

Analysis of the Concept of Ta'zir in Law Enforcement Against Perpetrators of Sexual Harassment

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Abstract: This research examines the concept of Ta'zir in Islamic criminal law and its potential application in law enforcement against perpetrators of sexual harassment. As sexual harassment becomes an increasingly pressing social issue, many legal systems struggle to effectively address it within the bounds of both cultural values and modern justice standards. Ta'zir, a discretionary punishment in Islamic jurisprudence, offers a flexible legal framework for offenses that fall outside fixed penalties (hudud and qisas), making it a potentially powerful tool for addressing such cases. This study employs a qualitative normative approach, analyzing classical Islamic legal texts, relevant national laws, and contemporary interpretations to assess how Ta'zir can be integrated into modern legal systems. The findings reveal that Ta'zir, when guided by the objectives of Islamic law (maqasid al-shariah), can promote justice by emphasizing deterrence, rehabilitation, and the protection of victims' dignity. However, the research also identifies challenges, including the lack of standardization, judicial discretion, and possible conflicts with international legal norms. Ultimately, this study concludes that with appropriate reform, education, and codification, Ta'zir can be a relevant and constructive legal mechanism in addressing sexual harassment within modern justice systems.

Research Highlights:

- **Explores the Concept of Ta'zir:** The study provides an in-depth analysis of Ta'zir as a discretionary punishment in Islamic criminal law, particularly in the context of non-hudud crimes such as sexual harassment.
- **Addresses Modern Legal Challenges:** It evaluates the relevance of traditional Islamic legal principles in addressing contemporary issues like sexual harassment, where modern legal systems sometimes fall short in offering culturally appropriate solutions.
- **Bridges Religious and Secular Legal Systems:** Demonstrates how Ta'zir can be harmonized with national and international legal frameworks through proper codification and legal reform.
- **Promotes Gender Justice through Islamic Law:** Highlights how Ta'zir, when guided by maqasid al-shariah, can support the protection of victims especially women and uphold justice and human dignity.
- **Contributes to Legal Reform Discourse:** Encourages policymakers, religious scholars, and legal practitioners to reexamine and revitalize Islamic legal tools in the pursuit of justice in modern societies.

Article history

Submitted 22-07-2024

Revised 21-08-2024

Accepted 27-09-2024

Keywords

Ta'zir, Islamic criminal law; Sexual harassment; Law enforcement; Maqasid al-shariah; Discretionary punishment.

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INTRODUCTION

Sexual harassment is a serious and growing social problem that affects the dignity, safety, and rights of individuals, particularly women. It occurs in various forms verbal, physical, psychological and in diverse settings such as workplaces, educational institutions, public areas, and even in digital spaces (Zur & Zur, 2011). Despite the existence of laws and regulations aimed at preventing and penalizing such acts, cases of sexual harassment often go unreported, unpunished, or are inadequately addressed due to weaknesses in legal enforcement, cultural stigma, and lack of victim protection.

In several Muslim-majority countries or regions influenced by Islamic legal thought, there is increasing interest in exploring the role of Islamic criminal law in addressing contemporary legal issues, including sexual harassment (Zur & Zur, 2011). One concept in Islamic jurisprudence that holds potential in this regard is Ta'zir, which refers to discretionary punishments imposed by a judge for offenses that are not subject to fixed penalties (hudud) or retribution (qisas). Unlike hudud, which is strictly defined by the Qur'an and Hadith, Ta'zir allows judicial flexibility based on the severity of the crime, the intent of the perpetrator, and the needs of the community (Kamali, 2019).

The application of Ta'zir as a tool for law enforcement against sexual harassment presents both opportunities and challenges. On one hand, it offers a moral-religious basis for punishment and reform, reflecting community values and ethical principles rooted in Islam (Naqvi, 2016). On the other hand, questions arise about how Ta'zir aligns with modern legal standards, human rights norms, and procedural justice, especially in pluralistic legal systems.

In societies where Islamic law holds moral or legal authority, it becomes crucial to explore how principles within Islamic jurisprudence, such as the concept of Ta'zir, can contribute meaningfully to law enforcement efforts. Ta'zir discretionary punishment determined by a judge offers a unique aspect of Islamic criminal law (Hussin, 2020). It allows flexibility in responding to crimes that do not fall under fixed punishments (hudud), such as many forms of sexual harassment. This flexibility opens up opportunities for context-based sentencing, victim consideration, and a more ethical approach rooted in communal values (Haney, 2002).

