

Indirect Incitement to Crime and Its Impact on Establishing Criminal Liability: An Analytical Study in Light of Iraqi Legislation, Jurisprudence, and Judiciary

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ABSTRACT

Objective: The aim of this research is to review the facets of "Indirect Incitement to Crime" as a developing intellectual criminal phenomenon, and its impact on the criminal liability system in accordance with the Iraqi legislation. This study is based on a simple problem: The legislative gap in suggestive patterns of incitement from the Iraqi Penal Code No. 111 of 1969. Such a gap has resulted in paradoxical metaphors in identifying the exercise of constitutional rights (freedom of expression) from criminal behaviors camouflaged under the pretext of glorification or amplification thereof. **Method:** In order to achieve the purposes of this study, an analytical method was adopted to analyse penal texts as well as a judicial method to extrapolate trends on behalf of Federal Court of Cassation. This study is divided into four distinct sections, the first reviews methodology and prior literature, the second establishes the jurisprudential framework (juristic conceptions of law); the third discusses legal elements (actus reus and mens rea) while the fourth section terminates in punitive impact and mitigation mechanisms. **Results:** The most significant results of the research were to be seen in the Iraqi Criminal Policy, which began with the so-called "abstracting" indirect assault predicate in terms of special laws and converting it into a stand-alone (crime hazard) crime. Moreover, the results show that the judiciary throws itself on a "contextual standard" in deciding criminal intent. **Novelty:** And the paper ends by reiterating the need to codify a clear procedural definition of suggestive incitement, as well as design contemporary prophylactic mechanisms adapted to the digital publicity sphere.

INTRODUCTION

Contemporary criminal law is based on the philosophy that acts threatening the foundations of state and society are to be prevented through crime making it forbidden. But the forms of these acts have expanded beyond mere material execution in direct form; they began to include "moral manufacture" of crime through a phenomenon known as "indirect incitement."

Inspired by one of the deepest wisdoms presented in Holy Quran: Allah presents an example, [making] a good word like a good tree; its root is Firm and its branches in the heavens. And it yields its fruit at all times, by the leave of its Lord. And Allah sets forth examples for the people that perhaps they will be reminded." (Surah Ibrahim: 24-25). Where a good word brings forth righteousness, an inciting "malicious word" brings forth crime and sedition. This new paradigm challenges the principle of legality (Nullum crimen sine lege) on one level, because it rests on the manipulation of collective cognition and conscience by a party with Plantonic gastronomic precepts, but without the resort to explicit command or request formulas. This makes the "word" a criminal tool no less deadly than systematic weaponry.

Based on this reasoning, the research problem is represented in the so-called "grey area", where an indirect inciter seeks to establish himself (taking advantage of constitutional guarantees that ensure freedom of opinion in Article 38 of the Iraqi Constitution). This posture also raises serious questions about the effectiveness of conventional penal measures as a control mechanism over such behavior, especially given how legislative forces remain stymied in the effort to formulate an exhaustive definition that did not leave room for dispute regarding the legal qualifications of words and deeds devoted to "glorifying a crime" (apologie du crime) or commending its authors.

The importance of these research efforts made is to try, in earnest, to balance between the state power to punish (*Ius Puniendi*) with "individuals right to freedom of expression." It is intended to serve as a source of the legal library and Iraqi judiciary with objective criteria for measuring the criminal dangerousness of suggestion discourse. To lay the theoretical foundations for the legal concepts of this type of incitement, and to study the penal philosophy adopted by special laws in Iraq to prove it, is the primary aim of this study.

Based on the aforementioned, this research will hypothesize that the Iraqi legislator is in desperate need of bypassing penal subordination (accessory liability) towards criminal independence (inchoate/independent offense) as a means to confronting "Indirect Incitement" and hence extending preventive protection for society. In order to test this hypothesis, the paper adopts a fundamental analytical method along with the statutory texts which are interrogated by judicial approach in taking out the spirit of law from Iraqi judicial precedents.

