
Death Penalty for Tazeer Crimes and its Agreement with the Objectives of the Sharia

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Abstract

This study aimed to consolidate Quran and Sunnah death punishment laws for tazeer offenses, determine if Al-mazaheb Al-Fiqhiya allows the death penalty for tazeer charges, and explain the Sharia-compliant opinion. The researcher used inductive and deductive descriptive methodologies. Arabic ta'zeer means "restrain," and "Al-Qatl" actually means "subdue someone" "Execution represents" "spiritual discipline" and "killing." Fuqaha debated whether the death punishment was Hudood or Tazeer. Maliki and Shafai experts say the death punishment for tazeer is illegal. Most scholars advocate executing tazeer. The committee of experts rules the death penalty for tazeer offenses involving Muslim espionage, heresy, repeated drinking, homosexuality, and stealing. After examining the jurists' (Al-Fuqaha) writings and viewpoints on the issues, it's clear that the death penalty for tazeer crimes is not permissible since it meets Shariah's purposes in safeguarding and keeping the soul. The paper recommends more research on tazeer offenses, sanctions, and Qisas (retaliation in kind). More research is needed to verify Islamic thinkers' jurisprudential beliefs.

Keywords: *Tazeer, Killing, Hudood, Objectives, Protection of Soul.*

Introduction

Allah the Almighty created everyone to worship Him, and a Muslim's obligation towards Allah the Almighty is to continue going on the straight path and developing his relationship with his Lord as well as his society and community. However, humans are frail and susceptible to committing offenses and crimes. For this reason, Islam has a comprehensive system for dealing with sanctions for crimes and infractions (Aal Khunain, 2011). Allah the Almighty ordained Hudood (the punishment for Hudood transgressions is stated by the Quran or Hadith), Qisas (equal retaliation in cases of intentional harm to the body), and Tazeer (offenses whose punishment is prescribed by the court) for the same reason.

The punishments for the Hudood and Qisas offenses are predetermined by the Sharia and cannot be altered. As the court (Qazi) specifies the punishment for Tazeer's offenses is specified by the court (Qazi) after examining the offense and the offender, the scope of the punishment is expansive. "As in the case of Hudood, Qisas, and Diyah (blood money), the Shaira did not specify all Tazeer crimes, nor did it specify them in a way that precludes their addition or subtraction; instead, it was left to the rulers to establish rules and regulations to manage and direct the group and punish those who violate them. The proportion of tazeer offenses for which the penalty has been left to the rulers is more significant than the proportion for which the Shariah has defined and specified punishment (Odeh, n.d.).

Quantitatively and qualitatively, "Tazeer punishment" can take various forms. The death sentence for Tazeer's crimes is one of the most crucial concerns, particularly regarding its flexibility.

We observe that some individuals demand that the death sentence for tazeer crimes be applied to those who have committed a crime without Hudood or Qisas, even though their crime is not of a character that can result in the death punishment. Others believe that the reason for the death punishment for tazeer crimes is derived from a variety of issues and events described by the ancestors of the Ummah.

The statement mentioned above demonstrates the significance of researching this specific topic to investigate the opinions of Islamic scholars on this matter, explain the correct view, and investigate the truth behind the imams' alleged justification of the death penalty for tazeer crime (predecessors).

Research Problem

The main problem of the research lies in the following question: "Is it legal for the *tazeer* punishment to kill the offender? Is this proved by the scholars of Islamic law and jurisprudence?"

Research Objectives

The objectives of the research are:

- To consolidate the rule concerning the death penalty for *tazeer* crime in light of the Holy Quran and the Sunnah texts.
- To investigate if the schools of law (*Al-mazaheb Al-Fiqhiya*) permit the death penalty for *tazeer* crimes.
- To explain the correct view that achieves the objective of the *Sharia*.

Research Methodology

The research has been conducted on the base of the descriptive method with both types, inductive and deductive, as it is consistent with the nature of the subject.

Research Significance

The research significance is represented by the following:

1. Importance to explain the correct view in the matter related to the death penalty for *tazeer* crimes and investigate the truth behind the justification of the death penalty for *tazeer* crime, which has been attributed to the imams (predecessors).
2. The death penalty for *tazeer* crimes is one of the critical issues, especially with the flexibility found therein.
3. Counter those who demand that the death penalty for *tazeer* crime should be given to the one who committed a crime in which there is no *Hudood* or *Qisas* even if his crime is not of such nature that can lead to the death penalty.
4. Open the scientific field for research and investigation to know the truth behind the justification of the death penalty for *tazeer* crime attributed to the imams (predecessors).

