MANIFESTATIONS OF TRUTH

Translation And Detailed Explanation of



مظاهر حق شرح مشكوة المصابيح

ARABIC ENGLISH

Shaykh Waliuddin Abu Abdullah Al-Khateeb Al-Tabrezi

Translation and Commentary
Shaykh Nawab Qutbuddin Khan Dehlavi

DARUL-ISHAAT
Karachi-Pakistan.

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مظاہر الحق جدید شرح مشکوٰۃ المصابیح

Sheikh Waliuddin Abu Abdullah Al-Khateeb Al-Tabrezi

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Sheikh Nawab Qutbuddin Khan Dehlavi

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بسم الله الرحمٰن الرحيم

BOOK - XII

KITAB AL BUYOO كِتَابُ الْبُيُوْعِ

"BUSINESS TRANSACTIONS"

From the Islamic point of view the practical life of Mankind evolves round two axes. They are rights of Allah which are (عبادات) worship, and rights of fellow men which are (معاملات) mutual dealings of conduct. Both of these alone from the base of all principles, rules and lows of human life.

The first of these - 'rights of Allah' - has a universal application and concerns every member of the human society. Hence, the compiler of this book gave them priority in his book. Now, he begins with the second - 'rights of fellow man.' Its most significant part is (بيع) 'business transactions.'

MEANING OF (بيع) (*BAI*): It means 'to sell.' Sometimes it means 'to buy.' Hence, in the terminology, it means; 'to buy and sell.'

Fakhrul Islam said that in the terminology of Shari'ah (divine law), *Bai'* is 'to exchange goods for goods with mutual consent.'

LEGALITY OF *BAI'*: *Bai'* or 'buying and selling' is established as legal by the verse of the Quran cited here and the ahadith that will be narrated further down.

وَاَحَلَّ اللّٰهُ الْبَيْعَ وَحَرَّمَ الرِّبٰوا

{Allah has permitted trading and forbidden usury} (2: 275)

KINDS OF *BAI'*: There are three basic things in *Bai'*, meaning 'buying & selling.'

(i) The agreement between the seller and the buyer.
(ii) The commodity sold.
(iii) The price.

From the point of these three things jurists classify *Bai'* into various kinds.

Thus, as for as the transaction and its ruling whether *Bai'* is correct or not are concerned, there are four kinds of *Bai'* (1) enforced, (2) held in abeyance, (3) improper (4) invalid.[1]

The enforced is that the seller has the commodity and the buyer has the price, and both of them are sensible, further, they must conclude the transaction either directly or though an attorney or a broker. When these three things are found in a sole, then it is very correct and enforced.

The *Bai'* mawquf or held in abeyance is when someone sells something belonging to another person without his permission or power of attorney. The ruling is that this transaction will be correct only when the permission of the real owner is received.

The *Bai'* that is fasid or improper may be correct is essence, meaning as for as the transaction is concerned but is improper as for as its quality is concerned, or for some particular reason. (There may be a shortcoming).

The *Bai'* batil or invalid is not proper both in essence and in quality. Details and examples of both fasid and batil will follow, insha Allah, in the chapter

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[1] The English equivalent of the terminology is adopted from the Heavenly permanent translation of Muhammad Muhammadi (Darul Isha'at Karachi) pp 305f, 3114f etc.

BUSINESS TRANSACTIONS THAT ARE FORBIDDEN بَابُ الْمَنْهِيِّ عَنْهَا مِنَ الْبُيُوْعِ

Bai' from the point of view 'buying' is of four kinds:

(i) Muqayadh (مقايضة) or bartering.
(ii) Sarf (صرف) or money exchange
(iii) Salam (سلم) or forwarding buying.
(iv) *Bai* mutlaq or cash sale.

The Muqayadah is exchange of commodities or bartering.
The sarf is exchange of money or one currency for another, or coins for paper money.
The salam is to receive advance payment for delivery of merchandise at a future agreed date.
The mutlaq is sale against cash payment.
There are four kinds of *Bai'* in terms of price.

(i) Murabahah in which the seller sells to the buyer at a profit.
(ii) Tawalliyah in which the seller sells to the buyer at his cost price.
(iii) Wadi'ah in which the seller sells to the buyer at a loss.
(iv) Musawimah in which the two parties agree at a price of a commodity (by bargaining or otherwise) without consideration of the seller's coast price.

CHAPTER - I

EARNING & SEEKING WHAT IS LAWFUL بَابُ الْكَسْبِ وَطَلَبِ الْحَلَالِ

It is to earn a livelihood through lawful means and lawful occupation. This chapter speaks of the excellence of earning livelihood and points out the appropriate and good earning and occupant.
The books of fiqh (Islamic jurisprudence) underline jihad as the best occupation, followed by trading, cultivation and handiwork or mnual effort (like writing, etc).
It is *fard (compulsory)* to earn and it is also *mustahab (desirable)*. It is also permitted and forbidden too. Hence, it is *fard (compulsory)* for a man to earn so much as is enough for himself and his family's needs and to repay a debt, if any.
To earn more than that is *mustahab (desirable)* provided his intention is to spend on the poor and needy and his other deserving relatives.
Similarly, it is permissible to earn more than one's needs if it is to maintain his status in life. However, it is forbidden to earn merely to hoard money and boast, even if the earning is through lawful means.
It is necessary for the earner to spend his earning on himself and his family without being extravagant or miserly, but pursuing a middle course.
If anyone is able to earn his livelihood then it is binding on him to use lawful means to provide the economic needs of his family and safeguard his and their honourable way of living. He must not depend on other people. If anyone is helpless and cannot make a living for himself then it is necessary for him to ask other for help to protect his life. If anyone refrains from seeking help because of modesty and sense of honour so that hunger and poverty take away his life then he will be responsible for his own death and he will have committed sin.
Moreover, if anyone is unable to earn a living then it is binding on whoever is aware of his condition that he should look after the helpless person. He must feed him or if he cannot do

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it himself, then he must recommend other people to help him.
Mawlana Shah Abdul Aziz Dahlawi رحمه الله has quoted this verse:

يَا أَيُّهَا الَّذِينَ آمَنُوا كُلُوا مِنْ طَيِّبَاتِ مَا رَزَقْنَاكُمْ

{O you who believe, eat of the wholesome things wherewith we have provided you.} (2: 172)

JIHAD: He has explained it, saying that the best occupation is jihad provided when one decides to participate in it, he does not crave for the spoils at all. His intention should be sincere.

TRADING: Next ranks trade as a profession particularly the import and export business to bring and send commodities for Muslims of different countries or cities. If the businessmen who engages in this business aims at profit making but also aims at serving the Muslims by getting them what they need then his business is a form of worship for him.

FARMING: Next ranks cultivation. This occupation too fetches immense reward in the hereafter apart from providing worldly profit. The cultivator's intention should be to provide the means of sustenance to mankind and to beasts and reliance should be places on Allah's mercy, rain, wind, etc.

SCRIBE: Apart from these three occupations, other occupations do not excel over each other though the profession of the scribe is better because it is instrumental in service to knowledge and learning and enables one to refresh religious knowledge, commands and lives of the Prophets (عليهم السلام) and scholars.

OTHERS: The occupations that keep knowledge in circulation or have a deep connection with society and culture like building, extracting oil, tailoring and so on follow the foregoing occupations in importance. These professions are better than those that are only superficial or money making like painting. Decorating, sweetmeat making, perfumery, etc. However, if these occupations are suitable to the occasion and they do not contravene Shari'ah (divine law) then they too are not undesirable.

DISTASTEFUL: The occupations that are bad and filthy and lead the creatures astray are calumny, sweeping, tanning, hoarding grain, washing the dead, selling the shroud, indulging in immoral activities, brothel-keeping, dancing, singing, mimicking, brokerage, pleading for someone (and lying in the process), receiving wages for leading congregational *salah (prayer)* (as imam) and for calling adhan and for working in the mosque, receiving remuneration to recite and teach the Quran, and so on. These professions are all disliked (Shah Abdul Aziz)

LAWFUL: It is stated in Mughni-ul-Talib that the ahadith abound with merits of lawful earning and the earner. At the same time, a severe warning is sounded to one who begs of others out of lethargy though he is capable of earning. However, he is an exception who trusts Allah and relies in Him and does not beg of anyone nor interrupts his religious pursuits, worship and devotional exercises to work for a living. Also, he does not hope for anyone's help because this is an inward begging which is worse than the oral begging:

RICH: If anyone is rich enough and earns without putting in hours than he must devote his time to worship. The same command applies to teachers of religious knowledge to Muftis, judges and others of the same kind. If they earn enough for their livelihood then they must continue to occupy themselves in their work and not divert their attention to earning a livelihood.

