



e-ISSN 2798-8260



Jurnal ISO: Jurnal Ilmu Sosial, Politik dan Humaniora Vol: 4, No 2, 2024, Page: 1-7

Ta'dhir in Islamic Law : Types of Crimes and Punishments

Mukhtor Akramov

Researcher Uzbekistan

DOI:

<https://doi.org/10.53697/iso.v4i2.1861>

*Correspondence: Mukhtor Akramov

Email: m_akramov@gmail.com

Received: 18-10-2024

Accepted: 22-11-2024

Published: 23-12-2024



Copyright: © 2024 by the authors. Submitted for open access publication under the terms and conditions of the Creative Commons Attribution (CC BY) license (<http://creativecommons.org/licenses/by/4.0/>).

Abstract: This article analyzes the linguistic and terminological meanings of the term “ta’zir” and its application as a form of criminal punishment in Islamic law. The role of ta’zir in the Quran is examined, along with the different views expressed by various Islamic jurists, including Abu Yusuf, Imam Azam, and other legal scholars. The article discusses how ta’zir punishments are specific penalties assigned for various actions, such as insults, slander, and psychological harm, among others. It also outlines that ta’zir penalties are imposed for crimes that do not reach the level of hudud or expiation and can take various forms, such as warnings, lashes, or fines.

Keywords: Islamic law, Ta’zir, Criminal Punishment, Hudud Penalty, Expiation, Lashing, Slander, Warning, Jurists, Sharia, Legal Scholars.

Introduction

Before analyzing crimes under the category of *ta’zir*, it is essential to first understand its linguistic and terminological meanings.

“Additionally, the word **التعزير** (ta’zir) also conveys the meanings of 'to give punishment, reject, prohibit, and assist.' **Ta’zir** is also used as a form of punishment for a crime. In this case, the word is derived from the verb **عزر** (azzara), meaning 'to give punishment' or 'to discipline. (Egypt: “Vuloq al-misriyya, 1907)”

Additionally, the word **التعزير** also conveys meanings such as “punishing, rejecting, prohibiting, or assisting.” In legal contexts, *ta’zir* refers to a form of punishment for a crime. It is derived from the verb **’azzara** (عزر), meaning “to discipline” or “to give correction.”

According to the Uzbek Explanatory Dictionary, *ta’zir* is explained as “punishment, reproach, reprimand, admonition, chastisement for a past mistake or sin.”

Methodology

The term *ta’zir* is mentioned in three verses of the Qur'an, where it is used with the meaning of “to honor, respect, or support.” For example, in Surah Al-Fath (48:9): “So that you may honor and support him (Muhammad).” Similarly, in Surah Al-Ma’idah (5:12): “You shall believe in My messengers, and honor and support them.” (Mansur, 2024) In

Surah Al-A'raf (7:157), it is mentioned: "They believed in him, honored him, and supported him."

The *Fiqh Encyclopedia* published in Kuwait explains that *ta'zir* means "to reject, stop, assist, or discipline." It is called *ta'zir* in the context of criminal punishment because it serves to prevent the criminal from repeating the offense.

Regarding the technical meaning of *ta'zir*, we can state the following: "*Ta'zir* in Islamic jurisprudence refers to a discretionary punishment that is obligatory when a crime is committed that infringes on the rights of Allah or individuals, but does not reach the level of *hudud* or *kaffarah* punishments, and its specific amount is not fixed."

In the commentary on Burhan al-Din al-Marghinani's *al-Hidayah* by Abdulhay Lakhnawi, *ta'zir* is defined as a criminal punishment that does not reach the level of *hudud*. Essentially, it is a form of discipline or correction. For instance, if someone insults or slanders another person with a word that does not warrant the application of *hudud*, it becomes obligatory to apply *ta'zir*. In a narrower sense, *ta'zir* is often understood as flogging, but in reality, the forms of *ta'zir* in Islamic law are diverse, as outlined in the Uzbek Explanatory Dictionary, ranging from admonition, reprimand, and fines to imprisonment, deprivation of certain rights, pardon, compensation for damages, and other forms (Munawaroh, 2019).

