

# Inconsistency in Ta'zir Punishments in Islamic Juveniles' System

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## Abstract

When I was a paralegal in Saudi, I regularly came across many imprecise observations that tended to generalise about gross and severe lashings or jail sentences, ignoring the fact that this topic is very sensitive and highly complex. A great deal of information about juveniles' Ta'zir (i.e. corrective) punishments in Islam, e.g. the types, age group, gender, associates and previous convictions of the punished juveniles, has been obtained through the examination of verdicts. Correlating this data would, in theory, lend statistical and quantitative support to previous findings in past papers. Of particular interest is whether these results prove the inconsistency between three elements: crime, punishment, and the different circumstances of the juvenile offender (e.g. gender, associates, age group, previous convictions). This statistical analysis allows an extension of academic knowledge of the Islamic juveniles' system, beyond individual cases, so as to develop a more comprehensive analytical view about it.

**Keywords:** Islamic law, Ta'zir punishments, Saudi juveniles' system

## 1. Preface and Background

Inconsistency in the penal code, especially in the Saudi juveniles' system, has become an important research topic. A few articles and reports have been published to address this issue. For instance, Alshafi (2014, p.27) notes that consistency does not generally mean equalizing the penalty for all who commit the same crime. The penalty can differ from one person to another according to diverse motives, circumstances and the impact of the crime, but the role of the legislator is, however, to institute a balance between the punishment and the crime, determining a maximum and minimum amount for the sentences as well as allowing some room for judges to choose between those determined amounts based on the particulars of a case. Hence, finding a balance between a crime and its penalties is called legislative individualization, while choosing appropriate penalties for the criminals is referred to as the individualization of sentencing.

Unfortunately, the criteria upon which Saudi juveniles' judges can prescribe consistent, or at least similar, penalties have not been clearly identified. In my previous research and conference papers, I tried to assess the thematic process of prosecuting juveniles by qualitatively examining the theoretical basis and practice of the Saudi juveniles' system, analyzing and supporting my claims with verdicts gathered from the courts. This allowed me to arrive at important conclusions based on that examination. The next step was to determine whether those findings hold outside the investigative sample. A great deal of information about juveniles' Ta'zir (i.e. corrective) punishments in Islam, such as the type, age group, gender, associates and previous convictions, has been obtained through the examination of verdicts. Correlating this data would, in theory, lend statistical and quantitative support to findings.

In other words, despite the meaningful data collected from the case studies files in previous papers, it was apparent that there was a need to conduct statistical analysis. This statistical analysis has allowed a further extension of knowledge of the Saudi juveniles' system, beyond individual cases, in order to arrive at a more comprehensive analytical view. Specifically, this research has indicated that the current judicial problems faced by juveniles strongly depend on distorted perceptions caused by almost all the previous conducted research. Thus, before determining the key characteristics and measures that need to be examined within the juveniles' verdicts, it is useful to summarize some of what Alrousan (2010) suggested in this regard. He conducted a discussion on the "judicial individualization of the punishments" that involved investigating the likely settings

for inconsistency in any criminal verdict. The distinctiveness of his work has been long-lasting mainly because it recognizes a number of criteria for assessing punishments in general (not just for juveniles), and, hence, this has gone on to inform the view presented in this paper.

Alrousan (2010) concluded that punishment is a necessary evil that must acknowledge an awareness of its negative impacts and also its expected educational role and thus reduce the recourse to punishment. The primary purpose of this is the ability to develop techniques to identify appropriate penalties to re-integrate offenders into society, re-educate them, persuade them to respect societal values and to inform them of their duties. Therefore, it is possible to rely on age, gender, behaviour and the psychological elements of the criminal to make assessments. This knowledge is very different from what the traditional schools of Islamic jurisprudence (e.g. Hanafi, Hanbali) called for because it is not only about the external circumstances of the crime and the offenders' previous convictions. This was the case for juveniles' verdicts; however, while this argument was revealing, it is not sufficient in itself. This is because, unlike Alrousan, this research does not seek to develop a generic profile of criminal verdicts. Rather, the aim is to set out a common profile of Saudi juveniles' inconsistent punishments. With this purpose in mind, it was apparent that it was important to focus on juveniles' gender, associates, previous convictions, age groups and crime types across all penalty types (e.g. fixed lashes, discretionary lashes and jail), as the next section explores.

## 2. Methods and Study Design

Since this study combines a presentation of theory and practice (i.e. empirical data), this has allowed evidence of these claims on identifying thematic problems to be derived via a mixed methodology. Additionally, a mixed methodological approach assisted in mitigating bias. Creswell (2014) states that, if the collected data has both strengths and limitations, consideration should be given to how a better grasp of the study's aim can be achieved. For instance, a quantitative approach may have more research designs than a qualitative one. Moreover, quantitative methods are better structured, more specific and, therefore, have been tested to make sure of their reliability and validity, whereas the qualitative approach might mainly be used for discovering, understanding and explaining. As such, its design may often be based on a deductive rather than inductive sense, so they are flexible in nature (Kumar, 2014). However, Al'assaf (2014) argues that both deductive and inductive approaches are just tools or methods in a qualitative approach. Consequently, there might be no clear relationship between a research design and method of collecting data using a qualitative approach, which may open the door for potential bias. Employing mixed methods approaches maximises the advantages and minimises the disadvantages. Thus, this paper combines theoretical claims with proofs from judicial applications. Previous research designs have often applied just a deductive method as a tool of qualitative data, and unfortunately did not examine the Saudi juveniles' system in a thematic way. One reason for this can be that they approached the problem from the perspective of the dominant Hanbali juristic doctrine<sup>1</sup> regardless of the juveniles' best interests. From the researcher's long experience, this doctrine is the juristic foundation for all Saudi courts, including juveniles. It is basically based on Quran, Hadith and other related restricted interpretations. Data from an initial 271 cases was gathered, one of which is missing,<sup>2</sup> from three courts in Riyadh Saudi Arabia, which were the general, criminal and juveniles' circle courts, from the period of 7/6/2010 until about June 2015. The selection criteria for collecting this data focused on juveniles aged between 7 and 30 years old. This demonstrates the inconsistency between what has been written as a law for juveniles (i.e. between the ages of 7 and 18), that which is claimed to be the age of responsibility for females (30 years old) and that which, in practice, prosecutors use as an informal standard in the Hanbali doctrine – 7 to 15 years of age.

## 3. Data Analysis and Interpretation

To analyze and interpret the archived data, this research used the program, Social Product for Service Solution (SPSS) in order to undertake a quantitative analysis. This drew out some variables that affect judicial decisions or showed the contradictions between them.<sup>3</sup> In the gathered verdicts, almost all data are categorical except three variables as they are scales, which are sentences\_jail, sentences\_lashes and sentences\_fixed. Therefore, three non-parametric statistics were used. These non-parametric statistics are as follows: first, the Chi-square test was used to independently explore the relationship between categorical variables such as gender vs. either (associates and precedents). Another example was age\_group vs. either (associates and precedents). Secondly, the Mann-Whitney U test was deployed, which is the alternative to an independent-sample T-test. This tested differences between two independent clusters on a scale measure (i.e. continual data). An example of this was gender vs. (sentences\_jail, sentences\_lashes and sentences\_fixed) and also associates vs. (sentences\_jail, sentences\_lashes and sentences\_fixed). Thirdly, the Kruskal-Wallis test was applied, which is similar to the Mann-Whitney U test, but allows a comparison of variables that have more than two categories (i.e. three or more). For example, age\_group or offences or precedents vs. (sentences\_jail, sentences\_lashes and

sentences\_fixed) as these variables have more than two groups. Thus, the outcomes of the tables were analysed and interpreted.