Research Limitation:

Subjective Limitations: This research is limited to consolidating the rule concerning the death penalty for *tazeer* crime in the light of the texts of the Holy Quran and the *Sunnah* (sayings and teachings of Prophet Muhammad, peace be upon him); investigate if the schools of law (*Al-mazaheb Al-Fiqhiya*) permit the death penalty for *tazeer* crimes and to explain the correct view that achieves the objectives the *Sharia*.

Research Terminologies

Tazeer:

The word "*tazeer*" in the Arabic language is derived from the verb "Azzara," which has several meanings close to each other like: counter, prevent, discipline, etc. (Al-Basri, n.d.).

The contextual meaning of the word "*tazeer*": The definitions of jurists (*Al-Fuqaha*) for the word "*tazeer*" varied but perhaps the most appropriate definition is: "discipline that doesn't exceed the *Hadd*" (Al-Hanafi, 1895).

***Al-Qatl* (Killing):**

The word "*Al-Qatl*" has several lexical meanings, but the closest and clearest to our topic is "kill" (Al-Razi, 1978; Al-Ifriqi, 1993; Abu al-Fayz, 1993; Al-Hamwi, n.d.).

The contextual meaning of the word "*Al-Qatl*": the contextual meaning is not different from the lexical meaning as *Al-Qatl* is "an act which is carried out by people that ends life" (Ibn Muhammad, n.d.; Al-Sherbiny, 1994; Al-Hanbali, n.d.).

The killing (*Al-Qatl*) must be occurred by a human being to end the life of another human being. So, if the life of a human being is not ended by the act of killing another human being, such as if he was bitten by a snake and died, it will not be called "*Al-Qatl*" (killing) in the terminology of the jurists (*Al-Fuqaha*). (Al-Hadithi, 1998) The death penalty for *tazeer* crime is "discipline by taking the life of the offender."

***Al-Edaam* (Execution):**

The lexical meaning of *al-edaam* (execution) is the loss of something, but the loss or lack of money prevailed in the meaning of the word. *Al-edaam* is the opposite of *Al-Wujood* (existence). It is said, "*adamtu fulanan*" which can be translated as "I lost someone," i.e., he disappeared for you due to death. Also, it is said: "*qaza Al-Qazi be Edaam Al-Mujrim*," which can be translated as "The judge ruled against executing the criminal," which means the judge ruled to take his soul (Al-Basri, n.d.; Al-Ifriqi, 1993; Al-Razi, 1978; Al-Razi, 1999; Al-Najjar, n.d.; Al-Askari, n.d.).

The contextual meaning of *al-edaam*: The term *Al-edaam* (execution) was widely used by law commentators and a group of researchers in the modern era, and it was known by several definitions, including: "taking the soul of the convict as a penalty for committing a legally prohibited offense punishable by depriving him of the right to life" (Al-Kurdi, 2015). This meaning is close to the lexical meaning of the word "*Al-Qatl*" and to the jurists' intention by *Al-Qatl*, but the difference between "*Al-Qatl*" and "*Al-Edaam*" is evident through the lexical meaning as "*Al-Edaam*" is the opposite of existence. The word "*Al-Qatl*" denotes death, the separation of the soul from the body. If the soul separates from the body, it does not mean that it is lost, but it exists, and his spirit is present, but it left the body by death (Al-Hadithi, 1998). In addition, the term "*al-adam*" is predominant in poverty and the person who has lost his money. That is why; perhaps the term "*Al-Qatl*" is better and more accurate than the word "*Al-Edaam*" by the jurists.

The Previous Studies

The researcher reviewed several research papers and theses written on the subject of this research to benefit from them and identify the most noticeable results and recommendations. The researcher took into account the chronology from the oldest to the most recent in presenting the previous studies and research, which are as follows:

- The study of Al-Ghamdi (1985) entitled "Death penalty in Islamic Sharia" aimed to study the death penalty given to a human being by taking his soul in Islamic Sharia, in all its aspects, that is, Hudood, Qisas, and Tazeer. The study discussed the issue of the death penalty for tazeer crimes and reported the sayings of scholars and their evidence in this regard in detail. The justification for tazeer crimes was attributed to the predecessors of Ummah (Islamic scholars of old age).
- The study of Al-Nashmi (1997) entitled "Trends of Sharia Policy regarding the Death penalty for Tazeer Crimes: An Applied Study on the Rulings of the Sharia Court in Riyadh" aimed to identify the trends of Sharia policy regarding the Death penalty for Tazeer Crimes. The study addressed the issue from two angles. (1) The theoretical angle reported the sayings and evidence of the scholars and discussed them, as well as the justification of the death penalty for tazeer crimes, which was attributed to the predecessors of Ummah (Islamic scholars of old age) was talked about. (2) The practical angle studied the trends of Sharia policy regarding the death penalty for tazeer crimes through the rulings of the Grand Sharia Court in Riyadh.
- The study of Al-Mas'ad (2008) entitled "Death penalty for Tazeer Crimes: An Applied Study on Modern Crimes" aimed to make a theoretical by reporting the sayings and evidence of the Islamic Scholars and discussing them, but it was restricted to the applied study on modern crimes.