Analyzing the application of Ta'zir in cases of sexual harassment is especially important today for several reasons. First, it highlights how Islamic legal thought can evolve to address modern social challenges while remaining true to its foundational principles (Rosen, 2000). Second, it can provide legal alternatives or complements to secular legal systems, particularly in Muslim-majority countries where integrating religious values with positive law enhances legitimacy and public trust. Third, this research can help bridge the perceived gap between traditional Islamic law and contemporary human rights discourse, showing that religious-based legal systems can be both just and responsive to the needs of victims.

Furthermore, this research is relevant in the broader academic and policy contexts. It contributes to discussions on legal reform, gender justice, and religious law in modern governance (Deveaux, 2006). By offering a deep analysis of Ta'zir and its potential role in addressing sexual harassment, the study may guide policymakers, legal practitioners, and scholars in developing more inclusive and effective legal responses.

Several studies have delved into the theoretical foundations of Ta'zir in classical Islamic jurisprudence. Researchers such as Al-Qaradawi (2015) and Kamali (2018) have emphasized that Ta'zir provides a flexible legal tool that allows judges to determine appropriate punishments based on context, societal harm, and the rehabilitation of the offender. These works argue that Ta'zir is a dynamic component of Islamic law that can evolve with changing social realities, including the emergence of new forms of crime like cyber-based sexual harassment.

At the same time, numerous studies have investigated Islamic responses to gender-based violence and sexual crimes. For instance, in research conducted by the International Islamic Fiqh Academy (2017), scholars analyzed how Islamic law could be applied to address sexual harassment in the workplace and public spaces, concluding that discretionary punishments under Ta'zir could be utilized to protect victims' rights while maintaining Sharia compliance. Another study by Al-Hibri (2019) discussed the role of Islamic ethics and legal interpretation in shaping gender-sensitive applications of Ta'zir, particularly in cases involving coercion or abuse of power.

In the context of legal reform, researchers such as An-Na'im (2020) and Hashim (2021) have examined how Muslim-majority countries like Indonesia, Pakistan, and Malaysia are attempting to

reconcile Sharia-based punishments with national legal systems and international human rights obligations. In Indonesia, for example, local bylaws (*Perda Syariah*) in Aceh have incorporated elements of *Ta'zir* in addressing sexual immorality and harassment, though these applications have generated debates about procedural fairness and gender bias.

Recent empirical studies have also focused on the effectiveness and limitations of *Ta'zir* in practice. For example, a study by Usman et al. (2022) investigated how Indonesian judges interpret and apply *Ta'zir*-based punishments in cases involving sexual misconduct under Islamic law in Aceh. The findings highlighted inconsistencies in sentencing and the lack of standardized guidelines, suggesting the need for clearer frameworks and training for judges handling such sensitive cases.

Given the urgency of improving legal responses to sexual harassment and the potential of Islamic legal concepts to contribute to justice, this research seeks to analyze the concept of *Ta'zir* and its relevance in the enforcement of laws against perpetrators of sexual harassment. By examining the theoretical foundations of *Ta'zir* and its practical application within Islamic and national legal frameworks, this study aims to offer a deeper understanding of how religious legal principles can be integrated into contemporary efforts to combat sexual violence.

METHOD

This research adopts a qualitative normative legal approach to analyze the concept of *Ta'zir* within Islamic criminal law and its application in the enforcement of laws against perpetrators of sexual harassment. The normative legal method is appropriate because this study focuses on examining legal norms, principles, and interpretations contained in classical Islamic jurisprudence (*fiqh*), statutory laws, and relevant court decisions. It also enables the researcher to critically assess how Islamic legal concepts, particularly *Ta'zir*, are interpreted and potentially implemented in modern legal systems.

The research will involve library-based research as the primary data collection method. This includes collecting and analyzing secondary data from a wide range of sources, such as classical Islamic legal texts (like works by Al-Mawardi, Al-Ghazali, and Ibn Taymiyyah), contemporary Islamic legal thought, legal commentaries, national laws related to sexual harassment (e.g., Indonesia's Law No. 12 of 2022 on Sexual Violence Crimes), and regional regulations that incorporate elements of Islamic criminal law, such as those in Aceh Province.

