

EFFECTS OF KANO STATE SHARIA PENAL CODE LAW ON THE EMBEZZLEMENT OF PUBLIC FUNDS

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Abstract

Embezzlement as an act of criminal deception and betrayal of trust, in all its form and manifestation has not only been perfected in Nigeria but has become the order of the day- a means of earning a living. The teachings of Islam against embezzlement begin from its injunctions on morality and all sorts of virtuous conducts. Islam does not approve fraud in all its forms and dimensions. It is totally condemned and has been categorized under grave sins in Islam. To be dishonest after being entrusted with a wealth or any kind of trust, is an aspect of fraud and condemned in Islam. Any form of accumulation from the public treasury or property is condemned in Islam however little it may be. Even if it were taken from war booty before its distribution, whatever is taken is a fraud. Hence Kano State Legislatures enacted a law that provide the punishment for the offence of embezzlement in a public service. This paper adopted doctrinal legal research method to examine the offence of Embezzlement and its punishment under the Islamic Law and the Kano State Shari'ah Penal Code Law 2000. The findings revealed that although the Legislatures have the power to enact the law, such law must be in conformity with the Shari'ah. The provisions of the Kano State Shari'ah Penal Code Law, 2000 categorized the offence of embezzlement under Hudud offences punishable with amputation which is contrary to the principles of Shari'ah law, hence the need for its review.

Keywords: Embezzlement, Shari'ah, Punishment, Ta'azir, Funds

Introduction

Islamic criminal law has provided deterrent, reformatory, retaliative and other kinds of punishments to maintain peace in the society and reform the offenders. In the absence of a proper criminal law, the entire social structure of a society stands on a very weak footing. Merely prohibiting the commission of an offence by the government does not guarantee the effectiveness of such prohibition and if there is no punishment for such offence, the society will be full of crimes and evil-doers (Anwarullah, 2006). In order to protect public properties against wrongful inversion, Shari'ah has made embezzlement of public fund *khiyarul Amana* a punishable wrong and regarded it as an offence under *Ta'azir* (penal punishment) being an offence committed by someone having direct access to the custody of the property *hirz*.

With the codification of Islamic law of crime by Kano State government and its implementation in the year 2000, the Code provides amputation as punishment for the offence of embezzlement of public or private funds (such as funds of a bank or Company by officials and employees) (s1 34B of Kano State Shari'ah Penal Code Law, 2000).

Generally, the idea behind punishment of offences in Islam (the offence of embezzlement inclusive) is to serve as a deterrent to the offenders so that there may be peace in the society, because Islam wants to build a healthy *Ummah* with minimal criminal tendencies. Therefore, the offence of embezzlement is considered crime and injurious sin.

Islam has in its polity; a dynamic system of leadership, whose principles are deeply rooted in the moral teachings of righteousness. In conduct and foremost of these righteous conducts are trustworthy, honesty, truthfulness and probity. In Islam leadership is generally based on justice, meaning that it takes and returns to people whatever is taken from them unjustifiably. Leadership position is essentially a trust *Amana* that will certainly be accounted for by those entrusted with authority. Morality is low among societies now a days and politics has been synonymous with deceit, hypocrisy, treachery and fraud. Even religion is not spared from corruption and ungodly manipulations for selfish ends. While the poor are getting poorer by the day, those in authority are getting richer from their ill-gotten wealth mostly embezzled from public treasury (Aliyu, 2000).

Problem Statement

Just like the practice of *Shariah* across the globe, the Kano State Shari'ah Penal Code Law provided the punishment of theft *sariqa* and embezzlement of public funds to be amputation of the right hand wrist under the chapter of *hudud* offences. It is evident that embezzlement is quite different from theft *sariqa*. Under Islamic criminal law, the former is punish under *ta'azir* and the latter is classified as *hadd* offence. Bambale, (2003, p. 54) and section 133 of Kano State Shari'ah Penal Code Law stated that for the offence of theft to be committed, the stolen property must have been taken out of its place of custody *hirz*, that is to say the offender must not have access to the stolen property. In the other hand, As-Sanani, (1996, p. 440) stated that in embezzlement, the offender must have access to the wealth taken. Also Black's Law dictionary sixth edition defined embezzlement as fraudulent appropriation of the property by one lawfully entrusted with its possession. *Qur'an* 5:38 provides the punishment of theft *sariqa* to be amputation of the right hand wrist.