**4. Results and Discussion**

*4.1 Juveniles' Verdicts: Gender*

After each case, the information given in the verdicts was reflected upon in order to pick out potential themes and topics for further examination. One remarkable theme that appeared from the data was the disproportionate number of females and males involved within crime. For instance, Table 1 (below) shows that the percentage for male cases was 86.7% with 235 frequencies, while for females it was 12.9% with 35 frequencies. However, one of these cases is missing because of mis-archiving.<sup>4</sup> Gender should not be taken for granted, because it has a strong effect on the way juveniles' judges oversee cases.

Table 1. Juveniles' Gender

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Male	235	86.7	87.0	87.0
	Female	35	12.9	13.0	100.0
	Total	270	99.6	100.0	
Missing	System	1	.4		
Total		271	100.0		

Juveniles in Saudi are very much separated in courts based on their gender. For instance, the verdicts gathered from the Social Observation House (SOH) contained only boys' cases while the Care Institution for Girls (CIG) housed girls' cases. Cases that contain execution or cutting committed by minors were already directed to either the general or criminal court.<sup>5</sup> The data statistically shows two relevant factors; while there is a statistical significance between juveniles' gender on the one hand, and their associates (Tables 2-2.2), on the other hand, there is no such statistical significance between juveniles' gender and their previous convictions (Tables 3-3.2). Consequently, three issues needed to be pursued further – gender, juveniles' associates and juveniles' previous convictions – all of which must be considered with regard to the punishments given (e.g. fixed lashes, discretionary lashes and jail). However, the last two elements (i.e. juveniles' associates and juveniles' previous convictions) will be left now for a detailed discussion on them in subsequent sections.

Table 2. Gender by Associates Cross-tabulation

		Associates		Total	
		Yes	No		
Gender	Male	Count	259	57	316
		% within gender	82.0%	18.0%	100.0%
		% within associates	90.2%	100.0%	91.9%
	Female	% of total	75.3%	16.6%	91.9%
		Count	28	0	28
		% within gender	100.0%	0.0%	100.0%
	Total	% within associates	9.8%	0.0%	8.1%
		% of total	8.1%	0.0%	8.1%
		Count	287	57	344
Total	% within gender	83.4%	16.6%	100.0%	
	% within associates	100.0%	100.0%	100.0%	
	% of Total	83.4%	16.6%	100.0%	

To interpret the output from Tables 2-2.2, it can be seen that there is no violation for the Chi-square assumptions since more than 80% of cells have a frequency of more than 5. This can be found in the footnote signalled "a" of Table 2.1. Subsequently, the main value that is pertinent is the Pearson Chi-square (Table 2.1). However, since there is a 2 by 2 table (i.e. each of the variables have only two categories), then the continuity correction in the second row should be noted, because this is Yates's correction for continuity, which compensates for

overestimates of the Chi-square value when used with 2 by 2 tables. In this example, the continuity correction value is 4.819 with an associated significance level of .028; this is presented in the column labelled Asymp. Sig. (2-sided). Consequently, there is a significant difference as the associated significance level is less than .05 (i.e. it is .028 in the case above). This does mean that there is a strong relation between gender and associates in juveniles' verdicts in Saudi Arabia, so judges are already aware of that. For instance, in Table 2 it appears that while 82% of male juveniles are associated with others when committing crimes, 100% of girls commit crimes in association with others.

Table 2.1: Chi-Square Tests for Gender by Associates Cross-tabulation

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)
Pearson Chi-Square	6.054 <sup>a</sup>	1	.014		
Continuity Correction <sup>b</sup>	4.819	1	.028		
Likelihood Ratio	10.627	1	.001		
Fisher's Exact Test				.007	.005
Linear-by-Linear Association	6.036	1	.014		
N of Valid Cases	344				

a. 1 cells (25.0%) have expected count less than 5. The minimum expected count is 4.64.

b. Computed only for a 2x2 table

Table 2.2: Symmetric Measures for Gender by Associates

		Value	Approx. Sig.
Nominal by Nominal	Phi	-.133	.014
	Cramer's V	.133	.014
N of Valid Cases		344	

The size effect can be found in Table 2.2, so in this case the Phi Coefficient criteria are relevant, as there are only 2 by 2 tables. Therefore, it appears that the Phi value is -.133, which is considered a small effect using Cohen's (Pallant, 2013, p.228) criteria of .10 for small effect, .30 for medium effect and .50 for large effect.

Additionally, a Chi-square test was used to discover relations between categorical variables (e.g. gender with either associates and judicial precedents on the one hand, and age-grouping with either associates and judicial precedents on the other hand). Consequently, in Tables 2-2.2, it can be seen that there is a strong relation between gender and associates in minors' verdicts. While 82% of boys had associates when committing crimes, 100% of girls had associates. Tables 4-6.1 will help to reveal to what extent punishments are different for both genders.

Due to the strong relation between gender and juveniles' associates as shown in Tables 2-2.2, it was decided to examine gender further with regard to three Ta'zir punishments.<sup>6</sup> Despite the fact that Ta'zir penalties are not limited as they are subject to the judges' discretion, Awadh blamed Aud'a, a former judge, for limiting Ta'zir penalties to only four general categories: oral punishment (e.g. admonition, reprimand, threat and public disclosure); bodily punishment (e.g. flogging<sup>7</sup>); financial corrective punishment (e.g. fines, seizure of property, and loss of employment); and negative corrective sanctions for freedom (e.g. temporary or life imprisonment and exile). However, only jailing and flogging were found in the judicial applications related to juveniles. The other penalties (e.g. admonition, reprimand, threat and public disclosure, fines, seizure of property) were dismissed, or perhaps only mentioned in some very rare cases, to the degree that these were not statistically significant.

To explain the output from Tables 3-3.2, it can be seen that there is no violation of Chi-square assumptions since more than 80% of cells have a frequency of more than 5. As stated under Table 3.1, 0 cells (0.0%) have an expected count of less than 5. The minimum expected count is 5.86. Further, since there is a 2 by 3 table, whereby one variable (gender) has only two categories while the other (precedents) has three categories, a continuity correction is not pertinent. However, in this example, the Pearson Chi-square value is 3.942 with an associated significance level of .139. This is presented in the column labelled Asymp. Sig. (2-sided). Consequently, there is no significant difference as the associated significance level is more than .05 (i.e. it is .139 in the case above). This does not mean that there is a strong relation between gender and precedents in juveniles'

verdicts in Saudi Arabia, so judges should not take this into account while prosecuting juveniles' offences. For instance, in Table 3 it appears that while 51.9% of juvenile boys had no precedents, juvenile girls with no precedents numbered 67.9%. In addition, while the proportions of those boys and girls who had precedents seem close together (i.e. boys are 27.2 and girls are 10.7), there are similar proportions for those juveniles who had not specified their precedents (i.e. boys are 20.9 and girls are 21.4). Unfortunately, the judicial situation for juveniles in Saudi is that judges and the Prosecutor-General tend to take juveniles' previous convictions into account while prosecuting them.