Islamic jurists have expressed various opinions regarding crimes subject to *ta'zir* and the types of punishments associated with them. For example, Abu Yusuf mentioned: "-----". Another group of scholars holds the view that *ta'zir* is a type of punishment prescribed by Sharia for all sins (*ma'siyah*) that do not reach the level of *hudud* or *kaffarah* (expiation). Additionally, the circumstances of the crime and the guilt of the accused influence the type of *ta'zir* punishment (Kamalludin, 2022).

Imam Ala' al-Din al-Kasani, a Hanafi scholar, in his book *Bada'i al-Sana'i fi Tartib al-Shara'i*, highlights the distinctive aspects of *ta'zir* punishment, stating: "The primary condition for imposing *ta'zir* in Sharia is that the person commits an offense that does not warrant *hudud* punishment, whether it infringes on the rights of Allah or those of individuals. In such cases, *ta'zir* becomes obligatory. For example, if a person slanders a Muslim with insults other than adultery, such as calling someone a 'fasiq' (sinner), 'usurer,' 'thief,' or 'disbeliever,' these words cause psychological harm and damage the person's reputation, leading others to potentially believe these accusations (Scolart, 2019). To protect the honor and dignity of the victim, *ta'zir* is imposed on the slanderer."

If someone insults another person with words like "you pig" or "you donkey," no punishment is required. This is because such words do not actually insult the other person but rather degrade the speaker themselves (Mojtahedi, 2021).

Another key condition for imposing *ta'zir* is that the perpetrator must be of sound mind. When this is established, *ta'zir* punishment applies regardless of whether the individual is free or enslaved, male or female, Muslim or non-Muslim, adult or minor. However, in the case of minors, punishment is imposed for moral correction, not criminal liability. This is because minors or individuals with mental impairments are not considered

legally responsible for their actions and are instead regarded as a group that needs to be guided toward proper behavior (Alam, 2022).

The severity of *ta'zir* must not exceed the level of *hudud* punishment. As a result, the two Imams, Abu Hanifa and Abu Yusuf, hold differing views regarding the maximum number of lashes for *ta'zir*. Abu Yusuf (may Allah have mercy on him) stated: "In Sharia, the call for duty is primarily directed toward free individuals, so we apply this principle in the case of *ta'zir*. For instance, when a free person commits *qadhif* (false accusation of adultery), they receive 80 lashes, but in *ta'zir* for a similar crime, they receive 79 lashes."

Imam Abu Hanifa (may Allah have mercy on him), however, holds that the maximum number of lashes for *ta'zir* is 39, which is less than the 40 lashes prescribed for slaves in *hudud* cases. He explains that the Prophet (peace be upon him) used the term *hudud* in an indefinite form, implying that the prescribed punishment for slaves is 40 lashes. Thus, it is prudent to not exceed this limit and to adhere to the principle of caution in legal matters. Following Imam Abu Hanifa's ruling ensures compliance with the hadith and prevents any violation of the legal limits set by Sharia (Royani, 2021).

When considering the method of administering lashes as part of *ta'zir*, the following points should be noted: The lashes must be forceful enough for the offender to feel pain. Scholars have explained that the purpose of the initial strong blows is to concentrate the strikes on one part of the body without spreading them to other areas. Some jurists argue that the goal of these strong lashes is to cause pain and discomfort (Afzal, 2021).

Result and Discussion

There are two main purposes behind the forceful application of *ta'zir* punishment:

1. In *ta'zir*, the punishment serves the purpose of deterrence and warning, without providing expiation for sins, and separate repentance is required. In *hudud* punishments, however, both deterrence and expiation are present. As the Prophet (peace be upon him) said, "The *hudud* punishments serve as expiation for the sinner's sins."
2. Since *ta'zir* focuses solely on governance and deterrence, the lashes are administered with more force than in *hudud* cases. The number of lashes in *ta'zir* is fewer, but their intensity is greater to ensure the goal of deterrence is achieved.

Regarding the execution of *ta'zir*, the victim has the option to forgive the offender, reconcile, or pardon the crime. Since *ta'zir* deals with individual rights, these rulings can be applied. This means that the lashings associated with *ta'zir* can be waived through reconciliation initiated by the victim (Rahmawati, 2023).

