

DISCIPLINARY METHODS IN ISLAMIC  
JURISPRUDENCE AND THEIR APPLICATIONS IN  
THE KINGDOM OF SAUDI ARABIA

BY

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## **ABSTRACT**

This research attempts at providing the theoretical and practical approaches that focus on the disciplinary means and methods in the Islamic jurisprudence, and their applications in the Kingdom of Saudi Arabia, in the fields of family affairs, education and work, whereby shedding light on the concept of means and discipline and related terms, In the areas of discipline in family matters, education and employment. It also aims to identify the types of materialistic and non-materialistic means of discipline, the concept of criminal liability and provisions on the use of disciplinary means, and the method of their use with regard to the legal consequences, especially when they are used wrongfully. In accordance with the scientific methodology, the researcher applied the following methods: the inductive method, the analytical method and the comparative method. The study concluded with a set of results. It is also concluded with a set of recommendations, including: the Saudi regulator should formulate such rules and regulations as prescribed by Shari‘ah Scholars and regulations regarding personal affairs, which clarify the rights and duties of the people. The Saudi regulator shall also impose disciplinary sanctions that relate to a discipline executors, who often exceed the right and power given to them by Shari‘ah, in which those sanctions will be severe and dissuasive.

## ملخص البحث

يقدم هذا البحث دراسة نظرية وتطبيقية للجانب الفقهي والنظامي لمسألة الوسائل التأديبية في الفقه الاسلامي وتطبيقاتها في المملكة العربية السعودية، وذلك بتسليط الضوء على توضيح مفهوم الوسائل والتأديب، والألفاظ ذات الصلة بهما، وبيان المسائل المتعلقة بمجالات التأديب في كلاً من الشؤون الأسرية والتعليم والعمل؛ وبيان أنواع الوسائل التأديبية المعنوية و المادية وضوابط استخدامها؛ وإظهار مفهوم المسؤولية الجنائية والأحكام المتعلقة بالتجاوز في استعمال الوسائل التأديبية وكذلك عند استخدامها بطريقة غير مشروعة؛ وخضوعاً للمنهجية العلمية سلك الباحث كلاً من المناهج التالية: المنهج الاستقرائي، المنهج التحليلي، المنهج المقارن. وقد توصلت الدراسة لمجموعة من النتائج، كما حُتم البحث بمجموعة من التوصيات منها: أن يصوغ المنظم السعودي مثل هذه القواعد والضوابط التي سطرها علماء الشريعة والأنظمة فيما يتعلق بالأحوال الشخصية، توضح للناس حقوقهم وواجباتهم، وكذلك أن ينص المنظم السعودي على جزاءات تأديبية بحق المؤدِّبين، والذين يتجاوزون في استخدام السلطة الممنوحة لهم من الشرع، وتكون تلك الجزاءات صارمة وراعدة لهم.

## **APPROVAL PAGE**

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## DECLARATION

I hereby declare that this dissertation is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

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## DEDICATION

To those who Allah the Almighty blessed me of being a son to them ... To those who Allah ordered me to obey and be kind to them... To those who Allah ordered me to obey after His obedience the Almighty ... I am hereby showing you the fruits that resulted from your upbringing and sustenance upon me. This achievement is Allah's blessing by the virtue of your prayers upon me, which I cannot reward you all my life until I have reached the conclusion of this juncture ... It is my great pleasure at this moment, to show my gratitude and pray to Allah the Almighty to reward you abundantly in such a way He rewards obedient person to his parents, prolong your age in His path and obedience, provide you with health clothes, and to make your patience for our separation the means of elevating your rank, Indeed my Lord is All hearer All responsive.

And to the stars of our house who we gathered in one house ... In the shadow of a great and dignified parents, who have improved our upbringing... O' my dear brothers and sisters you I am really impressed and very grateful and proud of you ... for your support and encouragement and prayers upon me and invite me ... I hope that Allah will bring me to you in our country ... After this long alienation ... And in the Hereafter on couches raised.