CONCEALED POLYTHEISM: A person who engages in an occupation, like trading, must earn only lawful livelihood. He must refrain completely from the unlawful. He must abide by the commands of Shari'ah (divine law) and while working hard he must place trust in Allah knowing that only He is the sustainer and the profession is only an outward means of livelihood. He must not regard his profession as a provider otherwise that will be (equal to) a concealed polytheism. He must abstain from unlawful earning, for, the prophet صلى الله عليه وسلم has said about it, "If anyone gives charity from his unlawful earning then that is not accepted." The unlawfully earned wealth does not remain after its owner's death but as a provision of the journey to hell.

SMALL EARNINGS: Some people abstain from large quantities of unlawful wealth but do not mind small earnings of the unlawful. They must realize that even the smallest among of it will mingle with their lawful wealth and make all of it doubtful. The ruling again is the same that we must abstain from the doubtful, too.

GIFTS: If anyone presents something to another of whose status he is uncertain whether it is lawful or not, then he must return it to the giver politely and kindly. If that might hurt him then it must not be returned. Similarly, if probing the nature of a gift might hurt the giver then the receiver should not investigate whether the gift is doubtful, because it is forbidden to annoy or displease a Muslim, whereas examing anything for its doubtful nature is taqwa (piety). The ruling is that the unlawful should not be perpetrated for the sake of taqwa (piety). However, if it is known without a shadow of doubt that the gift is from unlawful sources then it must be returned even if the giver is hurt, unless there is likelihood of trouble arising in which case instead of returning it, the gift may be passed on to someone in dire straits. If the receiver himself if hard-pressed then he may use it himself.

BAD PLACES: One must keep away from such markets where the unlawful things are traded. Unless it is known of something that it is unlawful or doubtful, it is not necessary to probe into its nature, when the unlawful or doubtful nature of anything is not known, an unnecessary probe and investigation everywhere and for everything will be merely an evil suggestion.

WAGES: The remuneration of unlawful profession is also unlawful. Examples are stitching silk garments for men or making golden jewelery for them. Similarly, profit and wealth derived from illegal trading are also unlawful, like selling hoarded grain.

DRAPERS: The best of all businesses is that of the drapers and the best of all professions is to prepare and stitch water skins.

FAKE CURRENCY: It is absolutely forbidden to circulate counterfeit coins (and currency). If anyone gets any, he must throw them into a well or dispose of in such manner.

HONESTY: Every trader and shopkeeper must not deceive anyone. It is wrong to take oath to support his statements and he must not hide defects in his wares. He must not overdo when describing his wares as good.

SELLING TO A WRONG DOER: No trader must sell anything to such a person who might use it to prepare or do something unlawful, like grapes to a winemaker, weapons to a bandit and so on. No trader must resort to adulteration, cheat in weight and measures or deceive in any other way.

UNLAWFUL INCOME: Every trader must tell himself that even a paltry sum of money acquired unlawfully and through improper means will prevent him from entering

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paradise. He must suffice himself with little income because that is *mustahab (desirable)* and he must content himself with the business that earns for him enough livelihood. He must not yearn to engage in other businesses to earn more. Rather, he must use his spare time to work for the next world. It is foolish to devote oneself wholly to this fleeting world all the time and do noting for the everlasting hereafter.

SECTION I اَلْفَصْلُ الْاَوَّلُ

MANUAL LABOUR IS BEST

(٢٧٥٩) عَنِ الْمِقْدَامِ بْنِ مَعْدِى كَرِبَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَا اَكَلَ اَحَدٌ طَعَامًا قَطُّ خَيْرًا مِّنْ اَنْ يَّاْكُلَ مِنْ عَمَلِ يَدَيْهِ وَاِنَّ نَبِيَّ اللّٰهِ دَاوٗدَ عَلَيْهِ السَّلَامُ كَانَ يَاْكُلُ مِنْ عَمَلِ يَدَيْهِ۔ (رواه البخارى)

2759. Sayyiduna Miqdam ibn Ma'dikarib رضی اللہ عنہ **narrated that Allah's Messenger** صلی اللہ علیہ وسلم **said, "No one has eaten food better than what he eats on earning from the labour of his hands. Indeed, the Prophet of Allah, Dawud** علیہ السلام **used to eat from the earnings of his hands' labour."[1]**

COMMENTARY: Sayyiduna Dawud علیہ السلام was not only a glorious prophet but he also was sovereign over a vast territory that Allah had granted him. It was his habit that he went about his subjects disguised and asked them about their kings. Once, Allah sent an angel in the likeness of man and Prophet Dawud علیہ السلام asked him about himself. He said, "Dawud is a good man, but he eats from the Bayt ul Maal (State Treasury)." That was it! He was moved terribly and he prayed, "O Lord of the worlds, make me independent of the state Treasury and teach me some things whereby I may earn a living for myself." Allah taught him to make armour. [Allah softened iron in his hands and he was the first one skilled in making armour from iron.][2]

He sold that for four thousand dirhams and some ulama (Scholars) say that he sold them for six thousand dirhams making one armour each day. He spent two thousand dirhams on himself and on his family and disbursed the remaining four thousand as charity to poor of Banu Isr'ail.

In this hadith, the Prophet صلی اللہ علیہ وسلم said that to earn one's one living is the *sunnah (Prophet's* صلی اللہ علیہ وسلم *practice)* of the Prophets علیہ السلام. He encouraged the people to earn through their own manual labour. There is much benefit in that not only to one who works himself but also to those others who use his product. This man occupies himself so is safe from bad things and from pride and rebellion. Most of all he is not dependent on anyone else and lives an honourable life.

ADVANTAGE OF ABSTAINING FROM THE UNLAWFUL

(٢٧٦٠) وَعَنْ اَبِىْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِنَّ اللّٰهَ طَيِّبٌ لَا يَقْبَلُ اِلَّا طَيِّبًا وَاِنَّ اللّٰهَ اَمَرَ الْمُؤْمِنِيْنَ بِمَا اَمَرَ بِهِ الْمُرْسَلِيْنَ فَقَالَ يٰٓاَيُّهَا الرُّسُلُ كُلُوْا مِنَ الطَّيِّبَاتِ وَاعْمَلُوْا صَالِحًا وَقَالَ يٰٓاَيُّهَا الَّذِيْنَ اٰمَنُوْا كُلُوْا مِنْ طَيِّبَاتِ مَا رَزَقْنَاكُمْ ثُمَّ ذَكَرَ الرَّجُلَ يُطِيْلُ السَّفَرَ اَشْعَثَ اَغْبَرَ يَمُدُّ يَدَيْهِ اِلَى السَّمَاءِ يَا رَبِّ

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[1] Bukhari # 2072.

[2] Stories of the Prophet (علیہم السلام) (p267), Ibn Kathir. (English tr. Dar ul Ishaat, Karachi)

يَارَبِّ وَمَطْعَمُهُ حَرَامٌ وَمَشْرَبُهُ حَرَامٌ وَمَلْبَسُهُ حَرَامٌ وغُذِيَ بِالْحَرَامِ فَأَنّٰى يُسْتَجَابُ لِذٰلِكَ۔ (رواه مسلم)

2760. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Surely Allah is pure (of all defects) and only such (charity and deeds) are accepted (by him) as are pure (of shortcomings and defective intention). And, indeed, Allah has commanded the believers with the same command as He has given the Messengers, saying:

يَآاَيُّهَا الرُّسُلُ كُلُوْا مِنَ الطَّيِّبَاتِ وَاعْمَلُوْا صَالِحًا

{O you Messengers! Eat of the good things and do righteous deeds.} (23: 51)
And He said:

يَآاَيُّهَا الَّذِيْنَ اٰمَنُوْا كُلُوْا مِنْ طَيِّبَاتِ مَارَزَقْنَاكُمْ

{O you who believe, eat of the wholesome things wherewith we have provided you.} (2: 172)

Then, he mentioned (by way of an example) a man who undertakes a long journey, his hair unkempt and he in a dusty state, stretching out his hands to heaven in prayer, 'My Lord! My Lord!' But, his food is unlawfully acquired His drink is unlawful His clothing is un lawful acquired and he is nourished by the unlawful then, he asked, "How may such a one expect an answer (to his prayer)?"[1]

COMMENTARY: This hadith emphasizes the excellence of earning what is lawful. It is the demand of servitude that one must consume pure food. This will enable him to draw near to Allah.

The Prophet صلی اللہ علیہ وسلم also said that if anyone does not refrain from consuming the unlawful then his prayers will not be heard. He gave the example of one who undertakes along journey for Hajj (pilgrimage) or any other worship and prayers on such occasions and such auspicious prayers are not granted because he does not refrain from unlawful provision. Supplication has two wings: lawful food and truthful speech (which ensure that prayer will be granted).