Another important aspect is that, like in cases of *qisas* (retaliation), the heirs of the victim also have rights concerning the application of *ta'zir*. The principle of "tadakhul" (interference) does not apply in *ta'zir* cases, as individual rights are involved. However, this principle is applicable in *hudud* punishments. In *ta'zir*, the accused has the right to appoint a guarantor (lawyer) to represent them. If no guarantor is provided, the accused may be detained until witnesses are proven to be just (Adua, 2024). The right to a guarantor in *ta'zir* cases is granted to ensure the protection of the individual, as the matter pertains to personal

rights. In contrast, in *hudud* cases, no guarantor is needed because certainty of guilt is not required. Additionally, in *ta'zir*, temporary detention may replace corporal punishment if necessary.

The process of resolving crimes subject to *ta'zir* involves ensuring the accused's rights, including the right to confess guilt, present evidence of innocence, or deny the charges altogether. In such cases, the judge must be informed. Male testimony is typically accepted, although some scholars like Hasan ibn Ziyad have expressed opposing views. The majority view is correct in accepting testimony, and certain letters between judges can be accepted as evidence (Al-Ansari, 2023).

In the book *Al-Fatawa al-Hindiyya*, another aspect of *ta'zir* is highlighted, stating: "Ta'zir is divided into two categories in terms of the rights involved: the rights of Allah and the rights of people."

1. *Ta'zir* for the violation of Allah's rights.
2. *Ta'zir* for the violation of people's rights.

For the first type, when *ta'zir* is applied for violating Allah's rights, it must be enforced once the crime is proven, and it cannot be waived, unless it is established that the criminal has stopped committing the offense. Additionally, if someone openly commits a sin, all Muslims have the right to enforce *ta'zir* on that person. However, if the crime is discovered after the fact, only the ruler has the authority to impose *ta'zir*. Since *ta'zir* pertains to civil matters, it requires the testimony of two men or one man and two women. For example, if a person claims they were insulted or beaten by another and files a lawsuit in a Sharia court, saying, "I have witnesses for this matter and need a guarantor," the court will provide a guarantor for up to three days. After presenting witnesses, the guarantor stays with the plaintiff until the witnesses testify. Once the witnesses are found to be just and reliable, *ta'zir* is imposed on the offender.

In the book *Mukhtasar al-Wiqayah*, the laws and regulations concerning *ta'zir* are elaborated in detail. Crimes that fall under *ta'zir* are established in the Qur'an and the Sunnah of the Prophet (peace be upon him). Allah states in Surah An-Nisa, 34: "... strike them (lightly), but if they obey you, seek no further means against them." Abdullah ibn Abbas commented that this command refers to correcting their behavior. Nu'man ibn Bashir (may Allah be pleased with him) said, "Whoever commits an offense that does not reach the level of *hudud* is still to be considered among those who transgress limits." The Prophet (peace be upon him) said, "When your children reach the age of ten and do not pray, strike them lightly." The consensus of the companions also confirmed the application of *ta'zir*. Sometimes, *ta'zir* can take the form of a severe reprimand or verbal warning. Alternatively, it can be executed through actions such as pulling the ear, slapping lightly, or striking the back of the neck with the palm without causing harm. The maximum number of lashes for *ta'zir*, according to Imam Abu Hanifa (may Allah have mercy on him), is thirty-nine lashes. In the *Zahir al-Riwayah*, it is narrated from Abu Yusuf (may Allah have mercy on him) that the maximum number is seventy-five lashes in one narration, and seventy-nine in another. Imam Muhammad (may Allah have mercy on him) is reported to have given different

rulings: in one narration, he supports Abu Hanifa's position, and in another, he follows Abu Yusuf's opinion. Nu'man ibn Bashir (may Allah be pleased with him) stated: "Whoever commits an offense that does not reach the level of *hudud* is among those who have transgressed limits." Based on this hadith, Imam Abu Hanifa derived the minimum punishment, which is less than the forty lashes prescribed for a slave. Islamic law specifies different types of offenses and their respective punishments. For example, for drinking alcohol (*khamr*), a free person receives eighty lashes, while a slave receives forty. Imam Abu Hanifa (may Allah have mercy on him) accepted a punishment less than the forty lashes, which is thirty-nine. Abu Yusuf (may Allah have mercy on him) argued that since free individuals are more significant, they should receive seventy-nine lashes, one less than the prescribed eighty for *qadhif* (slander). In determining *ta'zir* punishments, scholars aim for a middle ground between these two numbers.