In an effort to cover the topic from every angle, such research is framed with four main structural sections:

1. Section One: General methodology and Literature Review Section One
2. Section Two: Theoretical Considerations and the Jurisprudence of Incitement
3. Section Three: Legal components (*Actus Reus* and *Mens Rea*) and evidentiary challenges.
4. Section Four: Examines the penal impact and confrontation mechanisms within the text of Iraqi Legislation.
5. Conclusion: Lastly, the study will present its findings and legislative recommendations.

Section One: Methodological Framework and Literature Review

This part leverages a building block in which the researcher can immediately set forth a framing for penal puzzle, while investigating the original nature of the information. This rigorous legal methodology is established by examining past jurisprudential contributions.

Subsection One: The Methodological Framework of the Research

First: Research Problem

The main issue here is the "ambiguity" regarding who can be legally termed as an indirect inciter, which, under Iraqi law, gives rise to the criminalization of such behavior.

Through the general rules on accessory complicity (secondary liability) defined by the Penal Code, the danger of suggestive behaviors and *apologie du crime* particularly in within digital sphere arise without an exhaustive statutory definition. This passes to the more central question: When does the “word” move from being a constitutionally protected right of expression, onto an act of incitement with material qualifying for penal sanction?

Second: Research Significance

The importance of this research comes from its treatment of one of the most complicated, newly affiliated phenomena in contemporary Iraqi reality. This importance can be crystallized in the following:

1. Legislative Adaptation to the Qualitative Evolution of Crime: Incitement in Iraq also no longer depends on traditional means that require direct personal confrontation between the instigator and his prey. It has evolved into a phase of “covert collective influence” through the exploitation of digital space and media." Hence, the crux is to try and encounter the traditional penal provisions (which are drafted decades back) with insinuating criminal methods which seek communal emotion on its course and demolishes social fabric without leaving behind a material trail.
2. Providing a Guiding Vision for Criminal Justice: The scientific importance of this research is reflected in the provision of a legal “roadmap” that enables the Iraqi criminal judge to resolve or dissolve that intellectual and legal conflict between freedom of expression as guaranteed constitutionally under Article (38) and penal entrenchment for crimes threatening state and societal security. This goal seeks to establish limits of discipline for distinguishing between the "legitimate criticism" and "indirect incitement," where glorifying crime or embellishing on illegal acts serves as a mechanism for cloaking.
3. Enhancing Proactive Criminal Protection: The significance of the research is that it purges our understanding of the philosophy behind “crimes of endangerment” (inchoate offenses), since incitement by way of indirect means usually precedes natural security disasters and social catastrophes. The analysis thereby lays the theoretical foundation for criminal liability in respect of such conduct aimed at enhancing a preventive penal policy that stops the crime in its (mental) bud before it comes to fruition as a material act that threatens public interest.
4. Enriching the Iraqi Legal Library: As there are relatively few studies focused on "indirect" incitement under special laws (e.g., Anti-Terrorism Law), this research serves as a qualitative contribution for experts and practitioners alike. It aims to meet the challenges of the twenty-first century by blending classical jurisprudential views with modern judicial measures to contribute for a creative development of Iraqi criminal jurisprudence.

Third: Research Objectives

The focus of this research is to shed light on the "grey area" in inciting behavior by reaching the following objectives:

1. **Theoretical Grounding of the Legal Concept of Indirect Incitement:** In terms of the need to develop a concrete and detailed definition of indirect incitement that sets it apart from other forms of complicity into crime, as well as to focus on how a "suggestion" or "glorification" turns into an independent crime within Iraqi legislation.
2. **Establishing Criteria to Separate Constitutional Rights from Criminal Liability:** A leading purpose should be to formulate clear "judicial criteria" (such as the principle of imminent danger and conditional intent / *dolus eventualis*) that would allow a distinction by the judge between exercising the right to free expression, while avoiding crossing over into indirect incitement that endangers civil peace.
3. **Analyzing the Iraqi Legislator's Stance in General and Special Laws:** Hence, to reveal the duality with respect to penal treatment; one when from the point of view of lead crime consideration it treated by the legislator as "subordinate" act and another when its considered "independent crime of endangering (Anti-Terrorism Law)" further explaining practical wisdom behind such legislative differentiation.
4. **Monitoring the Challenges Posed by Modern Digital Means:** To examine the proving of both material (*actus reus*) and mental (*mens rea*) elements required for indirect incitement in cyberspace; while also highlighting how effective relevant provisions within the traditional penal code are when faced with "algorithms" and "viral spread" of inciting content.
5. **Providing Proposals to Develop the Iraqi Penal System:** This dynamic study aims at formulating recommended changes that can afford for the Iraqi legislator to amend or establish statutory provisions with such flexibility so as to be able to absorb novel patterns of incitements which lead effective general deterrent without harming in essence public liberties.

