

Ta'zir Punishment in Islam and Its Implication in Our Society

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<p>Abstract: It is common knowledge that man cannot live in isolation. He interacts with others and maintains certain divine laws in that interaction. The divine laws are enforced by punishment either widely fixed by the Qur'an and Sunnah or by those that are left at the discretion of the judge. This paper therefore attempts to define Ta'zir as a discretion punishment, its difference with Hadd, its basic types, legal position and most importantly its practical application in our society. The discussion is done through a survey of the glorious Qur'an, Hadith and views of scholars on the subject matter. A summary, conclusion and some positive recommendations were given at the end of the paper.</p> <p>Keywords: Ta'zir, Punishment, Islam, Implication, Society.</p>	<p>Review Paper</p>
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INTRODUCTION

Human nature being what it is, demands sections for meaningful, peaceful and successful interaction. The most effective sanctions are the rules of Allah (S.W.T) as explained by the prophet (SAW). These rules are usually enforced by punishment and torts. Some punishments are fixed, while some are left at the discretion of the judge. This paper intends to discuss discretionary punishment (*Ta'zir*) in this logical manner: - its definition first, followed by basis, differences between *Hudud* and *Ta'zir*, its types and some of its practical applications in our society.

Definition of the Term *Ta'zir*

Qadr (1986:298) opines that *Ta'zir* derived from *azr* meaning to censure or repel. It is the discretionary administered for offences for which had or fixed punishment has not been appointed by the bases of *fiqh*. Abu-Bassam (1999:921) says *Ta'zir* is derived from the word "*azr*" meaning prevention because it prevents from falling into vices. technically, it refers to a punishment that has been prescribed by the law either through the observation of expiation or legal punishment, like deriving sexual pleasure from a woman through any other way than having real contact, or stealing from an unprotected place and so no.

Salam (2003:180) says: - *Ta'zir* means "to bless" while technically "it is a punishment on an offence that has not been prescribed either in Qur'an or Sunnah,

like a theft in case of such property that is not up to the *Nisab* (an amount at which the cutting off of the hand becomes legal), having during Ramadan, abusing someone and so on.

Al-Jaza'iriy (1976:461) defines al-*Ta'zir* as "A legal punishment of flogging, abusing boycott or exile. Yola (n.d:26) defines *Ta'zir* as "A legal discretionary punishment to be delivered for transgression against Allah or against an individual for which there is neither fixed punishment nor penance (*Kaffarah*).

Ta'zir in the Glorious Qur'an and Sunnah

It must be admitted that the word *Ta'zir* was never used in the Qur'an or the Sunnah in the sense in which it is used in Islamic legal writing. At the same time, both the Qur'an and the Sunnah referred to some types of, crimes for which is no fixed punishment and concerning which it was left to the judge or the ruler to decide what sort of punishment to be imposed and the manner of inflicting it. One instance of such crime is mentioned in the Qur'an. "...As for the two of you (males) who are guilty, punish them both..."

This verse, according to the commentators of the Qur'an refers to homosexual relations between men. The order "punish them both" is given to the ruler of the community without specifying the sort of punishment its amount or how it must be carried out. The decision, therefore, is entirely left to the ruler or the judge.

Another case in which the authority to punish is given in the Qur'an in similar flexible terms as in the above case, is stated in the following verse:- "As for those (women) from, whom you fear disloyalty and ill-conduct, admonish them (first), (next) refuse to share their beds and (last) beat them (lightly)".

This verse therefore concerned with the treatment of wives who rebel against their husbands. Although the methods of dealing with such wives are stated and are to be used consequently, a good deal is left to the discretion of the husband, who is the head of the household. He is given a certain amount of freedom in deciding how to use his authority.

It was this authority which jurists considered the origin of the *ta'zir* punishment (*al-Asl fil-Ta'zir*). This view may be interpreted by way of analogy (*Qiyas*).

