

## **The first lecture**

### **The first axis: Crime/its definition, divisions and elements in Islamic legislation**

Islamic law has prohibited some behaviors and actions that it deemed necessary to prevent and criminalize, because they affect the interests of the group and individuals that are harmed by such behavior. Jurists have attributed the interests that Islamic law came to protect to five interests: preserving the religion, preserving the soul, preserving the mind, and preserving the offspring. And preserving reason, as every attack on these interests constitutes a crime that requires accountability and punishment for whoever commits it.

### **The first topic: definition of crime**

The origin of the word "crime" from a crime in the sense of gain and cutting, and means in the past the hated gain is not advisable, and the word "crime" means to carry on the act of a sinful pregnancy, and from it the Almighty says: "O people, my discord does not criminalize you to afflict you, such as what befell the people of Noah, or the people of Hud, or the righteous people, and the people of Lot are far from you", that is, they do not carry you a sinful burden, my discord and your dispute with me to inflict severe torment on you, such as what happened to those who preceded you who worked hard for their prophets, and from it he also said Almighty He said: "And do not offend you against some people, but do not amend, just is closer to piety," that is, they do not carry you a sinful burden by hating people, provided that you do not amend with them.

Accordingly, the word crime is launched to commit everything that is contrary to the right, justice and the straight path, and from that derived criminality and criminality, where it came in the saying of the Almighty: "Those who committed crimes were those who believed laughing" and also said: "Eat and enjoy a little that you are criminals", and Ezz said: "The criminals are misguided and priced."

From the above, it is clear that the crime goes linguistically to do something that is not desirable and frowned upon, and that the criminal is the one who falls into something that is not advisable with insistence on it and continuing it without trying to leave it or accept it.

The crime in Islamic jurisprudence means: "prohibitions of legitimacy rebuff God Almighty for it with a limit or retribution or blood money or ta'zir", they are "prohibitions" because of the violation of the prohibition or order of legitimacy are

either the coming of an act forbidden or leave an act ordered by it, if it conforms to the rules of conduct Sharia excluded as a result of the meaning of the crime.

They are "legal prohibitions" because the rules of conduct that violate them are legal rules prohibited by the provisions of Sharia prescribed in the Qur'an or Sunnah, and the penalty for committing them is either a limit, which is an estimated punishment, that is, estimated by the street by indicating its gender and its amount by a text in the Qur'an or Sunnah in a fixed manner that may not be disposed of or modified by the judge or guardian, and also includes retribution and blood money as they are estimated in the Qur'an and Sunnah, and the penalty for the crime may be in addition to the ta'zir limit, which is a punishment that is not estimated in The Qur'an or the Sunnah, but leaving the matter of its discretion to the guardian based on a number of factors such as the prevailing conditions in society, the dangers that threaten it, and the appropriate and appropriate sanctions to deter and confront such dangers that threaten society, indicating the act that constitutes a sin carried out by the ta'zir, and specifying at a later stage the appropriate punitive punishment, based on a number of legal controls, whether related to the act or related to the punishment alike.

From the above, it is true for the definition of the crime of doing what God forbade him and disobeying what God commanded him by virtue of Sharia, which is to perform a forbidden act punishable for his act, or to leave an act ordered by him punishable for abandoning it, because God Almighty decided to punish anyone who violates his orders and prohibitions, which is either a worldly punishment or an eschatological punishment.

The words crime, felony, sin, sin and sin are all synonymous, and ratified by all the previous definitions, they are words converging in their meaning, although they differ in their graphic signals, the crime is characterized by what the criminal acquires from the malicious gain of the Almighty: "Wear out the gain of bad and surrounded by his sin, those owners of fire are immortal", so that this malicious gain is the product of crime reflects the same evil disrupts the mind from thinking, progress and sophistication and urges its owner to gain quick easy that is done by each This would constitute a violation of the commands and prohibitions of God Almighty.

From the preceding definitions, it is clear that the crime is based on the following elements:

- ✓ The crime in essence is prohibited legitimate you do every act forbidden by God Almighty or leave what he ordered, the essence of the crime from the perspective of Islamic criminal jurisprudence is the agreement of the act or its violation of the orders of God Almighty and prohibitions, the act is not described as a crime unless it includes disobedience to the prohibition or order of legitimacy, and in return no crime if the behavior does not violate the end or a legitimate order, as it is in such a case permissible legitimate behavior, refrain from doing the crime like it.
  
- ✓ The material element of the crime is a behavior that may take the form of an act or abandonment, i.e. positive or negative behavior through abstinence, as the violation of legal orders and prohibitions must be translated into material acts that appear in the outside world concretely, it is not enough just to think or design for punishment as long as it is not translated into the outside world in the form of material acts that have their physical entity, which is confirmed by the hadith of the Messenger of Allah, may God bless him and grant him peace: "Allah, may He be exalted, transgressed to my nation what she did or did not do or did not do or speak," and also saying: "Those who are good and did not do it, wrote him good, and those who are bad, did not do it, nothing was written for him."
  
- ✓ The moral element of the crime is based on the will or criminal intent, which is represented in the psychological link between the criminal and the material behavior he commits, a principle approved by Islamic law, which was the forerunner of it since its inception before the positive legislation that did not adopt the idea of taking care of the psychological aspect and the moral entity of the crime except in the era of the French Revolution, the idea is original in Islamic law, which surpassed and surpassed the most accurate and latest positivist theories that were said in this regard.

Therefore, in addition to being a physical entity represented in the criminal act and its harmful effects on the individual and society, the crime is also a psychological entity represented in the sinful intention that issued the act, and Islamic law has thus decided the principle of "where there is no sin, there is no

responsibility or punishment", which is an application of the saying of the Prophet (peace and blessings of Allaah be upon him): "Actions are by intentions, but for every person what he intended."

- ✓ The commission of the crime with its aforementioned elements and elements referred to above leads to the entitlement of the penalty and the imposition of the appropriate punishment on the perpetrator, it may be a worldly punishment that the public authorities represented by the judiciary are competent to impose on the perpetrators of the crime within the scope of what God Almighty has decided of the legal provisions, and it is also eschatological that God Almighty accounts for inflicting it with your wife