Table 3. Gender by Precedents Cross-tabulation

		Precedents			Total
		Yes	No	Not specified	
Gender	Count	86	164	66	316
	Male				
	% within Gender	27.2%	51.9%	20.9%	100.0%
	% within Precedents	96.6%	89.6%	91.7%	91.9%
	% of Total	25.0%	47.7%	19.2%	91.9%
	Female				
	Count	3	19	6	28
	% within Gender	10.7%	67.9%	21.4%	100.0%
	% within Precedents	3.4%	10.4%	8.3%	8.1%
% of Total	0.9%	5.5%	1.7%	8.1%	
Total	Count	89	183	72	344
	% within Gender	25.9%	53.2%	20.9%	100.0%
	% within Precedents	100.0%	100.0%	100.0%	100.0%
	<b>% of Total</b>	<b>25.9%</b>	<b>53.2%</b>	<b>20.9%</b>	<b>100.0%</b>

Table 3.1: Chi-Square Tests for Gender by Precedents

	Value	Df	Asymp. Sig. (2-sided)
Pearson Chi-Square	3.942 <sup>a</sup>	2	.139
Likelihood Ratio	4.560	2	.102
Linear-by-Linear Association	1.600	1	.206
N of Valid Cases	344		

a. 0 cells (0.0%) have an expected count less than 5. The minimum expected count is 5.86.

Table 3.2: Symmetric Measures for Gender by Precedents

		Value	Approx. Sig.
Nominal by Nominal	Phi	.107	.139
	Cramer's V	.107	.139
<b>N OF VALID CASES</b>		<b>344</b>	

To explain the above output from Tables 3-3.2, it can be seen that there is no violation of Chi-square assumptions since more than 80% of cells have a frequency of more than 5. As stated above under Table 3.1, 0 cells (0.0%) have an expected count of less than 5. The minimum expected count is 5.86. Further, since there is a 2 by 3 table, whereby one variable (gender) has only two categories while the other (precedents) has three categories, a continuity correction is not pertinent. However, in this example, the Pearson Chi-square value is 3.942 with an associated significance level of .139. This is presented in the column labelled Asymp. Sig. (2-sided). Consequently, there is no significant difference as the associated significance level is more than .05 (i.e. it is .139 in our case above). This does not mean that there is a strong relation between gender and precedents in juveniles' verdicts in Saudi Arabia, so judges should not take this into account while prosecuting juveniles' offences. For instance, in Table 3 it appears that while 51.9% of juvenile boys had no precedents, juvenile girls with no precedents numbered 67.9%. In addition, while the proportions of those boys and girls who had precedents seem

close together (i.e. boys are 27.2 and girls are 10.7), there are similar proportions for those juveniles who had not specified their precedents (i.e. boys are 20.9 and girls are 21.4). Unfortunately, the judicial situation for juveniles in Saudi is that judges and the Prosecutor-General tend to take juveniles' previous convictions into account while prosecuting them.

The size effect can be found in Table 3.2, so in this case Cramer's V criteria should be depended upon as there are 2 by 3 tables. Cramer's V criteria take into account degrees of freedom, so it appears that the value is .10 which is considered a small effect, if it is rounded to a close value which is .07, using Cramer's V criteria (Pallant, 2013, p.228) (for three categories, which is of .07 for small effect, .21 for a medium effect and .35 for a large effect).

While Awadh (2008) claims that Ta'zir penalties are not determined, one can critically ask about Ta'zir penalties that are already specified in the Quran (e.g. Quran 4: 34). To address this, Awadh notes that the Ta'zir penalties mentioned in the Quran do not necessarily limit all discretionary punishments to only four categories, as long as the penalty is legitimate and appropriate for the crime and the criminal. Yet, being mentioned in the Quran means legitimizing the penalty only, in order for the judge to use them in his verdicts. Therefore, it does not mean limiting the discretionary punishments only to those mentioned in the Quran. Hence, the judge's role is to seek a balance between the penalty, crime and criminal. With this in mind, this paper will statistically prove that, even when discretion is openly given to juveniles' judges in Saudi, almost all of their verdicts were solely confined to either fixed lashes, discretionary lashes or discretionary jail, as can be seen by critically looking at Tables 4-6.1. It can be concluded that there are significant differences between boys and girls in discretionary flogging, as girls get far more lashes, by 200 scores/lashes (Table 4.2). Additionally, jail punishment for girls is higher than boys by 18 months<sup>8</sup> (Table 5). However, there were no significant differences in respect to fixed lashes penalties, either for boys or girls. The reason behind this is that fixed lashes are predominantly determined by Allah, so there should be no variation in such sentences (Tables 6 and 6.1).

Table 4. Ranks for Sentences\_Lashes by Gender

	Gender	N	Mean Rank	Sum of Ranks
sentences_lashes	Male	316	168.07	53111.00
	Female	28	222.46	6229.00
	TOTAL	344		

To elaborate, the output from the Mann-Whitney U test above shows there are no violations of the SPSS assumptions in Table 4 above as SPSS does not indicate anything about this; the main value that needs to be considered is the Z value. This can be found at in the table titled Test Statistics (Table 4.1). The Z value is -2.793 so the result is very significant (i.e. the differences between males and females in the sentences-lashes are statistically important). As a result, according to Table 4, the mean ranks for males is (168.07), while for females it is (222.46). However, Pallant (2013, p.237) comments that when statistical differences are found, the median scores should be reported instead of the mean rank because the statistical analysis here is non-parametric. The median score for males is 80 while it is much more severe for females, with 200. This, again, emphasizes the unsuitability in discretionary lashes between boys and girls, let alone in one gender only.

Table 4.1: Test Statistics on sentences\_lashes by Gender

	sentences_lashes
Mann-Whitney U	3025.000
Wilcoxon W	53111.000
Z	-2.793-
Asymp. Sig. (2-tailed)	.005

Table 4.2: Report on sentences\_lashes by Gender

Gender	N	Std. Deviation	Median
Male	316	347.546	80.00
Female	28	195.246	200.00
Total	344	337.711	90.00

Table 5. Ranks for sentences\_jail by Gender

	Gender	N	Mean Rank	Sum of Ranks
sentences_jail	Male	316	168.22	53157.50
	Female	28	220.80	6182.50
	Total	344		

To interpret, there are no violations of the SPSS assumptions in Table 5 above as SPSS does not indicate anything about this; the main value that is pertinent is the Z value, which can be found in the table titled Test Statistics (Table 5.1). The Z value is -2.698 so the result is really significant (i.e. the differences between males and females in the sentences\_jail are statistically important as it is proven that the significance level is .007, which is much lower than .05). As a result, according to Table 5, the mean rank for males is (168.22), while for females it is (220.80). The median scores for males in Table 5.2 is 6 months while it is much more severe for females with 18 months.

