., p. 195.

to do so, shall be punished by imprisonment for a period not exceeding seven years."

The second paragraph of the same article also referred to "the determination of the same penalty if the threat is in a letter devoid of the name of the sender or is attributed to an existing or alleged secret group".

Through the text of this article, it is clear that it effectively helps to reduce acts of threats, and "tribal dukkah" is a type of threat that includes the use of violence or the threat of harm to individuals or their property, which makes it an offence under Article (430), including the threat of punishment for acts committed within the framework of "tribal dukkah", such as shooting or threatening to physically harm. Severe penalties for perpetrators<sup>1</sup>.

Article 431 stipulates that "Anyone who threatens another to commit a felony against himself or his property or against the life or property of another person, or by attributing or disclosing matters that are contrary to honor or prestige, other than the cases set forth in Article 431 (Article 432), shall be punished by imprisonment for a period not exceeding one year or by a fine Not more than one hundred dinars.

These articles have a significant impact on the tribal dukkah in Iraq, as these articles work to reduce threats and violations that may take place within the framework of the tribal dukkah, and these articles also work to promote the basic rights and freedoms of citizens in Iraq, and protect them from threats and violations that may be carried out against them.

As stipulated in this article 430-431 , it is clear that the law can play a key role in reducing violent tribal practices, including "dukka", and the imposition of punishments encourages recourse to the law rather than tribal customs, thus highlighting the role of the judiciary in punishing the perpetrators of "tribal dukkah" and ensuring that they are held legally accountable, rather than relying on tribal solutions.

It is clear from the above that "tribal dukkah" is a social phenomenon that involves a direct threat to the security of individuals and the stability of societies, as it relies on the use of symbolic or physical means of violence to impose influence or settle disputes in ways that are not in line with the laws Threats and acts of violence such as articles 430, 431 and 432, the

---

1 Articles 430–431 of the Iraqi Penal Code No. 111 of 1969.

perpetrators of "tribal dukkah" are held civilly liable as a result of damage to individuals or property<sup>1</sup>.

The Criminal Court adapts the criminal incident on the basis of which it issues its judgment after analysing the facts and deriving the legal description and the legal text applicable to the criminal incident, with the need to adhere to the material and persons of the crime, without obliging the court to comply with the legal adaptation established by the pre-trial investigative bodies<sup>2</sup>.

Adaptation is "a judicial act carried out by the magistrates, and even the judicial police at the stage of inference, through which the dispute in question is given a legal description that allows the implementation of a certain legal rule, it is a mental work through which estimates and logical processes are made to resolve the issue of measuring the dispute in question, a legal description that allows the operation of a certain legal rule, it is a mental work through which logical estimates and processes are made to solve a logical analogy issue." <sup>3</sup>

Through adaptation, we can return the crime to its own field in terms of the applicable law and text, as it is a scientific-mental task that falls on the shoulders of the judiciary in order to determine the applicable law, and that the problem arises if more than one law deals with this crime or if there is no text dealing with this crime.

The crime of tribal dukkah in origin was considered by the judiciary to be a threat based on the text of the threat contained in the Iraqi Penal Code, which stipulates that "anyone who threatens another to commit a felony against himself, his property or others, or to attribute and cure matters that are dishonorable, whether accompanied by a request, an order, or the refrain from an act or intended to do so, shall be punished by imprisonment for a period not exceeding seven years or <sup>4</sup> by imprisonment." The fact that the material acts of the crime of dukkah apply to the material of the threat mentioned in the above text, but what is taken into account in this text is its weakness in the deterrent aspect of the offender<sup>5</sup>, as we find that the maximum punishment is not more than seven years, in contrast to the great

---

1 Article 432 of the Iraqi Penal Code No. 111 of 1969.

2 Ayat, Iftan Sarra, op. cit., p. 4.

3 Sorour, Ahmed Fathy, Cassation in Criminal Articles, Dar al-Nahda al-Arabiya, Cairo, 1997, p. 322.

4 Article 431 of the Iraqi Penal Code No. 111 of 1969.

5 Article 2 of the Iraqi Anti-Terrorism Law No. 13 of 2005.

criminal impact that the crime of tribal dukkah has on the individual victim and at the general level, we note that the impact of this crime goes beyond that, achieving mass terrorism for the inhabitants of the area, because what is known from the tribal dukkah often takes place by firing gunshots. This is what instills terror and panic in the hearts of citizens, and sometimes these shots may hit buildings as well as people, causing harm and may be killing citizens or the victim.

