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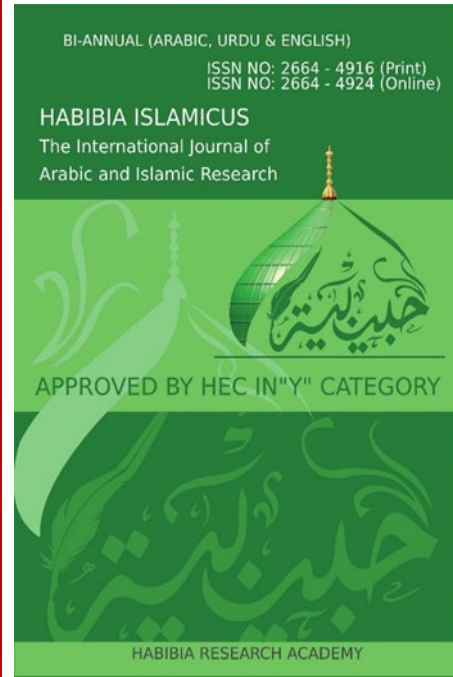
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### TOPIC:

**HADOOD AND QISAS LAWS IN PAKISTAN AN ANALYTICAL STUDY IN THE LIGHT OF QURAN & SUNNAH**

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## HADOOD AND QISAS LAWS IN PAKISTAN AN ANALYTICAL STUDY IN THE LIGHT OF QURAN & SUNNAH

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### ABSTRACT:

*In Islamic legal system crimes are of three types: Hadd, Qisas and Ta'zir. The Hudood are fixed punishments. Western jurists and scholars mark considerable condemnation on such sort of penalties. Some Muslim scholars and jurists follow them, who try to demonstrate right and correct follow Sir Syed, etc. but ignore the views of the majority of Muslim jurists, Mufasserins, and Hadith-o-Sunnah's narrators. In this research article definitions of Hadd, Qisas and Ta'zir are elaborated. In the Hudood case, no recommendation for withdrawal of the case can be made when it is reported, nor it can be waived even by the victim or his legal heirs. But in Qisas, it can be compromised & waived by the victim or his legal heirs. Ta'zir is the discretion of the state to punish or acquit the accused and discretion is exercised by the Judge of the Court or head of the state in a mercy petition.*

**KEYWORDS:** Hadd, Qisas, Ta'zir, Punishments, Views, Jurists, Discretion, Mercy petition

### INTRODUCTION:

Haddood: Haddood are described in Qur'an 4:13. In this verse Allah stressed and narrated the significance of the bow and complete submission of a man before His command. Allah passed and pronounced prejudgment against those people who do not perform their acts according to the rules and principles set by Allah and His Prophet Muhammad (SAW). A point is worthy to mention that the narrated success is for believers hereinafter, but who are nonbelievers and act in accordance with such rules, principles, and precedents demonstrated by the Holy Prophet (SAW) their success could be possible in this world, and might Allah forgive them if they are not considering any one partner of Allah.

**Haddood in literal sense:** Haddood is the plural of Hadd which literally and etymologically means: (الحاجزين الشئيين الذي يمنع اختلاط احدهما بالآخر) "The differentiating factor between the two, which prohibits interfusion of one with another."<sup>1</sup> It is also used in the sense of prevention. The word "Al-Hadd" from the same origin is used in the sense of prevented and prohibited. "Al-Haddood" is said to be the gatekeeper or the doorman who prevents the people from entering the house. The last barrier or line of partition is also known as Hadd: for example, "Haddood-ul-Haram".<sup>2</sup>

**The literal meanings:** Things whose prohibitive or permissive capacities according to Shari'ah have been clearly mentioned or expressly stated, are known as "Hooded" or "Hooded Ullah".<sup>3</sup>

**Allah's command of Hooded in The Holy Quran:** تِلْكَ حُدُودُ اللَّهِ فَلَا تَقْرُبُوهَا "These are the limitations imposed by God. Don't touch them."<sup>4</sup>

تِلْكَ حُدُودُ اللَّهِ فَلَا تَعْتَدُوهَا وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَأُولَئِكَ هُمُ الظَّالِمُونَ "These are the limitations imposed by Allah. Don't cross them. And those who defy the limitations of God are indeed the transgressors"<sup>5</sup>

**Laws of Shari'ah relating to Awamir and Nawahi:** Thus, on the basis of literal and etymological signification, the laws of Shari'ah relating to Awamir and Nawahi i.e, acts of commission and omission are generally known as Hooded or Hooded-Ullah which whose violation in any form or under any pretext amounts to sin. المعصية The Word "Hadd" means prevention, hindrance, impediment, withholding, restraint, debarring, inhibition, forbiddance, prohibition, interdiction, repelling, an averting, partition, to prevent their commixture, or confusion, or the encroachment of one upon the other.<sup>6</sup>

**Hadd Punishment is Imperative:** "الحَدُّ عَقُوبَةٌ مَقْدَرَةٌ تَحِبُّ حَقَّ اللَّهِ" "Hadd is the fixed punishment which has been made imperative as a right of God."<sup>7</sup>

**Hadood are Divine Law Violations which are A Crime:** Those unlawful acts or omissions which are declared prohibitive by the divine law and the people have not been permitted to violate them are termed Hooded because these Hooded prevent the people from their commission. Hence, violation of these Hadood is declared a crime.<sup>8</sup>