O' my dearest wife ... who tasted alienation and separation ... Long months ... And you cope with difficulties and responsibilities of our beloved children: Modha, Nauf, Abdurrahman and Muhammad ... for this long period of my study and engaging with research... You have been a better moral giver... most pious wife in patience ... You are the most honest and you have all loyalty... You are indeed a code of loyalty.

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## TABLE OF CONTENTS

Abstract in English .....	3
Abstract in Arabic .....	4
Approval page.....	5
Declaration.....	6
Copyright page.....	5
Dedication.....	8
Acknowledgements.....	9
<b>CHAPTER ONE: GENERAL INTRODUCTION.....</b>	<b>18</b>
1.1 Introduction .....	18
1.2 Statement of problem .....	21
1.3 Research Questions .....	22
1.4 Objectives of the Research .....	23
1.5 Significance of Research .....	24
1.6 Scope and limitation of research .....	25
1.7 Research Methodology .....	25
1.8 Literature review .....	28
1.9 Reserch Content .....	36
<b>CHAPTER TWO: THE CONCEPT OF DISCIPLINE, ITS MEANS AND THEIR RELATED TERMINOLOGIES .....</b>	<b>39</b>
2.0 Introduction.....	39
2.1 The concept of al-Ta' dīb.....	40

2.1.2	Definition of al-Ta' dīb.....	40
2.1.4	The basis of the legitimacy of al-Ta' dīb.....	43
2.1.5	Terms and conditions of al-Ta' dīb.....	49
2.1.7	The pillars of al-Ta' dīb, its status and authority	
2.1.7	Pillars of al-Ta' dīb.....	52
2.1.9	Authorities of al-Ta' dīb .....	55
2.2	The concept of al-Wasā' il .....	58
2.2	Definition of al-Wasā' il, legality and types.....	58
2.2.1	Definition of al-Wasā' il.....	58
2.2.4	The basis of legitimacy of al-Wasā' il .....	61
2.2.5	Types of al-Wasā' il.....	65
2.2.6	The status of the al-Wasā' il, their types and what is related to the theory (Target justifies the means) <i>alghayah tubarrirul waseelah</i> .....	66
2.2.6	The Status of al-Wasā' il .....	66
2.2.7	Classifications of al-Wasā' il .....	67
	Issues related to the theory of " <i>alghayah tubarrirul waseelah</i> .....	68
2.2.8	Related terms: (al-Ta' dīb – al-Ta' zīr – al-'Uqūbah).....	71
2.2.8	Al-Adab .....	71
2.2.8	Literal Definition of al-Ta' dīb.....	71
2.2.8	Technical Definition of al-Ta' dīb .....	71
2.2.8	Comparison between al-Adab and al-Ta' dīb.....	72
2.2.9	Al-Ta' zīr .....	72
2.2.9	Literal Definition of al-Ta' zīr .....	72
2.2.9	Technical Definition of al-Ta' zīr .....	73
2.2.9	Comparison between al-Ta' dīb and al-Ta' zīr..	74

2.2.10 al-‘Uqūbah .....	79
2.2.10 Literal Definition of al-‘Uqūbah.....	79
2.2.10 Technical Definition of al-‘Uqūbah.....	79
2.2.10 Comparison between al-Ta’ dīb and al-‘Uqūbah.....	81

**CHAPTER THREE: AREAS OF AL-TA’ DĪB AND APPLICATIONS  
IN THE KINGDOM OF SAUDI ARABIA**

3.1 Introduction.....	85
3.2 Scope of al-Ta’ dīb in family affairs under Islamic jurisprudence and its applications in the Kingdom of Saudi Arabia. .....	86
3.2 al-Ta’ dīb by the parents.....	86
3.2.1 Al-Ta’ dīb by parents and guardians in Islamic jurisprudence .....	86
3.2.3 Application of discipline of parents and guardians of their children in the Saudi Legal system.....	108
3.3 al-Ta’ dīb by the Husband over his wife.....	113
3.3.1 Discipline of the husband in Islamic jurisprudence...113	
3.3.2 Application of discipline by husband over his wife in the Saudi legal system.....	129
3.3.2 Discipline in education.....	130
3.4.1 Disciplining of a teacher’s discipline to the student in the Islamic jurisprudence.....	130
3.3.2 Application of teacher’s discipline to the student in the Saudi Legal system.....	139
3.3.2 Areas of discipline in work field.....	144
3.3.2 Punishing the employer for the worker in Islamic jurisprudence.....	144

