

## ***ISLAMIC JURISPRUDENCE -2***

### **TOPIC: PUNISHMENTS (UQABAT)**

#### **1. INTRODUCTION**

When certain public rights are violated the wrong is called Maasiat that is, crime or offence and it gives rise to certain substitutory public rights in the form of uqa'bat or punishments. Viz Had and Tazir. The distinction between Hadd and Tazir is of fundamental importance and concerns the doctrine of Hadd itself.

#### **2. TYPES OF PUNISHMENT**

Punishments are divided in to two types.

(i) Hadd

(ii) Tazir

#### **3. HADD**

##### **(I) Meaning of Hadd**

The word Hadd literally means limit.

(i) Legal meaning:

“Hadd means a punishment which is fixed and enjoined as the right of Allah.”

##### **(II) Origin of Hadd punishment**

Hadd used to be prevalent in Arabic at the time of the promulgation of Islam, and the Muhammadan law has laid down conditions of astringent nature under which such punishment may be inflicted.

#### **4. TAZIR**

##### **(I) Meaning of Tazir**

(i) Literal meaning:

Tazir literally means disgracing the criminal for his shameful conduct.

(ii) Legal meaning:

“Punishments that are at the discretion of the judge when the offence is related to a private injury are called Tazir.”

## **5. DIFFERENCE BETWEEN HADD AND TAZIR**

There is no indication in Sunnah about the difference between Hadd and Tazir. It would be open to legislature to add to the categories of Hadd and also enhance the punishment fixed by the Quran and the Sunnah keeping in view the circumstances and requirements of an age, though the punishments so fixed cannot be reduced (PLD 1983 FSc 255)

Following are some points of distinctions between Hadd and Tazir.

### **(I) As to object**

The object of Hadd is prevention of a crime by following the principle of retaliation and keeps everyone in the limits prescribed by Allah.

The object of Tazir is reformation and correction of the offender.

### **(II) Procedure**

The procedure of trial in Hadd is complicated.

The procedure of trial in Tazir is simple as according to some jurists judge can even render judgment on the basis of his own knowledge.

### **(III) As to right**

Violation of rights of Allah gives raise to Hudud punishments.

Violation of rights of individual gives raise to Tazir punishments.

### **(IV) Commuting of sentence**

The penalty of Hadd cannot be commuted.

The penalty of Tazir can be commuted.

#### **(V) Pardon of sentence**

Pardon cannot be granted in Hudud cases.

Pardon may be granted in Tazir cases.

#### **(VI) Operation of mistake**

Doubt or mistake has the effect of waiving the penalty of Hadd.

Doubt or mistake 'has no effect in Tazir.

#### **(VII) Rule of evidence**

The evidence of women is not admissible in hudud cases.

The evidence of women is admissible in Tazir cases, but the nisab of one man and two women has to be maintained.

#### **(VIII) Standard of evidence**

In Hudud, the standard of evidence is very high as to the number and qualifications of witnesses and the conditions under which Hadd may be imposed and any doubt would be sufficient to prevent the Imposition of Hadd.

In Tazir, the standard of evidence is not so high.

#### **(IX) Mention of offences**

Some jurists list seven Hadd offences:

- (i) Zina
- (ii) Sariqah
- (iii) Hirabah
- (iv) Qadhuf
- (v) Shrub
- (vi) Riddah

(vii) Baghi

The offences has not been mentioned exhaustively and they are innumerable.

**(X) Discretion**

In Hudud crimes, the judge cannot exercise his discretion.

In Tazir, judge or head of the state may exercise discretion.

**(XI) Replacement**

Hadd punishments can Be dealt with under Tazir.

In Tazir, the punishment of Hudud cannot be enforced.

**6. CONCLUSION**

Ta conclude, I can say, that the punishment of Hadd and Tazir is a part of Islamic law. Hadd was prevalent in Arabia before the promulgation of Islam and it is prior to the concept of punishment as Tazir. In Pakistan today Tazir and siyasah are both classified under the heading of Tazir. While the law of Hudud is enforced through the prohibition of Hadd order (No: 4) 1979, Hudud ordinance VI 1979 (offences against property) and Zina ordinance (Enforcement of Hadd) VII, 1979.