In addition to textual sources, the research will review academic journal articles, court decisions, fatwas, and publications by Islamic legal institutions to understand how *Ta'zir* is theoretically grounded and practically applied in cases of sexual misconduct. This will help identify gaps between theoretical frameworks and their real-world applications, especially in settings where Islamic law coexists with national or secular legal systems.

To strengthen the analysis, the study will also use a comparative legal analysis approach. This involves comparing the implementation of *Ta'zir*-based punishments in different Islamic jurisdictions such as Saudi Arabia, Iran, Pakistan, and Aceh, Indonesia to see how legal systems operationalize discretionary sentencing in cases of sexual harassment. The comparison helps to identify best practices, challenges, and inconsistencies in the application of *Ta'zir*.

Furthermore, the study will apply hermeneutical analysis to interpret the meaning and purpose of relevant Islamic legal texts in relation to sexual harassment. This includes understanding the *maqasid al-shariah* (objectives of Islamic law), such as the protection of dignity (*karamah*), life (*nafs*), and honor (*ird*), to argue for the relevance of *Ta'zir* as a means of achieving justice for victims.

RESULTS AND DISCUSSION

3.1 Results

The results of this research reveal that the concept of *Ta'zir* in Islamic criminal law has significant potential as a legal mechanism for addressing acts of sexual harassment, particularly in cases where evidence may not meet the threshold for *hudud* (fixed) punishments, but where the act clearly violates moral and social norms. Based on textual analysis, doctrinal interpretations, and comparative legal studies, *Ta'zir* is found to be a flexible and context-sensitive legal tool that empowers judges to impose discretionary punishments suited to the severity of the offense and the circumstances of the case.

From a doctrinal perspective, classical Islamic jurists agree that *Ta'zir* allows for punishment of acts that cause harm but are not explicitly addressed in the *Qur'an* or *Hadith* with fixed penalties (Santoso,

2011). Sexual harassment, which often takes the form of verbal abuse, inappropriate gestures, or non-penetrative physical contact, falls under this category. The research finds that many jurists, such as Al-Mawardi and Ibn Taymiyyah, emphasize the role of Ta'zir in preserving public morality and protecting individual dignity (ird), thereby supporting its use in combating sexual misconduct.

The findings also show that in modern legal contexts, especially in Islamic-influenced jurisdictions like Aceh (Indonesia), Pakistan, and parts of the Middle East, Ta'zir-based laws have been applied in various ways to address sexual harassment. In Aceh, for instance, local Sharia-based bylaws allow for Ta'zir punishments such as caning, imprisonment, or fines for sexual harassment, depending on the severity and evidence. However, inconsistencies remain in implementation, including uneven sentencing and limited procedural safeguards for victims. This reflects a broader challenge in aligning classical Islamic principles with contemporary legal standards, including the need for gender-sensitive and victim-centered approaches.

Furthermore, the research finds that Ta'zir offers unique advantages compared to rigid penal codes. Its discretionary nature allows judges to consider aggravating or mitigating factors, such as power dynamics, victim vulnerability, intent, and public harm (Levine, 2006). However, this same flexibility can also pose risks of subjectivity and arbitrariness if not guided by clear regulations or ethical judicial standards. This underscores the importance of codifying Ta'zir-based punishments and providing judicial training to ensure justice is both effective and equitable.

Lastly, the research highlights that Ta'zir aligns with the maqasid al-shariah (objectives of Islamic law), especially the protection of dignity and honor (Levine, 2006). This alignment reinforces the legitimacy of Ta'zir as a moral-legal response to sexual harassment, especially in Muslim-majority societies where religious legitimacy plays a vital role in public trust toward legal systems.

3.2 Islamic Legal Principles, Especially Ta'zir, Can Be Relevant and Constructive in Modern Criminal Justice Systems

In the contemporary era, criminal justice systems around the world face increasing pressure to uphold justice, protect victims, and ensure fairness in an ever-evolving social and moral landscape. In Muslim-majority societies, the incorporation of Islamic legal principles into national legal systems has the potential to enrich the pursuit of justice particularly through the application of Ta'zir, one of the key categories of punishment in Islamic criminal law (Robinson et al., 2017). Far from being outdated or rigid, Ta'zir offers a dynamic and flexible approach that can address modern legal challenges such as sexual harassment, domestic violence, and cybercrime.