Table 5.1: Test Statistics on sentences\_jail by Gender

	sentences_jail
Mann-Whitney U	3071.500
Wilcoxon W	53157.500
Z	-2.698-
Asymp. Sig. (2-tailed)	.007

Table 5.2: Report on sentences\_jail by Gender

Gender	N	Std. Deviation	Median
Male	316	29.798	6.00
Female	28	16.237	18.00
Total	344	28.933	7.00

Table 6. Ranks for sentences\_fixed by Gender

	Gender	N	Mean Rank	Sum of Ranks
sentences_fixed	Male	316	172.48	54504.50
	Female	28	172.70	4835.50
	Total	344		

Table 6.1: Test Statistics on sentences\_fixed by Gender

	sentences_fixed
Mann-Whitney U	4418.500
Wilcoxon W	54504.500
Z	-.024-
Asymp. Sig. (2-Tailed)	.981

There are no violations of the SPSS assumptions in Table 6.1 above as SPSS does not indicate anything about this. The main pertinent value here is the Z value, which can be found in the table titled Test Statistics (Table 6.1). The Z value is -.024 so the result is not really significant (i.e. the differences between males and females in the sentences\_fixed are statistically not important as it is proved that the significance level is .981, which is much more than .05). As a result, according to Table 6, the mean ranks for males are (172.48), while for females (172.70). Therefore, there is no need for median scores instead of mean rank. The reason for this is that the fixed lashes is already determined by Allah. Hence, there should not be any variations therein except in cases featuring the Khamr fixed penalty since there are different juristic opinions about it (i.e. whether 80 or 40 lashes are

appropriate). Nevertheless, Saudi juveniles' judges are applying sentences according to the Hanbali doctrine, which specifies the Khamr fixed penalty to be 80 lashes.

4.2 Juveniles' Verdicts: Age Groups

Notwithstanding the fact that there are many opinions in Islamic law concerning the issue of puberty, the Saudi juveniles' system is in a state of confusion, especially when it has created an unprecedented opinion in determining the age of puberty for girls at 30 years old. Within this research, juveniles' age groups in Saudi are classified into three stages: 7 to 15 years old, 16 to 18 years old and, finally, 19 to 30 years old. Table 7 shows that the 7-15 age group comprises 8.1% of cases, totalling 28 cases. The 16-18 age group comprises 83.4% (287) of cases. Finally, the 19-30 age group constitutes 8.4% (29) of cases.

The data statistically shows two factors. While there is a statistical significance between the juvenile age groups, on the one hand, and their associates on the other hand, there is no such statistical significance between a juvenile's age group and previous convictions. It can clearly be seen from Table 8 that there is a strong relationship between juveniles' age groups and associates; the 7-15 age group had 96% associates, the 16-18 age group had 80.5%, and the last group aged 19-30 had 100%. However, there is no strong relation between age group and precedents in Saudi, as can be seen in Tables 7.2 and 7.3.

Table 7. Age\_group

Standard Attributes	Label	Value <none>	Count	Percent
Valid Values	1	7-15 years old	28	8.1%
	2	16-18 years old	287	83.4%
	3	19-30 years old	29	8.4%

Table 7.1: Age\_group \* Precedents Cross-tabulation

Age_group			Precedents			Total	
			Yes	No	Not specified		
7-15 years old	Count	Count	6	13	9	28	
		% within Age_group	21.4%	46.4%	32.1%	100.0%	
		% within Precedents	6.7%	7.1%	12.5%	8.1%	
	% of Total		1.7%	3.8%	2.6%	8.1%	
		16-18 years old	Count	78	151	58	287
			% within Age_group	27.2%	52.6%	20.2%	100.0%
	% within Precedents		87.6%	82.5%	80.6%	83.4%	
	% of Total		22.7%	43.9%	16.9%	83.4%	
		19-30 years old	Count	5	19	5	29
% within Age_group			17.2%	65.5%	17.2%	100.0%	
% within Precedents	5.6%		10.4%	6.9%	8.4%		
% of Total		1.5%	5.5%	1.5%	8.4%		
	Total	Count	89	183	72	344	
		% within Age_group	25.9%	53.2%	20.9%	100.0%	
% within Precedents		100.0%	100.0%	100.0%	100.0%		
% of Total		25.9%	53.2%	20.9%	100.0%		

Table 7.2: Chi-Square Tests on Age\_Group \* Precedents

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	4.266 <sup>a</sup>	4	.371
Likelihood Ratio	4.117	4	.390
Linear-by-Linear Association	.327	1	.567
N of Valid Cases	344		

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 5.86.

Table 7.3: Symmetric Measures on Age\_group \* Precedents

		Value	Approx. Sig.
Nominal by Nominal	Phi	.111	.371
	Cramer's V	.079	.371
N of Valid Cases		344	

Table 8. Age\_group \* Associates Crosstabulation

			Associates		Total		
			Yes	No			
			Count	27	1	28	
Age_group	7-15 years old	% within Age_group	96.4%	3.6%	100.0%		
		% within Associates	9.4%	1.8%	8.1%		
		% of Total	7.8%	0.3%	8.1%		
				Count	231	56	287
	16-18 years old	% within Age_group	80.5%	19.5%	100.0%		
		% within Associates	80.5%	98.2%	83.4%		
		% of Total	67.2%	16.3%	83.4%		
				Count	29	0	29
	19-30 years old	% within Age_group	100.0%	0.0%	100.0%		
% within Associates		10.1%	0.0%	8.4%			
% of Total		8.4%	0.0%	8.4%			
			Count	287	57	344	
Total	% within Age_group	83.4%	16.6%	100.0%			
	% within Associates	100.0%	100.0%	100.0%			
	% of Total	83.4%	16.6%	100.0%			

Table 8.1: Chi-Square Tests on Age\_Group \* Associates

	Value	Df	Asymp. Sig. (2-sided)
Pearson Chi-Square	10.979 <sup>a</sup>	2	.004
Likelihood Ratio	16.976	2	.000
Linear-by-Linear Association	.172	1	.678
N of Valid Cases	344		

a. 2 cells (33.3%) have expected count less than 5. The minimum expected count is 4.64.

Table 8.2: Symmetric Measures on Age\_group \* Associates

		Value	Approx. Sig.
Nominal by Nominal	Phi	.179	.004
	Cramer's V	.179	.004
N of Valid Cases		344	

With regard to a relationship between juveniles' age groups and the three punishments (Tables 9-9.6), there are significant differences in all three punishments (discretionary lashes, jail and fixed lashes) in terms of the age-grouping. Furthermore, in terms of jail punishment (Tables 9-9.1), members of the older group, aged 19-30, were sentenced to the longest time in prison (mean rank of 218.52 months), while the second group, aged 15-18 years, was sentenced for 172.93 months. Yet, the shortest time of jail found was for the youngest group, aged 7-15 years, which was 120.48 months. To clarify, 120.48 months means more than ten years in prison. This is in fact the shortest jailing time (even for juveniles!), while the longest jailing period was 218.52 months, which translates to more than 18 years in prison. Initially, these results seem logical, as juveniles' judges take into account the gradation according to the juveniles' age groups. However, it is not convincing since the criteria upon which the juveniles' judges have prescribed the sentence is not really known. In other words, the jail

sentences are inconsistent since they are extremely open to the juveniles' judges' discretion to decide without clear guidance or criteria. This paper calls for replacing the penalty of jail time with other, more useful, rehabilitative procedures.