Preceding studies on the subject matter focused on overseas; hence, there is paucity of study on *Shariah* penal code law on the embezzlement of public funds in Nigeria. This therefore establish research gap to conduct further study. Consequently, this study intends to answer the following questions:

1. Can *ta'azir* offence be equated with the offence of theft *sariqa*?
2. Where a person has access to safe custody *hirz* and then committed theft, does that warrant the amputation of his right hand wrist?
3. What is the extent of power given by the *Shari'ah* to people in authority to make decisions in respect of crimes of penal nature i.e. *ta'azir* offences?

The questions would be looked into, to determine whether the punishment for

embezzlement of public funds as provided under the Kano State Shari'ah Penal Code Law is in line with provision of *Shari'ah*.

Methodology

The methodology employed doctrinal legal research to examine the effects of *Shariah* penal code law on the embezzlement of public funds. It is essentially a library-based study. references were made to relevant textual authorities from the holy *Qur'an*, *Sunnah* of the holy prophet (S.A.W), relevant text books, statutory provisions of Kano State Shari'ah Penal Code Law and other relevant materials for the purpose of enhancing this research work.

Conceptual Discourse

Nature of Embezzlement

According to Siti,Norajila, &AbdHalim, (2013) embezzlement is among the dishonest act or fraudulent activities and regarded it as one of the worst form of fraud in Islam. Hazrat Imam Ja'far as-Sadiq (a.s.) says:“Fear Allah! And return the entrusted thing to the owner. Even if the murder of Ali (A.S.) entrusts me with something, I shall deliver it to him (when he desires)” (Sayyid Abdul Husayn, 2001, p. 6). Muhammad Bin Qasim says that he mentioned to AbulHasan, Imam Musa al-Kadhim (A.S.) regarding the person who had entrusted someone with something valuable. “The trustee is an Arab and he is competent enough not to return the trust. Whereas the one who entrusts is a wretched Khariji i.e. enemy of *Ahlul-Bayt* Imam (A.S.) said, “Tell him to return the trust, because it is a divine trust that he is entrusted with”.(meaning that it is a trust, which is to be restored according to divine command).The holy prophet (S.A.W) says:“One who embezzles a property in his charge and does not deliver it to its owner and dies in such a condition, then he does not die in my community (he does not die a Muslim). When such a person meets Allah, He shall be infuriated with him. And one who purchases an embezzled property knowing that it is embezzled is just like the (actual) embezzler” (Sayyid Abdul Husayn, 2001).

According (Pindiga, 2000), embezzlement is an illegal act of taking something from the trust property by the trustee, who is in possession whose access to the stolen property is unrestricted. Theft *sariqa* is an illegal means of acquiring another's property (Doi,1984). Before the offence of theft is established, the property must be stolen from a secured place *hirz* and the culprit must not have been entrusted with the property before (Orire, 2007). As-Sanani, (1996), the punishment of embezzlement is provided in a *hadith* where the holy prophet (S.A.W) is reported to have said:“cutting off the hand is not to be inflicted on a dishonest person, an embezzler and a looter”. Going by the provision of the above *hadith*, it clearly indicates that the hand of an embezzler cannot be amputated.

The most hateful form of fraud in Islam is that committed in public office or responsibility or any level of leadership. In Islam, public responsibility and leadership is a trust (Salisu, 2007).Therefore, whatever position a person holds in any public office he or she is definitely holding a trust as clearly stated in the Hadith of Abu Dharr

Al-Giffari wherein the Holy Prophet (S.A.W.) tells him that “it is a trust”. He will be called on the Day of Judgment to account for his actions and stewardship while holding that particular post (Salisu, 2007, p. 84).

On trust, Allah (S.W.A.) said in the holy *Qur'an* 8: 27 thus:

○ you who believe! Betray not Allah and His Messenger, nor betray knowingly your *Amanat* (things entrusted to you and all the duties which Allah has ordained for you).