**Hadood According Qura'n:** وَمَنْ يَعْصِ اللَّهَ وَرَسُولَهُ، وَيَتَعَدَّ حُدُودَهُ، يُدْخِلْهُ نَارًا خَالِدًا فِيهَا وَلَهُ عَذَابٌ مُهِينٌ؛<sup>٩</sup> "But whoever disobeys Allah and His Messenger (blessings and peace be upon Him) and exceeds His limits, He will admit him to Hell wherein shall he dwell forever; and there is a humiliating torment for him."<sup>9</sup>

**Oath of Allegiance:** In Sura al-Mumtahina Allah instructed His Messenger as;

يَا أَيُّهَا النَّبِيُّ إِذَا جَاءَكَ الْمُؤْمِنَاتُ يُبَايِعْنَكَ عَلَى أَنْ لَا يُشْرِكْنَ بِاللَّهِ شَيْئًا وَلَا يَسْرِقْنَ وَلَا يَزْنِينَ وَلَا يَقْتُلْنَ أَوْلَادَهُنَّ وَلَا يَأْتِينَ بِهِنَّ يَفْتَرِيَهُ بَيْنَ أَيْدِيهِنَّ وَأَرْجُلِهِنَّ وَلَا يَعْصِيَنَّكَ فِي مَعْرُوفٍ فَبَايِعْهُنَّ وَأَسْتَغْفِرْ لَهُنَّ إِنَّ اللَّهَ غَفُورٌ رَحِيمٌ ١٢

"O Prophet! When the believing women appear in your presence to take the oath of allegiance that they will not set up anything as partner with Allah and will not steal, nor will they commit adultery, or kill their children, or bring false blame which they have invented between their hands and feet (i.e. will not deceive their husbands declaring some other's baby as their own), or disobey you in (any) matter pertaining to law, then accept their allegiance and seek forgiveness for them from Allah. Surely, Allah is Most Forgiving, Ever-Merciful."<sup>10</sup>

**Six Injunctions:** There are six injunctions mentioned in this verse.

**Firstly:** The first is that they will not ascribe any partner to Allah. Affirmation of faith and avoidance of shirk.

**Secondly:** The second pledge is that they shall not commit theft.

**Thirdly:** The third vow is that they shall avoid committing adultery.

**Fourthly:** The fourth vow is that they shall not kill their children.

**Fifthly:** The fifth vow is that they shall not bring calumny against anyone. While referring to this injunction, (bring false blame which they have invented between their hands and feet) This phrase has been added in order to indicate that on the Day of Resurrection man's hands and feet will bear witness against his actions. The verse thus warns that he is committing such sins in the presence of four witnesses who will bear witness against him.

**Sixthly:** The sixth vow means that shall obey the Messenger of Allah.”<sup>11</sup> Seven Hadd crimes, which are the mother of each murder, and their punishment, is fixed by Divine law which cannot be amended by any ruler are Judge of the Court.

**Meaning & Origin of Qisas. Qisas in Al-Qur'an:** فَأَرْتَدَّا عَلَىٰ آثَارِهِمَا قَصَصًا<sup>12</sup> In Quran this word is used as: “So they departed back repeating their footpaths (succeeding the route they had come).”<sup>12</sup>

**Qisas in Literal Sense:** The term Qisas is factually resulted from “Al-Qsas” which means (to follow in someone’s footpaths).<sup>13</sup> In the book of Tafsir Qurtabi Qisas is also explained as “to follow the track of mark.”<sup>14</sup> That the treatment of the offender should be the same as his offence.

**Qis as Literally Means:** “Equal or balanced”.

**Qis as in Technical Sense:** Jurists have adopted in its technical sense as: “Qisas is to award an equitable punishment to the offender for an intentional crime of homicide or for severing any organ of the body or injuring it”.<sup>15</sup>

**Qis as in Legal Sense:** Al-qisas in its legal sense signifies: “Qisas means to shed blood in Retaliation.”<sup>16</sup>

**Qis as (Arabic)** is an Islamic term meaning “retaliation in kind” or “revenge”, “eye for an eye”, “nemesis”, or retributive justice.

**Qis as: S; 299(K), Pakistan Penal Code:** Means punishment by causing similar hurt at the same part of the body of the convict as he has caused to the victim or by causing his death if he has committed qatl-i-amad, in exercise of the right of the victim or a wali.<sup>17</sup> Qisas is derived from Al-Quran used in the Arabic language as a divine law that was too familiar in earlier sharia. Its basic aim is the protection of the life and liberty of mankind. It serves as a purpose of deterrence against criminals and they avoid committing murder or causing hurt to other people. Hence, it provides a guarantee of life for humanity. Allah knows the best secrets of hearts and His law is for the welfare of mankind because He made man His vicegerent on earth so wants peace in an earthly kingdom. Law of Qisas was dominated in earlier Shariah, in Jew’s and Christian Holy Books even present today. But those Shariah were not familiar with the law of diyat which is given in the Quran and Sunnah.