Similarly, in the case of discretionary lashing, Tables 9.2 and 9.3 illustrate that the highest amount of discretionary penalty was given to the older group, aged 19-30, with a mean rank of 218.00 lashes, while the second group, aged 16-18 years old, was given 174.25 lashes. However, the youngest group, aged 7-15 years old, was given the lightest number of lashings, at 107.46. To detail the output from Tables 9.2 and 9.3, it can be seen that there are no violations for SPSS assumptions in Table 9.2. The main values that are relevant are the Chi-square, degree of freedom (df) and significance level values; these can be found in the table titled Test Statistics (Table 9.1). The Chi-square value is 18.383, so the result is very significant (i.e. there are huge differences in lashes given to juveniles according to their age group as it is proved that the significance level is .000, which is lower than .05). As a result, according to Table 9.2, the mean ranks for juveniles aged 7-15 years old was 107.46, while for those aged 16-18 years old it was 174.25. The mean ranks for juveniles aged 19-30 was 218.00, which indicates that the last age group gets the most severe lashing, demonstrating the same ambiguous issue that they look like adults yet are juveniles.

Table 9. Ranks for sentences\_jail by age\_group

	Age_group	N	Mean Rank
sentences_jail	7-15 years old	28	120.48
	16-18 years old	287	172.93
	19-30 years old	29	218.52
	Total	344	

Table 9.1: Test Statistics on sentences\_jail by age\_group

	sentences_jail
Chi-Square	14.041
df	2
Asymp. Sig.	.001

Table 9.2: Ranks for sentences\_lashes by age\_group

	Age_group	N	Mean Rank
sentences_lashes	7-15 years old	28	107.46
	16-18 years old	287	174.25
	19-30 years old	29	218.00
	Total	344	

However, with regard to the fixed lashing penalty (Tables 9.4-9.6), it can be seen that there is no significant difference in the fixed lashing penalty between the different juveniles' age groups. For example, for fixed lashes, the 7-15 group was given 160 while the second group, aged 16-18 years old, was given 173.74 and the older group given 172.26. It is argued that since the lashes here are fixed by God (i.e. the law giver), then there should be no differences in the fixed lashes with regard to juveniles' age groups because it is fixed.

Table 9.3: Test Statistics on sentences\_lashes by age\_group

	sentences_lashes
Chi-Square	18.383
Df	2
Asymp. Sig.	.000

Table 9.4: Ranks for sentences\_fixed by age\_group

	Age_group	N	Mean Rank
sentences_fixed	7-15 years old	28	160.00
	16-18 years old	287	173.74
	19-30 years old	29	172.26
	Total	344	

Table 9.5: Test Statistics on sentences\_fixed by age\_group

	sentences_fixed
Chi-Square	2.410
Df	2
Asymp. Sig.	.300

Table 9.6: Report on sentences\_fixed by age\_group

Age_group	N	Std. Deviation	Median
7-15 years old	28	.000	.00
16-18 years old	287	21.759	.00
19-30 years old	29	23.363	.00
Total	344	21.033	.00

To explain the output from Tables 9.4-9.6, there are no violations for SPSS assumptions in Table 9.4 as SPSS does not indicate this. The main values that are relevant are the Chi-square, degree of freedom (df) and significance level values; these can be found in the table titled Test Statistics (Table 9.5). The Chi-square value is 2.410 so the result is not really significant (i.e. there are huge differences in fixed penalties for juveniles according to their age group, as it is proved that the significance level is .300, which is more than .05). As a result, according to Table 9.4, the mean rank for juveniles aged 7-15 years old was 160.00, while for those aged 16-18 years old it was 173.74. Also, the mean rank for juveniles aged 19-30 was 172.26, indicating no statistical importance.

4.3 Juveniles' Verdicts: Juveniles' Associates

Despite the fact that Saudi juveniles' judges primarily apply the Hanbali doctrine, their verdicts were inconsistent with regard to juveniles' associates. There is an extensive discussion on the theory of juveniles' associates (whether juveniles or adults), arguing that the Hanbali and Shafie schools claim that the fixed penalty will only be applicable to an adult.<sup>9</sup> This view looks at distinguishing liabilities between perpetrators (e.g. adult and juvenile). Therefore, there is no criminal responsibility nor penalty for the minor, whereas the adult, who joined the juvenile, will not benefit from being with him (Ibn Qudamah, 1999; Alshirasi, 2003). Unfortunately, the statistics show that there have been many cases where juveniles who have associates were punished far more harshly than those who did not have associates. For instance, Tables 10-10.7 demonstrate that there are significant differences between associates in discretionary and fixed lashes and jail time, because the juveniles who had associates seemed to receive more severe punishment than those who did not. According to Table 10.2, the median scores for discretionary lashes for juveniles who had associates is 100.00 while it is much lower for those who had not, at 60. Further, according to Table 10.5, the median scores for jail sentences for juveniles who had associates is 12.00, while it was much lower for those who had not by 1.00.

Table 10. Ranks on sentences\_lashes by Associates

	Associates	N	Mean Rank	Sum of Ranks
sentences_lashes	Yes	287	178.47	51220.50
	No	57	142.45	8119.50
	Total	344		

Table 10.1: Test Statistics on sentences\_lashes by Associates

	sentences_lashes
Mann-Whitney U	6466.500
Wilcoxon W	8119.500
Z	-2.515-
Asymp. Sig. (2-tailed)	.012

Table 10.2: Report on sentences\_lashes by Associates

Associates	N	Std. Deviation	Median
Yes	287	363.830	100.00
No	57	86.290	60.00
Total	344	337.711	90.00

Table 10.3: Ranks on sentences\_jail by Associates

	Associates	N	Mean Rank	Sum of Ranks
sentences_jail	Yes	287	183.54	52675.00
	No	57	116.93	6665.00
	Total	344		

To explain the output from Tables 10-10.2, it can be seen that there are no violations for SPSS assumptions. The main relevant value is the Z value; this can be found in the table titled Test Statistics (Table 10.1). The Z value is -2.515 so the result is very significant (i.e. the differences between juveniles who had associates and those who did not in the sentences\_lashes are statistically important as it is proved that the significance level is .012, which is lower than .05). As a result, according to Table 10, the mean ranks for juveniles who had associates is (178.47), while for juveniles who did not have associates it is (142.45). According to Table 10.2, the median scores for juveniles who had associates is 100.00, while it is much lower for those who did not, by 60.

For Tables 10.3-10.5, there are no violations for SPSS assumptions. The most relevant value is the Z value; this can be found in the table titled Test Statistics (Table 10.4). The Z value is -4.646 so the result is very significant (i.e. the differences between juveniles who had associates and those who did not in the sentences\_jail are statistically important as the significance level is .000, which is lower than .05). As a result, according to Table 10.3, the mean ranks for juveniles who had associates is (183.54), while for juveniles who did not have associates it is (116.93). According to Table 10.5, the median scores for juveniles who had associates is 12.00, while it was much lower for those who had not by 1.00.

However, the prevalence of fixed lashes as a punishment was higher for those who did not have associates. According to Table 10.6, the mean ranks for fixed lashes for juveniles who had associates was 166.62, while for juveniles who did not have associates it was 202.12. This significant statistical difference in fixed lashes between juveniles who had associates and who did not lead one to question why. Bearing in mind that the fixed lashes are predominantly determined by God, they cannot vary from person to another. To cap it all, in my work as a paralegal I have repeatedly seen how fixed penalties are added to extra discretionary punishments without clear criteria. Again, it is very important to create a balance between the crime, its punishment and the issue of the juvenile’s associates. However, Ibn Alqayim (1999, p.394) has a different opinion, as he responded to Awadh when he claimed that the complete legislative power is for God. He gave some room for the ruler to legitimate some penalties for Ta'zir crimes, as well as to legislate certain conditions for crimes. Ibn Alqayim (1999, p.394) tried to respond to this, claiming that since the crimes' results are different due to their abundance or otherwise, as well as their strong or weak impacts, the crimes' penalties are authoritatively given to the Imams/qadis to choose a balance that is suitable for penalizing based on public interest, place, time and the criminals themselves. However, Ibn Alqayim argued any consolidation between time, place or criminals in the penalty demonstrates a misunderstanding of Islamic law. In elaborating on the output from Tables 10.6 and 10.7, it is evident there are no violations for SPSS assumptions. The main value that is pertinent is the Z value; this can be found in the table titled Test Statistics (Table 10.7). The Z value is -5.475 so the result is very significant (i.e. the differences between juveniles who had associates and those who had not in the sentences\_fixed are statistically important as it is proved that the significance level is .000, which is lower than .05). As a result, according to Table 10.6, the mean ranks for juveniles who had associates was 166.62, while for juveniles who did not have associates it was 202.12.