Comment on Previous Studies:

The present research agreed with previous studies on the same subject: the "death penalty for *tazeer* crimes." However, the previous studies elaborated on the evidence objected to them and agreed in attributing the statement that justifies the "death penalty for *tazeer* crimes" to the predecessors of *Ummah* but instead favored it.

As for the present research, it sheds light on the truth behind this statement and its attribution to the predecessors of *Ummah*, as well as reports the texts of jurists (Al-Fuqaha) and their views on the relevant issues and discusses them but, contrary to previous studies, it favors those who did not permit the death penalty for *tazeer* crimes as it achieves the objective of the *Sharia* in protecting and preserving the human soul.

Jurisprudential Description of the Death penalty for *Tazeer* Crimes: If we look at the statement which justifies the death penalty for *tazeer* crimes, we find that it is broader than the *Hudood* and *Qisas* and falls into

the category of punishments. However, let's look at the little incidents in which the death penalty was imposed on the offender. We find that the scholars differ in their jurisprudential description (the subject of the issue discussed here). So, the one who viewed that it falls into the category of *Hudood* attached it to a *Hadd*, and the one who believed that it falls into the category of *Tazeer* permitted and justified the ruling of the death penalty for *tazeer* crimes.

Ruling for the Death penalty for *Tazeer* Crime:

Opinions on the Issue of the Death penalty for *Tazeer* Crime: There are two views of scholars concerning the ruling for the death penalty for *tazeer* crimes, which are as follows:

1. The death penalty for *tazeer* crimes is not allowed: This is the view of some scholars of the Maliki School of Law, and the Shafai School of Law holds the same view.
Concerning Maliki School of Law, it is mentioned in the book *Iqd Al-Jawahir Al-Saminah*: "As for the extent of the punishment, its minimum or maximum cannot be specified, but it will be entrusted to the Imam's independent reasoning (*al-ijtihad*) as he does what he deems appropriate in case of a felony. He doesn't need to restrict himself to below the *Hudood* or rules for capital punishment" (Al-Maliki, 2002; Al-Maliki, 1994; Al-Granati-al-Maliki, 1995).
As for the Shafai School of Law is concerned, the book named "*Ghayas Al-Umam*" says: "the punishment for *tazeer* crimes doesn't reach the "*Hudood*" as the jurists have elaborated about it. I do not think that the ruler (sultan) has the right to extend the punishments except for prolonging the imprisonment period (Al-Jubani, 1980; Al-Najjar, (n.d.).
2. The death penalty for *tazeer* crimes is permissible, and this view is attributed to most scholars (*Jumhoor Ulama*) (Al-Hadithi, 1998; Al-Zakrout, 2010; Muhammad, 1994; Fayed, 2009; Al-Zakrout, 2010; Al-Kurdi, 2015).

Investigate the truth behind the statement that allows and justifies the death penalty for the *tazeer* crime and is attributed to the predecessors (Ulama *Al-Salaf*):

To investigate the truth behind this opinion, it will be viewed from two aspects which are as follows:

The First Aspect: The texts of scholars which Indicate this opinion:

The Death penalty for *Tazeer* Crime in the Hanafi School of Law: The Hanafi School of Law jurists justify the death penalty for the *tazeer* crime and call it "killing as per a policy." Ibne Hammam said: "If he used to commit homosexuality, the imam would kill him whether he was married or not" (Al-Yamani, 1993). Al-Zaylai said about those who repeated the act of theft: "The imam has the right to kill him as per the policy" (Ibn Muhammad, n.d.). Shaikul Islam/Ibn Taymiyyah also reported this opinion of them as he said: "From their principles, i.e., the Hanafi School of Law that if the offenses in which there is no death penalty such as killing by crushing, doing intercourse but not in the vulva are repeated, the Imam has right to kill the offender as well as he has right to increase the specified *Hadd* if he deems it appropriate and is in the interest of people. This is based on the examples from the age of the Messenger ﷺ and his companions, as the death penalty was issued in such crimes taking into account the interest. They call such killing "killing per a policy" (Al-Hanafi, 1895; Al-Qasim, n.d.; Al-Sarkhi, 1993).

