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A Reflection on the *Hadd-Ta'zir* Dichotomy in Islamic Criminal Jurisprudence

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Abstract

In traditional Islamic criminal jurisprudence, the classification of punishments to *hadd* (prescribed punishments) and *ta'zir* (discretionary punishments) is almost consensually accepted. According to the dichotomy, *hadd* is a certain and unchangeable punishment for criminal offences that are predetermined by the Holy Legislator. In contrast, punishments for those criminal offences falling outside the category of *hadd* are regarded as *ta'zir* and crucially, the quality and quantity of punishment is often left to the judge's discretion. The dichotomy is also regarded as a base for recognizing many vital different regulations and rules for *hadd* and *ta'zir*. However, whether the dichotomy itself is rational or derived from the transmitted evidences of the Holy Qur'an, *ahadith* (narrations) and *'ijma* (consensus) is hardly discussed.

This article investigates the rational and social foundations on which the dichotomy can be based, if any. The author comes to the conclusion that there are no rational and social criteria to support the *hadd-ta'zir* distinction. This implies that for the dichotomy to be valid, there needs to be religiously validated evidences in specifying some punishments as *hadd*. Without such transmitted evidences, neither the dichotomy nor any difference between the two categories may be accepted.

Keywords

Hadd (Prescribed Punishments), Ta'zir (Discretionary Punishments), Islamic Criminal Law, Fiqh (Jurisprudence)