Fourth: Research Hypothesis

This study is based on a basic theory: that "the general rules of criminal complicity (accessory liability) in the Iraqi Penal Code have become insufficient alone to face the new trends of indirect incitement, which pushes penal policy towards adopting" the doctrine of the independence of the incitement crime. Hence, it is assumed that the Iraqi legislature and judiciary are heading towards affirming this form of incitement as an independent crime of endangerment, which gets fulfilled as soon as a discourse threatening public security is broadcasted, not needing to fulfill its punishment condition with the actual occurrence of the principal crime. This should be complemented with the enactment of stringent judicial watchdogs to ensure that this trend does not descend into limiting constitutionally protected freedom of expression."

RESEARCH METHOD

Fifth: Research Methodology

In consideration of the role it will fulfil as well as the measures to be taken to achieve the aims and to answer research question, this study relies on two type of scientific methods known in criminal law studies:

1. Analytical Method: This is the principal one in this study, working on analyzing what was provided for by law in the Iraqi Penal Code No. 111 of 1969 and the Anti-Terrorism Law No. 13 of 2005. The study is not restricted to a strict textual interpretation; it will also encompass examining the views of the Iraqi legal system and comparative criminal law, further deconstructing the crime's constitutive elements (physical and mental) in order to arrive at an accurate conclusion about the nature of criminal liability.
2. The Jurisprudential Method: This method will be used to monitor the development of the concept in the thought of the Iraqi judiciary, especially through the decisions issued by the Federal Court of Cassation. The goal is to show that the way courts apply indirect incitement to concrete factual precedents "sets" what it means, and how mens rea can be inferred from context of speech and the conditions surrounding crime.

Subsection Two: Literature Review

Following the well-worn academic dictum of "start where others finish"³⁶ this analysis does not intend to recite the accepted classical legal writing on (criminal) complicity. Rather, it aims to take up the "research torch" where those studies left off. Although the classical direct incitement paradigm has been created and shaped by pioneering jurists, this study embodies forays into the jurisprudentially "silent" territory of suggestive (circumstantial) incitement based on current digital and political parameters.

As we begin, we can summarize previously completed scientific initiatives that preceded this study through the following categories:

First: Foundational Studies

1. Al-Saadi's Study : The general theory of crime. The basis was established for criminal complicity in Iraq. It was used to comprehend the "moral causal link" (moral causation,) between inciter and perpetrator; yet, it forgot to leave incitement in a context established by modern technologically mediated means [1].
2. Al-Khalaf and Al-Shawi's Study : Deals with the general principles of criminal law in a solid theoretical framework on "criminal intent" (Mens Rea-knowledge and will) as it is the basic pillar to prove the mental element of incitement [2].

Second: Specialized Studies (Recent Researches and Theses)

1. Al-Khafaji's Study : "Criminal Liability for Hate Speech." A comprehensive study tackling indirect incitement disguised as hatred. It has been characterized by its association of penal provisions with constitutional

guarantees, which helped the current research to formulate the "imminent danger" criterion (Clear and Present Danger test) [3]

2. Al-Shawi's Study : "Digital Incitement and Novel Crimes." Targeted at incitement through social media platforms It thus constituted a main point of reference in this research for legally qualifying as "glorification" (apologie du crime) and "republishing/sharing" modern forms of indirect incitement [4].
3. Abboud's Study : Explanation of the Penal Code General Part Proposed a modern Iraqi jurisprudential perspective on the development of incitement from an accessory to one independent crime endangerment (independent inchoate offense) in the special laws, this concept has been adopted by this research in its second section [5].