Furthermore, in *Qur'an* 3: 161 Allah (S.W.A.) said:

It is not for any prophet to take illegally a part of the booty *Ghulul* and whoever deceives his companions as regard the booty, he shall bring forth on the Day of Resurrection that which he took (illegally). Every person shall be paid in full what he has earned and they shall not be dealt with unjustly.

In view of the above verses of the holy *Qur'an*, it clearly shows that any form of accumulation of wealth from the public or private treasury is condemned in Islam however little it may be. Even if it were taken from war booty before its distribution whatever is taken is a fraud. Explaining how this should be enforced by the *Amir/Sultan* (President/Governor, etc.,) in *Dhiya al- Hukkaam*, Sheikh Abdullahi Fodiyo states it is an essential obligation upon him (the leader) that he should be examining his:

Employees (Subordinates) by seeking to know them, assessing their wealth before appointment, and looking from time to time in to their works. He shall rebuke anyone who fails in his duty, dismiss those who transgress, and replace any person against whom many complaints were made. Whoever is found to have wealth above what he earns from his work, the ruler shall confiscate and restore it to the treasury. If he is doubtful about the origin of the wealth, he shall confiscate half of it from the employee (Salisu, 2007).

According to theologians, the leader should be to his employee like a shepherd among wild lions: they look after his subjects for him and he looks after them. All corruptions come from evil employees. The leader should investigate the case of any person in whose house wine and immoral persons are testified by competent witnesses, to have existed. He shall investigate the allegation: if it is true, he should punish the accused and stamp out the corruption; otherwise he shall warn and chide him (Salisu, 2007).

The Holy Prophet (S.A.W) is said to have observed that:

Whosoever we appoint an offer and misappropriates needle or even a less expensive thing will be required to come with it on doomsday (HasanuzZaman, 1991).

Also, another hadith said: If we appoint anybody to a job and pay him subsistence and then he takes anything in addition to it, this is embezzlement ((HasanuzZaman, 1991, p. 84). In *Sahih Al-Bukhari* Volume 4, *Hadith* no. 307 narrated Abu Hurairah (R.A): The Prophet (S.A.W.) got up amongst us and mentioned *Al-Ghulul*, emphasized its magnitude and declared that it was a great sin saying:

Don't commit *Ghulul*, for I should not like to see anyone among you on the Day of Resurrection carrying over his neck a sheep that will be bleating, or carrying over his neck a horse that will be neighing. Such a man will be saying: 'O Allah's Messenger! Intercede with Allah for me, and I will reply, 'I can't help you, for I have conveyed Allah's message to you.' Nor should I like to see a man carrying over his neck, a camel that will be grunting. Such man will say, 'O Allah's Messenger! Intercede with Allah for me, and I will say 'I can't help you for I conveyed Allah's message to you'. Or one carrying clothes that will be fluttering, and the man will say 'O Allah's Messenger! Intercede with Allah for me. And I will say 'I can't help you for I have conveyed Allah's message to you.

Anwarullah, (2006) stated that the holy Prophet (S.A.W) said:

A man having four qualities is a hypocrite if he possesses one of the four qualities; he has then one quality unless he shakes it off. The qualities are:

1. He commits breach of trust whenever something is kept in his custody.
2. Whenever he tells something, it is a lie.
3. When he enters into a contract, he is dishonest and
4. When he picks up a quarrel he abuses.

In addition, the holy Prophet is reported to have observed that:

Whoever gets an office in our administration he may marry if he is unmarried; he may get a house if does not possess it; he may have a riding animal if he does not own it; he keep a servant if he does not have one. But if anybody hoards wealth or rears a flock of camels (with government funds) God shall make him rise up as the one who misappropriates or who cheats us (HasanuzZaman, p. 355).

Islam does not approve of fraud in all its forms and dimensions, as it is totally condemned and has been categorized under grave sins in Islam. These are sins that have been greatly abhorred and its perpetrators have been condemned as wicked miscreants. One of the various levels and forms of fraud and corruption is to betray one's trust and to be dishonest after being entrusted with a wealth or any kind of trust (Salisu, 2007).