THINGS TO COME

(٢٧٦١) وَعَنْهُ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَاْتِيْ عَلَى النَّاسِ زَمَانٌ لَايُبَالِي الْمَرْءُ مَااَخَذَ مِنْهُ اَمِنَ الْحَلَالِ اَمْ مِنَ الْحَرَامِ۔ (رواه البخاری)

2761. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "There will come a time to people when no one will worry whether what he acquires comes from a lawful source or an unlawful source."[2]

COMMENTARY: As the last Hour approaches, many misdeeds will be perpetrated. Among them will be lack of distinction between the lawful and unlawful incomes. This thing is very apparent these days. No Section of society and no group of people are safe from this malady.

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[1] Muslim # 65-1015, Tirmidhi # 3000, Musnad Ahmad 2-328, Darimi # 2717.

[2] Bukhari # 2059.

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AVOID THE DOUBTFUL TOO

(٢٧٦٢) وَعَنِ النُّعْمَانِ بْنِ بَشِيْرٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَلْحَلَالُ بَيِّنٌ وَ الْحَرَامُ بَيِّنٌ وَبَيْنَهُمَا مُشْتَبِهَاتٌ لَا يَعْلَمُهُنَّ كَثِيْرٌ مِنَ النَّاسِ فَمَنِ اتَّقَى الشُّبُهَاتِ اسْتَبْرَأَ لِدِيْنِهٖ وَعِرْضِهٖ وَمَنْ وَقَعَ فِي الشُّبُهَاتِ وَقَعَ فِي الْحَرَامِ كَالرَّاعِيْ يَرْعٰى حَوْلَ الْحِمٰى يُوْشِكُ اَنْ يَرْتَعَ فِيْهِ اَلَا وَاِنَّ لِكُلِّ مَلِكٍ حِمًى اَلَا وَ اِنَّ حِمَى اللّٰهِ مَحَارِمُهٗ اَلَا وَاِنَّ فِي الْجَسَدِ مُضْغَةً اِذَا صَلَحَتْ صَلَحَ الْجَسَدُ كُلُّهٗ وَ اِذَا فَسَدَتْ فَسَدَ الْجَسَدُ كُلُّهٗ اَلَا وَهِيَ الْقَلْبُ۔ (متفق علیه)

2762. Sayyiduna Nu'man ibn Bashir رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "The lawful is clearly defined, but between them are matters that are doubtful. Many of the people cannot pick them up. He who avoids the doubtful things preserves his religion and his honour from blame, but he who stumbles into them lands into what is unlawful. It is like a shepherd who grazes his animals on the borders of a sanctuary, he will soon encroach with them into it. Every king has a sanctuary and know that Allah's sanctuary is what He has declared unlawful. Indeed, there is in the body a piece of flesh. When it is sound, the whole body is sound. When it is bad, the whole body is bad. And, it is the heart."[1]

COMMENTARY: The lawful and unlawful that are well known are pious deed, good speech, marriage and such things as lawful things, and wine, swine, carrion, adultery, usury, falsehood, backbiting, etc which are unlawful. Some things there are that cannot be defined either way. It is not easy for the common man to recognize them. The ulama (Scholars) have three opinions about these things:

(i) Do not regard them as lawful or as unlawful or as permitted. This is the most correct opinion and it should be followed which calls upon us to desist from them.

(ii) Regard them as unlawful.

(iii) Regard them as permissible.

Suppose a man marries a woman and another woman appears and claims to have suckled both the man and the woman (husband and wife). This raises doubts about their marriage because they are said to be faster brother and sister. In that case, their marriage is absolutely disallowed. But, the woman is the lone claimant without any witness recognizes by Shari'ah (divine law). She could be lying. This means that the marriage is legal. This situation where arguments differ makes it a doubtful case. Hence, it is better that the man should divorce the woman because it is better to keep away from the doubtful.

Another example of the doubtful is that someone has lawfully acquired wealth as well as unlawfully acquired and both are inseparable. So, all his money is of the doubtful kind and he must refrain from using all his money.

The hadith compares to grazing animals in forbidden sanctuaries, the prohibitions of Shari'ah (divine law). It is *wajib (obligatory)* to refrain from doing them and the doubtful things are like borders of sanctuaries of the common people. These should be avoided lest

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[1] Bukhari # 52, Muslim # 107. 1599, Abu Dawud # 3329, Tirmidhi # 1209, Nasa'i # 4453, Ibn Majah # 3984, Musnad Ahmad 4-267.

one trespasses them. Anyone who perpetrates the forbidden is liable to punishment. Some of these things are such as will not be forgiven, like polytheism. Some of them Allah may pardon if he will. However, if a sincere repentance is made and forgiveness sought then everything will be forgiven.

Shaykh Ali Muttaqi رحمه الله has penned down a sequence; necessary, permissible, makruh (disapproved), forbidden disbelief. If a person suffices in all fields of his life with such necessities as maintain him and his honour then he is safe in his religion from every danger. If he tries to go beyond the limit of the necessities then he lands in the territory of the makruh (disapproved) (disliked) till greed takes him further into the forbidden limits. His next step is disbelief. We seek refuge in Allah from that.

The hadith sums up with reference to a person's heart. If it spoils, the entire body spoils because of sin and disobedience. Every sensible person must concentrate on his heart and keep it away from base desires otherwise it respects no limits and plunges into darkness.

The good of the body lies in lawful sustenance because it keeps the heart clean. A clean pure heart gets all limbs to do good deeds and to refrain from evil.

THREE AHADITH: The ulama (Scholars) agree that this hadith bears a large treasure of knowledge and answers to queries. There are three ahadith on which evolve Islamic laws and commands. They are:

إِنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ

(Deeds are judged according to the intentions behind them).[1]

مِنْ حُسْنِ إِسْلَامِ الْمَرْءِ تَرْكُهُ مَا لَا يَعْنِيْهِ

(The beauty of anyone's Islam lies in his abandoning what does not concern him),[2] and

اَلْحَلَالُ بَيِّنٌ الخ۔

(The lawful is clearly defined....)[3]

WAGES OF AN ADULTERESS ARE UNLAWFUL

(٢٧٦٣) وَعَنْ رَافِعِ بْنِ خَدِيْجٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ ثَمَنُ الْكَلْبِ خَبِيْثٌ وَ مَهْرُ الْبَغِيِّ خَبِيْثٌ وَكَسْبُ الْحَجَّامِ خَبِيْثٌ۔ (رواه مسلم)

2763. Sayyiduna Rafi' ibn Khadij رضی الله عنه narrated that Allah's Messenger صلی الله علیه وسلم said, "The price paid for a dog is impure, the wages paid to a prostitute are impure and the earning of a cupper are impure."[4]

COMMENTARY: The Arabic word (خبيث) (Khabith) in the hadith means 'impure' or 'bad'. However, jurists interpret it according to the context; unlawful, impure, makruh (disapproved) (undesirable), etc.

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[1] Bukhari # 54, Muslim # 155-1907, Tirmidhi # 1653, Musnad Ahmad 1-25.

[2] Tirmidhi # 2324, Muwata Maalik 47. 1-3, Ibn Majah # 3976.

[3] Tirmidhi under demission (# 2762)

[4] Muslim # 41-1568, Tirmidhi # 1279, Abu Dawud # 3421, Nasa'i # 429, Musnad Ahmad 3-464, Darini # 2621.

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Imam Shafi'I رحمه الله has translated the first portion: 'The price paid for a dog is unlawful.' Therefore, buying and selling of dogs is forbidden, both the trained and untrained dog. Imam Abu Hanifah رحمه الله, Imam Ahmad رحمه الله and some other imams said that trade of such dogs, cheetahs and beasts is permitted as are beneficial whether trained or untrained. They say that the price paid for a dog is impure or makruh (disapproved), not unlawful. The earnings of the cupper are undesirable, disliked. The prophet صلى الله عليه وسلم had himself paid wages for cupping. Hence, his (cupper's) wages are makruh tanzihi (disapproved for purification). Therefore, the word (خبيث) is not merely 'unlawful.'

QUESTION ABOUT PRICE OF DOG

(٢٧٦٤) وَعَنْ اَبِيْ مَسْعُوْدِ الْاَنْصَارِيِّ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ نَهٰى عَنْ ثَمَنِ الْكَلْبِ وَ مَهْرِ الْبَغِيِّ وَ حُلْوَانِ الْكَاهِنِ۔ (متفق عليه)

2764. Sayyiduna Abu Mas'ud al Ansari رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم for bade the price paid for a dog, the wages paid to a prostitute and the offerings made to a soothsayer."[1]

COMMENTARY: In the commentary on the previous hadith the buying and selling and price of a dog have been discussed exhaustively. As for this hadith forbidding the price paid for a dog, the Hanafi ulama (Scholars) say that this applied when the dogs should be killed and he had forbidden, too, that benefit should be derived from the dogs, Later, however, he gave permission that dogs should be used for beneficial purposes. It is also reported that someone killed a hunting dog and the prophet صلى الله عليه وسلم commanded him to reimburse the owner with forty dirhams. When someone else killed a dog guarding a herd of sheep, he commanded him to give the owner one ram.

