



Ethical Considerations of Ta'zir (Discretionary Punishment) Based on the Theory of Ayatollah al-'Uzmā Šāfi Golpāyegānī

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Abstract

Ta'zir, which means disciplining an individual through punishments less than the Sharia-prescribed hadd, is a cornerstone of Islamic criminal law. This analytical study investigates the ethical dimensions of the *fiqh al-ta'zir* theory of the Shia contemporary jurist, Ayatollah Safi. The research findings indicate that the semantics of ta'zir are based on a positive ethical understanding of the term, signifying aiding both the individual and society by preventing wrongdoing. Determining factors in ta'zir punishment include the psychological and social aspects of the offender, their intentions, the quality and quantity of the crime, its individual and social consequences, the ruler and judge, and the type, extent, aims, and effects of the punishment. Ayatollah Safi's theory built on the fluidity and gradualness of ta'zir, considering the differences among individuals and offenses, and taking into account the diverse ethical aims at the individual, social, and governmental levels. This approach provides a framework for the proportionality of crime and punishment, the defense of human rights and dignity, and a focus on the public good. The gradual ta'zir theory, from a moral perspective, leads to the "best return based on the public good," simultaneously encompassing retribution, deterrence, rehabilitation, and restorative justice, thereby evoking social virtue ethics.

Keywords

Islamic Ethics, Scientific Engagement, Prophets, Quranic Ethics,
Anthropological Foundations.

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