3.3.2 Application of employer's discipline to his worker in KSA.....	151
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**CHAPTER FOUR: TYPES OF DISCIPLINARY METHODS AND CONDITIONS OF THEIR USE.....164**

4.1 Introduction.....	164
4.2 Spiritual Means of al-Ta' dīb under Islamic Jurisprudence and their application in Saudi Araiba .....	165
4.2 Spiritual Means under Islamic jurisprudence.....	165
4.2 The application of Spiritual Means under the Saudi legal system.....	174
4.2 The physical means of al-Ta' dīb.....	178
4.4 Physical means of discipline in Islamic jurisprudence.....	178
4.4 Physical means of discipline under the Saudi Legal system.....	186
4.4.2.1 Physical disciplinary sanctions relating to the employee during his service.....	187
4.4.2.2 Material disciplinary sanctions relating to staff members after separation.....	191
4.5 The rules of using disciplinary means in Islamic jurisprudence and their applications KSA.....	194
4.5.1 Defination al-Ḍabiṭ (the criteria), execution and the relationship between the two.....	194
4.5.2 Definition of rules ( <i>Ḍawābiṭ</i> ).....	194
4.5.3 Definition of al-Tanfīdh.....	195
4.5.4 Relationship between al-Ḍabiṭ (the criteria) and al-Tanfīdh (execution) .....	196

4.6 General criteria for the use of disciplinary means in Islamic jurisprudence and Saudi legal system.....	197
4.6.1 General criteria for the use of disciplinary means in Islamic jurisprudence.....	197
4.6.2 General criteria for the use of disciplinary means in the Saudi legal system.....	202
4.7 Specific criteria for the use of disciplinary means in Islamic jurisprudence and Saudi system.....	204
4.7.1 The criteria of Parental Discipline for their Child...	204
4.7.2 The criteria of husband's discipline to his wife.....	208
4.7.3 The criteria of teacher's discipline to his student...	210
4.7.4 Systematic criteria rules on the worker.....	211

**CHAPTER FIVE: CRIMINAL LIABILITY IN THE USE OF DISCIPLINARY MEANS.....215**

5.1 Introduction.....	215
5.2 Definition of criminal liability.....	216
5.2.1 The concept of liability and its basis.....	216
5.2.2 The concept of liability.....	217
5.2.3 Basis of liability.....	218
5.4 Application of criminal liability in Islamic jurisprudence and Saud legal system.....	224
5.4.1 Application of criminal liability in Islamic Jurisprudence.....	224
5.4.2 Application of criminal liability in the Saudi legal system.....	225
5.5 al-Tajāwuz (excessive use) of disciplinary means.....	225

5.5.1 The concept of al-Tajāwuz (excessive use) and related words.....	225
5.5.2 Concept of al-Tajāwuz .....	225
5.5.3 Terms related to al-Tajāwuz .....	226
5.6 Overuse of the legitimate disciplinary means in family matters.....	229
5.6.1 Parental excesses in the use of lawful disciplinary means with the child.....	229
5.6.2 The husband's excesses of using lawful disciplinary means with the wife.....	229
5.6.3 The teacher's excesses of using the legitimate disciplinary means with the student.....	234
5.6.4 Overuse in the use of the employer legal disciplinary means with the worker.....	239
5.7 The use of illegal disciplinary means.....	247
5.8 The use of illegal disciplinary methods in Islamic jurisprudence.....	247
5.8.1 Damage which may arise from the use of father the prohibited disciplinary means with a child.....	246
5.8.2 Damage that might result from the use of illegal disciplinary means with the wife.....	253
5.8.3 Damage may result from the teacher's using prohibited disciplinary means with the Student.....	263
5.8.4 Damage resulting from employer's use of prohibited disciplinary means with the worker.....	264
5.9 The use of illegal disciplinary means and their punishment in the Saudi system.....	267
5.9.1 Damage arising from the use of parents prohibited disciplinary means with the child.....	267
5.9.2 Damage arising from the use of prohibited disciplinary means with the wife.....	270