As stated above, the Iraqi judiciary has not been able to amend the legislative text on threats for the purpose of increasing the punishment, which has led to a change in the legal adaptation and the crime of dukkah, which is considered a terrorist offence on the basis of the Iraqi Anti-Terrorism Law in force in article II, which reads that "a threat aimed at instilling terror among people, regardless of its origin, is considered a terrorist act."<sup>1</sup> This is what the Iraqi courts have done, as they have considered this act to be a terrorist crime, and this has been confirmed in practice by the Maysan Court, as it has confirmed the acts of (44) defendants accused of dukkah, in accordance with article two of the Anti-Terrorism Law, which has helped to reduce the rate of committing this crime<sup>2</sup>.

In fact, this translates into the usefulness of the severity of the punishment imposed on the perpetrators of the crime and on other people, as criminals are afraid of the severity of the punishment imposed on those who commit the dukkah, which can be punished up to death or life imprisonment.

By perusing the definition of terrorism contained in the Anti-Terrorism Act, which states: "Any criminal act committed by an individual or an organized group that targets an individual or group of individuals, groups or official or unofficial institutions that causes damage to public or private property with the aim of disrupting the security situation, stability and national unity, or introducing terror or fear and panic among the people and provoking chaos for terrorist purposes."<sup>3</sup>

We believe that the adaptation of the tribal dukkah as a terrorist crime has deprived the truth and the goal sought by the legislator in enacting the law, which seeks to criminalize criminal acts that destabilize security stability and national unity by inciting terror in the hearts of the people in order to

---

1 Zaid al-Araji, The Judiciary Writes Is the End of the Tribal Dukkah, report published on the website of the Supreme Judicial Council, Republic of Iraq, [www.hjc.iq](http://www.hjc.iq)

2 Article 1 of the Iraqi Anti-Terrorism Law in force.

3 Article (2) of the Iraqi Anti-Terrorism Law No. 22 of 1976.

achieve terrorist goals. They are not due to financial claims between the perpetrator and the victim, or due to skills or quarrels between people, i.e., they are far from terrorist goals, such as being an organization that seeks to achieve internal or external terrorist goals and agendas.

Therefore, we call on the Iraqi legislature to amend the Penal Code by adding a new text that deals with this crime appropriately or by amending the text of the threat, since this crime applies to this provision, but its punishment is reduced compared to the effect of the dukkah.

Thus, through the aforementioned articles referred to in the Iraqi Penal Code No. 111 of 1969, it is clear that they give rise to civil liability, which is represented in the fact that individuals can assume civil liability for the private acts of the tribal dukkah that cause harm to others, including threats and violations that take place within the framework of the tribal dukkah.

- Collective liability: Associations or clans can be held civilly liable for private acts of tribal dukkah that cause harm to others, including threats and abuses that take place within the framework of tribal dukkah.
- Financial Liability: Individuals or associations can be financially liable for damages caused by the private business of the tribal dukkah.

It should be noted that liability remains even if the offender does not carry out his promise, since responsibility is achieved simply because he makes a serious threat, with his knowledge and will to instill fear and terror in the victim's soul, i.e., with the existence of the criminal intent, otherwise liability is eliminated in the case of the act being a joke or a joke, etc.

Through the above, it is clear that tribal customs represent a fundamental pillar in supporting the state and the law and filling the void when there is any imbalance in the application of the law, as in Iraqi society, it has played an effective and undeniable role, due to its role at all security, economic and social levels. Breaking the law and disagreeing with it (or deviating from societal values and customs), the weaker the role of the law, the stronger the tribal customs.

In most cases, legal texts are only a translation of societal rules and norms, so some rules are criminalized and penalties are imposed on those who violate them, in addition to permitting some of these rules and customs, and despite the effective role of the tribal system, in many cases tribal

claims are in conflict, which necessitated the necessity of activating civil responsibility for dangerous social customs and values in Iraq.

## **The Third Requirement**

### **The tribal dukkah in Islamic jurisprudence**

#### **First: The tribal dukkah according to the purposes of the Islamic Shari'ah (the purpose of self-preservation):<sup>1</sup>**

The Qur'anic texts and the hadiths of the Prophet indicate the need to protect oneself from being harmed by killing or being attacked by intimidation, threats or intimidation, including:

- 1- The Almighty said: "And those who harm the believers, male and female, except for what they have earned, they have endured a slander and a manifest sin."<sup>2</sup>

The significance is: "Those who harm the believers, i.e., by word or deed, other than what they have earned, i.e., without a felony, for which they deserve to be harmed, they have endured a blatant slander and a manifest sin."<sup>3</sup>

- 2- Abu Hurayrah (may Allah be pleased with him) said: The Messenger of Allah (may Allah's peace and blessings be upon him) said: "None of you points a weapon at his brother, for one of you does not know, lest the Shaytaan<sup>4</sup> take it out of his hand and fall into a pit of fire."<sup>5</sup> In the narration "None of you walks".<sup>6</sup>

---

1 Al-Youbi, Muhammad Sa'd bin Ahmad bin Mas'ud, The Purposes of Islamic Shari'ah and its Relation to Shari'a Evidence, Dar al-Hijra, Kingdom of Saudi Arabia, First Edition, 1998, 1/181.

