Punitive Punishment (Ta'zir) in Islamic Law

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ABSTRACT

This article talked about the provisions of punitive punishment in Islamic law, Intended punishment: a penalty sign on behalf of the community to implement the court ruling on the responsibility of proving the crime. The scientists knew the law as punishment: punishment and treatment imposes a penalty on behalf of the community on a person criminally responsible for a crime on the basis of a court ruling issued by a criminal court of competent jurisdiction. The researcher explained in this article the concept of punitive punishment, and sections of punitive punishment in Islamic law. The department researcher disciplinary punishment into three sections: Ta'zir on sin: It should be the punishment for disciplinary actions sanctity of Sharia in itself is committing a sin. Ta'zir in the public interest: the punishment should be for disciplinary actions did not deprive itself, but rather for their descriptions and not a requirement to be a sin. Ta'zir irregularities: It should be the disciplinary punishment for acts prohibited in itself is not a sin to commit a foul. The researcher explained in this article the types Ta'zir between, and the difference between disciplinary punishment and other penalties, As explained researcher rights of the President to impose a disciplinary penalty.

INTRODUCTION

Although the base of legitimacy says (no crime and no punishment without text), however, this rule has been applied to crimes ta'zir expansion at the expense of the sentence, because it is not required in ta'zir crimes that each crime the death of certain specific crimes border or retribution and blood money, have the right to judge that choose the appropriate punishment of sanctions legitimate ta'zir, has commutation or toughen the punishment, as happened expansion at the expense of crime, because some of the crimes that are characterized in particular have not been appointed by the text, but only with the full text.

What Ta'zir? Is a discipline on the sins did not initiate the border, makes a deal with the limits of that discipline enjoined Reclamation and according to all the guilt, and it differs in two ways:
1. Reducing the death of certain inescapable rhythm of the offender, and the ta'zir advice begins and ends with flogging and imprisonment have been up to the murder.
2. The reduction may not be the guardian of the amnesty, but he may ta'zir amnesty for all or part of the punishment.

Otherwise provided by the law for all crimes ta'zir: it does not crimes border crimes retribution and blood money and stipulates the Islamic law only on what you see them harmful permanent interests of individuals and the community and public order, and leave to the Guardian to determine that, and sets rules for the organization of the group and punishable violation, that be consistent with the provisions of the law and general principles. [1].

What sections of ta'zir in Islamic law? ta'zir three sections:
1. Ta'zir on sin: It should be the punishment for disciplinary actions sanctity of Sharia in itself is committing a sin.
2. Ta'zir in the public interest: the punishment should be for disciplinary actions did not deprive itself, but rather for their descriptions and not a requirement to be a sin.
3. Ta'zir irregularities: It should be the disciplinary punishment for acts prohibited in itself is not a sin to commit a foul [1].
Section I: Punitive punishment (Ta’zir) on sin:

It is agreed that ta’zir in every sin that does not limit nor expiation whether disobedience to God, any group or affect the rights or security system, or the right of hairpieces, which affect the rights of individuals. Sin is an act of taboo and leave the duties.

The three types of sin:
1) what extent it may be added to the expiation, such as murder, theft and adultery of border crimes and crimes of retribution and blood money. And seven boundaries and five retribution and blood money, though originally that reducing ta’zir sing about but it can be combined with ta’zir by the public interest as you can see the four schools.

   Imam Malik sees the combination of retributive punishment in felony to intentionally less than the soul with discretionary while did not see it in the murder.

   Shafi’i see also combined hits mustache forty whip and increased discretionary, cutting the hands of thieves end and suspended in the neck discretionary.

   And Ahmad ibn Hanbal sees the combination as a comment thief’s hand cut in the neck after an end.

   Imam Abu Hanifa sees the combination, and the alienation of the adulterer is discretionary and not a punishment for adultery.

2) what the Atonement does not end it, intercourse during the day in Ramadan and intercourse in Ihram, and these sins are limited and replaced by the corruption of Siam, or the corruption of Ihram, or reneged on the right, or in intercourse with menstruation or unhide.

   The scholars differ in allowing punishment in these sins, he was content with only some of Atonement, and others insist on the non-accumulation of Atonement and discretionary.

3) What do not limit where no expiation , such as kissing a foreign woman and be alone with her, and eat the dead, and the attempted robbery, and the number of these sins is immeasurable , and unanimously agreed that these sins where discretionary only , and do not come out of these sins for three types:

   1. Type limiting sex, but do not limit it, such as theft or not secured without a quorum, and the initiation of adultery and fornication introductions.

   2. Type limiting it, but declined to reduce the suspicion Kote wife in her rectum and stealing money joint, or for a special reason offender such as killing or stealing Jr. branch.