From the above authorities, it can be understood that any wealth earned through any of the evil ways mentioned above is unlawful and illegal *haram*. Muslims therefore have been enjoined to find lawful means of earning a living.

Accordingly, in the Hanbali's School of thought, if a person breached a dwelling by striking down a wall or damaging the door and the owner learned of that breach, yet nevertheless ignored it, and thereafter the person entered the dwelling and took a property, he is guilty of embezzlement (Hisham, 2006, p.13). The person in the first instance is culpable of damaging the dwelling only since he did not take any property, and the person in the second instance is guilty of embezzlement because the taking of protected property requirement is absent (Hisham, 2006).

Concept of Embezzlement

Embezzlement *Khiyarul Amana* is one of the worst forms of fraud and dishonest acts which may occur with regard to money. Embezzlement is the act of taking the unpreserved wealth of another person in his absence (As-Sanani, 1996). Also, embezzlement can be defined as taking the property of another with his knowledge, against his will and without using force (Hisham, 2006, p.16). Again, the sixth edition of Black's law dictionary defined embezzlement as fraudulent appropriation of the property by one lawfully entrusted with its possession.

Embezzlement is an act of dishonesty or secreting assets usually financial in nature by one or more individuals to whom such assets have been entrusted with. For instance, a clerk or cashier handling large sums of money can embezzle cash from his or her employer, a lawyer can embezzle funds from client's trust account, a financial adviser can embezzle funds from investors. Embezzlement ranges from the very minor in nature involving only small amounts to the immense involving large sums. More often than not, embezzlement is performed in a manner that is premeditated, systematic and/or methodical with the explicit intent to conceal the activities from other individuals, usually because it is being done without their knowledge or consent.

Elements of the Offence of Embezzlement

The offence of embezzlement is very similar to theft offence and therefore the elements of theft offence apply to embezzlement. These elements are mental and physical elements. However, there are a number of basic differences between theft and embezzlement (Hisham, 2006, p. 12). The elements of the offence of embezzlement refer to the constituent's part of a crime, i.e. what makes such an offence or crime to be called as embezzlement. Hisham, (2006) further stated that for the mental element to be established, two states must be present, i.e. intent and knowledge. He also commented that intent and knowledge are the corner stone in criminal liability under Islamic criminal law, and they are difficult to be ascertained, however they can be inferred upon the circumstances of the act in the following instances if the offender:

Embezzlement and Punishment

The punishment for theft (embezzlement) of government fund and property or Bank and Company is provided under section 134B of Kano Shari'ah Penal Code Law and the section provides that:

Whoever is a public servant or a staff of a private sector including Bank or Company connives with somebody or some other people or himself and stole public funds or property under his care or somebody under his jurisdiction, he shall be punished with the amputation of his right hand wrist and sentence of imprisonment of not less than five years and stolen wealth shall be confiscated. If the money or properties stolen are mixed with another different wealth it will be confiscated until all monies and other properties belonging to the public are recovered. If the confiscated amount and stolen properties are not up to the amount, the whole wealth shall be confiscated and he shall be left with some amount to sustain himself.

The elements or particulars of prove of the offence of embezzlement can be deduced from the above section as follows:

1. He must be an employee of either a public or private sector.
2. He must have been entrusted with a certain property.
3. He must have taken away the property either by himself or in connivance with others.

Once the above mentioned elements are satisfied, the offence of embezzlement is said to be committed under section 134B of Kano State Shari'ah Penal Code Law 2000.

Ruud Peters responded to the issue of equating the punishment for the offence of theft and the offence of embezzlement as contained in section 134 and 134B of Kano State Shari'ah Penal Code Law 2000 respectively as follows:

To the best of my knowledge such offences do not fall under the definition of theft according to classical doctrine and cannot be regarded as a *hadd* crime. The punishment for theft (amputation of the right hand) can only be applied if the stolen goods have a certain minimum value *nisab* and were taken from a locked or guarded place *hirz*. Embezzlement therefore cannot be punished by the *hadd* penalty for theft (Ruud, P., 2003, p. 3 & 23).

In addition to the above context, some classical Maliki authorities regarded the punishment for the offence of embezzlement as lawful on the basis of *ta'azir* (Ruud, P., 2003, p. 3).