Teebi said رحمه الله that most ulama (Scholars) say that it is not allowed to trade is dogs and also it is not necessary to pay to the owner for his dog if it is killed whether the dog is trained or untrained and whether it is allowed to keep the dog as a pet or not allowed. But, Imam Abu Hanifah رحمه الله has declared that buying and selling is allowed of the dog from which benefit may be derived, like a watch dog for the house or for sheep. Also, he has ruled that if such a dog is killed then the such a dog is killed then the person killing it must pay its price to the owner. The commentary on the previous hadith mentions about the ruling on the wages to an evil woman.

The soothsayer predicts the future. His wages described as (حلوان) mean sweetmeat. However, the terminology gives its meaning as a soothsayer's salary, in whatever form sweetmeat, clothing, cash, etc.

It is forbidden to visit soothsayers to learn of the future as also to visit astrologers, palmists and their likes to know the future. It is forbidden to believe them. This will be discussed in detail in the chapter on sorcery and prediction; (Divination). (باب السحر والكهانة)

FORBIDDEN TO SELL BLOOD

(٢٧٦٥) وَعَنْ اَبِيْ جُحَيْفَةَ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ نَهٰى عَنْ ثَمَنِ الدَّمِ وَ ثَمَنِ الْكَلْبِ وَكَسْبِ الْبَغِيِّ وَ

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[1] Bukhari # 2237, Muslim # 39-1567, Tirmidhi # 1280, Abu Dawud # 3428, Ibn Majah # 2159, Musnad Ahmad 2-118, Muwatta Maalik # 31. 29-68.

لَعَنَ اٰكِلَ الرِّبَا وَ مُوْكِلَهٗ وَالْوَاشِمَةَ وَالْمُسْتَوْشِمَةَ وَالْمُصَوِّرَ۔ (رواه البخاری)

2765. Sayyiduna Abu Juhayfah رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم forbade the price paid for blood, price paid for a dog and the earnings of a prostitute. He cursed the receiver of interest and its payer, the one who tattoos and the one who gets himself tattooed, and the one who draws or snaps pictures or sculptures.[1]

COMMENTARY: It is forbidden to buy and sell blood because it is impure. Accordingly, the price paid for it is also disallowed. Some people interpret it to refer to cupping in which case the prohibition will be makruh tanzihi (disapproved for purification).

Tattooing is to punch holes on the body, or some of it, with needles and fill the holes with collyrium or oil. The colour is then visible, black or bluish. This is the work of the perverse and the infidels. This process tends to alter Allah's creation. If a Muslim has done it, he must find some way to undo it but if that will cause great pain then he must not put himself to pain but repent and ask Allah for forgiveness. After that, he will not remain a sinner.

The drawing of pictures of living creatures is disallowed. It is not forbidden to draw or snap pictures of inanimate objects, or to cast sculptures.

Khattabi رحمہ اللہ has written that pictures can be of two kinds. One is that the picture itself is the objective and that on which it is drawn is secondary. The other kind is that the picture is secondary while that on which it is drawn is the real objective, like vessels, walls carpets, etc. While it is allowed to buy and sell and second kind, yet making both kinds of pictures is forbidden.

BUYING & SELLING FORBIDDEN THINGS IS ALSO FORBIDDEN

(٢٧٦٦) وَعَنْ جَابِرٍ اَنَّهٗ سَمِعَ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ عَامَ الْفَتْحِ وَ هُوَ بِمَكَّةَ اِنَّ اللّٰهَ وَرَسُوْلَهٗ حَرَّمَ بَيْعَ الْخَمْرِ وَ الْمَيْتَةِ وَالْخِنْزِيْرِ وَالْاَصْنَامِ فَقِيْلَ يَا رَسُوْلَ اللّٰهِ اَرَاَيْتَ شُحُوْمَ الْمَيْتَةِ فَاِنَّهٗ تُطْلٰى بِهَا السُّفُنُ وَيُدَّهَنُ بِهَا الْجُلُوْدُ وَيَسْتَصْبِحُ بِهَا النَّاسُ فَقَالَ لَا هُوَ حَرَامٌ ثُمَّ قَالَ عِنْدَ ذٰلِكَ قَاتَلَ اللّٰهُ الْيَهُوْدَ اِنَّ اللّٰهَ لَمَّا حَرَّمَ شُحُوْمَهَا اَجْمَلُوْهُ ثُمَّ بَاعُوْهُ فَاَكَلُوْا ثَمَنَهٗ۔ (متفق علیہ)

2766. Sayyiduna Jabir رضی اللہ عنہ narrated that, in the year of the conquest, he heard Allah's Messenger صلی اللہ علیہ وسلم say when he was in Makkah, "Allah and His messenger have forbidden the sale of wine, dead animals, swine and idols." Someone asked him about the fat of dead animals because it was used to coat and plate ships and to anoint skins and people lighted lamps with it. He said, "No that is unlawful."

Then, he said, "May Allah ruin the Jews! Allah made fat of these animals unlawful for them but they melted it and sold it to devour its price."[2]

COMMENTARY: Ata رحمہ اللہ said that the command of wine etc. includes music, drums etc. it is not allowed to buy and sell them. If any one destroys a musical instrument then it is not *wajib (obligatory)* on him to pay compensation to the owner.

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[1] Bukhari # 2238, Musnad Ahmad 2-309.

[2] Bukhari # 2236, Muslim # 71-581, Tirmidhi # 1301, Abu Dawud # 3486, Nasa'i # 4669, Ibn Majah # 2167, Musnad Ahmad # 14479.

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Imam Shafi'I رحمه الله holds that it is not allowed to trade in fat of a dead animal, to eat it or to rub on one's body, but it is allowed to put it to other uses. This it may be used to grease ships or light lamps, etc. He also holds that if impurity drops in butter oil or olive oil or any oil then it may be used to light lamps or make soap. However, the majority holds that like buying and selling, it is disallowed to use it in any way whatsoever, because the prohibition of the dead is general but dyed hide is excepted because its permission is known in particular.

Imam Abu Hanifah رضى الله عنه and his students have allowed that impure olive oil may be sold. But, they say that it is makruh (disapproved) to light lamps with impure oil, particularly in mosques.

The hadith winds up with a reference to the play of the Jews who found a round about way to disobey Allah's command.

It is wrong to circumvent a command to perpetrate the unlawful. Also, any thing's price attracts the same command as that thing if it is forbidden then its price is forbidden too.

THE DECEIT OF THE JEWS

(٢٧٦٧) وَعَنْ عُمَرَ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ قَاتَلَ اللّٰهُ الْيَهُوْدَ حُرِّمَتْ عَلَيْهِمُ الشُّحُوْمُ فَجَمَلُوْهَا فَبَاعُوْهَا۔ (متفق عليه)

2767. Sayyiduna Umar رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "May Allah curse the Jews, they were forbidden fats (of dead animals),[1] but they melted them and sold them."

CAT AS A MERCHANDISE

(٢٧٦٨) وَعَنْ جَابِرٍ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ نَهٰى عَنْ ثَمَنِ الْكَلْبِ وَالسِّنَّوْرِ۔ (رواه مسلم)

2768. Sayyiduna Jabir رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم forbade payments for dogs and cats.[2]

COMMENTARY: Teebi رحمه الله said that the disallowance to use the price paid for a cat is of the nature of makruh tanzihi (disapproved for purification). Nearly all the ulama (Scholars) hold that it is allowed to trade in cats, give them as gifts, lend them. However, Sayyiduna Abu Hurayrah رضى الله عنه and some of the tabi'un abides by the literal meaning of this hadith. They held that these things were not allowed.

PROFESSION OF CUPPING IS LAWFUL

(٢٧٦٩) وَعَنْ اَنَسٍ قَالَ حَجَمَ اَبُوْطَيْبَةَ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَاَمَرَلَهٗ بِصَاعٍ مِنْ تَمْرٍ وَ اَمَرَ اَهْلَهٗ اَنْ يُخَفِّفُوْا عَنْهُ مِنْ خَرَاجِهٖ۔ (متفق عليه)

2769. Sayyiduna Anas رضى الله عنه said that Sayyiduna Abu Taybah رضى الله عنه cupped Allah's Messenger صلى الله عليه وسلم. so, he gave instructions that he should be given one sa' of dates. He also commanded his masters to collect a lesser amount from his

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[1] Bukhari # 2233, Muslim # 22-1582, Nasai # 4257, Darimi # 2104, Musnad Ahmad 1-25.