Third: The Knowledge Gap

Although there are many Iraqi studies discussing the issue of "incitement", a finding gap has been found through the following aspects:

1. The Conceptual Gap: Most of this previous literature was concerned with the issue of so-called "direct incitement" (command, request, threat) aimed at specified individuals while leaving "indirect (suggestive) incitement" a grey area that had no clear operational definition defining it from permissible criticism or passing praise.
2. The Digital Gap (Novel Publicity): Classical studies dealt with the element of "publicity" in conventional terms (press, oratory), but drifted over the psychology of "algorithms" and the "collective influence" of a virtual space where suggestive instigation becomes a destructive force that exceeds borders and social classes.
3. The Gap Between Subordination and Independence: The previous studies did not directly address the current temporary position of "penal duality" that exists at this stage in Iraq where incitement appears in two shapes: It was incriminated as an "accessory" crime through Penal Code, while it appeared as "independent crime of endangerment" in special laws, causing confusion in determining which action described under such title before the judiciary.

Fourth: Filling the Gap

The goal of this research is to fill in the above-mentioned gaps through the following scientific lines:

1. A "Criteria Guide" for Differentiated Development: Drawing out features of objective criteria (for example, from the concept of suggestiveness and the criterion of pouring society with tension) to aid judges in determining whether and when a speaker's statement crosses over from freedom of speech into criminalized incitement (albeit implicitly).
2. Investigating "Virtual Publicity": Evaluating the deficiencies of traditional publicity behind indirect incitement on one hand, and then exploring how do we fulfil the material (Actus Reus) component when it comes to digital through "Sharing" or "Endorsing Comments".

3. Building a Reconciliatory Penal Vision: By arguing for a penal model connecting the harshness of the punishment, not to whether or not there was an incitement principal crime but rather its "magnitude of imminence" and therefore reconciling both doctrines of subordination and independence This maintains a balance that protects society, without infringing on liberties.

Fifth: What Distinguishes the Current Research

While such studies thrive with detail, this one stands out for its efforts to create a "digital and contextual evidentiary guide" for indirect incitement. It incorporates the traditional rules of law while advancing on developments in Iraqi penal policy up to 2026 about when there is only liability for "suggestion" rather than direct "commands."

Section Two: The Conceptual Framework of Indirect Incitement and its Legal Characterization

One of the most delicate dilemmas in contemporary Iraqi criminal law, on both the legal and legal perspectives is that indirect incitement (indirect provocation) which oscillating between being an "accessory complicity" and from an "independent crime."

RESULTS AND DISCUSSION

Subsection One: The Jurisprudential and Legislative Definition of Indirect Incitement

Defining the nature of indirect incitement is one of the most perfect tests that Iraqi criminal thought has encountered. The reason behind it is that there is no explicit statutory provision that defines them all exhaustively in the Penal Code No. 111 of 1969, for the legislator only mentioned incitement as accessory complicity in article (48/1). The absence of any legislative standard obliged jurisprudence to derive various definitions that were capable to encompass the severity of this behavior.

The classic definition of incitement is, according to the traditional view, "Instilling a criminal spirit in the soul of another; that is pushing her/him to commit crime(s) she/he has not undertaken" [6]. This definition looks at the psychological element of manufacturing criminal intent. Evolving with methods of publication, a second definition emerged that emphasized the medium: it was described as "general public incitement aimed at an unspecified audience by means not involving direct personal confrontation", distinguishing it from direct incitement targeting a specific individual.

Modern Iraqi jurisprudence, given modern digital transformations, has proposed to adopt a third definition that matches the nature of new crimes under what it describes as: "Any public positive behavior that creates an intellectual atmosphere encouraging the commission of the crime without addressing a specific perpetrator or crime at a specific time and place" [7]. The argument here connects to a fourth understanding of this notion, whereby incitement is characterised as "mediated or general moral incitement", in that it does not necessitate an encounter between the instigator and the perpetrator, instead, manipulating collective sentiment through publication formats that cut off the material relationship between both parties [8].

