

The seventh lecture

Section Three: Determining rights in blood money crimes

Diyat is one of the crimes in which the right of God Almighty and the right of the slave meet, as it shows its attachment to the right of God Almighty based on its social nature, which is confirmed by the damage to society as a result of this crime, represented in the loss and loss of one of its members or the victim's inability to contribute and participate in the progress, prosperity and productivity of society, and due to the social nature of the crime that requires blood money, the wise street has decided to atone for it in addition to blood money, where atonement here represents the right of the affected community in this type of Crimes.

The blood money is assessed on the basis of the amount of social damage that is binding on both the offender and the victim, without changing its amount by the amount of factual damage suffered by the victim or his family.

As for the right of the slave, it appears that the blood money is attached to him because it was decided to compensate for the damage he suffered and suffered as a consideration for healing himself and recovering from the damage inflicted on her by the offender, so it is a compensation for moral damage inflicted on him, as it combines punishment and compensation as previously explained, and the attachment of blood money to the slave is embodied in several manifestations, the most important of which are: It is not obligatory to be entitled except by claiming it by the affected person or his family, which consequently results in the permissibility of pardoning her in any case. It must claim, in addition to the transfer of its proceeds to the victim or his blood guardian, all of which confirm the predominance of personal character over blood money.

Section Four: Cases of ta'zir being combined with blood money

As already explained above, blood money may replace retribution in the event of refraining from implementing the latter for a reason that requires it, such as the impossibility of similar or fear of the destruction of the offender when carrying out retribution in crimes without the self, in addition to the replacement of blood money for retribution in such cases that require it, the public of jurists

estimated the permissibility of adding a ta'zir penalty to blood money, because the latter is not sufficient alone to face the seriousness of the offender and the seriousness of his crime, which requires in terms of social danger retribution, Which exempted the offender for a reason that has nothing to do with it, which does not reduce at all the social seriousness of his crime, which requires the determination of ta'zir in addition to blood money, so that the ta'zir and blood money are equivalent together in terms of the severity of retribution, and makes the two penalties together constitute retribution image and meaning, as the criminal is pained to a degree close to what he inflicted on the victim, if blood money is paid with the addition of ta'zir to it, which makes them the rule of retribution.

The report of ta'zir in addition to blood money in such cases is due to the pure discretion of the judge, who determines its amount, although some believe that legislation should be issued specifying the controls of the punitive penalty that is added to the blood money and not to leave the field open to the judge's jurisprudence, taking into account the principle of the legitimacy of the punishment, which must be derived from clear legislative texts not in accordance with the judge's broad authority, and out of respect for the principle of equality of all citizens before the law alike, and in order to unify and stabilize solutions and judicial rulings.

The fourth requirement: discretionary crimes

Ta'zir means the sum of sins whose punishments are not specified according to Sharia texts, such as punishments, retaliation, or blood money. They are crimes for which the law has not determined a punishment, retaliation, or blood money, but rather leaves the scope of them to the guardian or the judge. They are punished with a punishment estimated by the judge or determined by the guardian, and this will be what will be done. Explaining it by first discussing the definition of ta'zir and its methods, going on to explain the reason for ta'zir, as well as explaining the controls of ta'zir and its areas, ending with an explanation of the difference between punishment and ta'zir, respectively.

The first section: Definition of ta'zir and its methods

Ta'zir is defined as: "Punishment for sins for which the hudud has not been initiated," and it is also defined as: "the punishment prescribed by the guardian or judge for a sin for which there is no hadd punishment, retribution or blood money," and ta'zir crimes mean: "sins for which ta'zir has decided to be a penalty."

The authority to consider the act as a sin as such constitutes a ta'zir crime deserves the appropriate punitive punishment is due to either:

- **Judge:** In such a case, there is no way to implement the principle of "no crime and no punishment except by a text", as there is no prior law that determines the crimes and based on the penalties prescribed for them, but the judge in such a case every time he deems that the act constitutes a sin carried out by the crime legitimately decides the appropriate punishment for it without a prior provision for that crime.

Accordingly, if the judge assesses that the act before him constitutes a religious disobedience, he considers it a crime, and accordingly determines the punishment he deems appropriate for it, taking into account the circumstances surrounding the accused.

- **Guardian:** In such a case, the principle of "no crime and no punishment except by text" established under contemporary legislation and absent in the event that this task is assumed by the judge, where an "Islamic Penal Code" is established similar to positive penal laws, where the guardian determines the acts that are considered crimes and decides the appropriate penalties for them under abstract general texts, explaining in each text the crime that is punishable, specifying its pillars accurately, and clearly indicating its penalties, taking into account In deciding the crimes and penalties prescribed for them, the guardian shall observe the conditions and legal controls that make the act a disobedience in the assessment of Sharia, and make the punishment legitimate and meet all its conditions.
- **The judge and the guardian together:** It is a trend that mediates the previous two sects, where the guardian assumes the authority of criminalization and punishment, but under broad terms that allow the

judge with broad interpretation authority and move within that text so that he extracts the elements of each crime, and the criminalization texts may include an accurate definition of the elements of each crime while allowing the judge room for diligence and measurement in the light of these texts, and thus both the guardian and the judge are involved in the process of criminalization and punishment in the field of ta'zir.

Section Two: The reason for ta'zir

The reason for opening the way for the guardian or judge to ta'zir in the field of crimes and penalties and not to make the latter all limits abbreviated by jurists in saying: "The texts are infinite, but the interests of the people do not end", so that the legal texts, no matter how tried to limit the acts that constitute crimes and sins prohibited by Sharia and show the penalties prescribed for them, the development that occurs in society in the future and the accompanying development of criminal thought and criminal means would reveal other acts did not These texts criminalize them, and therefore if the statement of crimes were limited to without opening the way for ta'zir, it would be impossible to punish these acts despite the danger they pose and the harm they cause to the various components of society.

Based on the above, the genius philosophy of Islamic law was deciding to criminalize acts that are not disputed about the necessity of criminalizing them at all times and in all places under explicit and clear legal texts prescribed for them clear penalties under these texts, namely hudud, retribution and diya, to affect the essential interests that the wise street estimated the need for its intervention to ensure their preservation throughout the times, and at the same time allowed the diligence of judges and rulers to criminalize what may result from the development of criminal thought, where the new is criminalized. of acts and the determination of appropriate penalties for them in each Islamic society to be decided in the light of the circumstances surrounding each society at various levels, within the framework of involving the guardian in the field of criminalization and punishment in accordance with the requirements of each era and the circumstances of each society in that era.

However, the jurisprudence of the judge or guardian in the framework of ta'zir crimes and his discretionary power is not wide open without controls or restrictions, as Islamic law within the framework of ta'zir crimes did not release the hand of the guardian in criminalization and punishment, but rather set him mandatory controls that he must observe and abide by, whether in the part of criminalization or the part of punishment, so as not to deviate from the spirit of Sharia and its basic principles, and exploit this authority granted to him in injustice, arbitrariness

and tyranny, because The ruler's resort to criminalization and punishment away from these controls makes his texts illegitimate and lacking legal basis, and therefore cannot be attributed to the Islamic legal system.