[2] Muslim # 42-1569, Tirmidhi # 1284, Abu Dawud # 3479, Ibn Majah # 2161, Daraqutni # 271 (Buyu-Sales).

earnings (meaning they should reduce from his Kharaj (homage revenue)).[1]

COMMENTARY: The Arabs used to put their slaves, both male and female, to work in different professions and had them commit to pay to them a certain part of their earnings. Abu Taybah رضی اللہ عنہ was a slave of Banu Harithah. He served the Prophet صلی اللہ علیہ وسلم so that he was very pleased with him and recommended to the masters of Abu Taybah رضی اللہ عنہ to reduce the amount they took from him every day.

This hadith is evidence that cupping is a lawful profession. Wages may be paid for it.

SECTION II اَلْفَصْلُ الثَّانِیْ

EARNINGS OF OFFSPRING'S MAY BE USED

(۲۷۷۰) عَنْ عَآئِشَةَ قَالَتْ قَالَ النَّبِیُّ صَلَّی اللّٰهُ عَلَیْهِ وَسَلَّمَ اِنَّ اَطْیَبَ مَا اَکَلْتُمْ مِنْ کَسْبِکُمْ وَاِنَّ اَوْلَادَ کُمْ مِنْ کَسْبِکُمْ رَوَاهُ التِّرْمِذِیُّ وَالنَّسَائِیُّ وَابْنُ مَاجَةَ وَ فِیْ رِوَایَةٍ اَبِیْ دَاوٗدَ وَالدَّارِمِیِّ اِنَّ اَطْیَبَ مَا اَکَلَ الرَّجُلُ مِنْ کَسْبِهٖ وَاِنَّ وَلَدَهٗ مِنْ کَسْبِهٖ۔

2770. Sayyidah Ayshah رضی اللہ عنہا narrated that the Prophet صلی اللہ علیہ وسلم said, "The best of what you earn is from your earnings and surely your children are part of your earnings."[2]

COMMENTARY: The last words of this hadith assert that if parents are no longer able to earn for themselves then they are allowed to consume from their children's earnings. However, if parents can make a living for themselves then it is not permitted to them to burden their children unless the children wish that their parents eat from their earnings. In that ease, they are allowed to do so.

Allamah Teebi رحمہ اللہ said that if parents are helpless then it *wajib (obligatory)* on their son to provide them their necessities of life. But, Imam Shafi'I رحمہ اللہ said that the condition for the *wajib (obligatory)* is that they also are unable to earns. Other scholars do not place this condition.

THE COMMAND ABOUT THE UNLAWFUL PROPERTY

(۲۷۷۱) وَعَنْ عَبْدِاللّٰهِ بْنِ مَسْعُوْدٍ عَنْ رَّسُوْلِ اللّٰهِ صَلَّی اللّٰهُ عَلَیْهِ وَسَلَّمَ قَالَ لَایَکْسِبُ عَبْدٌ مَالَ حَرَامٍ فَیَتَصَدَّقُ مِنْهُ فَیُقْبَلُ مِنْهُ وَلَایُنْفِقُ مِنْهُ فَیُبَارَکُ لَهٗ فِیْهِ وَلَا یَتْرُکُهٗ خَلْفَ ظَهْرِهٖ اِلَّا کَانَ زَادَهٗ اِلَی النَّارِ اِنَّ اللّٰهَ لَایَمْحُو السَّیِّئَ بِالسَّیِّئِ وَلٰکِنْ یَمْحُو السَّیِّئَ بِالْحَسَنِ اِنَّ الْخَبِیْثَ لَا یَمْحُوا الْخَبِیْثَ رَوَاهُ اَحْمَدُ وَ کَذَا فِیْ شَرْحِ السُّنَّةِ۔

2771. Sayyiduna Abdullah ibn Mas'ud رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "If anyone earns unlawful property and gives charity from it then that is not accepted from him. If he spends from it (on himself and his family), then he gets no blessing for it. When he leaves it behind him, it is his provision to hell.

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[1] Bukhari # 2102, Muslim # 64-1577, Abu Dawud # 3424, Tirmidhi # 1282, Muwatta Maalik 26 (Iztidhm) Musnad Ahmad 3-174.

[2] Tirmidhi # 1363, Abu Dawud # 3528, Nasa'i # 4461, Ibn Majah # 2290, Musnad Ahmad 6-162.

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Surely, Allah does not erase evil with evil, but He erases evil with good. Surely, the impure does not erase the impure."[1]

COMMENTARY: People are amazing for the sake of this fleeting life, they are prepared to ruin the never ending life to follow. Here, a man lies, deceives, sucks the blood of the poor, misappropriates rights of fellow man and stoops so law as to throw away his religion and faith.. Finally, it becomes for him a provision that sees him to hell. He not only earns the unlawful but also derives benefit from it. After him, his heirs use what he leaves behind so they too commit sin. The sins being committed till the last day are recorded against him in his record of deeds.

If anyone hopes to be forgiven by giving charity from his unlawful earnings then that is not possible because to give charity from the unlawful is itself a sin. In fact, some ulama (Scholars) say that if anyone gives charity from unlawful property and hopes for reward there against then he gets near to the borders of disbelief. Further, if a poor man to whom he gives this charity known that it is from unlawful property and yet he prays for him then this poor man to reaches the borders of disbelief.

Sins are forgiven or their punishment mitigated by pious deeds. If any one gives charity, for example, from the lawful property, then it is a pious deed. A person not only gets re ward for spending in Allah's path from his lawful wealth, but also his sins are obliterated. It is as this verse of the Quran says:

إِنَّ الْحَسَنَاتِ يُذْهِبْنَ السَّيِّئَاتِ

{Surely good deeds will drive away the evil deeds} (11: 114)

These sentences are by way prelude of the last portion of the hadith (ان الخبيث) 'Surely, the impure does not erase the impure.'

GROWTH FROM THE UNLAWFUL

(٢٧٧٢) وَعَنْ جَابِرٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا يَدْخُلُ الْجَنَّةَ لَحْمٌ نَبَتَ مِنَ السُّحْتِ وَ كُلُّ لَحْمٍ نَبَتَ مِنَ السُّحْتِ كَانَتِ النَّارُ اَوْلٰى بِهٖ۔ رَوَاهُ اَحْمَدُ وَالدَّارِمِيُّ وَالْبَيْهَقِيُّ فِيْ شُعَبِ الْاِيْمَانِ۔

2772. Sayyiduna Jabir رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "The flesh that is reared on the unlawful will not enter paradise. For every flesh that is bred on the unlawful, the Fire is the most appropriate place."[2]

COMMENTARY: A person who breeds on the unlawful will not enter paradise before first undergoing punishment in hell, or he will not make it to the elevated ranks of paradise, or such people will not be admitted to paradise who consume the unlawful under the assumption that it is the lawful. Or, the hadith really means to sound a warning against the evil of consuming the unlawful earnings, that people might stay way from it.

Such a person is exempted from this warning whom Allah forgives when he repents sincerely or simply out of His mercy and Allah makes those people happy with away their wealth, or, Allah accepts someone's intercession for him.

LEAVE WHAT IS DOUBTFUL

(٢٧٧٣) وَعَنِ الْحَسَنِ بْنِ عَلِيٍّ قَالَ حَفِظْتُ مِنْ رَّسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ دَعْ مَا يُرِيْبُكَ اِلٰى مَا لَا يُرِيْبُكَ

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[1] Baghawi in Sharh us *sunnah (Prophet's صلی اللہ علیہ وسلم practice)* # 2030, Musnad Ahmad 3-387.

[2] Darimi # 2776, Musnad Ahmad 3-321, Bayhaqi in Sha'bul-eeman # 5761.

فَإِنَّ الصِّدْقَ طُمَانِينَةٌ وَإِنَّ الْكَذِبَ رِيبَةٌ۔ رَوَاهُ أَحْمَدُ وَالتِّرْمِذِيُّ وَالنَّسَائِيُّ وَرَوَى الدَّارِمِيُّ الْفَصْلَ الْأَوَّلَ۔

2773. Sayyiduna Hasan ibn Ali رضی اللہ عنہ narrated that he had preserved (in his memory the hadith) from Allah's Messenger صلی اللہ علیہ وسلم (who said), "Abandon that which puts you in doubt and take up that which does not cause you doubt, because truth promotes contentment (of heart) while Falsehood raises confusion and doubt."[1]

COMMENTARY: Refrain from those things which involve you in doubt. Some ulama (Scholars) say that when your conscience becomes doubtful about the permissibility or prohibition of a deed or saying then you must abstain from that thing and adopt what your conscience approves. A man's conscience does not mislead him. This is an axiom to determine the nature of something whether it is lawful or not. However, not everyone is qualified to judge in this manner. Only those righteous people whose minds and thinking and hearts are repositories of taqwa (piety) and faith and rectitude, can judge by their conscience.