The Death penalty for *Tazeer* Crime in the Maliki School of Law: Ibn Farhoon Al-Maliki said: "If we say that it is permissible for the ruler to exceed the limits in cases of *Tazeer*, a question arises: Is it permissible to issue the death penalty or not? There is a difference of opinion on this issue. From our points of view, it is permissible to kill a Muslim spy" (Al-Yamari, 1985). It is mentioned in the Sharah Al-Kharshi: "If the independent reasoning (*ijtihad*) of the Imam leads to exceed the limit or take the soul of a human being, he has right to do it" (Abu Abdullah, n.d.; Yahya bin Abdullah, 1663). Ibn Taymiyyah reported this opinion as he said: "If the interest is not achieved without the death penalty for *tazeer* crime, it becomes a matter of reasoning such as the killing of a Muslim spy and there are two opinions of *Ulama* in this regard and both opinions are of the *Mazhab* of Imam Ahmad (Hanbali School of Law). According to one opinion, killing him is permissible: the *Mazhab* of Imam Malik (Maliki School of Law) (Al-Hanbali, 1985).

The Death penalty for *Tazeer* Crime in the Shafai School of Law: I didn't find in my search any text from the Shafai School of Law that justifies or permits the death penalty for the *tazeer* crimes except for what Ibn Taymiyyah mentioned while talking about the issue of the death penalty for *tazeer* crimes that some of the students of Imam Al-Shafai justified the killing of the person who calls for heresy. Ibn Taymiyyah said: "Is it

permissible to issue the death penalty in the cases of *tazeer* crimes like killing a Muslim spy?" There are two opinions on this issue. According to one opinion, it is permissible to kill a Muslim spy if the interest requires it. This is the opinion of Imam Malik, and some of the students of Imam Ahmad like Ibn Uqail and some of the students of Imam Al-Shafai and Imam Ahmad hold the same opinion that the one who calls for heresy should be killed as well as the one whose corruption cannot be get rid of except by killing him (Al-Harrani, 1995).

On this issue, Abu Al-Dhiya' Al-Shubramalsi said in his footnote on "Nihayat Al-Muhtaaj" concerning the Kharijites: "Yes, if we are harmed, we can get rid of it even if by killing them" (Al-Ramli, 1983).

The Death penalty for Tazeer Crime in the Hanbali School of Law: Ibn Taymiyyah said: "If the interest is not achieved without the death penalty for tazeer crime, it becomes a matter of reasoning such as the killing of a Muslim spy and there are two opinions of *Ulama* in this regard and both opinions are of the *Mazhab* of Imam Ahmad. According to one opinion, it is permissible to kill him" (Al-Hanbali, 1985). Ibn Al-Qayyim said: "The death penalty for the *tazeer* crime is permissible if the and disorder chaos cannot be repelled without it such as the killing of the person who is involved in such practices that split the Muslim community and the one who calls for something (heretical doctrines) other than the Holy Quran and the *Sunnah* of Prophet Muhammad (peace be upon him) (Al-Jawziyah, n.d.; Abu Ishaq, 1997; Al-Salihi-al-Hanbali, n.d.)

The Second Aspect: The Issues in which the scholars ruled for the death penalty for the *tazeer* crime:

First: The Muslim Spy: If a Muslim spied on other Muslims to benefit the enemies, what punishment does he deserve for his espionage? The *Ulamas'* opinions differed on this issue

The opinions of scholars differed on this issue and the most prominent opinions are:

- **First Opinion:** The Muslim spy will be punished with tazeer punishment but without killing. This is the opinion of Shafai School of Law and it is the apparent Mazhab of the Hanbali School of Law.
- **The Second Opinion:** The death punishment will be awarded to Muslim spy and this is the opinion of Maliki School of Law and some of the Hanabla.

Jurisprudential description of killing in this issue:

Those who held the view to kill the Muslim spy differed on the description of this killing if it falls into the category of *Hudood* as it is attached to the *Hadd* of highway robbery to cause corruption on the earth or it falls into the category of Tazeer and his killing was for a *tazeer* crime. See the opinions of Scholars on this issue in Ibn Qayyim al-Jawziyya, 1994; Al-Sherbiny, 1994; Al-Nawawi, 1991; Al-Salihi-al-Hanbali, n.d.; Abu Abdullah Al-Maliki, 1988).

What concerns us is the opinion of those who said that Muslim spies should be killed for *tazeer* crime, and they are the Malikis and some of the Hanbalis. As for the Maliki School of Law, it is mentioned in the book Al-Bayan Wal-Tahseel: "Imam Malik was asked about the spy from among the Muslims who has been in correspondence with Rome informing them the news of Muslim?" He replied: "I did not hear anything related to such cases. So, I think that it should be left to the independent reasoning of the Imam". Ibn al-Qasim said: I think that he should be killed as this is something for which no repentance is known (Al-Qurtubi, 1987). Abul Abbas Al-Qurtubi said: "The grand students of Imam Malik said that he should be killed" (Ibrahim Al-Qurtubi, 1996).