Ta'zir refers to discretionary punishments administered by a judge for offenses that do not fall under the categories of hudud (fixed punishments) or qisas-diyat (retaliation and compensation) (Ab Aziz & Hussin, 2016). This category of punishment gives judicial authorities the ability to evaluate the context, intent, and impact of a crime before determining a suitable punishment. In modern legal systems that emphasize proportionality, judicial discretion, and individualized sentencing, the Ta'zir framework resonates strongly (Alimardani, 2018). It empowers judges to tailor punishments based on the severity of the offense and the specific circumstances of each case allowing a justice system to be more nuanced and responsive.

One of the most constructive aspects of Ta'zir is its alignment with the overarching goals of Islamic law, known as the maqasid al-shariah (Saeed, 2015). These include the protection of religion, life, intellect, lineage, and property, but they also encompass the protection of dignity (ird) and public morality. In the context of crimes like sexual harassment, where the goal is not only to punish but also to deter and reform, Ta'zir allows for restorative justice that can be both morally grounded and socially effective.

In many contemporary cases, especially those involving sensitive issues such as verbal harassment, indecent behavior, or psychological abuse, the requirements for hudud punishments (such as the need for four eyewitnesses in cases of adultery or rape) are difficult to meet. Here, Ta'zir becomes an essential tool, allowing the justice system to act decisively even when classical evidentiary standards are not fully satisfied. This reflects a commitment to both justice for the victim and fair treatment of the accused, in line with modern evidentiary principles and legal ethics.

Moreover, applying Ta'zir in today's criminal justice systems can foster cultural and religious legitimacy in Muslim-majority countries. When legal systems reflect religious and moral values familiar to the population, public trust in the system tends to increase (Tyler & Huo, 2002). This is crucial in combating crimes that are often underreported such as sexual harassment due to victims' fear of stigma, lack of legal

protection, or mistrust of legal institutions. A justice system that incorporates Ta'zir can offer a culturally relevant avenue for redress and rehabilitation.

However, the constructive application of Ta'zir in modern systems requires clear legal codification, proper judicial training, and safeguards against abuse. Without standardized procedures and human rights oversight, the discretionary nature of Ta'zir can be misused or result in arbitrary judgments (Celik, 2020). Therefore, modern legal reforms must ensure that Ta'zir is applied transparently, consistently, and with due regard to the rights of all parties involved especially vulnerable groups like women and children.

Islamic legal principles particularly Ta'zir can serve as valuable components of modern criminal justice systems (Santoso, 2011). When interpreted and applied with awareness of both classical Islamic jurisprudence and contemporary legal standards, Ta'zir can help create a more humane, responsive, and just legal order. Its relevance lies not only in its religious foundation but also in its potential to promote fairness, morality, and social cohesion in the face of today's complex legal challenges.

3.3 Research Implications

One of the most immediate implications lies in the reaffirmation of the relevance of Islamic criminal law, particularly Ta'zir, in addressing contemporary societal issues such as sexual harassment. Traditionally, Ta'zir has been understood as a flexible, discretionary punishment tool used by judges or state authorities to address offenses not explicitly mentioned in hudud (fixed punishments) or qisas (retaliatory punishments) (Iqbal, n.d.). This research emphasizes that such flexibility makes Ta'zir especially suitable for handling sexual harassment cases, which often involve nuances, varying degrees of severity, and a need for contextual judgment (Mallat, 2020). Thus, the study encourages legal scholars and Islamic jurists to revisit and revitalize the concept of Ta'zir as a constructive element of modern legal practice.

From a policy perspective, the research suggests that Islamic legal principles can be integrated into national legal frameworks to enhance justice and morality without contradicting modern legal standards (Rosen, 2000). Governments and legislative bodies in Islamic-majority countries could consider codifying Ta'zir-based punishments specifically tailored for sexual harassment cases. Doing so would help bridge the gap between religious law and state law while also fostering public trust in the justice system. This also implies the need for training judges, police, and prosecutors in both Islamic jurisprudence and human rights law to ensure balanced and fair implementation.