**Judicial Discretion: Chastisements or Discretionary Punishments:**(التعازير)

**Literal sense:** The term ta’zeer is originated from the origin ‘عزر’ which literally means: “To prohibit and punish.” المنع و التاديب this word primarily applies to the signification of ‘help with respect’ in its Etymological orbit, as stated by Imam Raghib Asfahani in the following words: التعزير النصرّة مع التعظيم: “Ta’zeer is to help anybody and respect him.”<sup>18</sup>

**Technical Sense:** In its legal and technical sense, it is defined as

“Ta’zeer is the punishment (to a criminal), whose specification of nature and quantum is left to the discretionary jurisdiction of the state.”<sup>19</sup> Most of Muslim Jurists have explained Ta’zeer as: التعزير هوتاديب على ذنوب لم تشرع فيها الحدود “Ta’zeer is the punishment for crimes for which Shari’ah has not provided the fixed sentence.”<sup>20</sup>

**In Pakistan Need Legislation:** Thus, these precedents can be adopted in Pakistan through legislation of Parliament by making that part of the constitution or Pakistan Penal Code or Qanun-e-Shahdat.

**Right of Implementation of Qisas Primarily Vests in the Heirs of the Dead:** The right of execution of Qisas primarily vests in the heirs of the dead. Since they are not in a position to implement its execution on their own, it is exercised on their behalf by the state. There is no second opinion, according to Jazeeri, on this view. Therefore, the right of Qisas is available to a grieved party and the right of its implementation resides in the state, because the execution of Hudood, Qisas, and Ta’zeerat has been included in the duties of the state by Hazrat Muhammad (SAW).<sup>21</sup>

**Original Right of Qisas, available to the Heirs Expressed in Qur’an:** As far as the original right of Qisas, available to the heirs is concerned, it is expressed in Qur’an:

“وَمَنْ قُتِلَ مَظْلُومًا فَقَدْ جَعَلْنَا لَوْلِيَّهِ سُلْطٰنًا” “Whoso was murdered unlawfully, surely We have vested the right (to demand or forgive the Qisas) in his legal heir.”<sup>22</sup>

**Imam Qurtbi States:** That there is no opposing view on the issue that no one can execute the Qisas except the state because the whole of society has collectively given the authority of implementing the laws to the state.<sup>23</sup>

**Imam Sawi Argues:** That the state is the authority which, in fact, empowers the heirs of the deceased to get their rights enforced. It is the responsibility of the state to enforce the option of the heirs, either in the form of Qisas, or Diyat, or remission. Therefore, the legal heirs of the dead do not possess the right to execute it themselves without the adjudication of the court and the legal order of its execution, because it is likely to create disturbance and disruption. This argument is expressed in the words in light of this elaboration; it is held that if anybody executes the death punishment without permission of the court, he would be awarded the sentence of Ta’zeer because it amounts to an unlawful act.<sup>24</sup>

**Right of Qisas [Retaliation]:** The right of Qisas [retaliation] is given to the victim or the victim’s family in Islamic legal system according to Quran and Sunna. It is an option of the victim’s family to take Qisas or to receive diyat in case of intentional murder or to forgive for the sake of the pleasure of Almighty Allah and in cases of hurts, it is the right of the victim if he/she is alive or His/her heirs in case of victim’s death to take Qisas [retaliation] or to receive Arsh, or damand or to forgive for the sake of pleasure of Almighty Allah.

**Right to Proceeds Qisas:** Qur’an 17: 33 states as:

وَمَنْ قُتِلَ مَظْلُومًا فَقَدْ جَعَلْنَا لَوْلِيَّهِ سُلْطٰنًا فَلَا يَسْرِفُ فِي الْقَتْلِ إِنَّهُ كَانَ مَنْصُورًا ۝٣٣ “But whoever is killed unjustly, We have indeed given his heir the right [of retribution according to the legal procedure], but he too must not exceed the limits in [retributive] killing. He is indeed helped [by Allah. The responsibility of his legal help and support will be on the government.]”<sup>25</sup>

**Constitution of Retaliation: Prevention of Illegal Murder:** Allah stated in Sura al-Isra’/Bani Isra’il of Qur’an as; “And do not kill any soul whose [killing] Allah has declared unlawful unless [killing him] is just [according to the law and decree of the court]. But whoever is killed unjustly, we have indeed given his heir the right [of a retribution according to the legal procedure], but he too must not exceed the limits in the [retributive] killing. He is indeed helped [by Allah. The responsibility of his legal help and support will be on the government.]”<sup>26</sup>

**Punishment of Qisas consists of Two Rights:** (i) Public Right (ii) Private Right

The first right involves the penal element but the second involves the formal penal element. The former right originates from a violation of the collective rights of the society and the latter involves an infringement of the private right of the aggrieved party. Therefore, if the aggrieved party remits the punishment of Qisas or blood money, even then the state has a right to award the punishment of Ta’zer, for the preservation of the right of Shari’a that is the public right.<sup>27</sup>

**Scope of discretion:** In the case of Hadd, the state does not possess any discretion to increase or decrease the quantum of the punishment.

In case of retaliation, the state is equally denied any discretionary power to vary the quantum of the punishment. In the case of Ta’zer, the discretion to change the nature and quantum of the punishment is invested in the state and, on its behalf, in the judiciary. It is unanimously agreed: “Its fiction depends upon the discretion of the state.”<sup>28</sup> This implies that in the case of Hadd and Retaliation there is no scope of Ijtihad but Ta’zer is formulated on the basis of Legal Ijtihad. As it is stated: “The rulers are supposed to conduct ‘Ijtihad’ in adopting an appropriate sentence of Ta’zeer.”<sup>29</sup> At this stage from the above-mentioned discussion, it is worthy to elaborate that Judge is empowered to exercise his duties, functions, and discretion on behalf of the state and public at large not upon the dictation or order of the ruler based on his wishes which are injurious to the state and public at large. We can analyze it in Pakistan that Judges are exercising this scope of power freely and without any dictation of the rulers.