2 Surah Al-Ahzab, verse 58.

3 Al-Qasimi, Muhammad Jamal al-Din bin Muhammad Saeed bin Qasim al-Hallaq, The Virtues of Interpretation, researched by: Muhammad Bassel Oyouun al-Soud, Dar al-Kutub al-Ilmiyyah, Beirut, first edition, 1418 AH, 8/111.

4 Jamal al-Din, Muhammad Tahir bin Ali al-Siddiqi al-Hindi al-Fitni al-Gujrati, Majma' Bahar al-Anwar fi Gharaib al-Nasr wa al-Ta'if al-Akhbar, Majlis al-Ma'alib al-Usmaniyyah Press, third edition, 1387 AH – 1967 AD, 2/9.

5 Sahih Muslim, Hadith No. 2617, 4/2020.

6 Musnad of Imam Ahmad bin Hanbal, Abu Abdullah Ahmed bin Muhammad bin Hanbal, Hilal bin Asad Al-Shaibani, researched by: Shuaib Al-Arnaout, Adel Murshed, and others, supervised by: Abdullah bin Abdulmohsen Al-Turki, Al-Risala Foundation, First Edition, 1421 AH – 2001 AD, 13/725.

Significance: In it, the prohibition is by the word "news", which is more informable than the word "forbidding", that the devil removes and throws it in his hand and achieves his blow, even if the field marshal does not mean it<sup>1</sup>.

The tribal dukkah is one of the corrupt public norms in Iraqi society, and it has great bad effects on it, and it clashes and contradicts the rules of Islamic law, with its great corruption and clear damage.

## **Second: The Tribal Dukkah according to the rules of jurisprudence<sup>2</sup>**

If we present the tribal dukkah to the rules of jurisprudence, we find that the rules of jurisprudence refer to the prohibition of this act, and these rules include:

### **1. "The rule of no harm and no harm."<sup>3</sup>**

It also forbids encroachment on life, property and property, usurpation and injustice, and everything that is in the sense of harm or harm, and under which the felony against one's life, mind, offspring or property<sup>4</sup> is included.

We find that the damage is great in the tribal dukkah, and it falls on entire families without them knowing the reason for their crime or the reason for the attack on their freedoms, rights or property.

---

1 Al-Shafi'i, Muhammad Al-Amin bin Abdullah Al-Armi Al-Alawi Al-Harari, Al-Kawkab Al-Wahhaj, Sharh Sahih Muslim (called: Al-Kawkab Al-Wahhaj wa Al-Rawd Al-Bahaj in the Commentary of Sahih Muslim Ibn Al-Hajjaj), Review: A Committee of Scholars Headed by Prof. Hashim Muhammad Ali Mahdi, Advisor at the Muslim World League, Makkah Al-Mukarramah, Dar Al-Minhaj, Dar Touq Al-Najat, First Edition, 1430 A.H., 2009, 24/446.

2 Rules: the plural of a rule, as the rule: "A whole proposition that applies to its parts, as we say: the subject is raised and its parts are like Zayd raised in the coming of Zayd." Tayseer al-Tahrir, Muhammad Amin bin Mahmoud al-Bukhari, known as Amir Badshah al-Hanafi (d. 972 AH), Mustafa al-Babi al-Halabi – Egypt (1351 AH – 1932 AD), and his image: Dar al-Kutub al-Ilmiyyah, Beirut (1403 AH – 1983 AD), and Dar al-Fikr, Beirut 1417 AH – 1996 AD, 1/14.

3 Similarities and analogues on the madhhab of Abu Hanifa al-Nu'man, Zayn al-Din ibn Ibrahim ibn Muhammad, known as Ibn Nujaim al-Masri (d. 970 AH), annotated and extracted his hadiths: Sheikh Zakariyya Amirat, Dar al-Kutub al-Ilmiyyah, Beirut, Lebanon, first edition, 1419 AH – 1999 AD, 1/73.

4 Tawfiq, Obaida Amer, op. cit., p. 191.

Accordingly, all the traces of the tribal dukkah that are built to obtain reconciliation by resorting to it by threatening it are considered invalid.

According to the above, tribal dukkah is one of the crimes of threats that are forbidden in Islamic law, which leads to attacking the safe people, harming them, intimidating them, and forcing them to tribal rule, which varies from case to case according to the rules and provisions of the Islamic Sharia, but in most cases, things tend to be threatened that leads to tribal sitting and submission to the rules of the clan, which is the intended purpose of the threat.

It may lead to other effects, depending on the outcome of the use of the weapon, such as death due to fear as a result of threats, permanent disability, damage to private property, etc.