More examples and cases of *ta'zir* may be found in the sunnah, among the Muslims of Madina who did not go with the prophet to the battle of *Tabuk* were Ka'b bn Malik, Murarah bn al Rabi' and Hilal bn Umayya. After the Prophet's return to Madinah, some of those who had not gone with him gave him false excuses, but at home in Madinah and not joining the campaign, the prophet ordered all Muslims to avoid any contact with them: their wives were not even allowed to share their beds. Fifty days later, a Qur'anic verse was revealed stating that Allah had forgiven the three and accepted their repentance. This Prophetic order to avoid and ignore the men was *ta'zir* punishment imposed upon them for their failure to respond to the call to arms.

Again about the payment of *Zakat*, the prophet said 'Whoever given it would be rewarded (by Allah), and whoever refuses to give it, it would be taken from him; and he will take one-half of his property, not for Muhammad or his family but for the state treasury. This fining of the offender is also a sort of *ta'zir* punishment. Views of scholars on the implementation of *tazir*.

Scholars have two different options regarding the obligation or otherwise of the implantation of *ta'zir* as follows:

1) **Obligation**

Salam (2002:188) says Abu-Huraira, Malik and Ahmad maintained that it is compulsory to implement such *ta'zir* or which there is a base in either Qur'an Sunnah. But regarding that which there is no clear injunction, the judge can look into such an offence and make his judgment according to his discretion. If he observes that it would be of any benefit either to the offender or to the public if it is implemented, he should go ahead to implement it. The main idea remains that *ta'zir* should aim at reformation.

2) **Ta'zir is not Obligatory**

The opinion that *ta'zir* is not obligatory is held by *Imam Shafi'i*. He supported his opinion taking into

consideration the fact that many cases called for *ta'azir* during the lifetime of the Noble Prophet (S.A.W) but he did not implement *ta'zir* on them.

He cited the under-mentioned basis among others. That is the *Hadith* of a person who kissed a woman not lawful to him and reported that to the holy Prophet (S.A.W) who enquired as to whether the person was a Muslim who prayed along with them. on replying in the affirmative, the noble Prophet (S.A.W) recited the verse of *Suratul Hud* Qur'an 11:114 as thus:" And establish regular prayers at the two ends of the day and at the approaches of the night for those things that are good remove those that are evil, that is a reminder for the mindful".

Salam (2004:189) opined that *ta'zir* is not obligatory. The matter should be left to the discretion of a trusted judge who is free to implement it at his discretion. The centre of his argument is the aforementioned tradition regarding the son who kissed an awful woman which the holy Prophet (S.A.W) did not punish.

Differences between Hadd and Ta'zir Punishment

- 3) Hadd is fixed while *ta'zir* is not fixed
- 4) *Hadd* can be remitted by *Shubha* which is not possible in *ta'zir*
- 5) *Ta'zir* can be imposed on children while a had cannot be inflicted on them

Hadd being a fixed punishment is to be imposed on all irrespective of their being Muslim or otherwise, while *ta'zir* being a discretionary punishment is primarily imposed on Muslims and for the non-Muslims, its place is taken by the general theory of penal laws for the simple reason that *Ta'azir* has objectives to was out the sins which is not possible in cases of unbelievers.

Types of Ta'zir Punishment

Ta'zir unlike punishment is not fixed. The judges have a wide variety of punishments from which they can choose the ones suitable for a particular crime. According to the criminal circumstances, his record and psychological condition. This punishment ranges from admonition up to killing as follows:

1) **Admonition(al-waaz)**

Admonition refers to reminding the criminal that he has committed a transgression and that he has done an unlawful thing. The purpose of *wa'z* is to remind the offender if he has forgotten or inform him if he is unaware that he has done something wrong. This is restricted to those who commit minor offences provided the judges think that it is enough to reform them.

2) **Reprimand (al-Tawbikh)**

This *ta'zir* may be through any word or act that the judge feels would be sufficient to serve the purpose.