Concerning the Hanbali School of Law, it is reported from Shaikhul Islam: "It is reported from Imam Malik and others that it is one of the crimes and offenses that lead to the death penalty. Some of the students of Imam Ahmad agreed with him, like the case of a Muslim spy if he spied on Muslims for the enemies. Imam Malik and some Hanbalis like Ibn Uqail justified his killing" (Al-Harrani, 1995).

Second: Propagating the Heretical Doctrines: A group of scholars mentioned that the heretic or innovator who propagates his heretical doctrines that don't lead to the *Kufr* (disbelief) would be killed for *tazeer* crime, but some conditions must be fulfilled for the death penalty.

The Hanafi School of Law: It is mentioned in Ibn Abidin's Hashiyah: "if an innovator or heretic has evidence and invites people to his heresy and it is guessed that he is spreading the heretic doctrines, the ruler may kill him as a policy and as a refrain even if the ruling was not made for his *kufr* (disbelief)"

The Maliki School of Law: It is mentioned in the book "Al-Itesam": To blame them (heretics) or expel or banish or deny is according to the state of heresy itself." After mentioning the types of heresy, the author said: "There is independent reasoning related to all of these types if there is no *Hadd* in the *Shariah* related to that heresy. The scholars mentioned different kinds of punishment, including the seventh one, which is the "death penalty" if they did not repent while they had declared their heretic doctrines" (Al-Gharnati, 1991).

The Shafai School of Law: It is reported from Al-Bujairmi in his footnote on "*Al-Iqna*" concerning the Kharijites: "Yes, if we are harmed as they declared their heretic doctrines or propagated them, we will counter them even if we have to kill them."

The Hanbali School of Law: It is mentioned in Al-Mubde: A group of our people viewed that he would be killed because the situation required it. The heretic who propagates his heretic doctrines will be killed. Ibrahim ibn Saeed Al-Atroosh reported it from Ahmad about the preachers of *Al-Jahmiyah*" (Abu Ishaq, 1997).

Third: The one who repeatedly drank alcohol: if a person drank the alcohol four times or more, will the *Hadd* punishment be imposed on him each time? Or will the punishment be severe, like the death penalty? And if the answer is "yes" to the death penalty, the question is whether this death penalty will be counted as *Hadd* or *Tazeer*. The scholars differed on this issue, but what concerns us here is the opinion that permits the death penalty for *tazeer* crime for the person who repeatedly drank the alcohol. This is the opinion of Shaykh Al Islam Ibn Taymiyyah and his student Ibn Al-Qayyim.

Shaykh Al Islam Ibn Taymiyyah says: "The corruptor will be killed if there is no way to get rid of his evil, but killing and the same rule applies to the person who drank alcohol a fourth time, that is, he will be killed" (Al-Harrani, 1995). Ibn Al-Qayyim said: "The ruling for the death penalty is not compulsory, but it is *Tazeer* punishment keeping in consideration the interest. So, if people have become addicted to alcohol and the *Hadd* did not deter them, the Imam has right to issue death penalty" (Suleiman, n.d.).

Fourth: The one who repeatedly committed homosexuality: The scholars differed about the punishment for the person who commits homosexuality. The critical point here is that he will be awarded the "*tazeer* punishment," which may include the death penalty. This is the opinion of the Hanafi School of Law. It is mentioned in *Al-Inayah Fi Sharh Al-Hidayah*: "It is left to the opinion of Imam; he can award death penalty to him if he got addicted to this crime and he can beat him and imprison him" (Shams al-Din, n.d.; Lisan Al-Din, 1973).

Fifth: The one who repeatedly committed "theft": The scholars differed about the punishment for the person who committed theft a fourth time and more. What concern us in this issue are the opinions that permit the Imam to issue the death penalty to him if he sees interest in it. This is the opinion of the Hanafi School of Law and the choice of Ibn Taymiyyah of the Hanbali School of Law. It is mentioned in the footnote of Ibn Abideen: "If he stole third or fourth time, the imam has right to kill him according to the policy as he is trying corruption upon the earth" (Shams al-Din, n.d). Also, it is written in Al-Furooq: "If a thief stole the fifth time, he would be killed, and it is similar to the opinion of our Shaikh, i.e., Ibn Taymiyyah concerning the drinker of alcohol for the fourth time as he will be killed if he doesn't stop" (Al-Askari, n.d.).

Sixth: Killing by Crushing: The jurist (*Al-Fuqaha*) differed about the killing by crushing, whether it was deliberate or not. In this issue, the opinion of the Hanafi School of Law is that the killing by crushing is not a deliberate killing. Still, it is a semi-deliberate killing in which *qisas* (retaliation in kind) is not compulsory. Still, despite it, the ruler has the right to kill the offender as per policy if he sees interest in this. It is mentioned in Majma Al-Anhar: "If the act of killing by crushing is repeated, the Imam has right to kill him as per policy because he strived to cause corruption upon the earth" (Sheikhi Zadeh, n.d.; Al-Hanaf, 1895).