2- "Whoever commits an act that results in the destruction of the property of another person or himself – unlawfully – is a guarantor for the damage of life or property, even if he is not transgressive or at fault, because the guarantee and the fine are in return for the unauthorized destruction."

For example: "If a person fires a bullet and damages the property of another, he is obliged to guarantee it, because it is not necessary to deal with the necessity of guarantee."

As for the causer, he is not guaranteed unless he is an infringer, and the infringement is conditional on the fact that the cause is obligatory to guarantee by his act that leads to the unjust damage.<sup>1</sup>

Ibn Nujaim said: "The direct one is a guarantor even if he is not deliberate, and the one who causes it is only if it is deliberate."<sup>2</sup>

Ibn Qudamah said: "If a man draws a sword in the face of a man or a man from a height, and he dies from his splendor, or his mind is gone, then he has to pay his blood money, and if he shouts at a boy or a madman with great pride from a roof or towards him, and he dies, or his mind is gone, or he neglects a sane person and he shouts at him, and that hits him, then he

---

1 The singer in the jurisprudence of Imam Ahmad bin Hanbal al-Shaibani, Abu Muhammad Muwaffaq al-Din Abdullah bin Ahmed bin Muhammad bin Qudamah al-Jama'ili al-Maqdisi, then al-Dimashqi al-Hanbali, known as Ibn Qudamah al-Maqdisi, Dar al-Fikr, Beirut, first edition, 1405, 9/565.

2 Analogies and analogues, op. cit., 243.

has to pay his blood money, which is borne by the wise woman, if he does it deliberately, then it is semi-deliberate, otherwise it is a mistake<sup>1</sup>."

3- "A person who is not involved in the felony shall not claim the felony of the offender except in two branches":

It means that "the offender is the one who demands and is punished for his crime, and the one who has not gone mad does not demand the felony of another, because there is no other garment<sup>2</sup>."

The evidence for the rule is from the Book: "And do not gain every soul except for it, ✱ ✱ and do not wear another garment and 3 garment , then to your Lord is your return, and He will inform you of what you used to differ about."

The significance is: "It is a response to the pre-Islamic era of holding the relative accountable for the sin of his neighbor, and one of the tribe for the sin of another."<sup>4</sup>

Evidence of the rule from the Sunnah: Sulayman ibn 'Amr ibn al-Ahws narrated from his father: I heard the Messenger of Allah (may Allah's peace and blessings be upon him) say in the farewell argument to the people: "... Doesn't Jean reap except for himself?" <sup>(5)</sup>.

---

1 Abu Muhammad Mahmoud bin Ahmed bin Musa bin Ahmed bin Hussein al-Ghitabi al-Hanafi Badr al-Din al-Aini, Al-Binaya Sharh al-Hidayah, Dar al-Kutub al-Ilmiyyah, Beirut, Lebanon, first edition, 1420 AH – 2000 AD, 13/63, Majmoo' Sharh al-Muhadhab (with the complement of al-Sobki and al-Mutai'i), Abu Zakariya Muhyiddin Yahya bin Sharaf al-Nawawi (d. 676 AH), Dar al-Fikr, 19/88, the jurisprudential summary of Ibn 'Arf, Muhammad ibn Muhammad ibn 'Arafa al-Warghami al-Tunisi al-Maliki, Abu Abdullah (d. 803 A.H.), Research: Hafiz Abdul Rahman Muhammad Khair, Khalaf Ahmed Al Habtoor Charitable Foundation for Charitable Works, First Edition, 1435 A.H.–2014 A.D., 9/529.

2 Encyclopedia of Jurisprudential Rules, Muhammad Sedqi bin Ahmed bin Muhammad Al-Burnu Abu Al-Harith Al-Ghazi, Al-Risala Foundation, Beirut, Lebanon, First Edition, 1424 A.H. – 2003 A.D., 11/1071.

3 Surah Al-An'am from the verse: 164.

4 Fath al-Qadir, Muhammad bin Ali bin Muhammad bin Abdullah al-Shawkani al-Yamani (d. 1250 AH), Dar Ibn Kathir, Dar al-Kalam al-Tayyib, Damascus, Beirut, first edition, 1414 AH, 2/211.

5 Sunan al-Tirmidhi, 4/461, al-Tirmidhi said: The hadith of Hasan is saheeh.

The significance is: "The meaning is that he does not claim the felony of another of his relatives and distant relatives, and if one of them commits a felony, the other will not be punished for it... It is their custom to take the relatives of the person for his crime, and the result is that this is an injustice that leads to another injustice."<sup>1</sup>

Examples of this rule and its issues include:

A person deliberately kills another. The retribution is from the murderer, and not from anyone else, and the thief has his hand cut off and no one else's hand is cut off, and the adulterer is punished with hadd punishment, and no one else is acting on his behalf, because the punishment is meant to deter and discipline<sup>2</sup> him.