5.9.3 Harm resulting from the teacher's use of prohibited disciplinary means with the student.....	273
5.9.4 Damage resulting from employer's use of prohibited disciplinary means with the worker.....	275
5.10 Conclusion, Finding and Recommendation.....	277
5.11 Recommendations.....	281
<b>REFERENCES.....</b>	<b>282</b>

## CHAPTER ONE

### PROPOSAL OF THE RESEARCH AND STRUCTURE

#### 1.0 INTRODUCTION

All praise be to Allah. We praise Him, and seek His help and forgiveness, and we seek refuge in Him from the misdeeds of our minds and the evils of our misdeeds, and the inappropriateness of our actions. He whom Allah guides no one can mislead him, and he whom Allah sent astray no one can guide him to the right path. I bear witness that there is no deity but Allah alone. He has no partner. I also bear witness that Muhammad (ṣal-Allāhu ‘alayhi wa sallam) is His servant and His Messenger. May Allah’s blessing be on him and on his family, and his companions, and whoever follow his path appropriately, and let the peace and blessings of Allah be enormous upon them.

One of the greatest blessings of Almighty Allah is that He blessed us with a Prophet (ṣal-Allāhu ‘alayhi wa sallam) who is a person from among us to recite to His signs, purify us, and teach us the Book and wisdom. He accomplished his work and left us on a plain crystal path, in which night was as clear as day, and no one can deviate from it except the perished, and nobody can miss the way except one who has been misled and gone astray. Allah has revealed to his Prophet (ṣal-Allāhu ‘alayhi wa sallam) all that is needed to explain the teachings of the great book and His legislations. Such revelations allow him to restrict that which appeared general, limit that which is absolute, as well as clarifying that which is ambiguous. What Allah revealed to His Messenger as a collection of legislation includes the acts of worship which is the right of Allah, and transactions which are rights of the people themselves.

The Prophet (ṣal-Allāhu ‘alayhi wa sallam) explained the pillars and the conditions of the legislation and some of its rules in the Prophetic tradition which is by its capacity, a part of the revelation from Allah. Some of these legislations on penalties include: retaliation upon the murderer and the punishment of stoning an adulterer to death and the whipping of a drunkard. These are provided by Allah in His glorious book and were explained by His Noble Prophet (ṣal-Allāhu ‘alayhi wa sallam) in his pious traditions, and are referred to as al-Ḥudūd. There are other types of penalties known as al-Ta‘zīr. These are punishments that are left to the ruler to determine and execute. Other figures of authority who can implement it are judges, parents, teachers etc, as they deem fit and in accordance with the provisions and rules of the Sharī‘ah and general guidelines.

The Muslim scholars of Islamic Jurisprudence, may Allah have mercy on them, intensified their efforts to interpret the Qur’ān and the traditions of the messenger by deriving rules for any occurrences in the lives of Muslims. Henceforth they provided Sharī‘ah resolutions in their books for any new matters that occurred in their lives with the explanation of the rules and guidelines that govern the penal codes under Sharī‘ah law. This is starting from the most severe punishment which is the death penalty to the most lenient punishment through the various disciplinary means which by nature defers due to the size of the crime and the objectives in which al-Ta’zīb is based. After these comes the human made law that derived some of its rules from the divine revelation that serve the society in providing public benefits and preventing evils.

Indeed the existence of punishment in Islam necessitates provision of disciplinary methods whether they are spiritual such as al-wa‘z (admonishment), tawbīkh (reprimanding a person), al-ṭard (expulsion) and al-Hajr

(forsaking/boycotting), etc. They may also be physical such as al-ḍarb (caning), al-ḥabs (imprisonment), etc. disciplinary methods in Islam vary based on the degree of the crime. Their purpose is to stop corruption and injustice from spreading in the society.