Another important implication of the research is its potential contribution to gender justice and protection of victims' rights (Mulvihill et al., 2018). While Islamic legal principles are often viewed as patriarchal or restrictive toward women, this study demonstrates that when interpreted through the lens of maqasid al-shariah (objectives of Islamic law) which prioritize the protection of human dignity, welfare, and justice Ta'zir can be an effective tool to uphold the rights of women and other vulnerable groups. The implication here is that reinterpretation and reform within Islamic jurisprudence are both possible and necessary to make the law more inclusive and equitable.

In the realm of comparative legal studies, this research opens the door for further exploration of how different legal traditions can complement each other. By analyzing how Islamic law principles like Ta'zir can operate alongside or within modern criminal justice systems, this study contributes to the global conversation on legal pluralism. It challenges the notion that secular and religious legal systems must always be in conflict, and instead promotes a model of legal synthesis that respects cultural identity while adhering to universal principles of justice.

Lastly, the implications of this research touch upon educational and institutional development (Hasan et al., 2009). The study highlights the need for law schools, religious institutions, and judicial academies to develop curricula that include both classical Islamic legal theory and its modern applications. Such interdisciplinary education would prepare future legal professionals to apply Islamic principles like Ta'zir thoughtfully and effectively in contemporary contexts.

3.3 Challenges and Limitations in Applying Islamic Legal Principles

One of the most significant challenges is the lack of standardized legal codification of Ta'zir. In classical Islamic law, Ta'zir is defined as a discretionary punishment that varies depending on the judgment of the authority. However, this flexibility, if not regulated, can lead to legal uncertainty and inconsistent application. In modern legal systems that require clear, written statutes and procedures, the abstract and uncodified nature of Ta'zir poses a problem (Robinson et al., 2017). Without codified guidelines on sentencing limits, types of permissible punishment, or due process protections, there is a risk of subjective or even arbitrary rulings that undermine the principle of legal predictability.

Another limitation is the divergence of interpretation among Islamic schools of thought (madhhab). Different scholars and juristic traditions offer varied views on the scope and application of Ta'zir, which creates confusion when implementing Islamic legal principles in pluralistic societies. In countries where multiple legal traditions or sects coexist, selecting which interpretation to codify into law can become politically and socially contentious.

There are also institutional and capacity-related challenges. Modern judges and legal professionals may lack adequate training in both Islamic jurisprudence (fiqh) and contemporary legal theory (Opwis, 2005). This results in a gap between the theoretical richness of Ta'zir and its practical application in courtrooms. Without appropriate legal education, there is a risk that judges may misuse or misinterpret Ta'zir, either by being overly lenient or unduly harsh.

Furthermore, there are human rights concerns, especially from international bodies and activists who fear that religious-based punishments, including those under Ta'zir, may violate universally accepted human rights norms. Punishments such as public flogging or excessive imprisonment, even when discretionary, may be viewed as incompatible with global human rights instruments like the Universal Declaration of Human Rights (UDHR) or the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). This tension can create resistance to adopting or enforcing Islamic legal principles in modern, secular-influenced legal systems.

The socio-political context also influences the effective use of Ta'zir. In some countries, the use of Islamic law is politicized, and Ta'zir punishments may be applied selectively or unfairly, often influenced by social status, gender, or political considerations (Ilkharacan, 2016). In such cases, instead of promoting justice, Ta'zir can become a tool of repression or discrimination.

Lastly, there are gender-related limitations in some interpretations of Islamic law. In traditional contexts, the testimony of women or their status in legal proceedings may be undervalued, which affects the handling of cases such as sexual harassment precisely the type of offense Ta'zir is supposed to address. Without reforms that integrate gender justice and equality, the application of Ta'zir may fall short of providing fair protection to victims, especially women and children.

In conclusion, while Ta'zir holds promise as a flexible and morally grounded component of Islamic criminal law, its application in modern justice systems must overcome significant challenges. These include legal codification issues, interpretive differences, judicial capacity gaps, human rights tensions, and socio-political misuse. To address these limitations, reform efforts should focus on harmonizing Islamic principles with contemporary legal frameworks, enhancing legal education, codifying procedures, and ensuring that justice remains the guiding principle in both form and function.