**Right of Punishment:** The punishment of Hadd is imposed as the right of God. The punishment of retaliation is imposed as the right of the man. The fixation and execution of the punishment of Ta’zer is the right of the state.<sup>30</sup> As in case of Hadd sentence is fixed by Qur’an & Sunnah, while in case of retaliation and compensation it is the right of heirs of the deceased or of injured if he is alive in case of hurts. But tazir’s sentence is the right of the State which is used by the Court’s verdict.

**Recommendation of withdrawal:** In the case of Hadd, no recommendation in any form is acceptable. This legal principle is based on the tradition in which ‘chader’ of Sufyan bin



Umayyah was stolen. The case was tried and adjudicated by Prophet Muhammad (SAW). He awarded the sentence of amputation to the thief. After the award of the sentence, Prophet Muhammad (SAW) Sufyan came to Prophet Muhammad (SAW) and made the recommendation in favor of the convict and asked permission for withdrawal of the case. But Prophet Muhammad (SAW) refused and said: *هَلَا قَبْلَ أَنْ تَأْتِيَنِي بِهِ* "You would have done so before the case came to me for trial."<sup>31</sup> The prophetic tradition establishes the fact that after the cognizance of the court, the plaintiff or complainant can neither withdraw the case nor make a recommendation in favor of the accused. Moreover, Imam Abu Daud has reported a prophetic tradition through Amr bin Shu'ayb:

*تَعَاَفَرَا الْهُدُودَ فِيمَا بَيْنَكُمْ فَمَا بَلَغْنِي مِنْ حَدٍّ فَقَدْ وَجِبَ* "You can remit the Hudood as long as the matter is between you. When the case of Hadd comes to me for trial, its execution becomes obligatory."<sup>32</sup>

Imam Dar-al-Qutni has reported another Hadith in this respect through Prophet Muhammad (SAW) Zubayr: "You can make a recommendation before the case comes for trial. When it comes to the court and even if the aggrieved person remits, God will never remit."<sup>33</sup> Imam Tabrani has reported still another Hadith through 'Urwah bin Zubayr: "When the case comes to the court for trial, then God execrates those who recommend and those who accept the recommendation."<sup>34</sup> In case of Qisas the aggrieved himself can withdraw the case at any moment because his right preponderates the right of the community.<sup>35</sup> In the case of Ta'zeer the recommendation is also permissible before or after the cognizance of the court. It is entirely up to the court to decide the degree and extent of acceptance of the recommendation made by the aggrieved or the injured party. Here the preference of the party is considered immaterial.<sup>36</sup>

**Remission or forgiveness:** In the case of Hudood, the aggrieved party cannot forgive the accused or the convict as far as the element of infringement of public right or right of God is concerned, because the punishments awarded in the cases are obligatory. Since they are to be executed as the right of God, no one has a right to forgive them.<sup>37</sup> Muslim Jurists are unanimous on the view that the Hudood cannot be remitted or forgiven.<sup>38</sup> In case of retaliation and blood money, the full right of forgiveness is vested in the aggrieved. Either retaliation or blood money or both can be forgiven. This right is based on the express Qur'anic provision: *فَمَنْ عَفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتَّبَاعُ بِالْمَعْرُوفِ وَأَدَاءٌ إِلَيْهِ بِإِحْسَانٍ* "If any remission is made by the brother of the slain, then grant any reasonable demand and compensate him with handsome gratitude."<sup>39</sup> It is reinforced by another Qur'anic injunction:

*فَمَنْ تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ لَهُ* "If any one remits the retaliation by way of charity, it is an act of atonement for him."<sup>40</sup>

Moreover, it is narrated by Prophet Muhammad (SAW) Anas bin Malik: "Whenever any case of Qisas was referred to Holy Prophet (peace be upon him) he always used to suggest forgiveness."<sup>41</sup>

**Infringement of Two Rights:** It may be noted that the crime of retaliation involves infringement of two rights: (i) right of God (public right). (ii) Right of individual (private right).<sup>42</sup> If the injured party forgives the accused, its forgiveness would operate within the scope of its private right. Therefore, the punishment as retaliation or blood money would be remitted. But as far as the second component of the infringement of public rights is concerned, it cannot be forgiven by the aggrieved individual. Therefore, if the court considers it proper to award punishment of lashes or imprisonment etc., as Tazeer for the infringement of the public right under the impression of heinousness and gravity of the crime, it can award the Tazeer in spite of forgiveness of retaliation and blood money.<sup>43</sup> This is established through the practice of Prophet Muhammad (SAW) ‘Umar,<sup>44</sup> which is the basis of the opinion of Imam Malik, Lays, Abu Thour, and other scholars of Madinah, that the award of any specific Tazeer after the remission depends on the discretion of the Court.<sup>45</sup> This view has also been adopted by the Hanafi Jurists.<sup>46</sup> In the case of Tazeer, remission is again permissible by the law.<sup>47</sup> But if it involves damage or injury to the public right also, then it depends on the discretion of the state to award punishment for the damage or the injury in the importance of common wellbeing of the public.<sup>48</sup>