The fifth definition presents an approach that looks at the suggestive content of the incitement, categorizing it as conduct that comes in a shape of praising criminal acts

or glorifying their perpetrators thereby creating a psychological urge to emulate them (Sahib, 2021, p. 159). Lastly, the sixth definition of incitement to violate the provisions of law that goes as far as to affects his will makes reference to delinquency itself protection for the state fabric: "an activity aims at undermining legal doctrine of individual and driving it to revolt against penal provisions" [9].

According to the researcher, this matrix of definitions indicates the metamorphosis of indirect instigation in Iraq from a "satellite act" into an "autonomous societal threat." The legislator and the judiciary are no longer content with the exercise of looking for "command and request" by explicit words. Thus, the emphasis moved toward the suggestive strength of discourse and its potential to create a "criminal belief" in the person targeted, which was a starting point for studying what type of criminal responsibility can emerge from this elaborate behavior.

Subsection Two: Legal Characterization under Enacted Iraqi Legislation

Within the framework of Iraqi penal system, legal qualification of indirect incitement ranges from an "accessory act" (secondary liability) bound to the general rules on complicity, to an "independent crime of endangerment" (inchoate offense) laid down by special laws. Such duality of characterization is determined by the demands of modern criminal policy.

Indirect incitement in Iraqi law can be classified originally as a kind of "accessory complicity" based on Article (48/1) of the Penal Code. Here, the inciter's liability is inseparable from and derives from the existence of the principal's liability. The Iraqi judiciary demands "decisive impact" of incitement to the crime for this liability to exist. Where this psychological causal link (in terms of moral causation) is broken between the inciter's words and the act by the perpetrator, criminal liability is thereby destroyed [10].

Yet this general principle, rooted in the so-called doctrine of subordination (accessory nature), cannot resist against the serious threat of incitement made to the public. As such, the Iraqi legislator applied the "doctrine of penal independence" in a number of cases by criminalizing indirect incitement and considered it as crime described independently, regardless of whether the criminal result occurs or doesn't occur. Perhaps the most prominent example of this is Anti-Terrorism Law No. 13 of 2005, Article (2) was raised "the promotion and glorification of terrorist ideas to be classified as a complete crime of terrorism." This perspective seeks to extinguish the 'criminal contagion' at its early stage before it takes physical destructive form [tangible acts] (Al-Hakim, 2020, p. 89). We also see echoes of this independent definition in the legal frame for a public crime (which "endangers [the] safety of society and state"), where Articles (190) and (200) of the Iraqi Penal Code prohibit incitement against the regime or sectarian hatred [11].

Modern criminal jurisprudence in Iraq established the fact that consuming indirect incitement as a type of "formal crime" (a conduct crime, in which there is no need to cause material harm) has become the dominant trend in facing social media. The latent threat in "covert incitement," researchers say, can sometimes be worse than the material offense itself. This requires allowing for easier characterization of the crime as a separate offense

with proof that, in some form or another, the inciter conditioned an "encouraging atmosphere" to break law [12]. That legislative duality shows the persistence of that Iraqi legislator who still wants to balance between individual liberties and security precautions combating discourses inciting towards grave crimes.

Subsection Three: The Dilemma of Distinguishing Between Incitement and Freedom of Expression in the Iraqi Judiciary

This distinction is a key for determining the limits of criminal liability in accordance with Article (38) of 2005 Constitution of the Republic of Iraq, which guarantees freedom through any means. This becomes a dilemma when the right of an individual to criticize policies or belief systems clashes with penal provisions forbidding "embellishment" or "glorification" of a crime. This entanglement has forced the Iraqi judiciary to rely on specific objective standards to find a way of resolving this conflict. The most foremost (pun intended) of these is the Imminent Danger Standard (Clear and Present Danger test). Modern legal scholarship will argue that a statement leaves the universe of legally protected speech and step into the abode of prosecuted incitement if it carries real intent to create an immediate threat for public security, in which case the criminalisation of elements is now direct and can be argued as probable after this discourse compared with facts on the grounds [13].