3) Threat (*al-Taḥdīd*)

It is a *ta'zir* punishment by means of which the criminal may be induced to mend his behaviour out of fear of punishment. It may consist of threatening him with a punishment if he repeats the same offence or sentence him but the execution of the sentence is delayed until he commits the same offence.

4) Boycott (*al-Hajr*)

Boycott as a *ta'zir* punishment has been recommended in the Qur'an where Allah stated in *Suratul Nisa' i 4:34*: "...As t those women on whose part you fear disloyalty and ill conduct, admonish them (first) (next), refuse to share their beds, and last beat them lightly...". That is in respect of disobedient women to their husbands. The messenger of Allah himself practiced boycott, in the case of men who did not participate in the battle of *Tabuk*.

5) Public Disclosure (*al-Tashir*)

This is done to disclose the mistrust of the criminal so that he will be known to the public to save people from becoming victims of circumstances. Some examples of practical cases that could be applied in our society

The *Ulama* think that *ta'zir* can take the forms of either verbal or non-verbal. Verbal in the sense that it can be a refusal to say peace be upon you (*Assalamu alaikum*) in salutation or boycott. Non-verbal in the sense that it can be a demotion, relieving one of his posts, denial of appointment and so on.

Salam (2003:186) cited the following as some practical cases of the application of *ta'zir* clone by the predecessors. Those applications if borrowed could undoubtedly be helpful to our society.

1) Destruction of Wealth and Other Valuable Properties

Ta'zir can be applied in the form of destroying some wealth or properties as well as the means and place of their acquisition if being acquired unlawfully. This is an opinion upheld by Imam Malik and Ahmad. Examples of these properties include: - Idols, Musical instruments/bottles containing wine and so on.

Some (2003:186) supported the above by quoting the following *Ahadith*

- a) That Abu Talha as reported by Anas informed the Prophet (S.A.W) that he bought wine for some orphans under his care. The Prophet (S.A.W.) directed him to throw away the wine and destroy the calabash.
- b) Ali bn Abi Talib (R.A) directed that a certain village be burnt to ashes because wine was being sold in it.

He however opines that the destruction of a place should be on the condition that they are meant specifically for vices. But where it occurs coincidentally,

it should not be destroyed as stated by *Shaikhul Islam* (Ibn Taimiyyah).

2) A Change of Image or Likeness That is Unlawful

Like destroying the eye of a person in a photograph. This is contained in the meaning of a hadith of Abu Hurairah in which there is a mention of an incident that occurred between the Prophet (S.A.W) and angel Jibril. Angel Jibril had been appointed to meet with the prophet (S.A.W) at a certain time. On his arrival to honour the invitation, he stayed outside. The reason for that was to honour the invitation, he stayed outside. The reason for that was due to some stature, a curtain bearing a drawing of a living object as well as a toy found in the room. The Prophet directed that the stature be headed, the curtain be turned to two pillowcases and the toy be taken outside.

3) Fines and the Seizure of property

Financial penalties can be imposed as *ta'zir* punishment. However, according to El-Awa (1982:103), tie jurists are divided into three groups concerning the legality of this. According to some, it is illegal to punish by fine or by seizure of property: the second group regards it as legal, while the third group regards it as legal only if the offender does not repent.

4) Imprisonment (*Habs*)

There is imprisonment also for an indefinite time, which is inflicted for minor offences. There is imprisonment also for an indefinite term, which is imposed on a habitual criminal who cannot reform, but scholars vary for each offence and from one individual to another. But Shafi'i says the maximum period of imprisonment by *ta'zir* is one month for investigation and six months for imprisonment.

5) Public Disclosure

Some of the *Ta'azir* punishments include public disclosure that is called in Arabic "al-tash-hr". It occurs usually when the trustworthiness of the offender is questioned.

6) Fines and Seizure of Property (*Al-gharramah wa metadata*)

The holy prophet (SAW) imposed financial penalties as *ta'zir* punishment and this has been recognized by the Islamic penal system.

