

Publicizing an Offender as a Protective-Precautionary Measure: Its Rationale and Temporal Scope

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Article Info	ABSTRACT
Article type: Research Article	Public identification of offenders can intensify stigma, social exclusion, and obstacles to reintegration, and may amount to a second punishment inconsistent with human dignity. Islamic jurists have discussed tashhīr, or public exposure, in connection with false testimony, qadhāf, fraud, deception, and procuring. This article re-examines the subject, rationale, scope, and legal nature of tashhīr. Using a descriptive-analytical study of primary fiqhī sources, it finds that a binding requirement of public exposure is established only for the false witness. Its rationale was not retribution, deterrent humiliation, or reform through disgrace, but the protection of adjudication by preventing renewed reliance on the witness until rehabilitation became known. The measure is therefore protective and precautionary rather than punitive, and it differs from publication of a final judgment, media release of an offender's image, public execution of punishment, shaving the head, exile, or banishment. Because modern criminal-record systems enable courts to verify prior convictions, the original rationale has largely disappeared. Tashhīr is no longer required as a primary rule, although narrowly tailored disclosure may exceptionally be authorized as a secondary governmental measure where public order and a demonstrated public interest require it.
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Introduction

Criminal justice systems use several forms of public identification, including publication of convictions, disclosure of names or images, and public execution of penalties. These practices raise concerns about stigma, double punishment, human dignity, and the offender's return to society. Premodern fiqh also contains the concept of tashhīr, but modern commentary often treats every form of public exposure as a single punitive institution. This article asks why tashhīr was prescribed, for which offense it was binding, how long it was to operate, and whether its rationale survives under contemporary judicial administration.

Methodology

The study uses a descriptive-analytical method. It examines primary Imami legal texts and reports to distinguish authoritative prescriptions from later analogies or broad assertions. It then applies cause-based analysis to identify the operative rationale, compares tashhīr with neighboring sanctions and publicity practices, and evaluates whether contemporary criminal-record systems achieve the same protective purpose through less harmful means.

Literature Review

Existing studies frequently adopt a maximalist understanding. They classify publication of judgments, disclosure of images, public punishment, shaving, exile, and similar practices as manifestations of tashhīr and describe the institution as a punishment designed to disgrace or deter. This approach pays insufficient attention to the textual basis and legislative purpose of the classical rule. It also risks converting a narrow precaution into a general license for reputational punishment.

Findings

Authoritative support for mandatory tashhīr is confined to deliberate false testimony. Comparable obligations in qadhf, fraud, deception, and procuring lack either a reliable text or the same operative rationale. The reason for exposing a false witness was to alert the community and courts so that the person's testimony would not again be accepted before genuine reform was established. The measure consequently served the integrity of adjudication rather than the conventional purposes of punishment. Its temporal scope was tied to the continuing evidentiary risk and ended with verified rehabilitation.

Discussion

Once courts maintain accessible and reliable criminal or judicial records, public humiliation is no longer necessary to prevent renewed reliance on a known false witness. The primary rule loses its practical cause, while the

harms of indiscriminate exposure become more pronounced. This conclusion reflects the minimum-oriented character of the classical doctrine and its concern for human dignity. It does not eliminate every governmental power to disclose risk. Disclosure may be justified under secondary principles such as preservation of public order and public interest, but only where necessity, proportionality, accuracy, temporal limits, and procedural safeguards are demonstrated.

Conclusion

Tashhīr in classical fiqh is a narrow protective-precautionary measure linked to false testimony, not a general punishment of public shame. It is conceptually distinct from publication of judgments and other public sanctions. Modern judicial-record systems ordinarily remove the cause that once justified public exposure, so no primary obligation to apply it remains. Any contemporary disclosure of an offender must be assessed independently under secondary governmental principles and confined to the least intrusive measure necessary to protect a concrete public interest.

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