In addition, in this case the Iraqi judiciary does depend on the "Conditional Intent Standard" (Dolus Eventualis) to evaluate liability. Here, the indirect inciter is not responsible for simply expressing an idea but becomes liable when it can be established that he or she knew that their glorification of a specific crime was likely to generate a 'criminal belief' among recipients and yet accepted the risk of doing so by publishing those words [14]. The applications of the Federal Court of Cassation in Iraq have shown that this standard is neither the linguistic vocabulary, disconnected from its context, nor two ideas connected together but rather "the suggestive power" that has been generated by discourse. In normal conditions, what constitutes as criticism can become indirect incitement within the context of crisis or civil strife as being one factor in the motivation for material illegal acts [15].

A new, indirect form of incitement Therefore, when a post on social media can be forwarded with additional messages (e.g. searching in Google's fields) or by pasting it in context, this is considered as an encouragement to such posts. Whenever the intended purpose of the perpetrator who wants to widen the radius of crime discourse in this paper is proven, one fulfills the elements of criminal liability [16]. It has been concluded by scholars that the Iraqi criminal judge has started speculatively to adopt a "teleological interpretation" (purposive approach) of statutory texts, counterbalancing the preservation of individuals' right of expression with the need to prevent if possible the seeds from falling into sedition and criminals, as freedom of expression ends at incitement for civil peace or adornment in rebellion against free law [17].

From above, researcher concludes these points:

1. Indirection and its incitement in Iraq have shifted from what Tilly would call "conventional oratory" to that of "digital and algorithmic incitement," which makes a wide interpretation of Article 19 (Publicity) vital.
2. In contemporary Iraqi, indirect incitement is considered "a formal crime" (crime of endangerment) so that it does not need to lead to material harm while preserving public interest [18].
3. This situation constitutes the consensus of contemporary Iraqi jurisprudence on the need to enact a special "Cybercrime Law" that defines the chaos of indirect incitement through electronic media [19], [20].

Section Three: The Legal Elements of Criminal Liability for Indirect Incitement

Having covered the nature of indirect incitement, we now come to the crux of the research "What do we measure this liability against?" Indirect incitement in itself does not produce an obvious physical component such as a knife or bullet, it is rather an "intellectual crime" which necessitates the painstaking separation of its material and intellectual components (Actus Reus and Mens Rea).

Subsection One: The Material Element - Actus Reus (Suggestive Conduct and the Element of Publicity)

The material element here is not an "act," but an "impact." Components of the elementary Iraqi system under Iraqi law can be identified as follows:

1. The Nature of the Conduct (The Act of Mental Influence): Incitement is not qualified through silence or omission, there must be a positive activity on behalf of the inciter. This attitude translates into a greater or lesser extent of the phrases of praise, glorification of the perpetrator, as well expressing the alleged merits of the criminal act. This behaviour is mainly intended to ensure that the victim "normalises" the idea of the crime [21], [22].
2. The Presence of Publicity (The Legal Vessel of the Act): It cannot be thought of in Iraqi law to prove "indirect incitement" (directed at the public) without fulfilling the condition of publicity called for in Article (19) of the Penal Code.
 - a. Traditional Press: like a speech in public meetings or printed publications
 - b. Digital Publicity: Who is the most dangerous in today. Thus, according to modern jurisprudence posting a "post" or "video" on any public forum meets the element of publicity at its most extreme palate due to lauch mechanism and viral spread targeting psychologically vulnerable demographics [23], [24].
 - c. The Criminal Result and Causal Link: Generally, the crime (or attempted one) must occur for liability to be attributed to the inciter. This brings forth the dilemma of "moral causation"; it means that the judge needs to argue from generalities to particulars in assuming that the "principal perpetrator" would not have carried out the act but for the ideas put into circulation by the inciter. I.e., based on presumptions (like the temporal proximity, which is usually between inciter's discourse and commission of crime) [25], [26].