7) Imprisonment

There is imprisonment of indefinite time, which is inflicted for minor offences. There is imprisonment also for an indefinite term, which is imposed on a habitual criminal who cannot reform by ordinary punishment. The minimum period of imprisonment is one day but the maximum according to the hadith Malik and hadith scholars varies for each offence and from one individual to another. But Shafi'i says the maximum period of imprisonment by another. But Shafi'i says the maximum period of imprisonment by *ta'zir* is one month of investigation and six months for imprisonment.

8) Flogging (*Jald*)

Flogging is a common punishment in both *Hadd* and *ta'zir* offences as to whether *ta'zir* punishment may exceed the *Hadd* punishment, there is a prophetic tradition, which says: "The man who shall inflict scourging, to the amount of punishment in case where *Hadd* is not established shall be counted an aggressor". Also in another Hadith, the noble Prophet (S.A.W) labelled those who exceed the limit of *Hadd* punishment in a non-*Hadd* offence as aggressors. In the light of this prophetic tradition, the Maliki school of thought is of the view that *ta'zir* punishment may exceed the *Hadd* as long as the judges or ruler thinks that the circumstances require it. While Hambali, Zahiri and Zaidi School believed that flogging as *ta'zir* punishment cannot exceed ten lashes and they relied on a tradition which says: "stripes more than ten shall not be inflicted except for an ordained crime out of ordained crime of Allah".

Hanafi, Shafi'i and some of the Hambali schools hold an immediate view between the first two opposing views. The minimum number of lashes in three strokes. Imam Abu Hanifa is in support of this view. However other scholars disagree in disagreement of this view and maintain that there should be no minimum lashes because the number of lashes varies from one crime to another depending on the offender's character etc. About the minimum number of lashes, the school are not unanimous. Imam Abu Hanafi held that the highest number of *Hadd* lashes is thirty-nine (39) and argued that the minimum number of inflicted is forty (40) lashes concerning slaves and deducted one from it to get the maximum of thirty-nine lashes to be inflicted in *ta'zir*. But some jurists are of the view that seventy-five lashes are the maximum and others hold that it is ninety-nine (99) lashes. (Yola, n.d:29-30).9. Death sentence or penalty as *ta'zir*.

The death sentence is usually imposed for the most serious crimes like adultery, highway robbery, and *Qisas*, while serious ones are dealt with within *ta'zir*, though the jurists normally are against the infliction of the death penalty as a *ta'zir* punishment. They all agree that it can be inflicted under exceptional cases. for instance, the Hanafi school thinks that the death penalty by *ta'zir* can be imposed where the offender is a habitual homosexual or a murderer on whom *Qisas* cannot be imposed because of the means he used in his crime, the habitual thief who attacks a man's house and those whose harmful conduct cannot be prevented by other punishment. While Maliki, Shafi'i and Hambali propagate heretical doctrines or practices which split the community or where the criminal is a habitual offender and there is no other effective method to stop his wickedness.

SUMMARY/ CONCLUSION

Interactions in human society are being sanctioned by Divine laws enforced by punishment that can be fixed or discretionary. The discretionary (*Ta'zir*) was defined basis, and types and applications were discussed. It cannot be out of place to state categorically that *ta'zir* punishment that has proved beyond all doubt aims at reformation should be encouraged to the judges' far application.

RECOMMENDATIONS

The following recommendations were suggested by the presenter as follows:

- 1) Muslims should fear Allah by sticking to the rules of Islam regarding their relationship with Allah and other fellow human beings which, undoubtedly will curtail the commission of vices.
- 2) That the judges should not misuse the power given to them to use their discretion in the punishment of the offender through *ta'zir*.
- 3) That Muslims should try to seek Islamic Knowledge to prevent themselves from being victims of *ta'zir*.
- 4) The public should not forget the fact that *ta'zir* aims at reforming the culprits as well as serving as a deterrent to others who might be tempted to commit similar offences.
- 5) *Ta'zir* is a pointer to the encompassing and dynamic nature of Islamic law that suits all times and circumstances.

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