**Pardoning Power of the State:** In case of Hadd, the state is absolutely stripped of any power of pardoning. It can remit the punishment neither completely nor partly. This concept is grounded in the fundamental principle that the imposition and execution of Hadd is an exclusive right of God that can be interfered with by the state. The state is not empowered to remit or suspend it but is under obligation to execute it on behalf of the community. There are two prophetic traditions supporting this perspective of punishment.<sup>49</sup> Prophet Muhammad (SAW) ‘Ayshah reports Prophet Muhammad (SAW) saying: “The rulers should adopt a forgiving and lenient attitude in offenses other Hudood.”<sup>50</sup> Once in a case of theft Prophet Muhammad (SAW) awarded the sentence of amputation to a woman of the Makhzumi tribe and Prophet Muhammad (SAW) Usamah made a recommendation in her favor. Prophet Muhammad (SAW) replied: “The people before you were extinguished only for the reason that whenever any person of high stature among them had committed theft he was not sentenced, and if any person of low stature committed theft, his hands were amputated.”<sup>51</sup> He added: “I swear by God who possesses my soul that if Fatimah daughter of Muhammad had committed theft, I would have amputated even her hand.”<sup>8</sup> This categorically establishes that there is no pardoning power vested in the state for the crimes of Hudood.<sup>52</sup> In the case of Qisas the state is equally denied any power of granting pardon because the punishment of retaliation primarily vests in the injured party.<sup>53</sup> If the injured died as a result of an injury caused by the offender then the heirs of the deceased had the right of pardoning. In the case of Tazeer it is a unanimous view that the power of pardoning vests in the state. The state can remit the sentence partly as well as completely, if there is no infringement of private right.<sup>54</sup>

**Flexibility and variation:** The punishment of Hudood are neither flexible nor variable. They are awarded irrespective of the status and reputation of the person. It means that they



are awarded indiscriminately to all kinds and categories of people whether they belong to respectable and well-reputed classes or disrespectable and ill-reputed groups and communities. This non-discriminative mode of punishments underscores the fundamental egalitarianism of the Islamic legal system where people living in the upper brackets of society and reduced to the level of the feelings and off-scorings of humanity, where a king with his crown is chiseled down to the status of a beggar with his bowl, where a princess with her silver spoon upbringing is trimmed down to the pedestrian existence of a skimping seamstress, where the difference between the ruler and the ruled is slashed down to an equity which flouts all Western claims of the equality of human beings. A Prophetic tradition reported by Prophet Muhammad (SAW) ‘Ayshah and recorded by Imam Ahmad, Abu Daud, Nasai and Bayhaqi, Prophet Muhammad (SAW) said: “Rulers should take a lenient view, except in Haddood.” Imam Sanani has also mentioned the second meaning of this Tradition in the following words: “A lenient view should be taken for non-habitual offenders, except in Haddood.”<sup>55</sup> In the case of Haddood, the status of the offender or that of the convict is absolutely immaterial. Imposition of punishment, its nature, and quantum are not affected by the superior position or inferior grade of the person whose offense falls within the area of application of the penalty of Hadd.<sup>56</sup> In the case of Qisas, as in the case of Hadd, no flexibility or variation in the punishment is permissible.<sup>57</sup> In the case of Ta’zeer, however, the punishment is variable and flexible. Persons who are of good repute and possess a non-criminal record of character are awarded a relatively lesser punishment if they commit an offense liable to the punishment of Ta’zeer. But if the same offense or act is committed by a person who not only enjoys a bad reputation but is also a known criminal or a habitual offender, he is awarded a comparatively severer punishment. This variation and flexibility in the nature and quantum of Ta’zir is already explained through the Prophetic tradition quoted above.<sup>58</sup>

It follows that the punishment of Ta’zir is subject to the psycho-social stability and dislocation of the offender: it varies from person to person and from character to character and, therefore, confirms to both social and psychic parameters of a human personality. With a remarkable feat of legal finesse, it eschews the pitfalls of the Western penal system and wriggles out of the blind of their insularity into the spotlight of human sensitivity and understanding. Those adverse critics of Islam, who in a package deal of hostility, accuse it of narrowness and constriction, are advised to moribund attitudes. Through a mere juxtaposition of the two polities and a dispassionate dissection of their contents, they are bound to arrive at a conclusion that may joggle them out of their prejudiced complacency. It is stated: “The punishment of Ta’zeer changes with the change of people.”<sup>59</sup> It is a slap in the face of those critics of Islam whose tongues know no respite in wagging ill against its petrified punishments. They, in their blind rage, concentrate only on the inflexible system of punishments, which in their own way, are directed by infinite divine wisdom and omniscience, denied to the cramping and crouching flight of the human mind and imagination, and perversely brush aside and shrug away the element of flexibility, latitude,

and leniency in Islamic punishments. This statement is bolstered by another statement: "The punishment of Ta'zeer varies due to the variation of the gravity of the offense and the offender."<sup>60</sup>

**Damages:** In the case of Hadd, no damages are awarded to the convict even if he is severely injured during the execution of the punishment.<sup>61</sup> The same condition is applicable in case of Qisas.<sup>62</sup> In case of Ta'zeer, different interpretation are possible. If any severe injury or damage occurs during the execution of the punishment, some Jurists believe that damages are permissible,<sup>63</sup> but Imam Abu Hanifah and Imam Malik disagree with them believing that Ta'zeer, like Hadd, does not involve any damages because the right of execution of punishment in case of Ta'zeer and Hadd possess the same validity and legality."<sup>64</sup> Scholars who accept the provision of damages in the case of Ta'zeer have based their view on the practice of Prophet Muhammad (SAW) 'Umar when he awarded the punishment, which terrified a woman to the extent that she suffered premature delivery. As compensation, Prophet Muhammad (SAW) 'Umar paid her the blood money, both for the involuntary abortion and the pain that accompanied it obviously, he interpreted abortion as murder. Therefore, on the basis of this precedent, the jurists do not observe any distinction between Qisas and Ta'zeer in terms of the according to damages.<sup>65</sup>

