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Be just: that is next to Piety (Al-Māida:8)

Islamic Emirate of Afghanistan

Judicial Criminal Court Proceedings

This document was translated by the International Development Law Organization (IDLO) for the Afghanistan Rule of Law Observatory (ARLO) initiative. To find out more about ARLO, please visit our website at www.arlo.online.

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In the Name of Allah, the Most Merciful, the Most Compassionate¹

¹ Translator's Comment: The original version of this document contains a preface in Arabic which has not been translated or included in this English version.

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Article 01:

The term Tazeer in Arabic means disciplinary action, which also means refusal and prohibition, and it is the type of Disciplinary/Correctional action in the Islamic Sharia, which is lower in degree than *Hadd*.

Comment: The difference between *Hadd* and *Tazeer* is as follows:

1. The penalty amount for Hadd is predetermined, whereas the penalty for Tazeer is subject to the Imam's (Ruler's) discretion.
2. Hudood is nullified in the presence of doubts or ambiguities, whereas Tazeer can be imposed even in uncertain situations.
3. Enforcing Hadd on a juvenile is invalid, while the application of Tazeer is permissible for minors.
4. Hadd applies to Dhimmi under Sharia, whereas Tazeer serves as both a punitive and purifying measure for them.
5. Some later scholars contend that while Hadd is the prerogative of the ruler, Tazeeri (discretionary), punishment may also be administered by a husband or master.
6. An individual witnessing a sin can administer Tazeer at the moment of the transgression. In Islamic Sharia, each Muslim is obliged to prevent wrongdoing within their capacity. However, if the matter could be escalated to the ruler, it should be to avoid arbitrary actions.
7. Withdrawal is valid in Hadd but not in Tazeer.
8. In Hadd cases, the defendant remains imprisoned until witness verification is complete; such conditionality does not apply to Tazeeri punishments.
9. Once Hadd is confirmed, intercession is not permissible, and the ruler may not abandon it.
10. Hadd cannot be annulled over time, unlike Tazeer.
11. Tazeerat (discretionary punishments) do not overlap, while they can in Hudood.
12. Tazeer and Qisas are inheritable, while Hudood is exempt from this rule.
13. Guarantees are permissible in Tazeerat but not in Hudood.
14. Hudood acts as a means for sin remission, whereas Tazeerat aims for prohibition and correction.

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Article 02:

While the extent of Tazeerat can vary, the imposition of Tazeer is generally at the Judge's discretion. In cases where Tazeer involves the death penalty or life imprisonment, authorization from the ruler is mandatory.

The Judge may impose any form of Tazeer deemed appropriate.

Article 03:

In the imposition of Hudood, Qisas (retribution), and Diyat (blood money) penalties, the focus is on the crime, not the individual committing it.

Article 04:

For Tazeer punishments, considerations include the nature of the crime, the personality of the offender, as well as the time and location of the offense.

Article 05:

A judge is not allowed to punish a criminal contrary to the punishments specified for crimes related to *Hudood*, *Qisas* (retribution), and *Diyat* (blood money) in the Sharia.

There are four types of *Tazeer* (discretionary punishments):

Type 1 Tazeer: Reserved for scholars and high-ranking individuals, the form of Tazeer is a warning. The Judge communicates awareness of their involvement in specific activities.

Type 2 Tazeer: Applicable to the nobility, like tribal chiefs and merchants, it involves both a warning and a court summons.

Type 3 Tazeer: Targeted at the middle-class or ordinary citizens, this Tazeer manifests through imprisonment and court summons.

Type 4 Tazeer: Intended for stingy individuals, the punishment includes verbal cursing and physical beating. However, repeated strikes in the same area are not permitted.

Comment: In cases involving beating as Tazeer, the Judge must ensure that areas prohibited in Hudood, such as the head, are not targeted.

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Article 06:

In Sharia law, various types of Tazeer exist. Sharia principles do not prohibit the imposition of any form of Tazeerat. Any punishment that aligns with the objectives of Sharia may be administered.

Article 07:

Discretionary punishments do not allow killing or chopping off a limb (*Tazeerat*).