In other words, the most favoured view in the Maliki's School is that had punishment will not be inflicted for embezzlement on the basis of the *hadith* of Jabir which reads thus: Cutting off the hand is not to be inflicted on a dishonest person, an embezzler and a

looter (As-Sanani M. I, 1996, p. 440).

Analysing all the cited authorities, one can understand that the punishment of the offence of embezzlement is not fixed, but rather varies in accordance with the gravity and circumstances of the offence committed and the situations of the offender himself. Looking back at the provision of section 134B of Kano State Shari'ah Penal Code Law, 2000 cited earlier, it shows that the culprit must have direct access to the custody and the property is entrusted to him, i.e. directly under his care. Therefore, based on these reasons the offence committed cannot be punishable with amputation of hand, as that is punishment for theft *sariqa*; an offence different and distinguished from embezzlement.

Again, section 134B of Kano Shari'ah Penal Code Law cited earlier indicates that whoever embezzled public or private funds or property (including that of a bank or a company) will be punished by amputation which is the punishment for the offence of theft *sariqa* as provided by the section 134 (1) of the Kano State Shari'ah Penal Code Law as follows:

Whoever commits the offence of theft punishable with *hadd* shall be punished with amputation of the right hand from the joint of the wrist.

In addition to the punishment of amputation of the right hand wrist of an embezzler as provided by the Code, such an offender will be sentenced to imprisonment for not less than five years and the property or wealth shall be confiscated, but where he mixed with another wealth it will be confiscated until all monies and another properties belonging to the public are recovered. If the confiscated amount and stolen properties are not up to the amount, the whole wealth shall be confiscated and he would be left with some amount to sustain himself. Looking closely at section 134B of the Code, one may argue that the section is equated with section 134(1) or has linkage with the section, because it comes under the punishment of theft and of which the offence of the embezzlement is not a theft.

Notwithstanding, the fact that some jurists like Imam Abu Hanifa and Imam Malik are of the opinion that the legislature or a judge has the power of awarding greater punishment *inta'azir* offence i.e equal to *hadd* punishment which depends on the culprit's circumstances and the level of the offence committed. And upon all these, it does not change the offence, but it still remains *asta'azir* offence irrespective of the punishment awarded.

In line with the above context, it can be understood that section 134B ought not to be linked with section 134(1), but rather the section should be under chapter X i.e. *ta'azir* offences.

Punishment of Embezzlement under the Shari'ah

The punishment of the offence of embezzlement under the *Shari'ah* can be found in the following *hadith*:

Narrated Jabir (R.A): The Prophet (S.A.W) said:

Cutting off the hand is not to be inflicted on a dishonest person, an embezzler and a looter (As-Sanani M. I, 1996, p. 440).

Also, the offender shall be punished with *ta'azir* where a servant or employee has committed theft from the custody of his master or employer to which he is allowed access (Anwarullah, 2006, p. 239). The above authority shows that an embezzler should not be subjected to amputation of his right hand wrist. Also in the second authority, it indicates that the punishment of *hadd* should be remitted with *ta'azir* because the act lacks some elements that warrant the *hadd* punishment.

Concept of *Ta'azir* (Discretionary Punishment)

Ta'azir punishments are types of punishments that are not prescribed in the Holy *Qur'an* or *Sunnah* of the Holy Prophet (S.A.W), and are executed under the discretionary powers of a judge or are being prescribed by the legislators (Etim, 2013, p. 228). *Ta'azir* covers acts that are prohibited in the Holy *Qur'an* or *Hadith*, or acts that constitute violation of public morality and welfare that are not classified under *qisas* or *hudud*, like usury, embezzlement, bribery, false testimony, consumption of pork, breach of trust by a public officer (Etim, 2013, p. 228). Discretionary punishment to be delivered for transgression against Allah, or against an individual for which there is neither fixed punishment nor penance (Bambale, 2003, p. 13). By and large, *ta'azir* is another type of punishment for theft offences which fall short of the stipulated conditions necessary to be complied with as a pre-requisite for the infliction of *hadd* punishment.