**Doubts:** The execution of Hudood is suspended if any doubt is established during the proof of crime. This practice is validated by a Prophetic tradition *ادروا الحدود بالشبهات* "Hudood should be suspended on account of doubts."<sup>66</sup> The same injunction is differently phrased by Abu Hurayrah: "Leave out the Hudood if you find any excuse."<sup>67</sup> Another Prophetic injunction is reported by Prophet Muhammad (SAW) Ayshah in the words: "As far as possible, guard the Muslims against sentencing them by Hudood. If there is any other way out (alternative) for them, you should allow them this concession (or option). It is better for the Head or the court to err in forgiveness than to err in punishment."<sup>68</sup> The benefit of doubt is similarly extended in case of Qisas.<sup>69</sup> Ta'zeer is not suspended or remitted on the basis of doubt. Therefore, the benefit of the doubt is not extended in the case of Ta'zeer because Ta'zeer is essentially a discretionary punishment. The concession of the benefit of the doubt is awarded for minimizing the penal gravity and heinousness, whereas Ta'zeer is already a kind of minimized punishment. Therefore, the extension of additional benefit of the doubt, in this case, is tantamount to an exercise in misplaced levity and sheer superfluity.<sup>70</sup>

Narrated Rabia bin Abi Abdal Rahman: An Iraqi approached to Umar bin Khattab and said; "I have come to you with a problem which has neither any head nor tail." Umar enquired about the problem and was told that false testimony has become order of the day in Iraq. Umar said is to so. The man replied in affirmative. Then Umar said that now no Muslim will be put behind the bars without the testimony of witnesses of probity and rectitude.<sup>71</sup>

**Succession:** There is no concept of succession in cases of Hudood, according to the generally accepted view of the Jurists.<sup>72</sup> The privilege of succession is absolutely allow to the heirs in circumstances of Qisas,<sup>73</sup> this privilege is not allowed in crimes of Ta'zeer.<sup>74</sup>

If the accused who were sons of the deceased had killed their father in a land dispute they, as heirs of the deceased, could be debarred from the inheritance of the property of the dead agreeing to Islamic Law. Where the deceased was not issueless, the real sister of the deceased could not be termed as the legal heir of the deceased and according to Islamic Law sons and daughters of the deceased were legal heirs of the deceased. 2001 PCr.LJ 1636.<sup>75</sup> Prophet Muhammad (SAW) said: لا ميراث لقاتل "The murderer cannot inherit the murdered in spite of being his legal heir."<sup>76</sup> In this law, the act of murder has been declared to be the hindrance or intercepting factor in succession. That is why it is a declaratory law and not a defining one.<sup>77</sup>

**The claim of Aggrieved Party:** The cognizance and trial of the case of Hadd does not depend on the claim or filing of the aggrieved party, with the exception of Hadd of Qazaf (false allegation of adultery).<sup>78</sup> The cognizance and trial of the case of Qisas absolutely depend on the claim or filing of the suit of the aggrieved party.<sup>79</sup> Ta'zeer varies from case to case. If the infringement of the public right preponderates in the offence, its cognizance is immune from the injured party. If the private right preponderates, the claim of the party is deemed to be necessary.<sup>80</sup>

**An analytical comparison of the definitions and discussions of Ta'zeer given by Muslim Jurists:** It may be summed up in the following statement:

"Ta'zeer is chastisement or discretionary punishment for the crimes which fall neither within the category of Hudood nor retaliation, and the fixation of its nature or quantum or both is left to the judicial discretion and jurisdiction of the state."<sup>81</sup> The penalty of imprisonment or lashes or transportation or death punishment, awarded by the Muslim courts for the commission of crimes, on the basis of discretionary fixation of penal quality and quantity, neither being hudood nor retaliation or blood money, is known as Ta'zeer (تعزير)<sup>82</sup>.

**Conclusion:** In the light of above averments, it can be concluded that Islam recognized three modes of penalties. First Haddod punishments fixed by Quran & Sunnah cannot be altered as matter of Right of Allah. Second Qisas sentence as matter of private right of individual or victims' heirs may be waived for pleasure of Allah or may be compromised by Diyyat. Thirdly, Tazir punishment can be imposed by the state for the maintenance of peace, harmony, law, and order situation so that habitual offenders may not disturb the security of the public at large.

## REFERENCES:

<sup>1</sup> Tahir-ul-Qadri, Prof. Dr. Muhammad Classifications of Islamic Punishment; p.8.

<sup>2</sup> Ibid.

<sup>3</sup> Tahir-ul-Qadri, Prof. Dr. Muhammad Classifications of Islamic Punishment; p.8.

<sup>4</sup> Holy Quran 2:187.

<sup>5</sup> Holy Quran 2: 229.