We see in the tribal dukkah that all the family of the perpetrator and his relatives are the ones who are attacked, and they are the ones who are required to sit with the owners of the tribal dukkah to pay the money unjustly, and this is not out of justice ordered by the Sharia, but for the sake of achieving interests, but out of the injustice that our tolerant Shariah forbids.

It is clear that tribal dukkah is considered one of the crimes of intimidation prohibited by Islamic law, which leads to attacking the safe people, harming them, intimidating them and forcing them to tribal rule, the punishment of which varies from case to case according to the rules and provisions of the Islamic Sharia, but in most cases, things tend to move towards the threat that leads to tribal sitting and submission to the rules of the clan, which is the intended purpose of the threat.

### **The Fourth Requirement**

#### **A Comparison between Iraqi Law and Islamic Jurisprudence on the Tribal Dukka Habit**

The Islamic Shari'a was keen to protect the soul of a person and prohibit threatening him, and the Iraqi Penal Code also addressed the issue of threats in Chapter III of the Iraqi Penal Code No. 111 of 1969: Threats in Articles 430, 431, and 432.

---

1 Tuhfat al-Ahwazi bi Sharh Jami' al-Tirmidhi, Abu al-'Ula Muhammad 'Abd al-Rahman ibn 'Abd al-Rahim al-Mubarakfour (d. 1353 AH), Dar al-Kutub al-'Ilmiyyah, Beirut, 6/314.

2 Ibid., 8/637.

Article 430 stipulates: "Anyone who threatens another to commit a felony against himself or his property or against the life or property of another or by attributing or disclosing matters that are defamatory of honour shall be punished by imprisonment for a period not exceeding seven years or by imprisonment for a period not exceeding seven years.

The same penalty shall be imposed if the threat is in a letter that is devoid of the name of the sender or if it is attributed to an existing or alleged secret group."

Article 431 stipulates: "Anyone who threatens another to commit a felony against himself or his property or against the life or property of another or by attributing or disclosing matters that are contrary to honor or prestige other than the cases set forth in article 430 shall be punished by imprisonment."

Article 432 provides: "Whoever threatens another by word, deed or gesture in writing, orally or by another person other than in the cases set forth in articles 430 and 431 shall be punished by imprisonment for a term not exceeding one year and a fine not exceeding one hundred dinars."<sup>1</sup>

Tribal dukkah is considered one of the crimes of threats, because it affects the soul and money of a person, because the dignified life guaranteed by the law is not compatible with the threat, as any dignified life that a person lives when he finds bullets thrown at his house, threatening his life, the life of his family, his social stability, as well as the psychological pressures to which he is exposed.

These provisions, which are enshrined in Iraq's penal code, protect basic human rights.

It is left to the judiciary to determine which articles apply to those who use weapons in tribal dukkah, but the difficult situation in Iraq and the spread of the problem of the use of tribal weapons, so that the issue of tribal dukkah and the tribal threat to tribal fighting sometimes led to tribal fighting, which led to many casualties, which prompted the Iraqi judiciary to tighten the punishment.

At the convening of the session of the Supreme Judicial Council, it issued its final decision to consider the "tribal dukkah" as terrorism in accordance with Article 2 of the Anti-Terrorism Law No. 13 of 2005, which stipulates that:

---

<sup>1</sup> Penal Code No. 111 of 1969.

"Violence or threats aimed at terrorizing people or endangering their lives, freedoms and security and exposing their property to destruction, whatever its motives and purposes, is the execution of an individually or collectively organized terrorist project."<sup>1</sup>

According to the new decree, the punishment for tribal dukkah is up to death or life imprisonment according to Article IV of the Anti-Terrorism Law, which stipulates:

- 1- Anyone who, in his capacity as a principal actor or an accomplice to any of the terrorist acts mentioned in Articles II and III of this Law, shall be punished by death, and the instigator, planner, financier, and anyone who enables terrorists to carry out the crimes mentioned in this Law shall be punished by the penalty of the original perpetrator.
- 2- Whoever deliberately conceals any terrorist act or harbours a terrorist person for the purpose of concealment shall be punished by life imprisonment<sup>2</sup>."

The Islamic Shari'ah has taken great care of the soul, so we find that many of the rulings have been prescribed in order to bring benefits to it and ward off the evils from it, and in this it is an exaggeration in preserving and maintaining them, and preventing aggression against them, because by exposing the souls to destruction, the taxpayer who worships Allah Almighty loses, and this in turn leads to the loss of religion.