Table 10.4: Test Statistics on sentences\_jail by Associates

	sentences_jail
Mann-Whitney U	5012.000
Wilcoxon W	6665.000
Z	-4.646-
Asymp. Sig. (2-tailed)	.000

Table 10.5: Report on sentences\_jail by Associates

Associates	N	Std. Deviation	Median
Yes	287	30.801	12.00
No	57	7.356	1.00
Total	344	28.933	7.00

Table 10.6: Ranks on sentences\_fixed by Associates

	Associates	N	Mean Rank	Sum of Ranks
sentences_fixed	Yes	287	166.62	47819.00
	No	57	202.12	11521.00
Total		344		

Table 10.7: Test Statistics on sentences\_fixed by Associates

	sentences_fixed
Mann-Whitney U	6491.000
Wilcoxon W	47819.000
Z	-5.475-
Asymp. Sig. (2-tailed)	.000

4.4 Juveniles' Verdicts: Crime Types

The researcher decided to choose certain cases (i.e. Ta'zir crimes) that truly show situations where the fixed punishments are not applied, yet corrective punishments were alternatively applicable, but extremely different in quantity. In other words, four specific crimes were selected: theft, adultery, use of drugs and alcohol, and Hirabah (i.e. armed robbery). The reason is that these crimes are considered the most dangerous in Saudi society and, hence, have more severe punishments in Sharia. This can be seen, for instance, in Tables 11-11.6.

It would appear that displaying variables inside the judicial decisions, noting the frequency and percentage, should provide a clearer picture about the corrections that can be achieved. Thus, to describe the percentages and frequencies for the offences in this chapter, Table 11 illustrates that four crimes are already fixed in Sharia, yet some of their conditions had not been met, so discretionary punishments are applicable, such as undetermined flogging and jailing. This represented 39.2% or 135 cases for theft offences. With regard to the crime of adultery, this comprised 7.8% or 35 cases, while drugs and alcohol crimes constituted 17.2% or 59 cases. Furthermore, Hirabah crime was committed 35.8% of the time, or in 123 cases.

Table 11. Offences

Standard Attributes	Label	Value <none>	Count	Percent
Valid Values	1	Theft	135	39.2%
	2	Adultery	27	7.8%
	3	Drugs and alcohol	59	17.2%
	4	Hirabah (armed robbery)	123	35.8%

These discretionary sentences varied, even for the same crime, such as theft. It is argued here that the main reason could be that the law has not been codified, and there is no Tadwin or any criteria upon which the judge can prescribe the sentences. However, some Saudi judges were confused and prescribed paradoxical decisions, even when some of them depended on legal maxims. Alkhunain (2010, p.81), who was seen a stereotype for other judges, wrote on how to determine discretionary punishment. Alkhunain posited that discretionary punishment should be similar to fixed penalties for similar crimes. Thus, for the crime of promoting drug use, the discretionary penalty of flogging was similar to that for drinking alcohol, a fixed penalty. Unfortunately, Alkhunain's paper has arguably not assisted in reforming the situation with regard to this research since some judges have prescribed combined punishments (i.e. severe flogging with long jail terms). Further, there are no similar punishments for some discretionary crimes that are comparable to those with fixed penalties in Islamic law. For example, in theft crimes where the conditions for the fixed penalty (i.e. cutting the right hand off) are missed, the discretionary penalty, however, is not, and cannot be, similar to the fixed one.

Tables 11.1-11.6 show that there are significant differences in all three punishments (discretionary lashes, jail and fixed lashes) for the four crimes that are the focus of this paper (adultery, theft, the consumption of alcohol and/or drugs, and Hirabah). For adultery, the jail penalty is the highest, at 222.63 months (Table 11.1). In contrast, alcohol and drugs punishment are the lowest, with jail terms of 95.18 months. Both crimes have alternatives in

terms of punishments according to Alkhunain (2010); for example, jail may not be an appropriate sentence for adultery and alcohol since these two crimes can both be altered in lashing (i.e. because their fixed penalties were whipping, yet the judges herein mixed jail with discretionary lashing). Muhammadin (2011) argues that jail sentences can be altered in other social, economic and personal ways, but did not clarify what precisely what he meant, such as house arrest or curfews, or even fines. Nor did he provide a plan for applying his argument.

Table 11.1: Ranks on sentences\_jail by Offence

	Offence	N	Mean Rank
sentences_jail	Theft	135	161.41
	Adultery	27	222.63
	Drugs and alcohol	59	95.18
	Hirabah (armed robbery)	123	210.76
	Total	344	

Table 11.2: Test Statistics on sentences\_jail by Offence

	sentences_jail
Chi-Square	63.154
df	3
Asymp. Sig.	.000

Table 11.3: Ranks on sentences\_lashes by Offence

	Offence	N	Mean Rank
sentences_lashes	Theft	135	152.76
	Adultery	27	224.78
	Drugs and alcohol	59	132.68
	Hirabah (armed robbery)	123	201.79
	Total	344	

Interpretation of the output from Tables 11.1 and 11.2 shows that there are no violations for the SPSS assumptions. The main values pertinent are the Chi-square, degree of freedom (df) and significance level values; these can be found in the table titled Test Statistics (Table 11.2). The Chi-square value is 63.154 so the result is very significant (i.e. there are huge differences in lashing juveniles according to their age group, as it is proved that the significance level is .000, which is lower than .05). As a result, according to Table 11.1, the mean rank for theft is 161.41, while for adultery this is 222.63. Also, the mean rank for drugs and alcohol is 95.18, and for Hirabah (armed robbery), it is 210.76, so this indicates that the sentence for adultery is the most severe punishment, but a question remains as to why. This might indicate the presence of ambiguity.

Table 11.4: Test Statistics on sentences\_lashes by Offence

	sentences_lashes
Chi-Square	33.365
Df	3
Asymp. Sig.	.000

Table 11.5: Ranks on sentences\_fixed by Offence

	Offence	N	Mean Rank
sentences_fixed	Theft	135	162.54
	Adultery	27	173.17
	Drugs and alcohol	59	209.42
	Hirabah (armed robbery)	123	165.58
	Total	344	

Table 11.6: Test Statistics on sentences\_fixed by Offence

	sentences_fixed
Chi-Square	49.849
Df	3
Asymp. Sig.	.000

In terms of Tables 11.3 and 11.4: there are no violations for SPSS assumptions. The main values that are relevant are the Chi-square, degree of freedom (df) and significance level values; these can be found in the table titled Test Statistics (Table 11.4). The Chi-square value is 33.365 so the result is very significant (i.e. there are huge differences in lashing juveniles according to their age group, as it is proved that the significance level is .000, which is lower than .05). As a result, according to Table 11.3, the mean rank for theft is 152.76, while for adultery it is 224.78. Also, the mean rank for drugs and alcohol is 132.68, and for Hirabah (armed robbery) it is 201.79, which indicates that the sentence for adultery is the most severe in terms of discretionary lashes.