However, these measures require guidelines and criteria from both the Shari'ah and government legal system that must be observed in order to avoid negligence or going beyond the boundaries. The guidelines are necessary in order to refrain from other prohibited methods of punishment such as as-sabb (insulting), al-shatm (cursing), al-ḍarbal-wajh (hitting the face), al-tajwī' (starvation) , exposing a person to the cold weather, punishment by fire, stripping of clothes, al-tamthīl (mutilation) etc. which are all repugnant to al-Maqāṣid al-Sharī'ah (Objectives of Sharī'ah) that must not contradict the realization of islāḥ (benefit), tahdhīb (rehabilitation), and al-rada' (a strong warning).

This is where the role of the executors of the disciplinary measures arises. A guardian must execute the disciplinary measures whenever there is a need for it without misusing the disciplinary right. Likewise, there are punishments prescribed for executors who abuse their role and use methods prohibited by the Sharī'ah and law. For this reason it is the responsibility of the Mu'addib (disciplinarian) to ensure that he uses the Islamic and legal means whenever he disciplines someone. This is in order to actualize the realization of al-Maqāṣid al-Sharī'ah (Objectives of Sharī'ah) in preventing evil and bringing good. This will be done through reforming, disciplining, warning his likeness and purifying the society from their evil attitude and behaviour.

Among the topics brainstormed by the researcher is: 'the disciplinary measures under Islamic jurisprudence and their application in the Kingdom of Saudi Arabia.' The researcher chose this topic due to the meagerness of literature written on the legality of

those disciplinary measures from the *Sharī‘ah* perspective and position of Saudi Law towards them. This is the gap the researcher is aiming to fill.

## 1.1 PROBLEM STATEMENT

Article 1 of the Basic Law of Governance of the kingdom of Saudi Arabia states: The Kingdom of Saudi Arabia is a fully sovereign Arab Islamic State. Its religion shall be Islam and its constitution shall be the Book of God and the Sunnah (Traditions) of His Messenger, may God’s blessings and peace be upon him (*ṣal-Allāhu ‘alayhi wa sallam*). Its language shall be Arabic and its capital shall be the city of Riyadh.<sup>1</sup> It also provided in its Article 7 that ‘Governance in the Kingdom of Saudi Arabia derives its authority from the Book of God Most High and the Sunnah of his Messenger, both of which govern this Law and all the laws of the State.’<sup>2</sup> This shows that it is not permissible to legislate any law or rule that contradicts the provision of the *Sharī‘ah* as stipulated in the Qur’ān and the Pure Sunnah of the Prophet (*ṣal-Allāhu ‘alayhi wa sallam*). Thus, the *Sharī‘ah* provides a system of punishments in this life and the hereafter. Some are fixed by the Lawgiver which are al-Ḥudūd, while others are left to the discretion of the leaders, authorities or judges to decide in accordance to the gravity of the crime or violation committed. However, this is with the condition that it must be subjected to the standard and Islamic legal maxims that are derived from the Qur’ān and the Sunnah. There are collections of rules and procedures in the Saudi legal system that explain the means of guidance and punishment that are applicable to anybody that commits certain violations or crimes. But the problem of these laws is:

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<sup>1</sup> Article 1, Constitution of Saudi Arabia.

<sup>2</sup> Article 7, Constitution of Saudi Arabia.

1. There is no specific law for personal affairs and family matters (family law) that regulate the disciplinary authority of the husband to punish the wife, or parental disciplinary authority over the children. Similarly there is no limit to such power or criminal liability against the use of excessive means of punishment in family life.
2. The laws and rules that are provided for the punishment of the workers in the public and private sectors are not clear. Thus, such punishment is left to the ministries and specific departments to use any means of punishment against its staff as they deem appropriate. However, this has led to some violations of the *Sharī'ah*. This is where the question of who is authorized to legislate laws, to issue disciplinary decisions and to execute such punishments and whether they are in compliance with Shari'ah arises.
3. The rules for the punishment of students by their schools and universities of the Kingdom of Saudi Arabia also needs research and appraisal in accordance with the *Sharī'ah* which is the source of legislation and constitutionality in the Kingdom.