DISTINGUISHING GOOD FROM BAD

(٢٧٧٤) وَعَنْ وَابِصَةَ بْنِ مَعْبَدٍ أَنَّ رَسُولَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ يَا وَابِصَةُ جِئْتَ تَسْأَلُ عَنِ الْبِرِّ وَالْإِثْمِ قُلْتُ نَعَمْ قَالَ فَجَمَعَ أَصَابِعَهُ فَضَرَبَ بِهَا صَدْرَهُ وَ قَالَ اسْتَفْتِ نَفْسَكَ اِسْتَفْتِ قَلْبَكَ ثَلَاثًا اَلْبِرُّ مَا اطْمَأَنَّتْ إِلَيْهِ النَّفْسُ وَاطْمَأَنَّ إِلَيْهِ الْقَلْبُ وَالْإِثْمُ مَا حَاكَ فِي النَّفْسِ وَ تَرَدَّدَ فِي الصَّدْرِ وَإِنْ أَفْتَاكَ النَّاسُ۔ (رواہ احمد و الدارمی)

2774. Sayyiduna Wabisah ibn Ma'bad رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "O Wabisah, have you come to ask about piety and sin?" He said, "Yes" He went on to narrate that the prophet صلی اللہ علیہ وسلم joined his fingers and struck his (wabisah's) chest with them and said, "Ask yourself the question. Ask your heart for a ruling." He said that three times. "Righteousness is that with which your self is content and the heart is content. And, sin is that which confuses the soul and perplexes the heart, even though the people may uphold it."

COMMENTARY: This hadith emphasizes that a decision about what is good and pious and about what is bad and evil, of any word or deed, should be left to one's conscience. If one's conscience does not hesitate then the words or deeds are pious but if there is a confusion then they are bad even though the people might recommend it and a mufti gives his verdict in its favour. A mufti's verdict (fatwa) is not the same as righteousness (taqwa (piety)). It is much better to abide by taqwa (piety) than to obey a fatwa.

As suggested in the commentary to the previous hadith, not everyone's heart is a repository of taqwa (piety) to be able to judge by his conscience. Hence, too, the common 'ask your heart' applies to the righteous people whose hearts are pure and free of base desires but filed with taqwa (piety) and love of Allah. Their hearts incline only to the good and turn away from evil. Moreover, this command is applied when a clear ruling of Shari'ah (divine law) is not found. Thus, when the verses of the Quran cannot be easily interpreted, resort should be made to ahadith as a *wajib (obligatory)* and a decision should

[1] Tirmidhi # 2526, Nasa'i # 5711, DArami # 2532 (first portion).

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be arrived at. If an interpretation alludes even from them, then resort should be made to the ulama (Scholars) as a *wajib (obligatory)*. If no clear answer is forthcoming even from them, the heart should be asked and one of the opinion on which it seems convinced should be followed .

When Sayyiduna Wabisah رضی اللہ عنہ came to the Prophet صلی اللہ علیہ وسلم, he did not ask him anything but the Prophet صلی اللہ علیہ وسلم perceived his intention because of the gift of perception and disclosed his intention. He then patted wabisah's رضی اللہ عنہ heart with his fingers to bless it and enable it to understand. He also meant to tell him to ask his heart.

PERFECT ABSTINENCE

(٢٧٧٥) وَعَنْ عَطِيَّةَ السَّعْدِيِّ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا يَبْلُغُ الْعَبْدُ اَنْ يَكُوْنَ مِنَ الْمُتَّقِيْنَ حَتّٰى يَدَعَ مَالَا بَاْسَ بِهٖ حَذْرًا لِمَا بِهٖ بَاْسٌ۔ (رواه الترمذی وابن ماجة)

2775. Sayyiduna Atiyah as-Sa'di رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "A person will never make it to (perfect) righteousness (and the rank of the God fearing) till he abandons what is not harmful to be able to be on guard against what is harmful."[1]

COMMENTARY: From the point view of Shari'ah (divine law) a muttaqi or the God-fearing is the person who keep himself away from those things which is perpetrated invite Allah's displeasure and punishment on the perpetrator.

Some ulama (Scholars) hold that taqwa (piety) or righteousness has three degrees:

(i) To shun polytheism or associating with Allah. Anyone who keeps away from it earns perpetual deliverance and this is stated in the verse:

اَلْزَمَهُمْ كَلِمَةَ التَّقْوٰى

{...made them stick to the word of piety} (48: 26)

(ii) To abstain from every sin, even the minor sins, and some ulama (Scholars) insist that this is taqwa (piety). This agrees with the verse:

وَلَوْ اَنَّ اَهْلَ الْقُرٰى اٰمَنُوْا وَاتَّقَوْا

{And had the people of (those) townships believed and feared (Allah)} (7: 96)

(iii) To exercise extreme care in everything so much so that even some permissible things are avoided, not to let the heart think of anyone besides Allah and to concentrate only on Him. This is the message of the verse:

اِتَّقُوا اللّٰهَ حَقَّ تُقَاتِهٖ

{Fear Allah as He should be feared} (3: 102)

In fact, the hadith under discussion also says the same things about the perfect degree of taqwa (piety).

The essence of the hadith is that no one becomes a perfect muttaqi or abstinent unless he shuns even the permitted things for fear lest they lead him to commit the unlawful or makruh (disapproved) (disapproved) or doubtful. For instance, if he is a bachelor, he has more sexual appetite, so he must shun such things as arouse his emotions, like perfume,

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[1] Tirmidhi # 2459, Ibn Majah # 4215.

etc. In short, after keeping away from the unlawful, makruh (disapproved) and doubtful, one must also give up some permissible, things as a cautionary measure to attain a perfect degree of taqwa (piety) and abstinence. Sayyiduna Umar رضی اللہ عنہ used to say, "Lest we fall into the unlawful, we used to keep away from nine out of ten portions of the lawful." Sayyiduna Abu Bakr رضی اللہ عنہ used to say, "We used to shun seventy portions of the permissible for fear we might commit what is unlawful."

CURSE ON THOSE CONNECTED WITH WINE

(٢٧٧٦) وَعَنْ اَنَسٍ قَالَ لَعَنَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فِي الْخَمْرِ عَشَرَةً عَاصِرَهَا وَ مُعْتَصِرَهَا وَشَارِبَهَا وَ حَامِلَهَا وَالْمَحْمُوْلَةَ اِلَيْهِ وَسَاقِيَهَا وَبَائِعَهَا وَ اٰكِلَ ثَمَنِهَا وَالْمُشْتَرِى لَهَا وَالْمُشْتَرٰى لَهٗ۔ (رواه الترمذی وابن ماجة)

2776. Sayyiduna Anas رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم cursed ten people connected with wine: The one who extracts it, the one who gets it extracted, the one who consumes it, the one who delivers it, the one to whom it is delivered, the one who serves it, the one who sells it. The one who uses its price for his good. The one who buys it and the one for whom it is bought.[1]

(٢٧٧٧) وَعَنِ ابْنِ عُمَرَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَعَنَ اللّٰهُ الْخَمْرَ وَ شَارِبَهَا وَسَاقِيَهَا وَ بَائِعَهَا وَ مُبْتَاعَهَا وَعَاصِرَهَا وَ مُعْتَصِرَهَا وَحَامِلَهَا وَالْمَحْمُوْلَةَ اِلَيْهِ۔ (رواه ابوداؤد وابن ماجة)

2777. Sayyiduna Ibn Umar رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Allah has cursed wine, its drinker, its server, its seller its buyer the person who extracts it, the person for whom it is extracted, its deliverer and the person to whom it is delivered."[2]

COMMENTARY: Wine is *Umm-ul-KhaBaith* (the root of all evils). Therefore, it is cursed. However, it is possible that here 'wine' could refer to one who uses the price paid for wine.

WAGES OF THE CUPPER

(٢٧٧٨) وَعَنْ مُحَيِّصَةَ اَنَّهٗ اسْتَاْذَنَ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فِيْ اُجْرَةِ الْحَجَّامِ فَنَهَاهُ فَلَمْ يَزَلْ يَسْتَاْذِنُهٗ حَتّٰى قَالَ اَعْلِفْهُ نَاضِحَكَ وَاَطْعِمْهُ رَقِيْقَكَ۔ (رواه مالك والترمذی وابوداؤد وابن ماجة)

2778. Sayyiduna Muhaysah رضی اللہ عنہ reported that he sought permission of Allah's Messenger صلی اللہ علیہ وسلم for (collecting) the wages of the cupper, but he disallowed it, He did not cease to ask for his permission, so finally he consented, "Feed the earnings (from it) to your watering camels and feed your slaves (male and female) with it."