Interpretation of the output from Tables 11.5 and 11.6 shows that there are no violations for SPSS assumptions. The main values relevant are the Chi-square, degree of freedom (df) and significance level values; these can be found in the table titled Test Statistics (Table 11.6). The Chi-square value is 49.849 so the result is very significant (i.e. there are huge differences in lashing juveniles according to their age group as it is proved that the significance level is .000, which is lower than .05). As a result, according to Table 11.5, the mean rank for theft is 162.54, while for adultery it is 173.17. Also, the mean rank for drugs and alcohol is 209.42, and for Hirabah (armed robbery) 165.58, which indicates that drug and alcohol sentences are the most severe punishment in terms of fixed lashes, but a question again remains as to why. There is no clear answer from the judges. For adultery, discretionary lashes also numbered the highest, at 224.78 (Table 11.3), and again, the crime of alcohol and drugs consumption was the lowest in discretionary lashes at 132.68. The fixed lashes penalty was the highest for alcohol crime at 209.42 (Table 11.5), while theft crimes had the lowest rate with 162.54. One of the most remarkable notes here is that judges are combining fixed and discretionary penalties. Moreover, through looking at Table 11.5, something rather strange can be seen, which is that theft has a fixed lashes penalty other than the cutting of the hand off. The reason why this sounds strange is that theft does not have a fixed lashes penalty, so the verdict might be vague or accommodated wrongly or not accurately (i.e. the case was accommodated as theft while inside the case the culprit admitted that he/she had drunk alcohol, but not theft, so the judge prescribed two penalties: one was for theft and the other was for alcohol).

4.5 Juveniles' Verdicts: Previous Convictions

There are no significant differences in all three penalties (discretionary lashes, jail and fixed lashes) in relation to juveniles' precedents, as can be seen in Tables 12-12.5. This indicates that precedents were not taken into account by judges when dealing with juveniles' crimes. However, precedents were written down by a public prosecutor so as to trace the juvenile's situation in order to maximize the penalty when the crime was committed for a second time. Alotaibi (2003, p.464) reports that according to Saudi ulema's fatwa number (1/43) and the Saudi juveniles' system, they are allowed to record juveniles' precedents if they are aged 15 and above in a special file in the court. Yet, Alkhunain (2010, p.96) has forgotten to exempt juveniles from having their sentences increased in cases of recidivism, so it is understood that his paper advises judges to consider precedents in the verdicts, even if the accused is a juvenile.

Table 12. Ranks on sentences\_jail by Precedents

	Precedents	N	Mean Rank
sentences_jail	Yes	89	176.42
	No	183	174.73
	Not specified	72	161.99
	Total	344	

Table 12.1: Test Statistics on sentences\_jail by Precedents

	sentences_jail
Chi-Square	1.047
Df	2
Asymp. Sig.	.592

Table 12.2: Ranks on sentences\_lashes by Precedents

	Precedents	N	Mean Rank
sentences_lashes	Yes	89	177.70
	No	183	175.02
	Not specified	72	159.67
	Total	344	

Table 12.3: Test Statistics on sentences\_lashes by Precedents

	sentences_lashes
Chi-Square	1.581
Df	2
Asymp. Sig.	.454

Table 12.4: Ranks on sentences\_fixed by Precedents

	Precedents	N	Mean Rank
sentences_fixed	Yes	89	169.63
	No	183	174.06
	Not specified	72	172.08
	Total	344	

Table 12.5: Test Statistics on sentences\_fixed by Precedents

	sentences_fixed
Chi-Square	.593
Df	2
Asymp. Sig.	.743

The results here indicate that there are no significant differences in jail sentence with regard to precedents of juveniles as the significance value shown in Table 12.1 is .59, which is more than (.05/ P value). Additionally, there are no significant differences in lash sentences with regard to precedents according to Table 12.3, as the P value is .454, which is more than .05. In addition, according to Table 12.5, there are also no important differences in the fixed lashes penalty with regard to precedents since the P value is .743, which is more than .05.

### 5. Summary and Recommendation

This paper has discussed Ta'zir in conjunction with SPSS analysis and the results thereof. Thus, in Ta'zir crimes and their penalties in the Islamic juveniles' system, only jailing and flogging in the judicial applications related to juveniles. Otherwise, the other penalties (e.g. admonition, reprimand, threat, fine and seizure of property) were dismissed or, at best, mentioned in very rare cases (to the degree that they were statistically not significant). This led to an analysis of Ta'zir penalties via further SPSS calculations. In short, the tables indicated in the text above show that there are strong relations between factors such as gender and age groups in Saudi juveniles' verdicts with associates, while there are no strong relations between both gender and age grouping in relation to juveniles' judicial precedents. Furthermore, there were considerable inconsistencies in the discretionary lashes and jail punishments with regard to both genders, except in respect of fixed lashes. Additionally, there were substantial differences in the discretionary lashes, fixed lashes and jail penalties with regard to juveniles' associates, the four discretionary crimes and age groups. However, there were no statistical differences in those three punishments with regard to the juveniles' judicial precedents. Thus, the inconsistency extended to cover almost all the four thematic areas in the Saudi juveniles' system (i.e. codification/Tadwin, the age of criminal liability, crime classification, and punishment). Some potential solutions have been discussed in past papers,<sup>10</sup> except for the classification of crimes and consistency in sentencing, as these have been left until now, in order to develop a clearer picture of juvenile crime and punishment.

I would strongly suggest that juveniles' crimes classification and punishment should be re-organised again into distinct procedures, rather than focusing on penalizing. The names of crimes cannot be altered in Sharia law, but crimes can, however, be classified according to their punishment in Islam. Hence, the paper has considered

penalties that are considered *Hudud*, *Qisas* and *Tazir* penalties<sup>11</sup>. *Hudud* (fixed) offences refer to those with a fixed penalty that is mostly due to Allah's right (Almarghinani, 2006, p.200). *Hudud* crimes are not just limited to only one crime, generally covering seven crimes, that are, adultery, defamation, drinking wine, theft, rebellion, banditry (armed highway robbery) and apostasy. With regard to the complex legal nature of the Islamic law, it should be borne in mind the difficulties in translating some of its terms, cultural and historical styles. Added to this, some authors on Islamic law generally do not refer to their original resources, such as books of the four schools. Bassiouni (1982) reported that this writing style is commonly practised by some Islamic scholars (e.g. Awadh, 2008) as they assume that those books were well known to everyone. *Qisas* crimes can be defined according to Almawardi (2013, p.303) as "a punishment that is pre-determined by Sharia, in which the human right is predominant". *Ta'azir* can technically be defined as a discretionary punishment prescribed by the ruler for crimes committed against Allah or individuals, where there is no fixed penalty nor expiation (Ibn Farhoun, 2002, p.217).