Apart from the above, many incident and events have been mentioned in the books of Scholars in which they justify the death penalty in *tazeer* crimes. Perhaps, it was the main reason behind attributing the justification

of the death penalty in *tazeer* crimes to the predecessors (Ulama Al-Salaf). Still, when we ponder over and investigate these incidents, we observe two things which are as follows:

- The issues in which some jurists (*Al-Fuqaha*) permitted the death penalty in *tazeer* crimes, we find that from the perspective of some other scholars, they were fixed by the Sharia. Thus they fell into the category of *Hudood*, not *tazeer* like the issue of the repeated crime of homosexuality or killing by crushing, as the Hanafi School of Law permits the death penalty as part of *tazeer* punishment. In contrast, other scholars hold the same opinion about the death penalty. Still, as part of *Hadd's* punishment, they attach homosexuality with the *hadd* of adultery and attach the killing by crushing with the deliberate killing. In both of them, the *Hadd* is implemented.
- In some of these issues, we find that the scholars decided on the death penalty in *tazeer* crimes saying that they cause corruption on earth, as was reported on the authority of Ibn Taymiyyah in more than one place, including his saying: "The person whose corruption cannot be get rid of without killing him, he would be killed" (Al-Harrani, 1995) and he said: "As for killing the heretic who propagates the heresy, he will be killed to protect people from his harm as the case of *Muharib*" (Al-Harrani, 1995). Muhammad ibn Rushd supported the justification of killing the spy: "because the spy is more harmful to Muslims than the *Muharib* and causing more corruption than him. Allah the Almighty said in the Holy Quran about the *Muharib*: "Indeed, the penalty for those who wage war against Allah and His Messenger and strive upon earth [to cause] corruption is none but that they are killed or crucified or that their hands and feet be cut off from opposite sides or that they be exiled from the land. That is for them a disgrace in this world; and for them in the Hereafter is a great punishment" (Almaaida, Verse: 33), so the same ruling of *Muharib* will be applied in case of espionage" (Al-Qurtubi, 1987).

Keeping the above in mind, it can be said that those who ruled for the death penalty in some cases as they fell into the category of "*Al-Muharabah*," i.e., waging war to cause corruption on the earth; the killing was for *Al-Harabah Hadd*, like the killing of Muslim spy, the person who propagates heresy and the person who repeatedly committed the crime of homosexuality or theft or drank alcohol repeatedly.

1. The thing that motivates us to bring these issues closer to *Hudood* punishment, not the *Tazeer* punishment, is that the opinion of the jurists who permits the death penalty for *tazeer* crimes contradicts the two issues mentioned in the section *Tazeer* and they are as follows:
2. The issue of upper limit to the number of lashes?
3. The issue of warranty arising from the damage occurred in *tazeer* punishment.

As for the first issue, there are several opinions of scholars and the most important of which are as follows:

- The upper limit to the number of lashes in *tazeer* crimes is 10 lashes, and it cannot be increased but in some specific cases. This is the opinion of the Shafai School of Law (Al-Sherbiny, 1994; Al-Nawawi, 1991; Qudamah, 1968) and the known opinion of the Hanbali School of Law (Qudamah, 1968; Abu Ishaq, 1997).
- The maximum punishment in *tazeer* crimes doesn't reach the minimum punishment of *Hadd* whether the offense or crime is of such a nature that there is no *Hadd* or not. This is the opinion of the Hanafi School of Law (Al-Sarkhi, 1993; Al-Kasani al-Hanafi, 1985) and one of the opinions of the Maliki School of Law (Al-Yamari, 1985; Abu Abdullah Al-Maliki, 1988) and the known opinion of Shafai School of Law (Al-Nawawi, 1991; Al-Sherbiny, 1994) and a narration reported from the Hanbali School of Law (Qudamah, 1968; Abu Ishaq, 1997).
- There is no estimation for maximum punishment except for the offense or crime in which it is fixed, *Sharai Hadd*. So, the *tazeer* will not reach that *Hadd*. This is the choice of Ibn Taymiyyah as he says: "As for maximum limit of *tazeer* punishment is concerned, there are three opinions in the Hanbali School of Law"..... until he said: "the third opinion is that it will not be estimated, but if the *tazeer* punishment is in a case in which there is a certain limit and it didn't reach that limit like the act of theft of an amount which is below the certain limit (Al-Nisab), the thief's hand will not chop off, and *tazeer* punishment for gargling with wine (alcohol) does not reach the *Hadd* punishment for drinking alcohol, and *tazeer* punishment for slander other than fornication doesn't reach the *Hadd*" (Al-Harrani, 1995).