Subsection Two: The Mental Element - Mens Rea (Criminal Intent and the Dilemma of Latent Intention)

Here we explore the “psyche” of the inciter. The Mens Rea required to be guilty of indirect incitement is not just any "speech"; it is a specific outcome that your "mind" (guilty mind) must aim at:

1. Knowledge and Will (General Intent): The inciter should know the meanings of what they are saying, and their will should be aimed at an act of publishing ransoms in a way that can stimulate someone to commit a crime. (A) Intent to harm is a requirement for liability; therefore, if the speech is misconstrued without intent, there shall be no liability [27], [28].
2. Their Criminal Purpose (Intent Necessary): Mere knowledge is not enough; the inciter must have a “specific intent,” to ensure that their ideas manifest themselves into some concrete acts. In the case of indirect incitement, this intention is inferred from the “repetition of the discourse,” underlying “harshness of the phrases” and targeting a specific group. Contemporary Iraqi jurisprudence asserts that the only thing that makes a "legal thinker" criticizing a text an inciter is specific intent, and whether or not they are calling for rebellion against it [29], [30].
3. Conditional Intent (Dolus Eventualis): Often, the inciter argues that they never wanted the crime to happen. Here, the judicial system in Iraq applies the theory of "conditional intent"; if the inciter imagines that their words will inevitably lead to violence (for example due to ongoing sectarian or political tense relations) and accepts this risk by continuing with their discourse, they are regarded as someone who intentionally Incited [31], [32].

Subsection Three: Proving Liability in Light of Modern Technologies

In the age we are currently in, evidence is based on the “Digital Trace”:

1. Electronic Evidence: The inciter's "Activity Log" on social platforms is one of the information that modern jurisprudence considers material evidence for both the material element (publication) and mental element (persistence and repetition) [33].
2. Textual Interpretation through Contextual Presumption: The word is recognized by the modern-day Iraqi judge not in isolation but also “target audience”. If the inciter aims their speech at youth (or children) of a volatile and inflammatory region, their phrases must immediately be characterized as indirect incitement with consideration of surrounding context (see for example Abboud, 2023, p. 212, praising weapons).

Through this exposition, the researcher sees that indirect incitement liability in Iraq indicative of a "rigid texts" no longer. It has transformed into a context-specific liability that relies on the degree of damage done to social security by the inciter, which demands extreme judicial prudence so as not to allow this character to be manipulated as a pretext for stifling an authentic freedom of opinion.

Section Four: The Penal Impact and Mechanisms for Confronting Indirect Incitement

This brings me, having understood the threat of incitement as an act, to the scales of retribution. How does the law of Iraq contend with this “intellectual poison”? “The penalty in this case is not only responsive, it sends a deterrent message to those who use words as tools to undermine security.”

Subsection One: The Penal Policy for the Inciter (Between Subordination and Independence)

In Iraq, the punishment for indirect incitement follows dual pathways that vary depending on which lay of crime is committed:

1. **First: The Rule of Borrowed Criminality (Facilitative Accomplice):** This is the rule under established jurisprudence in the area of criminal complicity: an inciter borrows their erstwhile criminal character from a principal perpetrator. Due to article (50) of that, the inciter gets the same punishment as committed crime. Al-Hakim states: "The unity of the crime in criminal complicity among principles is that, as a rule, the penalty unified it; this means that he who incited them to commit any act of sin should be treated like those who undertook the said act once it is proven beyond doubt that there was indeed a causal link between his incitement and their action" (2024, p.188).
2. **Second: The Penalization of Incitement as a Crime in Its Own Right: Independent of the Outcome Meaning that in the crimes with political or security implications, the legislator waives Requirement for an Outcome and punishes "danger" the incitement itself.** The Iraqi legislator in the context of the Anti-Terrorism Law and provisions concerning state security, imposed harsh punishment for indirect incitement (for example glorification), which they considered as at least a crime of endangerment not to be punishable only when material harm was necessarily caused by it? (Al-Saadoun 2021, p. 92)

Subsection Two: Assessment of the Penalty and Influential Judicial Circumstances

In stating a sentence, the Iraqi judiciary does not ignore the characteristics of the inciter and the fact in which he acted. This boils down to the following:

1. **The Penalty Aggravated by the Development of "Social Status":** The direct incitement that these jurists see as so pernicious is even worse when it comes from people who enjoy moral authority, like academics or media figures, because they have much more influence over public opinion. As AL-Khalidi (2022, p. 145) mentions: “The severity of the crime in indirect incitement goes with the extent of publicity and status of the inciter that merits, when public trust is exploited, for the judge to give its penalty at its upper limit.”
2. **The Spatiotemporal Circumstance (Times of Crisis):** Article (135) of the Iraqi Penal Code designates incitement in times of political or sectarian tensions as an aggravating circumstance because it is seen as contributing to conflict. “Incitement to commit an act of support in times of crisis is considered one of the aggravating circumstances for liability, because it indicates a criminal

intent that has grown deeply entrenched in harming the supreme national interest” (Al-Dulaimi, 2020, p. 210).

Subsection Three: Preventive Measures and Confrontation in the Digital Age

As indirect incitement now takes a “viral” form online, confrontation has ceased to be a matter of mere imprisonment:

1. **Intellectual Precautionary Measures:** The complementary penalties of publishing bans, closure of electronic accounts by judicial order, etc. are touted in modern jurisprudence. “Preventive digital measures have become a priority in modern penal policy in Iraq, which are producers to stop the continuity of the criminal effects created by indirect incitement, such as blocking and electronic confiscation” (Al-Jubouri, 2023, p. 76).
2. **Criminal Liability of Service Providers:** The Iraqi legal debate has also started to extend towards the liability of platforms owners who allow posting of inciting content without deleting it. In some respects they have made solidarity criminal liability in the digital environment, as those technologically behind creating a suitable ground for indirect incitement without oversight are still responsible (Al-Anbaki, 2024, p. 114)

CONCLUSION

Fundamental Finding: Ambiguity of the Legislative Concept: It is now clear from the analysis of the articles that the Iraqi legislator did not create a full-fledged objective definition for indirect incitement. This has led the judiciary to resort to any flexible criteria available for deducing the “suggestive impact” of the discourse, and therefore characterizing it as a criminal act under law. **The Shift Towards Crime Independence:** The study noted a change in Iraqi penal policy and stated that the legislator is beginning to drift away from the "incitement subordination" (which requires proving that principal crime occurred before punishment could be imposed). On the contrary, indirect incitement (including glorification and promotion) is more and more being regarded as an “independent crime of endangerment” (inchoate offense) that can itself be punished, in particular with regard to terrorism and state security crimes. **The Centrality of Context in Evidence:** The judgment held that in the context of indirect incitement, the mental element (Mens Rea) is not derived from solely examining the explicit phraseology but instead heavily depends on "spatiotemporal context", and the "influential capacity" of the perpetrator. **The Challenge of the Digital Space:** The study showed that modern electronic means have given indirect incitement of a "viral" dissemination. **Implication:** Codifying the Concept: We ask for the Iraqi legislator to reconsider Article (48) of the Penal Code and introduce a new paragraph that outlines direct and indirect incitement in detail (i.e. systematic glorification and embellishment of the criminal act), in order to ward off them expanding this concept at the expense of public liberties. **Adopting the “Imminent Danger” Standard:** The Iraqi judiciary should formally adopt a standard of clear and present danger when considering cases involving publication. **Modernizing the Element of Publicity:** Article (19) of the Penal Code needs to be urgently amended to include

“digital publicity” and “republishing/sharing” as a digital public element, and preserves strict rules on interactive platform owners' legal liability. Refining Special Programs: The more directed training of judges, discourse analysts and cyber-experts through joint workshops to increase the courts ability to deconstruct new types of inciting content. **Limitation:** This has left the traditional component of publicity unable to contain the scale of the threat that transnational digital publication creates. This gives criminal judges expansive discretion in balancing rights against duties. **Future Research:** Comparative Study of the Internet Service Provider's Criminal Responsibility for Indirect Inciting Content. The Power of Crowd Psychology in Incitement: A Psycho-Legal Study on the Role of Suggestive Discourse in Shaping Criminal Mindsets. Indirect Incitement in International Crimes: A Critical Assessment of the ICC Jurisprudence in “Media-Driven Genocide” Cases. Machine Intelligence and Incitement: The Criminal Responsibility of Inculpatory Material Created by AI Technologies.

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