The Kano State Shari'ah Penal Code Law, 2000 has made embezzlement of public or private funds such as that of a bank or company by officials and employees an offence punishable by amputation of the right hand wrist (Section 134B quoted earlier). On the other hand, all crimes other than those which are liable to *hudud* and *qisas* are liable to *ta'azir* to be fixed according to the nature and severity of the offence. The right of discretion of a legislator or a judge in *ta'azir* is not absolute. It must be based on public interest. Moreover, the offence is compoundable (Anwarullah, 2006).

Jurists concur that there is no limit to the kinds of punishments to be given to the culprits who committed crimes liable to *ta'azir*, and any kind or form of punishment can be given in the opinion of a legislature or judge that is suitable for the reformation of the culprit (Anwarullah, 2006). It is essential to note that jurists differ as to whether *hadd* punishment can be given as *ta'azir* or not. According to some Shafi'i and Hanbali jurists, death punishment cannot be given as *ta'azir*. But according to Imam Abu Hanifa and Imam Malik, the kind and quantum of *ta'azir* have not been fixed and have been left to the discretion of the legislature or judge to fix them in accordance with the circumstances with respect to crime, culprit and society (Anwarullah, 2006).

In line with the above, it clearly shows that two different culprits liable to punishment of embezzlement may be subjected to different *ta'azir* in which the first culprits where for

instance embezzled Ten Thousand Naira Only (N10, 000.00) will receive lesser punishment than the second culprit where for instance he embezzled One Million Naira (N1, 000,000.00) in which he may be subjected to the amputation of his hand by way of *ta'azir*. Consequently, all forbidden or sinful acts, even if they do not constitute *hadd* offences are punishable under the *Shari'ah*.

An important function of *ta'azir* is to provide grounds for the punishment of those who have committed *hadd* crimes or crimes against person but cannot be sentenced to the appropriate punishment for procedural reasons or for the punishment of those who have committed acts that resemble those crimes but do not fall under their legal definitions (Rudolph, P., 2005, p. 66).

Application of Ta'azir

The judge is obliged under *Shari'ah* to make the punishment of *ta'azir* to fit the crime since Allah (S.W.A) says in the *Qur'an* as follows: **Q42:40** "The guerdon of an ill-deed is an ill the like thereof. But whosoever pardoned and amended his wage is the affair of Allah. LO! He loved not wrong-doers". **Q16:126** "If ye punish, then punish with the like of that where with ye were afflicted. But if ye endure patiently, verily it is better for the patient". It has been narrated that the holy prophet (S.A.W) said: "Do not flog (a person) with more than ten lashes except in a legal punishment prescribed by Almighty Allah" (Reima, 2004).

It has also been authentically narrated that Umar may Allah be pleased with him, would discipline people through discretionary punishments such as shaving the head, exiting and beating. He would also burn the shops of those who traded in intoxicants (Reima, 2004). Some scholars, Ibn Hanbal, assert that no *ta'azir* is to be with more than ten lashes because of the above quoted *hadith*, whereas some others including Maliki and Ash-Shafi'i maintain that it may be with more than ten lashes, yet it must not reach the least legal punishment. Still some others say that it varies according to the estimation of those in authority and according to the crime committed ((Reima, 2004).

Instances where Discretionary Punishment *ta'azir* is applied are as follows:

- (a) Acts that technically do not amount to either *qisas* or part of *hudud*. Examples include the theft of an item, the value of which is below *nisab* and illicit sexual acts which do not amount to intercourse.
- (b) Offences which are normally punished under *hadd* but because of some doubt *shubha* or because of want of required proof; they cannot be punished, although it is plausible that the accused person is guilty of the offence. An example to illustrate this point is that a man may be punished under *ta'azir* if it is established that he stayed with a prostitute in a secluded place for a long time. This is because it is probable but not certain, that he has committed the offence of *zina*.
- (c) Acts which are prohibited in the *Qur'an* or *Hadith* or are contrary to public welfare but which are not under *qisas* or *hudud*. Examples include the consumption of

pork, usury, embezzlement or breach of trust by a public officer, false testimony and bribery. This list is not exhaustive.

(d) Acts that violate Islamic norms such as obscenity, provocative dress or a wife's refusal to obey her husband.