- <sup>6</sup> Tahir-ul-Qadri, Prof. Dr. Muhammad Classification of Islamic Punishments; pp. 8-9.
- <sup>7</sup> Ibid. p. 9
- <sup>8</sup> Ibid. p.8.
- <sup>9</sup> Qur'an 4: 14. Dr. Muhammad Tahir-ul-Qadri, The Glorious Quran, English Translation of, 'Irfan- ul- Quran'; p. 119
- <sup>10</sup> Qur'an 60: 12. Dr. Muhammad Tahir-ul-Qadri, The Glorious Quran English Translation 'Irfan-ul-Quran'. p. 930.
- <sup>11</sup> Maulana Mufti Muhammad Shaffi, Marrauf-ul-Quran, Volume 8; p. 433.
- <sup>12</sup> Al-Quran 18: 64.
- <sup>13</sup> Isfahani Imam Raghib, Mufradat-ul-Quran (Urdu), Vol 2; p. 292.
- <sup>14</sup> Tafsir Qurtabi, Zia-ul-Quran Publicationz, Pakistan. Volume2; p.708.
- <sup>15</sup> Prof. Dr. Muhammad Tahir-ul-Qadri, Classification of Islamic Punishments; p. 10.
- <sup>16</sup> Mufradat-ul-Quran (Urdu); p. 292.
- <sup>17</sup> Siddiqui Mobeen Ahmed "the Qisas & Diyat Laws" Advocate Supreme Court, Omer Law Book House; p. 13. Pakistan Penal Code, 1860. Criminal Major Acts 2011, PLJ; p. 1235.
- <sup>18</sup> Tahir-ul-Qadri, Prof. Dr. Muhammad Classification of Islamic Punishments, p. 11.
- <sup>19</sup> Ibid.
- <sup>20</sup> Ibid. pp. 11-12. Kashani Abu Bakr al-, Badai-us-Sunnah, Translated in Urdu Dr. Mahmood-Ul-Hassan & Prof. Khan Muhammad Chawala, Vol.VII, p. 180.
- <sup>21</sup> Tahir-ul-Qadri, Prof. Dr Muhammad Legal Structure of Islamic Punishments, Minhaj-ul-Quran Publications; p. 28. (Quoted from (a) Fiqh-us-Sunnah, Vol. II, p. 536. (b) Kitab-ul- Fiqh Vol. V, p. 462.)
- <sup>22</sup> Qur'an 17: 33.
- <sup>23</sup> Ibid. p. 29. (Quoted from Fiqh-us-Sunnah, Vol. II, pp. 536-537).
- <sup>24</sup> Ibid. (Quoted from Hashiya-tus-Sawi alal Jalalayan, Vol.II, p. 349).
- <sup>25</sup> Qur'an 17: 33. Shaykh-ul-Islam Dr Muhammad Tahir-ul-Qadri, The Glorious Qur'an English Translation 'Irfan-ul-Quran' Minhaj-ul-Quran Publications, p. 461.
- <sup>26</sup> Imam Qurtabi, Al-Jamah-ul-Ahkam-ul-Quran, Al-Resalah Publishers Beirut Lebanon, Vol-13, p. 73.
- <sup>27</sup> Prof. Dr Muhammad Tahir-ul-Qadri, Legal Structure of Islamic Punishments, Minhaj-ul-Quran Publications; pp. 29-30. (Quoted from Al-Madkhal-ul-Fiqhi-yul-Am, Vol. II, p. 622).
- <sup>28</sup> Prof. Dr. Muhammad Tahir-ul-Qadri, Classification of Islamic Punishments, p. 13. (Quoted from Fiqh-us-Sunnah, Vol. II, p. 355.)
- <sup>29</sup> Ibid. (Quoted from San'ani, Subul-us-Salam, Vol. IV, p. 38).
- <sup>30</sup> Ibid. (Quoted from Fiqh-us-Sunnah, Vol. II, pp. 355 & 593).
- <sup>31</sup> Muhammad Tahir-ul-Qadri Prof. Dr., Classification of Islamic Punishments, p. 14. (Quoted from Subul-us-Salam, Vol. IV, p. 21. Nasa'i and Ibn-i-Majah).
- <sup>32</sup> Ibid. (Quoted from Subul-us-Salam, Vol. IV, p. 21).
- <sup>33</sup> Ibid. p. 14. (Quoted from Subul-us-Salam, Vol. IV, p. 21).
- <sup>34</sup> Ibid. pp. 14-15.
- <sup>35</sup> Ibid. p.15.
- <sup>36</sup> Ibid.

