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A Survey on the Narrative Evidences of the Demarcation of Hadd- Ta'zir (Prescribed-Discretionary punishments)

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(Persian text, P.P 135 - 164)

Abstract

In Islamic Criminal Jurisprudence, the demarcation between hadd (prescribed punishment) and ta'zir (discretionary punishment) is almost unanimously accepted. As a maxim, this division has also been used as a foundation for many other jurisprudential verdicts and rules. This article critically evaluates the narrative evidence which supports the dichotomy. The author concludes that there is sufficient evidence in the narrations of the Prophet (p.b.u.h.) and infallible Imams (a.s.) which acknowledge the demarcation itself. However, due to the ambiguity of the related textual narrations, jurists are not unanimous on the numbers of hodoud or their specific verdicts. According to some reliable narrative evidence, the early Muslim community used to have a more flexible understanding of hadd than they have today and, moreover, criminal sentencing had a strong dimension of political and social governance. It is therefore hard to believe that the Holy Legislator intended to exclude hodoud from all rational developments in our understanding of punishment and social condemnation when they are based on an authentic methodology and acceptable legal reasoning. Methodologically speaking, since jurists themselves categorize Islamic criminal teachings under rational aspects of jurisprudence (Ahka'm va siya'sa't) rather than purely revealed knowledge (ibadat) there are, in fact, legitimate means of accepting some kinds of developments and new rational institutions in hodoud which would lead to a less differential system of punishment. According to this view, which can be called 'the theory of dynamic punishment in Islam', a proper punishment by which divine values are protected could be established based on the nature of the crimes and considering all relevant circumstances and conditions.

Keywords

Hadd (prescribed punishment), Ta'zir (discretionary punishment), Inflexible punishments, Islamic Punishments, Islamic criminal jurisprudence.