In juveniles' crimes, however, we cannot rely on punishment since juveniles are not capable of withstanding such penalties, and thus we need to concentrate on two elements – rehabilitative and corrective procedures. Rehabilitative procedures can be defined according to Aljundi (1986, p.70) as being "diverse policies that involve varied educational, economic and social procedures against juveniles". Such rehabilitative procedures would be applicable to juveniles aged between 11-15 years old. Additionally, these varied rehabilitative processes can include, but are not limited to, returning the juveniles formally to sound parents/guardians,<sup>12</sup> sending the juveniles to an appropriate vocational, industrial or commerce institutions to be trained,<sup>13</sup> involving the juveniles in certain duties (e.g. attending useful lectures etc.), exercising admonition and reprimand, and finally, depositing the juveniles in social welfare institutions or appropriate hospitals. In short, these rehabilitative processes can derive their legitimacy from Sharia policy as long as they do not breach Sharia interests in upholding goodness and preventing evil (Ibn Alqayim, 2014, p.16).

In contrast, corrective procedures are a bit stronger than rehabilitative ones. Therefore, corrective processes are only applied to juveniles who have committed serious crimes (e.g. murder, *Hudud* crimes) and those aged 15-18 years old. Further, these corrective procedures can involve some other people (i.e. juveniles' relatives in paying the blood money). Examples of these procedures can include, but are not limited to, financial corrective punishment (e.g. blood money, fines, seizure of property or the item used in the crime, being dismissed from their employment) and negative corrective procedures for freedom (e.g. temporary imprisonment in an appropriate social institution, exile). Please note that the time span for these procedures varies from person to person, and place to place. However, it is the responsibility of the legislative and judicial authorities in Saudi to decide which time span is most beneficial for juveniles, bearing in mind determining an appropriate maximum amount for those procedures in order to employ the principle of individualization of punishments and legislation. Until then, I beg to move a motion in Saudi Shura to discuss these vital matters, since I have identified these problems and suggested some possible solutions for them.

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## Notes

<sup>1</sup> - The Hanbali doctrine is the juristic foundation for all Saudi courts, including juveniles. It is basically based on the Quran, Hadith and other related restricted interpretations.

<sup>2</sup> - The reason for this was because of mis-archiving the cases (i.e. the archive has separately transferred to the criminal court while they were archived either at the general or at the juveniles' circle courts, so some cases were missing by the court's clerks).

<sup>3</sup> - The condensed data do not demonstrate rigorous requirements, nor do they make assumptions about the population distribution as most of the data are categorical. If the data do not have rigorous requirements nor make assumptions about population distribution, then there is no need for a parametric statistic (Pallant, 2013, p.221), for instance, if most of the data are measured to be categorical or nominal (e.g. gender, crime type, associates). Thus, the variables do not have a meaning for rank or order to them.

<sup>4</sup> - I.e. the archive has been separately transferred to the criminal court over long intervals while they were already archived either at the general or at the juveniles' circle courts. Hence, some cases were mislaid by the court's clerks.

<sup>5</sup> - This is according to the recent new judicial law (2007), as there were many barriers to it, such as funding and facilities for new court buildings etc. As a result, the legislature decided to allow about five years as a preparation period in order to implement the new law. However, during this period the cases mentioned above will be directed to the general court as usual.

<sup>6</sup> - Discretionary lashes, fixed lashes and jail.

<sup>7</sup> - An argument arises between jurists regarding whether or not a judge can exceed, by corrective flogging, the fixed amount of lashing in Hudud crimes. Logically, flogging may have minimum and maximum amounts in order to be appropriate, as well as to give the judge more room to navigate and more choices to apply, rather than confining himself to very few options and thereby not taking individual circumstances sufficiently into account. However, different opinions exist about the minimum amount of lashing. First, some jurists (such as Ibn Abidin, 2000) argue that the minimum level is three lashes, therefore, it must be applied where the minimum level is to be chosen. Secondly, others (such as Ibn Qudamah, 1999) believe that there is no minimum amount for lashing in Islamic law because if it is specified, it must be like a fixed penalty (i.e. Hudud), while in reality it is not fixed since it is called discretionary punishment, and it should be left for the judge to decide what is suitable for the juvenile.

On the other hand, in terms of the maximum amount, jurists are divided into three clusters, relying on some Hadiths. First, some Hanbali scholars (e.g. Ibn Qudamah, 1999) claim that the maximum level for flogging is ten lashes, as, according to the Hadith, "do not inflict more than 10 lashes unless in Hudud crimes" (Bukhari, 1987; Alqushairi, 2013). Secondly, the majority of scholars (e.g. Hanafi and Shafie) believe that it is 39 floggings because it is less than the fixed penalty, which is 40 lashes, for the crime of drinking, according to Hadith: "whoever reaches with his verdict the fixed penalty, then he will be regarded [a] transgressor" (Almawardi, 2013, p.236).

Thirdly, Maliki scholars (e.g. Ibn Farhoun, 2002) are of the view that there should be no maximum amount for flogging because it is a matter for the judge's discretion. Aljundi (1986) tried to arrive at somewhat of a balance, and argues that there should be a maximum amount for flogging in adult crimes (i.e. 39 lashes), whereas for minors it should be 10 lashes maximum, because a minor cannot bear flogging. This means that the punishment of lashing must not be applied other than in highly necessary cases, as it should be remembered that all punishment must be as suitable. Consequently, if injuries result from the beating (lashing), then compensation should be due (Aljundi, 1986). Notwithstanding this, I personally call for the abolition of the penalty of lashing

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completely. One reason for this is what Sheikh Abu Zahra (1998, p.339) stated: that the discreet child (i.e. aged 11-18 years of old) can be corrected, yet not punished. This means that when the juveniles' judges decide upon minors' crimes, then the judges should take into account that the procedure/s is for correcting or rehabilitating juveniles, not only to punish them. There is a huge difference between the principles of punishment and rehabilitation. Another reason that will shortly be apparent is that, if those lashes had been, by any means, useful in addressing juveniles' crimes, then surely their crimes should have stopped. Regrettably, lashes were not the best solution and, hence, it has not prevented juveniles' crimes or, at least, minimized them in Saudi juveniles' courts.

<sup>8</sup> - Please note that in respect to jail sentences, the paper uses months; however, for sentences of less than a month (i.e. 10 or 19 days) all of the sentences will be rounded up to ensure that they are all included.

<sup>9</sup> - One reason for this is that the complete meaning of the crime already exists from the adult's side.

<sup>10</sup> - For instance, Ma'bdah (2011) argues that the age of Ibadaat (i.e. religious affairs) should be 15 for boys and girls. Children can learn how to pray and so on from a reasonable early age, that is, 7 years old. However, the age of Muamalaat (e.g. criminal responsibility) needs more awareness and cautiousness based on some exposure to life. Therefore, this should be at the age of 18 years old for both genders, as the majority of juristic doctrines do not differentiate between boys and girls in terms of age.

<sup>11</sup> - Ta'azir can technically be defined as a discretionary punishment prescribed by the ruler for crimes committed against Allah or individuals, where there is no fixed penalty nor expiation (Ibn Farhoun, 2002, p.217).

<sup>12</sup> - The Prophet said in the Hadith "the child's right over his/her parents is to educate and guide him/her". Hence, the parents must be more honest in their parental responsibilities as to take the matter of bring up the children seriously.

<sup>13</sup> - Omar Ibn Alkhattab, the second successor caliph, said "when I see a wonderful teenager, I would ask does he have a job? If not, it would be a shame."

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