Punishment under Discretionary Punishment *Ta'azir*

It is worthy to note that *qisas* and *hudud* have not exhausted crimes under Islamic law. Although an act could be classified under *hudud*, it may not be so punished due to some technical shortcomings. However, no blameworthy act should be left unpunished. Therefore legislators or judges may at their discretion impose corrective punishment on those who have committed had crimes or crimes against person but cannot be sentence to the appropriate punishment for procedural reasons.

The most common forms of punishment allocated under *ta'azir* include flogging, imprisonment, banishment, public rebuke, exposure to public scorn *tashhir*, warning, amputation and death. It should be noted that the amount of the punishment to be awarded under *ta'azir* depends on the serious of the offence involved. What constitutes a serious offence? These include spying for the enemy, homosexual acts, abduction, embezzlement spreading heresies or sorcery etc (Mamman, Ibrahim, & Shaheen, 2011).

Discussion of the findings (Observations)

In line with the discussions in this paper on the examination of the offence of embezzlement and its punishment under the Kano State Shari'ah Penal Code Law, the following issues have been observed:

1. The offence of embezzlement of trusted public or private funds falls under *ta'azir* however, punishment for the offence of embezzlement is not expressly provided under the *Shari'ah*.
2. Under the Islamic Criminal Law, *ta'azir* signifies punishment for a crime for which punishment has not been fixed by the Holy *Qur'an* and/or the *Sunnah* of the Holy prophet (S.A.W).
3. The leader or the judge has been given the discretion to fix it in accordance with the prevailing circumstances i.e. punishment under *ta'azir* so as to reform the culprit and restrain others from committing the offence.
4. The magnitude for the offence of embezzlement that will attract "amputation" has not been specified in the Code.
5. Punishment for the offence of embezzlement falls under *ta'azir* and not under *hudud* as provided by the Code. Therefore, the former should not be equated with the latter.

Conclusion and recommendation

The Kano State Shari'ah Penal Code Law 2000 provided the punishment for the

offence of embezzlement of public funds to be amputation of the right hand wrist and sentence of imprisonment of not less than five years and the stolen wealth shall be confiscated. However, the punishment for embezzlement of public or private fund is provided in the *Hadith* of Jabir (R.A) where the Holy Prophet (S.A.W.) said: "Cutting off the hand is not to be inflicted on a dishonest, an embezzler and a looter". Furthermore, embezzlement falls under *ta'azir* offences and some classical Maliki Jurists regards the punishment for the offence of embezzlement as lawful on the basis of *ta'azir*. Also legislatures or judges are given the discretion of awarding punishment on *ta'azir* offences by considering the nature, severity and circumstances upon which the offence is committed. Thus, it is in line with the above that some jurists are of the opinion that punishment for *ta'azir* offences should be less than the punishment of *hadd* offence, while other jurists opined that it can be greater than that of *had* offence so as to serve as deterrence to others or even prevent the commission of the crime. Note that the *Shari'ah* has fixed the punishment of *hudud* offences which are not alterable by anybody, but on the other hand the *Shari'ah* allows those in authority to fix punishment that relates to *ta'azir* offences and at the same time empowered them to alter the punishment. In line with the above statement, the following recommendations are proposed:

1. The punishment for the offence of embezzlement of public or private funds under the Kano State *Shari'ah* Penal Code Law 2000 should be transferred from Chapter VIII which deals with *hudud* offences to Chapter X which deals with *ta'azir* offences. The reason being that the offence of embezzlement is a *ta'azir* offence and not a *hudud* offence.
2. The degree or amount of the offence of embezzlement that will attract amputation as punishment has to be stated.
3. Section 134B of the Kano State *Shari'ah* Penal Code Law, 2000 that provided for the meaning and punishment of embezzlement is not clear. Hence there is need to reconstruct this section.

Limitation

This research work is limited to the discussion on the offence of embezzlement under the *Shari'ah* in relation to the punishment for the offence of embezzlement of public funds as provided by the Kano State *Shari'ah* Penal Code Law. The research also serves as a guide for further research by students of Islamic Law, academia and Islamic scholars with a view to pointing out the punishment of various crimes according to their classes.

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