The Qur'anic texts and the hadiths of the Prophet indicate the necessity of protecting one's souls from being harmed by killing or being attacked by intimidation, threats or intimidation, including:

- 1- The Almighty said: "And those who harm the believers without what they have earned, they have endured calumny and manifest sin."<sup>3</sup>

The significance is: "Those who harm the believers, i.e., by word or deed, other than what they have earned, i.e., without a felony, for which they deserve to be harmed, they have endured a blatant slander and a manifest sin."<sup>4</sup>

---

1 Law No. 13 of 2005, Anti-Terrorism Law, Iraqi Legislation Base <http://iraqlid.hjc.iq>

2 Law No. 13 of 2005, Anti-Terrorism Law, Iraqi Legislation Base <http://iraqlid.hjc.iq>

3 Surah Al-Ahzab, verse 58.

4 The Virtues of Interpretation, Muhammad Jamal al-Din bin Muhammad Saeed bin Qasim al-Hallaq al-Qasimi (d. 1332 AH), researched by: Muhammad Bassel Oyoun al-Soud, Dar al-Kutub al-Ilmiyyah, Beirut, first edition, 1418 AH, 8/111.

2- Abu Musa narrated that the Prophet (peace and blessings of Allaah be upon him) said: "Whoever takes up arms against us is not one of us."<sup>1</sup>

The significance of the phrase "whoever takes up arms against us" is not one of us because of the intimidation and terror of the Muslims, and the right of the Muslim over the Muslim to help him and fight without him, not to intimidate him by taking up arms against him, because he wants to fight or kill him.<sup>2</sup>

According to the above, tribal dukkah is one of the crimes of threats that are forbidden in Islamic law, which leads to attacking the safe people, harming them, intimidating them, and forcing them to tribal rule, which varies from case to case according to the rules and provisions of the Islamic Sharia, but in most cases, things tend to be threatened that leads to tribal sitting and submission to the rules of the clan, which is the intended purpose of the threat.

It may lead to other effects, depending on the outcome of the use of the weapon, such as death due to fear as a result of threats, permanent disability, damage to private property, etc.

### **The end**

---

1 Al-Jami' al-Musnad al-Sahih al-Mukhtar min Amr, Sunnah and Days, Sahih al-Bukhari, Muhammad ibn Ismail ibn Ibrahim ibn al-Mughirah al-Bukhari, Abu Abdullah (d. 256 AH), researched by Dr. Mustafa Deeb al-Bagha, professor of hadith and its sciences at the Faculty of Sharia, Damascus University, Dar Ibn Kathir, Al-Yamamah, Beirut, third edition, 1407-1987, hadith number (6660), 6/2592.

2 Al-Ilam bi Sharh 'Umda al-Ahkam, Sheikh Ismail al-Ansari, Al-Sa'ada Press, Egypt, second edition, 1392 A.H. – 1972 A.D., 2/195.

After talking about the issue of the tribal dukkah custom in Iraqi society and the legal and jurisprudential adaptation to it, we reached several conclusions and recommendations, which are represented in the following:

**First: Results:**

- 1- Tribal dukkah is armed attacks on the homes of opponents from other clans as a severe threat to force them to submit to tribal rule.
- 2- Tribal dukkat has spread widely in Iraq as a result of the weak enforcement of the law after 2003 and the spread of uncontrolled weapons illegally.
- 3- The spread of the phenomenon of tribal dukkah has resulted in a change in many of the authentic values of Iraqi society, fearing this phenomenon, due to the great arbitrariness in its use by the tribes that support it, so it has become necessary to protect the authentic values of Iraqi society and to combat this bad phenomenon.
- 4- The Iraqi Penal Code addresses the issue of threats in Chapter 3 of the Iraqi Penal Code No. 111 of 1969: Threats in Articles 430, 431 and 432, and as a result of the widespread spread of the phenomenon of tribal dukkah, the Supreme Judicial Council increased the punishment by issuing its final decision to consider tribal dukkah as terrorism in accordance with Article 2 of the Anti-Terrorism Law No. 13 of 2005.
- 5- Islamic law prohibits assault on lives and private property, taking people's money in falsehood, and prohibiting intimidation of security personnel, so tribal dukkah is considered forbidden by Sharia.

**Second: Recommendations:**

- 1- Researchers should study the phenomenon of tribal dukkah from a social and psychological point of view.
- 2- The need for the honorable Arab tribes to address the phenomenon of tribal dukkah and other tribal customs that violate the provisions of Islamic Sharia, and to rebuild authentic values and customs.
- 3- The need to create a unified charter among the Arab tribes to renounce corrupt customs, control the use of tribal weapons, and strengthen the rule of law.
- 4- Emphasizing the social role of tribes only and giving them a simple role in resolving disputes between individuals, especially in areas that are far from cities and where access to judicial institutions is very difficult.