Imam Malik (may Allah have mercy on him) held that there is no fixed limit on the maximum number of lashes for *ta'zir*, and if the imam sees benefit for the public interest, the punishment may exceed the maximum limit of *hudud*.

The minimum number of lashes for *ta'zir* is three, as mentioned by Imam Quduri (may Allah have mercy on him), who believed that below this number, deterrence, governance, and precautionary measures would not be achieved.

Temirtoshi (may Allah have mercy on him), citing Imam Sarakhsi, stated that there is no strict minimum for *ta'zir*, and it is left to the discretion of the local ruler or imam. Since the goal of *ta'zir* is deterrence and governance, it varies depending on the circumstances of the crime. For some, *ta'zir* may take the form of advice, a slap to the face, a beating, or imprisonment.

An-Nihayah explains that for high-ranking individuals, such as scholars or officials, *ta'zir* is carried out publicly. The judge would say, "It has come to our attention that you committed these actions," and the offense would be announced and dealt with in court. For middle-class individuals, such as merchants, *ta'zir* involves public disclosure, dragging to court, and imprisonment. For the common people, flogging or whipping may be included alongside the punishments mentioned above.

According to a narration from Imam Abu Yusuf (may Allah have mercy on him), it is permissible for the ruler to confiscate the property of offenders as *ta'zir*. However, the fatwas of Imams Abu Hanifa and Muhammad (may Allah have mercy on them) state that this is not permissible, except in cases involving rebels or those who oppose state authority. The three Imams – Abu Hanifa, Malik, and Ahmad – along with the Shafi'i school, generally hold that confiscation of property is impermissible. However, if the imam sees it fit, the scholars of the Hanafi, Maliki, and Hanbali schools argue that *ta'zir* should be enforced in legal matters. The Shafi'i school holds that it is not obligatory.

In our school of thought, *ta'zir* serves as a form of legal admonishment, and like *hudud* punishments, its enforcement is obligatory. If the imam finds it beneficial, corporal punishment and imprisonment may also be imposed. The lashes administered in *ta'zir* are stronger than those in *hudud*, as the number of lashes is fewer, but their intensity is greater, ensuring that the purpose of governance is not lost (Ismail, 2019).

Burhan al-Din al-Bukhari, in his work *al-Muhit*, mentions that Imam Muhammad (may Allah have mercy on him) stated, "In *ta'zir*, the lashes should be spread across different parts of the body, while in *hudud*, they are applied to a single area. (al-Qori, 1997)"

Conclusion

In conclusion, crimes subject to *ta'zir* are diverse, and the corresponding punishments vary accordingly. It is essential that the severity of the crime and the offender's circumstances are taken into account by the judge or imam when determining and implementing *ta'zir*. A more detailed analysis of these punishments can be found in the master's thesis on this topic.