   3. Does not limit the type or in the race , such as eating dead meat, blood, pork and dishonesty Cheating balance perjury and usury and insults [3].

But how do you know sin? Access, study and refer to the texts of legitimacy and the expiation of sin which does not end there? Are: the corruption of fasting, and the corruption of Ihram, and perjury, and intercourse in menstruation, intercourse unhide. Expiation corrupting fasting to fast for two consecutive months, or feed sixty poor persons, or free a slave, and tripping is the first. and expiation corrupting Ihram by type of corruption, for example, the killing of a fishing Muharram must sacrifice as much as they kill, or feed six poor or fast three days and expiation perjury feeding ten poor or clothe them or freeing a slave or fasting for three days. And expiation intercourse in menstruation, Ibn Abbas said , The dinar charity treading in blood and half dinars in the interruption of blood (Imam Ahmad ibn Hanbal was not true that the modern imams at the other three). and expiation intercourse in zihaar freeing a slave or fasting for two consecutive months or feed sixty poor persons.

And the sin which does not limit nor expiation?

Three types (as previously explanation), namely:
1 - Type initiated sex and do not limit the extent,
2 - Type origin in the reduction and declined to limit it,
3 - Type did not rush it and do not limit in origin.

It can be noted that the sins of the third type is limited, you can not review all of the most important of which is sufficient statement as follows:

   1 - the prohibition of certain foods,
   2 - dishonesty,
   3 - cheats weights and measures,
   4 - usury,
   5 - perjury,
   6 - insults,
   7 - bribery,
   8 - Gambling,
   9 - Log homes unjustly,
   10 - espionage.

Does Islamic law left to the judge or guardian task of appointing crimes and discretionary sanctions on them?
Of course not; because the law specified that, all acts considered sins certain specific penalty also certain specific, and the judge, however, taught sin or act ugly to determine it is a sin or not, and then punish its owner in one of the penalties set by Shara’s Ta’zir provided that the punishment appropriate and punched her in the kind of the crime and the offender, and If you do not find sin no crime and no punishment[3]. How Islamic law imposed sanctions discretionary?

Text may sharia law for crimes punitive, and stipulates penalties discretionary, and are summarized as follows:
1) preaching the death, and the death threat, and the abandonment of the death penalty and the skin and beating: the right of women to a disobedient penalties for each sin that does not limit nor expiation.
2) Death reprimand
3) imprisonment and hard to recognize the charge.
4) murder
5) fine, defamation and denial.

Accordingly; no crime and no punishment in discretionary non- text.
The authority of the judge in the law is not arbitrary but is the power to choose and appreciation, which is not the authority to control and arrogation , was intended Shara to enable the judge to assess the seriousness of the crime and the offender and the choice of appropriate treatment for them.

The judge has the right to choose between two of punishment or performs the two together, and that the penalty rises to the top alone, or download them to a minimum, and may stop the execution of the sentence or spends under certain conditions [2].

Section II: Punitive punishment (Ta'zir) public interest:

Excluded from the base of legitimacy (not punitive punishment "Ta'zir" except in sin) discretionary required by the public interest, the acts and conditions can not be assigned nor restrict it in advance; because it is not forbidden to itself, but to describe them so that if there is this description which was prohibited, although retardation reported they were permissible, and the description is damaging public interest or public order. Offender (felony actor) being in a position of two modes:
1- Either that he committed an act affects the public interest or public order,
2- Or that it is in the case hurt the public interest or public order.

May imprison the Prophet Muhammad - peace be upon him - a man accused of stealing a camel, and when he emerged he did not steal it cleared him, he is imprisonment for mere accusation and not a sin, and it means that everyone from there itself or brings one into existence circumstances in the case of charge if it does not come really taboo permissible punishment, because leaving the accused without incarceration can escape in contravention of the public interest must be maintained and the protection of public order.

As well as the companion denied Omar ibn al-Khattab - may Allah be pleased with him - to Nasr bin pilgrims to Basra, fearing that mesmerizing by women means that his presence detrimental to the interests of the group. And disciplining the boys to leave prayer and purity, and come from the actions did not consider Sharia crimes in right after the non-discrimination and commissioning is a matter of protecting the public interest, and to prevent the insane from contact with people to harm them ta'zeer in the public interest, and to protect the security of the group and the maintenance of its system of suspicious persons and dangerous too Ta'zir in the public interest. The rules of the law requires that damage your bear to pay damage to the public, and that the worst damage is still damage the lightest.