COMMENTARY: Many Sahabah (Prophet's Companions) رضی اللہ عنہم had a retinue of slaves some of whom they had appointed to the profession of cupping. The Prophet صلی اللہ علیہ وسلم did not permit Sayyiduna Muhaysah رضی اللہ عنہ to use the share of earnings he received from his slave but permitted him to feed the camels and the slaves from his share. Though these earnings were not unlawful yet they were makruh tanzihi (disapproved for purification) and not proper for the sahabah (Prophet's Companions) رضی اللہ عنہم. He encouraged them in this way to work hard for a living.

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[1] Tirmidhi # 1299, Ibn Majah # 3381.

[2] Abu Dawud # 3674, Ibn Majah # 3380, Musnad Ahmad 2-25.

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EARNINGS OF SONGSTRESS DISALLOWED

(٢٧٧٩) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ نَهٰى رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَنْ ثَمَنِ الْكَلْبِ وَكَسْبِ الزَّمَّارَةِ۔ رَوَاهُ فِيْ شَرْحِ السُّنَّةِ۔

2779. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم forbade the (use of the) price of the dog and the wages of the songstress.[1]

COMMENTARY: Some ulama (Scholars) say that the word (الزمارة) (az-zammarah) means the beautiful woman who is lecherous. Some others say that it means 'making signs with the eyes.' Prostitutes do lure men by signs with the eyes. (These meanings are suggested instead of 'songstress!')

BUYING AND SELLING SINGING GIRLS

(٢٧٨٠) وَعَنْ اَبِيْ اُمَامَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَاتَبِيْعُوا لْقَيْنَاتِ وَلَا تَشْتَرُوْهُنَّ وَلَا تُعَلِّمُوْهُنَّ وَثَمَنُهُنَّ حَرَامٌ وَفِيْ مِثْلِ هٰذَا اُنْزِلَتْ وَمِنَ النَّاسِ مَنْ يَّشْتَرِيْ لَهْوَ الْحَدِيْثِ۔ رَوَاهُ اَحْمَدُ وَالتِّرْمِذِيُّ وَابْنُ مَاجَةَ وَقَالَ التِّرْمِذِيُّ هٰذَا حَدِيْثٌ غَرِيْبٌ وَعَلِيُّ بْنُ يَزِيْدَ الرَّاوِيُّ يُضَعَّفُ فِي الْحَدِيْثِ وَسَتَذْكُرُ حَدِيْثَ جَابِرٍ نَهٰى عَنْ اَكْلِ الْهِرِّ فِيْ بَابِ مَايَحِلُّ اَكْلُهٗ اِنْ شَاءَ اللّٰهُ تَعَالٰى۔

2780. Sayyiduna Abu Umamah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Do not sell singing girls, nor buy them, nor teach them (to sing). The price paid for them is unlawful. The like of it has been revealed.

وَمِنَ النَّاسِ مَنْ يَّشْتَرِيْ لَهْوَ الْحَدِيْثِ

{And of mankind is he who buys frivolous discourse} (1)[2] (31;6)

COMMENTARY: Some ulama (Scholars) interpret the hadith to mean: it is not allowed to sell the singing girls. All the others say that while it is permitted to sell them, yet the hadith merely forbids receiving wages of their singing. Wages acquired for their songs are unlawful. It is like grapes sold to the processor of wine, their price is forbidden, but not the price of grapes as a commodity. In both cases, the wages or price are forbidden because they are got from unlawful means. Neither grapes nor singing girls are disallowed to be bought and sold.

The words 'frivolous discourse' (or, playthings as translated in Urdu) in the verse cited in the hadith mean the songs and forbidden voices that keep a person away from remembrance of Allah and cause him to commit sin. Every kind of vain talk comes under this meaning. A man by the name of Nasr ibn Harith used to purchase singing girls so that he could lead people away from Allah's path through them. This verse was revealed to censure him. Some ulama (Scholars) say that Nasr ibn Harith had bought certain books of the ajamis (non Arabs) from which he read stories to the Quraysh, saying, "Muhammad relates to you the stories of the Aad and Thamud, but I narrate to you the tales of Rustum, Isfandyar and kings."

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[1] Baghawi in Sharh us *sunnah (Prophet's صلی اللہ علیہ وسلم practice)* # 2038.

[2] Tirmidhi # 1286, Ibn Majah # 2118, Musnad Ahmad 5-264.

وَسَنَذْكُرُ حَدِيْثَ جَابِرٍ نَهٰى عَنْ اَكْلِ الْهِرِّ فِيْ بَابِ مَا يَحِلُّ اَكْلُهٗ اِنْ شَآءَ اللّٰهُ تَعَالٰى

We shall mention the hadith of Jabir (# 128) forbidding eating of cats in the chapter on what is allowed to be eaten, Insha Allah.

SECTION III اَلْفَصْلُ الثَّالِثُ

FARD (COMPULSORY) TO EARN LAWFUL SUSTENANCE

(٢٧٨١) عَنْ عَبْدِاللّٰهِ بْنِ مَسْعُوْدٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ طَلَبُ كَسْبِ الْحَلَالِ فَرِيْضَةٌ بَعْدَ الْفَرِيْضَةِ۔ (رواه البيهقي في شعب الايمان)

2781. Sayyiduna Abdullah ibn Mas'ud رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Seeking to earn to lawful livelihood is obligatory duty after the obligatory duties."[1]

COMMENTARY: The hadith means that it is *fard (compulsory)* to earn a living with one's family. However, the obligatory duties, like *salah (prayer)* zakah (Annual due charity) etc. prescribed by Allah are of prime importance and must be discharged without fail and earning lawful sustenance follows next.

According to the ruling of fiqh (Islamic jurisprudence), it is *fard (compulsory)* for that person to earn for the upkeep of himself and his family who is dependent on the earnings.

The hadith calls for lawful livelihood which means that is must not be unlawful. So, here lawful sustenance could include doubtful earning too because the other ahadith call for keeping away from doubtful provision only by way of caution, not as an obligatory duty. Also, it is not *fard (compulsory)* on everyone to seek a livelihood for himself, because many there are whose upkeep is *wajib (obligatory)* on other people so it is not necessary for them to earn for themselves.

PERMITTED TO SEEK REMUNERATION FOR WRITING DOWN THE QURAN

(٢٧٨٢) وَعَنِ ابْنِ عَبَّاسٍ اَنَّهٗ سُئِلَ عَنْ اُجْرَةِ كِتَابَةِ الْمُصْحَفِ فَقَالَ لَا بَاْسَ اِنَّمَا هُمْ مُصَوِّرُوْنَ وَاِنَّهُمْ اِنَّمَا يَاْكُلُوْنَ مِنْ عَمَلِ اَيْدِيْهِمْ۔ (رواه رزين)

2782. Sayyiduna Ibn Abbas رضی اللہ عنہ was asked about wages paid for writing down the (copies of the) Quran. He said, "It does not matter. They are only those who sketch lines and they only eat what their hands earn."[2]

COMMENTARY: Sayyiduna Ibn Abbas رضی اللہ عنہ explained to the man who wondered if the scribe could get wages for writing down the Quran that the scribe merely drew lines on pages. He might do that for the Quran or for any other book. It is his art and his profession and a means of his lawful sustenance.

THE MOST EXCELLENT EARNING

(٢٧٨٣) وَعَنْ رَافِعِ بْنِ خَدِيْجٍ قَالَ قِيْلَ يَا رَسُوْلَ اللّٰهِ اَيُّ الْكَسْبِ اَطْيَبُ قَالَ عَمَلُ الرَّجُلِ بِيَدِهٖ وَكُلُّ بَيْعٍ مَبْرُوْرٍ۔ (رواه احمد)

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[1] Bayhaqi in shu'ab ul Eeman # 8741.

[2] Razin.

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2783. Sayyiduna Rafi ibn Khadij رضی اللہ عنہ narrated that Someone asked (the Prophet صلی اللہ علیہ وسلم), "Ó Messenger of Allah, which kind of earning is the purest (meaning, best)?" He said, "A person's work with his hand and every trade that is approved (being according to principles and rules of Shari'ah (divine law)).''[1]

COMMENTARY: The Prophet صلی اللہ علیہ وسلم said that while the best profession was of manual labour, yet if anyone cannot earn his living with his hands then he must engage in some business conducting it honestly and in a trustworthy manner. This too is a pure and lawful earning.