- 5- Exclude any legal provision that allows tribal customs to intervene to resolve legal disputes between individuals.
- 6- Spreading and promoting a culture of human rights affirmed by the Constitution and international conventions among all members of society to introduce them to their rights and freedoms that no one can take away from them.
- 7- We call on the Iraqi legislature to amend the Penal Code by adding a new text that deals with this crime appropriately or by amending the text of the threat, since this crime applies to this text, but its punishment is reduced compared to the effect of the dukkah.

## Sources and References

### After the Holy Qur'an:

#### First: Arabic Dictionaries:

- 1- Ibrahim Anis, The Intermediate Dictionary, Al-Shorouk International Library, Cairo, 2004.
- 2- Abu Muhammad Mahmoud bin Ahmed bin Musa bin Ahmed bin Hussein al-Ghitabi al-Hanafi Badr al-Din al-Aini, Al-Banaya Sharh al-Hidayah, Dar al-Kutub al-Ilmiyyah – Beirut, Lebanon, first edition, 1420 AH – 2000 AD, 13/63, al-Majmoo' Sharh al-Muhadhab (with the complement of al-Sobki and al-Mutai'i), Abu Zakariya Muhyiddin Yahya bin Sharaf al-Nawawi (d. 676 AH), Dar al-Fikr, 19/88, The Fiqh Summary of Ibn 'Aref, Muhammad bin Muhammad ibn Arafa al-Warghami al-Tunisi al-Maliki, Abu Abdullah (d. 803 A.H.), Research: Hafiz Abdul Rahman Muhammad Khair, Khalaf Ahmed Al Habtoor Charitable Foundation for Charitable Works, First Edition, 1435 A.H.- 2014 A.D., 9/529.
- 3- Similarities and analogues on the doctrine of Abu Hanifa al-Nu'man, Zayn al-Din ibn Ibrahim ibn Muhammad, known as Ibn Nujim al-Masri (d. 970 AH), annotated and extracted his hadiths: Sheikh Zakariyya Amirat, Dar al-Kutub al-Ilmiyyah, Beirut, Lebanon, first edition, 1419 AH – 1999 AD, 1/73.
- 4- Knowledge of the Explanation of the Mayor of Judgments, Sheikh Ismail Al-Ansari, Al-Sa'ada Press, Egypt, Second Edition, 1392 A.H. – 1972 A.D., 2/195.
- 5- Ait, Iftan Sarra, Adaptation of Accusation and its Impact on the Stages of Public Proceedings, Ph.D. Thesis, University of Djilali Liabes – Sidi Bel Abbes, Faculty of Law and Political Science, 2017-2018.
- 6- Tuhfat al-Ahwazi with the explanation of the Tirmidhi Mosque, Abu al-Ula Muhammad Abd al-Rahman bin Abd al-Rahim al-Mubarakfour (d. 1353 AH), Dar al-Kutub al-Ilmiyyah, Beirut, 6/314.
- 7- Al-Jami' al-Musnad al-Sahih al-Mukhtar min Amr al-Rasulullah (may Allah's peace and blessings be upon him) and his Sunnah and Days, Sahih al-Bukhari, Muhammad bin Ismail bin Ibrahim bin al-Mughirah al-Bukhari, Abu Abdullah (d. 256 AH), researched by Dr. Mustafa Deeb al-Bagha, Professor of Hadith and its sciences at the Faculty of Sharia, Damascus University, Dar Ibn Kathir, Al-Yamamah, Beirut, third edition, 1407-1987, hadith number (6660), 6/2592.
- 8- Jamal al-Din, Muhammad Tahir bin Ali al-Siddiqi al-Hindi al-Fitni al-Gujrati, Majma' Bahar al-Anwar fi Gharaib al-Nasr wa al-Ta'if al-Akhbar, Ottoman Encyclopedia Council Press, Third Edition, 1387 AH – 1967 AD, 2/9.