So, if many scholars prove that they had specified the upper limit to the number of lashes in *tazeer* punishment, how can it be right with the saying that justifies the death penalty for *tazeer* crime?

The second issue is the warranty arising from the damage that occurred in tazeer punishment: In this case, the scholars indicated the condition of security from unfairness and injustice as the punishment must not exceed the specified limit. Al-Zailai says: "Tazeer is for discipline, and it is not allowed to inflict the damage as well as its implementation is restricted by the condition of safety" (Al-Yamari, 1985).

Ibn Farhoon says: "Tazeer is allowed as long as it is safe from its bad consequences. Otherwise, it is not allowed" (Al-Hanafi, 1895). Ibn Qudama said: "Tazeer punishment will be carried out through beating, imprisonment, and reprimand, and it is not permissible to cut any part the offender or injure it or take his money as the Sharia did not narrate such thing from anybody that can be followed. Moreover, the discipline is necessary, and it is not possible by inflicting damage or harm" (Qudamah, 1968). So, the thing that causes damage or harm is forbidden whether the damage occurred due to exaggeration in punishment or the body couldn't bear it due to illness, etc." (Aal Khunain, 2011). In the story of Al-Ruwaijil, who had committed adultery with his "*amah*" (slave woman), the prophet Muhammad (peace be upon him) implemented the *Hadd* punishment (lashes) in a way that could not lead to his death (Yazid al-Qazwini, n.d.). Tazeer punishment is allowed, provided the body is safe from harm (Al-Maliki, 1994).

It is concluded from the above statements that *Shariah* considers the offenders' right in specifying the punishments to protect his right, which compels a person to think if it is possible to issue the death penalty for *tazeer* crimes.

The reasons that led to forming the opinion that the death penalty for tazeer crimes is permissible:

Perhaps any of the following reasons is the basis of those scholars who viewed that the death penalty for *tazeer* crimes is permissible:

First Reason: The issues reported by the predecessors (Salaf Al-Ummah) mentioned the death penalty for *tazeer* crimes. Some of such issues have been mentioned in this research, and their answers were provided.

Second Reason: The overlap between the issues like the issue of upper limit to the lashes in *tazeer* punishment and the issue of maximum *tazeer* punishment as the one who was aware of the opinion of some jurist that there is no upper limit supposed that it is general and includes lashes and other punishments. Thus, it falls into the death penalty category for *tazeer* crime.

Third Reason: It is flexible as some scholars justify the death penalty for *tazeer* crime because there is interest and benefit in awarding this punishment. It is known that interest and benefits consideration in rulings is a matter that *Shaare* has taken into account. Still, it is not generalized as rules, regulations, and criteria must be met for the ruling to be of considerable interest. It is well-known that Imam Malik was keeping their interest into account, which was the motive behind his view about the death penalty for *tazeer* crime, but some scholars criticized him. Al-Juwaini says: "The people of his time believed that the positions of sultanate were based only on the opinion of Imam Malik and he viewed the justification of increase in the *tazeer* punishment, and he permitted the ruler to kill the offender in *tazeer* crimes. Also, it is reported that he said: "The Imam has right to kill one-third of the Ummah to bring about reform in its two third" (Al-Jubani, 1980). Al-Ghazali said: "As for Imam Malik, he went about the interests to such an extent that he allowed killing of one-third of the nation to bring about reform among the two-thirds of it as well as he justified the death penalty for *tazeer* crime" (Al-Tusi, 1998). However, it is incorrect as Imam Malik regulated the interests but did not act according to them (Al-Shibl, 2022). That is why; Al-Aamidi refuted this narration from him as he said while talking about the validity of the interest the Sharia neither approved nor refused: "The jurist of Shafai School of Law, as well as Hanafi School of Law, agreed that it is not permissible to stick to that rule. This is right, but what about the view that has been reported from Imam Malik that he justifies it while his students refute it? So, if the attribution of this view to him is authentic, he might not have said this for every interest but for the most vital interests whose achievements were certain".

Fourth Reason: Perhaps the reasons that led to the opinion which justifies the death penalty for *tazeer* crimes are based on some scholars of Al-Usool to prove the analogy (Al-Qiyas) in matters of *Hudood* and *Tazeer* (Al-Namlah, 1989; Al-Hurriti, 2000).

The Preferable Opinion: The statements mentioned above make it clear (Allah knows best) that the preferable opinion is the one that doesn't permit and justify the death penalty for *tazeer* crime. Following are the reasons behind this view:

1. It achieves the objective of *Shariah* to protect the human soul and its keenness to respect the blood. Allah the Almighty said: "And do not kill the soul which Allah has forbidden, except by right" (Al-Israa, Verse: 33), and it is mentioned in another verse: "But whoever kills a believer intentionally - his recompense is

Hell, wherein he will abide eternally, and Allah has become angry with him and has cursed him and has prepared for him a great punishment" (Al-Nisaa, Verse: 93). The prophet Muhammad (peace be upon him) said: "Your blood and your property and your honor are forbidden for you to violate, like the sacredness of this day of yours, in this month of yours, in this city of yours" (Al-Bukhari Al-Jaafi, 2001).