No right to judge himself in that the act is considered a crime if Massa public order or in favor of the group, because the law requires is that the punishment should be the case or act Massa public interest or public order, they are defining the crime. In this section of the discretionary otherwise provided by the law for an act constituting an offense and shall establish a penalty ability crimes border and retribution and blood money and did not provide for the act is forbidden and is appointed and then leave it to the judge to be punished by an adequate penalty of between penalties for punitive punishment (Ta’zir), but decided the law that every act or state affect the system or group interest is punishable by the penalty the judge deems appropriate penalties for punitive punishment (Ta’zir).

Section III: Punitive punishment (Ta’zir) Irregularities (Violations):

Scholars differed in the passport rule in punitive punishment (Ta’zir) Etienne hated leaving delegate, sees some of that punishment did not hate or leave delegate, and others see punishment.

The basis of the difference is due to the difference in the definition of the hated and delegate, It is believed that hated forbidden to act in the absence of constraints, or prohibition in the sense that it is not far from Forbidden (haraam) and that the delegate selection is in the act, or that he is not in the sense that duty, he said, may not punishment; because the punishment is not only not to leave duty.

The delegate of the view that it is not given a choice and hated prohibition not given a choice in which he said the punishment is permissible, these scientists say not to act and not to act sin sinner nor the offender, but
they say the act and whether or not a foul, and the offender violation, sayers and requires punishment be repeated Etienne hated leaving the delegate, or one being prejudicial to the public interest or public order, without the need for repetition [6,7].

- The rights of the President of the State in Punitive punishment (Ta‘zir), three:
  1. Prohibition and punishment: President of rights that prohibits certain acts or Etienne Etienne requires that certain acts punishable offense, which enjoined or forbidden to do, but this right was restricted not to go out on the texts of the law, and that are intended to achieve the public interest or pay spoiler.
  2. The allocation of the judiciary: the rights of the President to allocate the judiciary chapter in making the crimes of appointed judges, and makes for each chapter in certain crimes and certain other offenses to consider the rest .. But this right is restricted not to go out on the texts of the law.
  3. Pardon or permit: the rights of the President to pardon the crimes of discretionary punishment for all or some of them, but this right was restricted not to deviate from the provisions of the law, and is intended to achieve the public interest or raise the spoiler [8].

Example:

It is not the president not to establish sanctions border due, if neglected was the duty of each individual officer that hosted without is the perpetrator of the crime, and this means that scholars consider establishing boundaries of hypotheses, which obliges all individuals rulers and the ruled, and do not fall for them, but if held, nor may be pardoned nor defer.

As well as the case for the crimes of retribution and blood money, under the same ruling the border unless pardoned by the victim or his guardian for punishment.

The scholars agreed that the president does not have to replace what God has forbidden or condones what God has forbidden, whatever the punishment.

But the scholars differed on the establishment of sanctions Ta‘zir, sees the Imam Malik and Abu Hanifa, and Ahmad ibn Hanbal the president must establish penalties Ta‘zir not leave unless the pardon is better than punishment, supports their opinion on the basis of the bug public interest and public order, and the Imam Shafei felt that the establishment of sanctions Ta‘zir the right of the president, but it is not a chore, and the basis of that that amnesty for his crime and punishment, even if the duty of what it is to forgive. The intent of this course Shafei not disrupt religious texts, but the responsibility of rulers and presidents to ensure that the implementation of sanctions Ta‘zir of death or cutting member of rights. Within Shafi‘i jurists talk about it at the door to ensure contaminants and not in the door Ta‘zir, and as long as the president to forgive or be punished, he must bear as a result of what he is doing [5].

The difference between the punitive punishment (Ta‘zir) and other penalties:

1. Sanctions border crimes and retribution and blood money given to the ability of the amount required and the eye , and the ability of non- punitive punishment, the judge may choose a minimum or rises to the upper limit because it is inherently often double-edged.
2. Sanctions border crimes and retribution and blood money does not accept the amnesty does not drop, the penalty may be discretionary amnesty and allow dropping punishment.
3. Sanctions border crimes and retribution and blood money to the consideration of the crime is not only considered where the offender's personality , but the consideration of punitive punishment to the crime and the offender together to person [4].

Types of punitive punishment (Ta‘zir):

1. Penalty killing:

Original punishment punitive they are disciplined , it should not be a fatal not to kill or cut , but a lot of scholars authorized the murder exception to the public interest , to be appointed by the head of state crimes that may be punishment punitive death, such as: the criminal who used did the crime and repeatable, sodomy and heretic, apostate from Islam.