- <sup>37</sup> Ibid. (Quoted from At-Tashri'-ul-Janai, Vol.I, p. 774.)
- <sup>38</sup> Ibid. (Quoted from Subul-us-Salam, Vol. IV, p. 37).
- <sup>39</sup> Qur'an 2: 178.
- <sup>40</sup> Qur'an 5: 45.
- <sup>41</sup> Ibid. p. 16. (Quoted from Sunan Abi Da'ud, Vol. II, (Kitab-ud-Diyat) p. 262.)
- <sup>42</sup> Ibid. (Quoted from Al-Madkhal-ul-Fiqhi-yul-'Am, Vol. II, p. 624. Kashf-ul-Asrar, Vol. IV, p.161).
- <sup>43</sup> Prof. Dr. Muhammad Tahir-ul-Qadri, Classification of Islamic Punishments. p. 16. (Quoted from Al-Madkhal-ul-Fiqhi-yul-'Am, Vol. II, p. 624.
- <sup>44</sup> Ibid.
- <sup>45</sup> Ibid. (Quoted from (a) Ibn Rushad, Bidayat-ul-Mujtahid, Vol. II, p.303. (b) Ibni Qudamah, Al-Mughani, Vol. IX, p. 468).
- <sup>46</sup> Ibid. (Quoted from Al-Madkhal-ul-Fiqhi-yul-'Am, Vol. II, p. 624).
- <sup>47</sup> Ibid. (Quoted from (a) Subul-us-Salam, Vol. IV, p. 37. (b) Fat'h-ul-Qadeer, Vol. V, p. 1113).
- <sup>48</sup> Ibid. (Quoted from Al-Madkhal-ul-Fiqhi-yul-'Am, Vol. II, p. 624).
- <sup>49</sup> Ibid. pp. 16-17.
- <sup>50</sup> Ibid. p.17. (Quoted from Subul-us-Salam, Vol. IV, p. 38. Musnad Ahmad, Abu Da'ud, Nasai and Bayhaqi).
- <sup>51</sup> Ibid. (Quoted from Subul-us-Salam, Vol. IV, p. 20. Bukhari, Muslim).
- <sup>52</sup> Ibid. (Quoted from Jame-ul-Usul, Vol. IV, p.214. Bukhari, Muslim, Tirmazi, Abu Da'ud and Nasai.)
- <sup>53</sup> Ibid.
- <sup>54</sup> Ibid. p.18. (Quoted from (a) Fath-ul-Qadeer, Vol. V. p. 237.(b) Al-Ahkam-us-Sultaniyyah, p. 237. (c) Shami, Radd-ul-Muthar, Vol. III, p. 194. (d) Al-Mughni, Vol. X, p. 349. (e) Mawahib-ul-Jaleel, Vol. VI. p. 320.)
- <sup>55</sup> Tahir-ul-Qadri, Prof. Dr. Muhammad Classification of Islamic Punishments. p.18. (Quoted from Subul-us-Salam, Vol. IV, p. 38.)
- <sup>56</sup> Ibid. pp. 18-19.
- <sup>57</sup> Ibid. p. 19.
- <sup>58</sup> Ibid. p. 19. (Quoted from Al-Ahkam-us-Sultaniyyah, p. 236.).
- <sup>59</sup> Ibid. pp. 19-20. (Quoted from Subul-us-Salam, Vol. IV, p. 37.)
- <sup>60</sup> Ibid. p. 20 (Quoted from Al-Ahkam-us-Sultaniyyah, p. 236.)
- <sup>61</sup> Ibid. (Quoted from Al-Ahkam-us-Sultaniyyah, p. 238.)
- <sup>62</sup> Ibid. p. 20.
- <sup>63</sup> Ibid. (Quoted from Subul-us-Salam, Vol. IV, p. 39.)
- <sup>64</sup> Ibid. (Quoted from Fiqh-us-Sunnah, Vol.II, p. 591.)
- <sup>65</sup> Tahir-ul-Qadri, Prof. Dr. Muhammad Classification of Islamic Punishments, pp. 20-21. (Quoted from (a) Al-Ahkam-us-Sultaniyyah, p. 238. (b) Fiqh-us-Sunnah, Vol.II, p. 591.)
- <sup>66</sup> Ibid. p. 21. (Quoted from Asqalani, Bulugh-ul-Maram, p. 156).
- <sup>67</sup> Ibid. (Quoted from Fiqh-us-Sunnah, Vol.II, p. 360. Ibn-i-Majah).

<sup>68</sup>Ibid. p. 21. (Quoted from (a) Jamae Tirmazi, pp.313-314. (b) Fiqh-us-Sunnah, Vol.II, p. 360. (c) Al-Madkhal- ul-Fiqhi-yul- 'Am, Vol. II, p. 609).

<sup>69</sup> Ibid.

<sup>70</sup> Ibid. pp. 21-22. (Quoted from Maulana Salamat 'Ali, Kitab-ul-Ikhtiyar (Translated) p. 4)

<sup>71</sup> Khan,Khalil-ur-Rehman Mr. Justice. Judge, Justice Monir's Principles and Digest of the Qanun-e-Shahadat.p. 19. (Quoted from Mowatta, Imam Malik Kitab Alaqqiyya.)

<sup>72</sup> Prof. Dr. Muhammad Tahir-ul-Qadri, Classification of Islamic Punishments, pp. 22-23. (Quoted from Kitab-ul-Ikhtiyar, p.5).

<sup>73</sup> Ibid. p. 23.

<sup>74</sup> Ibid.

<sup>75</sup> Pakistan Penal Code, 1860. Criminal Major Acts 2011, PLJ, pp.1298-1299.

<sup>76</sup> Khan Khalil-ur-Rehman,Mr. Justice. Judge, Justice Monir's Principles and Digest of the Qanun-e-Shahadat. p. 211. (Quoted from (a) Al-Ihkam fi Usul-Il- Ahkam, Vol, 1, p. 181. (b) Al-Mustafa, Vol, 1, p.93 ff. (c) Usul-ul-Fiqh, p. 74.)

<sup>77</sup> Ibid.

<sup>78</sup> Tahir-ul-Qadri,Prof. Dr. Muhammad Classification of Islamic Punishments, pp. 22-23. (Quoted From Kitab-ul-Ikhtiyar, p. 6)

<sup>79</sup> Ibid. p.23.

<sup>80</sup> Ibid.

<sup>81</sup> Prof. Dr. Muhammad Tahir-ul-Qadri, Classification of Islamic Punishments, p. 12.

<sup>82</sup> Ibid.



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