2. The definition mentioned above of *Tazeer*, according to linguists and jurists (Al-Fuqaha), means "discipline that doesn't exceed the *Hadd*." The objective of this penalty is to discipline in a matter that doesn't reach the fixed *Hadd*, so the meaning itself contains the specification of *Tazeer* punishment.
3. In Islamic Sharia, *the Tazeer* aims to achieve several objectives, including the following, which concerns us here: "reform the offender" as punishing the offender for something he committed is intended to reform him and set him straight so that he can carry out his duties and responsibilities towards Allah the Almighty and towards people and participate in building his society (Aal Khunain, 2011).
4. Ibn Al-Qayyim says while talking about the ruling of *Tazeer* punishment: "For sincere repentance, the pain will be inflicted on him, and it will remind him the punishment of the Hereafter" (Al-Jawziyya, 1990). The opinion to justify and permit the death penalty for *tazeer* crime doesn't achieve this great objective of *tazeer* punishment.
5. The gradual increase in punishment from the lightest to the most severe is a path led by Islamic *Sharia* for the judge, so he should not move to a more severe punishment while he sees a less severe punishment as a substitute. So, if corruption can be eliminated with lesser punishment, there is no need to move to the more severe one (Aal Khunain, 2011). Al-Sharbini says: "The Imam must take into account the order and gradation appropriate for the situation in terms of quantity and type as he does in resisting the aggressor, so he should not move to a high point while he sees that a low point is available which is enough as well as practical (Al-Sherbiny, 1994).

Undoubtedly, the death penalty is one of the most severe punishments, and that is why there is no need to resort to it, especially when there are many other means that achieve the objective of *tazeer* punishment and are consistent with the objective of the legislator (*Al-Shaare*) in taking into account the interests of the *Ummah* and its individuals.

Results and Discussion

In this part of the research, we present the results and outcomes according to the sequence of research objectives and study questions as the research objectives were:

- Consolidate the rule concerning the death penalty for *tazeer* crime in light of the Holy Quran and the Sunnah texts.
- Investigate if the schools of law (*Al-mazaheb Al-Fiqhiya*) permit the death penalty for *tazeer* crimes.
- Explain the preferred opinion that achieves the objective of the *Sharia*.

The researcher used the descriptive method with both types, inductive and deductive, as it is consistent with the subject's nature. The research's main problem was described by asking the following question: "Is it legal for the *tazeer* punishment to kill the offender? Is this proved by the scholars of Islamic law and jurisprudence? After replying to the research question, the researcher provided several results and outcomes, which were discussed in light of the research objectives. The results are as follows:

- The word "tazeer" in Arabic has several meanings close to each other like: counter, prevent, discipline, etc.
- The contextual meaning of the word "tazeer" is "discipline that doesn't exceed the *Hadd*."
- The real meaning of "Al-Qatl" is "subdue somebody."
- "Al-Qatl" contextual meaning is "an act carried out by people that ends life."
- The death penalty for *tazeer* crime means "discipline by taking the offender's life."
- "Al-Edaam" (execution) is similar to the killing.
- The jurists (Al-Fuqaha) differed on the jurisprudential description of the death penalty for *tazeer* crimes: Does it fall into the category of *Hudood* or *Tazeer*?
- The death penalty for *tazeer* crimes is not permissible, as some of the scholars of the Maliki School of Law declared, and this is the opinion of the Shafai School of Law.
- The permissibility of the death penalty for *tazeer* crimes is attributed to the majority of Scholars (Jumhoor Al-Ulama).
- The issues in which a group of scholars rules the "death penalty for *tazeer* crime" are the act of espionage by a Muslim, propagating heresy, drinking alcohol repeatedly, the crime of homosexuality repeatedly,

and the crime of theft repeatedly.

- By looking into the texts of the jurists (Al-Fuqaha) and their opinions concerning the relevant issues, it becomes clear that the opinion which does not permit the death penalty for tazeer crimes is preferable as it achieves the objective of the *Shariah* in protecting the human life.

Research Recommendation

Based on the results, the research recommends conducting more research and studies regarding the following:

- What are Tazeer crimes?
- What are the conditions that lead to the tazeer punishments?
- The difference between the tazeer offense, Qisas, and Hudood crimes
- More studies to investigate the jurisprudential views and opinions attributed to the scholars of Islam.

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