Comment: However, a large number of jurists have permitted it as a matter of expediency. Where public interest is safeguarded with the death of someone, in such case, the death penalty can be given. Examples include (1) persistence on corruption, (2) espionage, (3) retaliatory murder, (4) defending false religion, and (5) inviting to the false religion.

Explanation: For instance, according to the Hanafi School of Thought, if a person is killed using a heavy object, the penalty for the perpetrator is termed "political Tazeeri punishment." The other three Imams categorize it as Hadd and Qisas.

Article 08:

Islamic Sharia prescribes the death penalty under Hadd for four specific crimes: (1) adultery by a married man, (2) highway robbery, (3) treason, and (4) apostasy. Additionally, the death penalty is lawful under Qisas for intentional murder. In all such cases, the ruler's authorization is necessary.

Article 09:

Where both the State's right (Haq-ullah) and the victim's right (Haq ul-Abd) combine, the Judge shall first pass a verdict in the matter of the victim's right (Haq ul-Abd), which shall be followed by the State's right (Haq-ullah).

Article 10:

Unless the actual punishment has been prohibited with one of the Sharia factors, such as Qisas, it is not allowed for the Judge to give a verdict in alternative punishment such as Diyat or *Tazeer*.

Article 11:

Tazeer is lawful in respect of any crime for which there is no specifically determined *Hadd*, the soul be it is free and/or slave; male and/or female, Muslim or Non-Muslim; adult or minor with the condition of wisdom.

Article 12:

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The Judge may give *Tazeer* for destruction of property rather than taking it.

Article 13:

Giving punishment where *Hudood* is established shall be enforceable. It is also enforceable in *Tazeerat* related to the State's Rights. However, in the case of Victims' Rights, intercession, reconciliation, pardon, and waiver are right.

Article 14:

The establishment of *Tazeerat* in respect of Victims' Rights takes place with the reasons paving the way for ascertaining other rights, for example, confession, witness, and refusal. Moreover, the testimony of women along with men, as well as the establishment of *Tazeer* in connection with State's Rights, takes place with confession, witnesses, fair word, explicit circumstantial evidence, and knowledge of the Judge. The establishment of Qisas and Hudood does not take place with testimony over testimony and letter of one Judge to another.

Article 15:

Where a person is involved in homosexuality, the Judge shall imprison him until signs of repentance become visible. If homosexuality was his habit, he would be put to death with the ruler's permission.

Article 16:

The Judge may imprison the accused only on the testimony of one righteous person and/or two anonymous people before him.

Article 17:

Where an individual is accused of murder, robbery, or beating another individual, the Judge shall imprison him until signs of repentance appear.

Comment: The Judge, who has not investigated to find the truth, shall not release the accused upon swearing alone.

Article 18:

Where the plaintiff confesses before the Judge that his claim was false, the Judge shall punish him.

Article 19:

The Judge shall take extra precautionary measures while verifying *Hudood* and *Tazeerat*. It is better to commit a mistake in pardoning than make a mistake in giving

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punishment.

Article 20:

Tazeer is given to any individual who commits a crime that has reached the scale of *Hadd*, but the conditions of *Hadd* do not exist in the matter concerned. For example, an individual steals something but is not stolen from a protected place.

Article 21:

Tazeer may also be given because of an accusation; for example, a man keeps the company of *Fussaqa* (rebellious disobedient), though he may not be a *Fasiqa* (rebellious disobedient), or he spends time with thieves, though he may not be a thief; or remains in the company of the wine drinkers, though he may not be a wine drinker. Such a man may also be given *Tazeer*.

Article 22:

Tazeer is also given based on prudence, though the individual may not have committed the deed of crime. For example, beating children for abandoning prayers and ablution.

Article 23:

The Judge may not impose multiple forms of *Tazeer* on a criminal, such as combining corporal punishment with imprisonment.

Article 24:

If a Mujahid, soldier, or employee of the Emirate disobeys an order from a superior officer, the officer should initially issue a warning. If the warning is ineffective, disciplinary action may follow. However, if there is a valid reason for the disobedience, the superior officer must refrain from punishment.

Article 25:

It is permissible to give a soldier *Tazeer* by preventing him from rendering services when his superior tells him: You are forbidden to serve any further and by sacking assigned people from duty and discontinuing pay.