- 9- Sunan al-Tirmidhi, 4/461, al-Tirmidhi said: The hadith of Hasan is saheeh.
- 10- Al-Shafi'i, Muhammad Al-Amin bin Abdullah Al-Armi Al-Alawi Al-Harari, Al-Kawkab Al-Wahhaj, Sharh Sahih Muslim (called: Al-Kawkab Al-Wahhaj wa Al-Rawd Al-Bahaj in the Commentary of Sahih Muslim Ibn Al-Hajjaj), Review: A Committee of Scholars Headed by Prof. Hashim Muhammad Ali Mahdi, Advisor at the Muslim World League – Makkah Al-Mukarramah, Dar Al-Minhaj – Dar Touq Al-Najat, First Edition, 1430 A.H., 2009 A.D., 24/446.
- 11- Sahih Muslim, Hadith No. (2617), 4/2020.
- 12- Fath al-Qadeer, Muhammad bin Ali bin Muhammad bin Abdullah al-Shawkani al-Yamani (d. 1250 AH), Dar Ibn Kathir, Dar al-Kalam al-Tayyib, Damascus, Beirut, first edition, 1414 AH, 2/211.
- 13- Al-Qasimi, Muhammad Jamal Al-Din Bin Muhammad Saeed Bin Qasim Al-Hallaq, The Virtues of Interpretation, Researched by: Muhammad Bassel Oyouun Al-Soud, Dar Al-Kutub Al-Ilmiyyah, Beirut, First Edition, 1418 A.H., 8/111.
- 14- Rules: The plural of a rule, for the rule: "A whole proposition that applies to its parts, as we say: the subject is raised and its parts are like Zayd is raised in the coming of Zayd." Tayseer al-Tahrir, Muhammad Amin bin Mahmoud al-Bukhari, known as Amir Badshah al-Hanafi (d. 972 AH), Mustafa al-Babi al-Halabi – Egypt (1351 AH – 1932 AD), and his image: Dar al-Kutub al-Ilmiyyah, Beirut (1403 AH – 1983 AD), and Dar al-Fikr, Beirut 1417 AH – 1996 AD, 1/14.
- 15- Muhammad Bin Yaqoub Al-Firouzabadi, The Surrounding Dictionary, Dar Al-Hadith, Cairo, 2013.
- 16- Musnad of Imam Ahmad bin Hanbal, Abu Abdullah Ahmed bin Muhammad bin Hanbal Hilal bin Asad Al-Shaibani, Research: Shuaib Al-Arnaout – Adel Murshed, and others, Supervision: Abdullah bin Abdulmohsen Al-Turki, Al-Risala Foundation, First Edition, 1421 AH – 2001 AD, 13/725.
- 17- The Singer in the Fiqh of Imam Ahmad bin Hanbal Al-Shaibani Abu Muhammad Muwaffaq Al-Din Abdullah bin Ahmed bin Muhammad bin Qudamah Al-Jama'ili Al-Maqdisi and then Al-Dimashqi Al-Hanbali, known as Ibn Qudamah Al-Maqdisi, Dar Al-Fikr - Beirut, First Edition, 1405, 9/565.
- 18- Encyclopedia of Jurisprudential Rules, Muhammad Sedqi bin Ahmed bin Muhammad Al-Burnu Abu Al-Harith Al-Ghazi, Al-Risala Foundation, Beirut, Lebanon, First Edition, 1424 AH – 2003 AD, 11/1071.
- 19- Al-Youbi, Muhammad Saad bin Ahmed bin Mas'ud, The Purposes of Islamic Sharia and its Relationship with Shari'a Evidence, Dar Al-Hijra, Kingdom of Saudi Arabia, First Edition, 1998, 1/181.

## **Second: Legal Books**

- 1- Sorour, Ahmed Fathy, Cassation in Criminal Matters, Dar Al-Nahda Al-Arabiya, Cairo, 1997.
- 2- Amer Saleh, Tribal Dikka, Terrorism and Clan Reproduction, Al-Naba Information Network, 2018.

## **Third: Legal Research and Journals:**

- 1- Tawfiq, Obaida Amer, The Tribal Dikkah and its Effects on Iraqi Society, A Jurisprudential Legal Study, Journal of the Faculty of Education for Girls, Iraqi University, Issue 14, Question 8, Part 1, 2021.
- 2- Abbas, Bakr Ali, Ahmed Fadhil Hussein, Abdul Basit Abdul Rahim Abbas, Tribal Customs under the Constitution and Iraqi Laws, Journal of Politics and Law, No. 15, June 2016.
- 3- The Virtues of Interpretation, Muhammad Jamal Al-Din Bin Muhammad Saeed Bin Qasim Al-Hallaq Al-Qasimi (d. 1332 A.H.), Researched by: Muhammad Bassel Oyoun Al-Soud, Dar Al-Kutub Al-Ilmiyyah, Beirut, First Edition, 1418 A.H., 8/111.
- 4- Al-Rawabet Center for Research and Strategic Studies, (2019), Is the Tribal Dikkah Ending in Iraq?, Article Published on the <https://rawabetcenter.com/archives/96304> Website
- 5- Al-Rawabet Center for Research and Strategic Studies, 2019, Is the Tribal Dikka Ending in Iraq?, Article published on the website <https://rawabetcenter.com/archives/96304>
- 6- Research published on the website: [Ar.m.wikipedia.org](http://Ar.m.wikipedia.org)
- 7- Zaid al-Araji, The Judiciary Writes Is the End of the Tribal Dukkah, Report Published on the Website of the Supreme Judicial Council, Republic of Iraq, [www.hjc.iq](http://www.hjc.iq)

## **Ra Ba'a. Legislation**

### **Laws**

1. Iraqi Counter-Terrorism Law No. 22 of 1976.
2. Iraqi Penal Code No. (111) of 1969.
3. Iraqi Counter-Terrorism Law No. (13) of 2005.