Henceforth, this research is designed to provide solutions to the abovementioned problems and to compare the existing Saudi Legal System with the injunctions of the *Sharī'ah* explained by the jurists in their books. This results in subjecting those laws in line with the Islamic Principles as well as *Maāşid al-Sharī'ah al-kulliyyah* (the general objectives of the *Sharī'ah*) concerning matters of punishment and disciplinary means.

## **1.2 RESEARCH QUESTIONS**

It is common knowledge to many researchers that any study or research must be based on questions to be answered by an honest researcher. This is in order for the researcher to be aware of his rights as well as his obligations, especially in this contemporary era

where the culture of right is widely spread. The major questions this research seeks to answer are:

1. What does al-Ta'dīb (discipline) and its Wasā'il (means) mean? And what are the related terminologies to discipline and its means?
2. What are the issues that are related to the subject of al-Ta'dīb (discipline) in family matters, education and employment under the Islamic jurisprudence as well as their application in the kingdom?
3. What are the types of material and moral measures of discipline under the Islamic jurisprudence and their application in the Kingdom of Saudi Arabia and the standards to be followed in their application?
4. What is the definition of criminal liability, and to what extent is it applicable in situations where the disciplinary means are misused or utilized in an illegal way?

### **1.3 RESEARCH OBJECTIVES**

This research aims to attain the following objectives

1. To explain both the concept of al-Ta'dīb (discipline) and its Wasā'il (means) as well as their related terminologies.
2. To elaborate on the scope of al-Ta'dīb (discipline) concerning family matters, education and employment under the Islamic Jurisprudence and their application in the kingdom.
3. To explain the types of material and moral disciplinary means under Islamic jurisprudence and their application in the Kingdom of Saudi Arabia. Likewise, to explain the standards to be adopted in their application.

4. To adduce the concept of criminal liability and the scope of its availability in the situation where al-Wasā'il (the disciplinary means) are misused or utilized in an illegal way.

#### **1.4 RESEARCH SIGNIFICANCE**

Indeed, the Sharī'ah of Islam has come with the system of al-Targhīb (motivative enticement) and al-Tarhīb (intimidation). It provides each Muslim ruler with an incentive mechanism that could be used to reward his subject whenever they practice good, it also provides them with disciplinary mechanisms to discipline whoever misbehaves or violates the rules. These are among the Sunan of Allah in the universe.

The significance of this research is embodied in the following matters:

1. That al-Wasā'il (the disciplinary means) are among the major punishments provided by Islamic jurisprudence, and in this contemporary era, these punishments vary and are not standardised.
2. The high increase of cases found within the courts of the Kingdom of Saudi Arabia, especially those related to the matter of misuse of the disciplinary means and the negative effects that result from that transgression. This is due to lack of clarity in the legal system in dealing with disciplinary means.
3. Presenting the areas of conformity of the disciplinary means between the Islamic jurisprudence and their application in the Saudi Arabia Legal System. Similarly, it aims to propose a system that regulates the application of the disciplinary means in line with the Sharī'ah principles and legal maxims and its general objectives according to the statement of the scholars.

This is in addition to the fact that the issue of the disciplinary means has become of great importance in this contemporary era. The authoritative people to discipline are in great need to be guided on how they should carry out their duties without transgressing the limits. Likewise it helps the offender to be aware of the rights and liabilities related to his crime.

## **1.5 SCOPE AND LIMITATIONS OF THE RESEARCH**

### **1. The Scope based on the research contents:**

The research focuses on the areas of the application of the disciplinary means under Islamic jurisprudence as well their application in the Kingdom of Saudi Arabia. The following are the areas of focus in this regard:

- Education (private and public educational institution).
- Family Affairs (al-Ta' dīb observed by parents, guardian, and the husband).
- Work and Employment (employees and workers).

### **2. Limitations of the research geographically and duration**

The geographic limitation of the research is the Kingdom of Saudi Arabia Legal System, and the periodic limitation is the period of unification of the Kingdom of Saudi Arabia to the current time.

## **1.6 RESEARCH METHODOLOGY**

The following is methodology followed by the researcher in this research:

### **1. Inductive Method:**