2. Flogging:

A punishment prescribed in the border, and in punitive punishment, a favorite in punitive punishment; impact of effective in deterring criminals from both sides and being taken of them that fits the crime and the offender at once. and differed in the upper limit, sees the owner that the head of state has the right to estimate that, even more than a hundred lashes, and sees Abu Hanifa and Muhammad ibn al-Hasan al-Shaibani 39 whip and Abu Yusuf 75 whip, and sees al-Shafei is consistent with the Abu Hanifa and Muhammad ibn al-Hasan in the opinion and with Abu Yusuf Recent opinion and between 75 to a hundred in the third, and in the view of Ahmad ibn Hanbal, including several views of what is consistent with the opinion of Shafi‘i, including what is different opines that not increased in discretionary ten blows in any way, and sees less three thumps.
3. **Confinement or prison:**
   It is of two types: fixed-term, non-fixed term, fixed-term for crimes discretionary ordinary, and ordinary criminals, the less time one day and the highest non-Agreed though some see as six months or a full year, and others see that appreciation alone, the Supreme Head of State. May be a combination of imprisonment and beatings. The indefinite incarceration punishable by owners of dangerous criminals and repeat the crime, and continues to imprison the offender even show his repentance, it is agreed that the term of imprisonment is not determined in advance because it is imprisonment until death or until repentance.

4. **Westernization:**
   Imam Abu Hanifa sees disciplinary punishment, and the rest of the Imams Malik and Shafi'i and Ahmad ibn Hanbal they see an end, and with the exception of adultery and alienation is a disciplinary sanction agreement the four schools. The resort of Westernization at the multiplicity of criminal acts. Not up to a full year at the Imam Shafi'i and Imam Ahmad ibn Hanbal, true that more than a year at the Imam Abu Hanifa, and also sees the Imam Malik.

5. **Crucify:**
   End banditry in the crime, as well as disciplinary punishment, not preceded or accompanied by the killing of course, and be Crucify man without preventing it from food or drink, and no more than three days duration. Prophet Muhammad was crucified man on a mountain named Abu Knapp, and this punishment is intended to discipline and publicity together.

6. **Preachment (Good advice):**
   The sign is most likely to fit the person and prevent him from crime.

7. **Desertion:**
   Such as the desertion of the three who are left of the Prophet Muhammad - peace be upon him - in the Battle of Tabuk, and desertion fifty days until God meant them.

8. **Reprimand:**
   When the judge sees it enough to repair the perpetrator and discipline.

9. **Threat:**
   Provided that the threat honest, he sees the judge course in order to discipline the culprit.

10. **Libel (Defamation):**
    The announcement of any crime convict people of crimes confidence perjury (testimony Zour) and fraud in particular.

11. **Fine:**
    Some scientists believe that the fine disciplinary punishment in general, and some scientists believe the opposite, for example: the death of refrained from paying zakat money, take half his money. Some scholars said that the fine fit in petty crime, and determine the amount of the fine left upper and lower to the president.

12. **Other disciplinary sanctions:** determined by the president or the judge, such as:
    A. Removal from office.
    B. Deprivation of certain rights.
    C. Confiscation of instrumentalities of crime or deprive such as weapons possession.
    D. Remove the impact of the crime or the work is forbidden.

**Conclusion:**
At the conclusion of this article, you may reach a researcher to a number of results, mentions are as follows:
- Ta'zir Is a discipline on the sins did not initiate the border, makes a deal with the limits of that discipline enjoined Reclamation and according to all the guilt, and it differs in two ways: Reducing the death of certain inescapable rhythm of the offender, and the ta'zir advice begins and ends with flogging and imprisonment have been up to the murder. and the reduction may not be the guardian of the amnesty, but he may ta'zir amnesty for all or part of the punishment.
- Ta'zir three sections: Ta'zir on sin: It should be the punishment for disciplinary actions sanctity of Sharia in itself is committing a sin. Ta'zir in the public interest: the punishment should be for disciplinary actions did not deprive itself, but rather for their descriptions and not a requirement to be a sin. Ta'zir irregularities: It should be the disciplinary punishment for acts prohibited in itself is not a sin to commit a foul.
- The rights of the President of the State in Punitive punishment (Ta’zir), three: Prohibition and punishment. The allocation of the judiciary. Pardon or permit.
- The difference between the punitive punishment (Ta’zir) and other penalties: Sanctions border crimes and retribution and blood money given to the ability of the amount required and the eye, and the ability of non-punitive punishment, the judge may choose a minimum or rises to the upper limit because it is inherently often double-edged. Sanctions border crimes and retribution and blood money does not accept the amnesty does not drop, the penalty may be discretionary amnesty and allow dropping punishment. Sanctions border crimes and retribution and blood money to the consideration of the crime is not only considered where the offender’s personality, but the consideration of punitive punishment to the crime and the offender together to person.
- Types of punitive punishment (Ta’zir): Penalty killing, Flogging, Confinement or prison, Westernization, Crucify, Preachment (Good advice), desertion, Reprimand, Threat, Libel (Defamation), Fine, and other disciplinary sanctions.

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