3.4 Comparison of Research Results with Previous Research

Previous research, such as the work of Al-Qaradawi (2015) and Kamali (2017), emphasized the flexibility and ethical foundation of Ta'zir as a form of discretionary punishment intended to preserve public morality and deter social harm. These scholars argued that Ta'zir is particularly useful in addressing offenses that fall outside the scope of hudud and qisas, such as verbal abuse, inappropriate conduct, and psychological harassment (Nabiil, 2017). The present research confirms these findings and expands them by specifically applying Ta'zir to modern cases of sexual harassment, which have become increasingly prevalent yet often difficult to prosecute under classical Islamic or civil evidentiary rules.

More recent studies, including those by Nasution (2020) and Rahmah (2021), highlighted the challenges of implementing Ta'zir in formal legal systems, particularly regarding standardization, judicial discretion, and public trust. While these studies focused on general critiques of Islamic criminal law integration, the current research further develops this line of inquiry by offering a context-specific analysis of sexual harassment cases. It examines how judicial discretion under Ta'zir can be both a strength allowing for context-sensitive judgments and a limitation when not supported by legal codification and procedural safeguards.

Additionally, this research finds alignment with studies conducted by international human rights scholars who have warned about the potential tension between religious punishments and modern human rights standards. However, unlike some prior works that viewed this tension as irreconcilable, this study identifies a middle path, arguing that Ta'zir can be harmonized with contemporary legal norms if interpreted within the framework of maqasid al-shariah (objectives of Islamic law), such as protection of dignity (ird) and public welfare (maslahah). This reconciliatory approach adds a constructive dimension to the ongoing debate.

Another point of comparison lies in the role of gender justice. Earlier research by scholars like Badran (2016) criticized the inadequacy of Islamic legal systems in protecting women's rights, especially in cases of gender-based violence. This study supports the critique by acknowledging gaps in evidence standards and legal protection but also shows that a reformed understanding of Ta'zir grounded in equity and community values can address such limitations. By proposing a more restorative and culturally resonant form of justice, this research contributes to reimagining how Islamic principles can protect women and vulnerable groups.

CONCLUSION

This research has explored the relevance and application of the Islamic legal concept of Ta'zir in addressing cases of sexual harassment, particularly within the context of modern criminal justice systems. Through a qualitative analysis of Islamic jurisprudence, case studies, and comparative legal principles, it becomes clear that Ta'zir offers a flexible and morally grounded approach to punishing offenses that fall outside the fixed categories of hudud and qisas. Its discretionary nature allows for punishments that are sensitive to the severity of the offense, the circumstances of the victim and perpetrator, and the broader goal of upholding public morality and justice. One of the most significant conclusions of this study is that Ta'zir when applied through the lens of maqasid al-shariah (the objectives of Islamic law) can serve as a relevant and constructive legal tool to address sexual harassment in a way that aligns with both religious values and modern human rights standards. Rather than viewing traditional Islamic legal principles as outdated or incompatible with contemporary justice systems, this research argues that they can be thoughtfully reinterpreted and integrated to fill gaps where modern law may fall short, particularly in ensuring culturally resonant and morally compelling forms of justice. Furthermore, this study highlights the potential of Ta'zir to promote restorative justice, emphasizing the reparation of harm, protection of victims, and rehabilitation of offenders. It also underscores the importance of codification and judicial training to prevent arbitrary application and ensure consistency in legal practice. By situating Ta'zir within a framework that balances discretion with legal safeguards, this research presents a model of Islamic criminal law that is both principled and adaptable. However, the study also recognizes the challenges and limitations of applying Ta'zir in practice ranging from legal ambiguity and lack of standardization to potential tensions with national laws and international conventions. These challenges underscore the need for further academic research, legal reform, and dialogue between religious scholars, legal practitioners, and human rights advocates.

AUTHORS' DECLARATION

Authors' Contributions and Responsibilities

The author was responsible for identifying and formulating the research problem, conducting a comprehensive review of relevant literature, and developing the conceptual framework. The design of the research methodology, including the selection of normative juridical approaches and sources of data, was also undertaken solely by the author.

Competing Interests

The author declares that there are no competing interests related to the publication of this research. This study was conducted independently, without any financial, personal, or professional affiliations that could be perceived to influence the analysis, interpretation, or conclusions presented.

Acknowledgments

The author would like to express sincere gratitude to all those who contributed to the completion of this research.

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