Article 26:

The Judge has the authority to combine *Hadd* and *Tazeer* penalties. In such instances, imprisonment serves as the interim measure between the execution of the *Hadd* and *Tazeer*. For instance, if someone consumes alcohol during daylight hours in the month of Ramadan, the Judge will first enforce the *Hadd* penalty for alcohol consumption, followed by imprisonment, and finally administer the *Tazeer* in the form of whipping.

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Article 27:

There are three categories of *Tazeer* (discretionary punishment)

(1) *Tazeer* with taking property/money, (2) *Tazeer* with destruction of property, and (3) *Tazeer* with sealing of property.

- 1) *Tazeer* with taking property/money is not lawful unless otherwise extremely needed. However, in case of extreme need, the Judge shall consult with a higher authority of the Judiciary, such as the Supreme Court and/or the high authority of the Cassation. He shall decide if a consensus is reached.
- 2) *Tazeer* with destruction of property is allowed.
- 3) *Tazeer* with the sealing of property is allowed. For example, if an individual is disobedient, or hidden or dissentient, and does not appear before the court and does not make himself available through the court-appointed attorney as well, then the decision is made on sealing of property after due consultation.

Notably, none but a judge may give *Tazeer* of sealing of property.

Article 28:

Imprisonment is one of the types of *Tazeer*. Where the Judge hands a criminal *Tazeer* with imprisonment, the detention must be in line with the procedure of the Jail; however, where there is fear of the escape of the prisoner, the Judge may put handcuffs and chains on him.

Article 29:

Judges may imprison some prisoners indefinitely unless signs of repentance become visible in them. These prisoners include those involved in treason or other political prisoners.

Article 30:

The judge may imprison those accused of ruining property and harming the lives of the people till they express their repentance. For example, an individual is accused of setting properties of people on fire and/or slaughtering livestock or other likely destructive activities.

Article 31:

Imprisonment in a matter of debt is lawful only on the condition that the debtor denies the creditor the debt when he is capable of returning it, and the debt is proven based on the confession of the debtor or witnesses and/or reneging his promise.

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Article 31:

The Judge may give a debtor *Tazeer* imprisonment where the Judge cannot retrieve the right of the rightful person from him. , on the contrary, if the object is in the custody of the debtor and/or an object belonging to the debtor is in the custody of a third person as a deposit, and the Judge had the power to retrieve it in a way defined in the Sharia, then there is no need for imprisonment.

Article 32:

If a debtor requests an extension for repaying a debt, the Judge should approve the grace period and abstain from imprisonment. Granting an extension does not negate the creditor's rights.

Article 34:

The term of imprisonment of the debtor is contingent on the opinion of the Judge.

Article 35:

If a debtor is incarcerated due to debt and the creditor becomes unavailable, the Judge has two options if the debtor claims to have the owed money ready. The Judge may either accept the repayment and release the debtor or decline the payment while requiring a current guarantor for both the individual and the property in question.

Article 36:

Where the Judge grants *Tazeer* imprisonment, in such case, he will record the name of the prisoner, his father's and grandfather's names, the reason for his detention, and the date of imprisonment. If the Judge is sacked, he shall hand over the record to the new Judge.

Article 37:

Tazeer, in the State's right, does not require filing the lawsuit. The plaintiff serves as the witness, and the witness serves as the plaintiff.

Article 38:

In *Tazeer*, where the victim's right is involved, none but the Judge can proclaim such *Tazeer*. However, any other person may also proclaim *Tazeer* on him if substantiated.

Article 39:

Any Muslim may give *Tazeer* while he is present on the spot when the *Tazeer* incurring deed is being committed, but, later on, none but the ruler and Judge may give *Tazeer*.

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Article 40:

The Judge may grant *Tazeer* in respect of any sin where *Hadd* is not involved. Similarly, the husband may give his wife *Tazeer*. For example, a wife leaves her home without her husband's permission or other similar instances. However, he shall not beat his wife in a way that can cause her bone to break or darken.

Article 41:

When administering whipping under Hudood and Tazeerat, the Judge must use a whip as defined by Sharia law, and the method of whipping should also conform to Sharia guidelines.