References

- Adua, M. I. (2024). AUT DEDERE AS ERGA OMNES TO SUPPRESS CIVIL AVIATION CRIMES UNDER THE INTERNATIONAL LAW: THE ISLAMIC LAW PERSPECTIVE. *Malaysian Journal of Syariah and Law*, 12(1), 77–90. <https://doi.org/10.33102/mjssl.vol12no1.537>
- Afzal, M. (2021). Flexibility in the implementation of islamic criminal law in modern islamic society in the light of qur'ān and Sunnah. *Journal of Islamic Thought and Civilization*, 11(1), 396–410. <https://doi.org/10.32350/JITC.111.21>
- Alam, S. (2022). Islamic Criminal Law Study on The Seizure of Corruptor Assets as an Indonesian's Criminal Sanction in The Future. *Juris: Jurnal Ilmiah Syariah*, 21(2), 143–156. <https://doi.org/10.31958/juris.v21i2.6722>
- Al-Ansari, S. (2023). Contextualising Islamic Criminal Law: An Analysis of Al-Azhar Scholars' Contributions. *Manchester Journal of Transnational Islamic Law and Practice*, 19(2), 20–42. <https://www.scopus.com/inward/record.uri?partnerID=HzOxMe3b&scp=85166918247&origin=inward>
- Ar-Roziy, A, B, I, A. Muxtorus-sihoh. – Egypt: "Vuloq al-misriyya". – 1907.
- Al-Qori, N, S, M, A. Fathu bob al-inoya. – Egypt: Dori – assalam. – 1997.
- Ismail, W. A. F. W. (2019). Document falsification/forgery from the view of Islamic jurisprudence and Malaysian law. *Al-Jami'ah*, 57(2), 459–498. <https://doi.org/10.14421/ajis.2019.572.459-498>
- Kamalludin, I. (2022). RESTORATION OF PANCASILA VALUES AGAINST CRIMINAL LAW REFORM STRATEGY IN INDONESIA POLITICAL PERSPECTIVE OF ISLAMIC LAW. *Syariah: Jurnal Hukum Dan Pemikiran*, 22(1), 31–47. <https://doi.org/10.18592/sjhp.v22i1.4637>
- Mansur, S, A. Qur'oni karim ma'nolari tarjimasi. – Tashkent: "Islamic University" publishing house. – 2004.
- Makhsudov D. Muslim world scientists of the temurids period //The Light of Islam. – 2019. – T. 2019. – №. 3. – C. 4.
- Mukhamedov N. Activities of scholars of islamic law (fuqaha) from shash oasis in scientific centers of the region //The Light of Islam. – 2020. – T. 2020. – №. 3. – C. 4-15.

- Makhsudov D. R. Mufasssirs of Mawarannahr //ISJ Theoretical & Applied Science, 12 (80). – 2019. – C. 539-543.
- Mojtahedi, M. H. (2021). Islamic Law and the Balancing of Justice and Peace in Iraq's Post-IS Landscape. *International Journal of Transitional Justice*, 15(2), 407–427. <https://doi.org/10.1093/ijtj/ijab012>
- Mukhamedov N. Khoja Ahrar-peace and consent between people //ISJ Theoretical & Applied Science, 01 (117). – 2023. – C. 378-383.
- Mukhamedov, N. Activities of scholars of islamic law (fuqaha) from shash oasis in scientific centers of the region //The Light of Islam. – 2020. – T. 2020. – №. 3. – C. 4-15.
- Munawaroh, H. (2019). Restorative Justice In Settling Minor Criminal Disputes In Ponorogo, East Java: An Islamic Law Perspective. *Mazahib Jurnal Pemikiran Hukum Islam*, 18(2), 167–200. <https://doi.org/10.21093/mj.v18i2.1632>
- Rahmawati. (2023). Criminal Law Disparities against Perpetrators of Sexual Violence against Children Based on Islamic Law in Indonesia. *Al-Istinbath: Jurnal Hukum Islam*, 8(2), 667–696. <https://doi.org/10.29240/jhi.v8i2.7379>
- Royani, Y. M. (2021). Hate Speech During the Caliphate of 'Alī ibn Abī Ṭālib and Its Relevance to Regulations in Indonesia: The Study of the Islamic Law History. *Al-Ahkam*, 31(2), 223–240. <https://doi.org/10.21580/ahkam.2021.31.2.8956>
- Scolart, D. (2019). Punishment and islamic law. *Quaderni Di Diritto e Politica Ecclesiastica*, 22, 97–113. <https://doi.org/10.1440/95750>
- Ugli A. Z. Z., Farxodjonova N. Alikhantura Soguniy Role in State Administration in East Turkestan //Journal of Modern Islamic Studies and Civilization. – 2024. – T. 2. – №. 02. – C. 128-132.
- Zokirjonugli Z. A. Approaches to studying the scientific heritage of Alikhantora Soguni //Asian Journal of Multidimensional Research. – 2022. – T. 1