PRICE OF MILK

(٢٧٨٤) وَعَنْ اَبِيْ بَكْرِ بْنِ اَبِيْ مَرْيَمَ قَالَ كَانَتْ لِمِقْدَامِ بْنِ مَعْدِيْ كَرِبَ جَارِيَةٌ تَبِيْعُ اللَّبَنَ وَيَقْبِضُ الْمِقْدَامُ ثَمَنَهُ فَقِيْلَ لَهُ سُبْحَانَ اللّٰهِ اتَبِيْعُ اللَّبَنَ وَتَقْبِضُ الثَّمَنَ فَقَالَ نَعَمْ وَمَا بَاْسٌ بِذٰلِكَ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ لَيَاْتِيَنَّ عَلَى النَّاسِ زَمَانٌ لَا يَنْفَعُ فِيْهِ اِلَّا الدِّيْنَارُ وَالدِّرْهَمُ۔ (رواه احمد)

2784. Sayyiduna Abu Bakr ibn Abu Maryam رضی اللہ عنہ said that Sayyiduna Miqdan ibn Ma'dikarib had a female slave who sold milk (of the domestic animals) and Miqdam took its price. Someone exclaimed, "Subhan Allah, is it that she sell the milk and you keep its price?" He said, "Yes! There is no harm in it. I had heard Allah's Messenger صلی اللہ علیہ وسلم say, 'A time will come to man without doubt when nothing will benefit him but the dinar and the dirham.''[2]

COMMENTARY: People questioned Sayyiduna Miqdam رضی اللہ عنہ why he collected the price of milk because it was better that milk should be given away to the poor or distributed to friends and acquaintances. It did not behave him to sell milk and get its price. He clarified that it was not disallowed by Shari'ah (divine law) and neither was it otherwise disallowed nor disliked. Besides, he was not driven to sell milk out of greed but only made two ends meet with it.

He also said that a time would come when people would think only of wealth and expand the sphere of their needs but paucity of funds would involve them in different kinds of difficulties. Hence, neither will they pay attention to leaning nor will they respect the learned. Rather, they will have only one goal; money, and they will esteem the monied class.

The sahabah (Prophet's Companions) رضی اللہ عنہم used to encourage each other to collect enough wealth to be able to preserve a respectable way of life. They reminded others that a time would come when the needy and hard-pressed would first of all risk his religion and faith.

RETAIN THE SOURCE OF PROVISION APPOINTED BY ALLAH

(٢٧٨٥) وَعَنْ نَافِعٍ قَالَ كُنْتُ اُجَهِّزُ اِلَى الشَّامِ وَاِلَى مِصْرَ فَجَهَّزْتُ اِلَى الْعِرَاقِ فَاَتَيْتُ اُمَّ الْمُؤْمِنِيْنَ عَائِشَةَ فَقُلْتُ لَهَا يَا اُمَّ الْمُؤْمِنِيْنَ كُنْتُ اُجَهِّزُ اِلَى الشَّامِ فَجَهَّزْتُ اِلَى الْعِرَاقِ فَقَالَتْ لَا تَفْعَلْ مَالَكَ وَلِمَتْجَرِكَ فَاِنِّيْ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ اِذَا سَبَّبَ اللّٰهُ لِاَحَدِكُمْ رِزْقًا مِنْ وَجْهٍ فَلَا يَدَعْهُ حَتّٰى

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[1] Musnad Ahmad 4-141.

[2] Musnad Ahmad 4-133.

يَتَغَيَّرَ لَهُ اَوْ يَتَنَكَّرَ لَهُ۔ (رواه احمد وابن ماجة)

2785. Sayyiduna Nafi رحمه الله said that he was in the habit of preparing (merchandise for) his business expeditions to Syria and Egypt (under the supervision of his staff and attorneys). Then, he decided to send on to Iraq and met the mother of the believers, Sayyidah Ayshah رضى الله عنها and said to her, 'O Mother of the believers, used to prepare expeditions to Syria and now I have prepared one for Iraq." She said, "Do not do so. What is wrong with you and with the place with which you were trading? For, I did hear Allah's Messenger صلى الله عليه وسلم say. 'When Allah has caused for any of you sustenance from one place, he should not abandon it unless it changes for him or gets bad for him.'

COMMENTARY: Teebi رحمه الله said that if anyone receives something good of the permissible then he must regard it as a blessing of Allah and continue to work for it. He must not give it up without a valid reason to go for something else.

ABU BAKR'S رضى الله عنه CAUTION AND TAQWA (PIETY)

(٢٧٨٦) وَعَنْ عَائِشَةَ قَالَتْ كَانَ لِاَبِيْ بَكْرٍ غُلَامٌ يُخَرِّجُ لَهُ الْخَرَاجَ فَكَانَ اَبُوْ بَكْرٍ يَاْكُلُ مِنْ خَرَاجِهٖ فَجَاءَ يَوْمًا بِشَيْءٍ فَاَكَلَ مِنْهُ اَبُوْ بَكْرٍ فَقَالَ لَهُ الْغُلَامُ تَدْرِيْ مَاهٰذَا فَقَالَ اَبُوْ بَكْرٍ وَمَا هُوَ قَالَ كُنْتُ تَكَهَّنْتُ لِاِنْسَانٍ فِي الْجَاهِلِيَّةِ وَمَا اُحْسِنُ الْكَهَانَةَ اِلَّا اَنِّيْ خَدَعْتُهُ فَلَقِيَنِيْ فَاَعْطَانِيْ بِذٰلِكَ فَهٰذَا الَّذِيْ اَكَلْتَ مِنْهُ قَالَتْ فَاَدْخَلَ اَبُوْ بَكْرٍ يَدَهُ فَقَاءَ كُلَّ شَيْءٍ فِيْ بَطْنِهٖ۔ (رواه البخارى)

2786. Sayyidah Ayshah رضى الله عنها narrated that Sayyiduna Abu Bakr رضى الله عنه had a slave who paid to (Sayyiduna) Abu Bakr رضى الله عنه a specified portion of his earnings (as per the custom of the Arabs) and he consumed from what he brought. One day, he brought something to him and Sayyiduna Abu Bakr رضى الله عنه ate from it. Then the slave asked him, 'Do you relies what it is?" Abu Bakr رضى الله عنه asked, "what is it?" He said, "I used to predict the future for one man during the jahiliyh but I was not good at it, so I duped him. He happened to meet me today and gave that to me. It is of this that you have eaten." She said, "Abu Bakr put his hand in his mouth and vomited everything that was in his belly."[1]

COMMENTARY: Sayyiduna Abu Bakr رضى الله عنه vomited what he had eaten of the earnings through soothsaying and deceit. He vomited not only what he had eaten of it but also everything else lest it had mixed up with it.

Imam Ghazzali رضى الله عنه wrote in Minhaj ul Aabideen that he work of Abu Bakr رضى الله عنه was his taqwa (piety) and fear of Allah. He also wrote that fear of Allah demands that nothing should be taken from another unless its lawfulness is verified, after that it should be confirmed that there is no dubious nature in it. If these things cannot be confirmed the it should not be taken and it already taken then it should be returned.

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[1] Bukhari # 3842.

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CONSEQUENCES OF DEVOURING THE UNLAWFUL

(٢٧٨٧) عَنْ اَبِيْ بَكْرٍ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لَا يَدْخُلُ الْجَنَّةَ جَسَدٌ غُذِيَ بِالْحَرَامِ۔ (رواه البيهقي في شعب الايمان)

2787. Sayyiduna Abu Bakr رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "The body that has been nourished with the unlawful shall not enter paradise."[1]

AN EXAMPLE OF SAYYIDUNA UMAR رضی اللہ عنہ

(٢٧٨٨) وَعَنْ زَيْدِ بْنِ اَسْلَمَ اَنَّهٗ قَالَ شَرِبَ عُمَرُ بْنُ الْخَطَّابِ لَبَنًا وَاَعْجَبَهٗ وَقَالَ لِلَّذِيْ سَقَاهُ مِنْ اَيْنَ لَكَ هٰذَا اللَّبَنُ فَاَخْبَرَهٗ اَنَّهٗ وَرَدَ عَلٰى مَاءٍ قَدْ سَمَّاهُ فَاِذَا نَعَمٌ مِنْ نَعَمِ الصَّدَقَةِ وَهُمْ يَسْقُوْنَ الْحَلَبَ لِيْ مِنْ اَلْبَانِهَا فَجَعَلَتْهُ فِيْ سِقَائِيْ وَهُوَ هٰذَا فَاَدْخَلَ عُمَرُ يَدَهٗ فَاسْتَقَاءَهٗ۔ رَوَاهُ الْبَيْهَقِيُّ فِيْ شُعَبِ الْاِيْمَانِ۔

2788. Sayyiduna Zayd ibn Aslam رضی اللہ عنہ narrated that (once) Sayyiduna Umar رضی اللہ عنہ drank milk that pleased (or seemed strange to)[2] him. So, he asked the person who had given him to drink, "From where did you get this milk? He informed him that he had gone to a watering place, naming it. There some animals of the zakah (Annual due charity) were gathered and were drinking water. The supervisors who were watering the animals milked them for him and he put it in his milk skin. He gave him that, so, Umar رضی اللہ عنہ put his hand in his mouth and vomited (out the milk because it was property of zakah (Annual due charity) not allowed to him).[3]

COMMENTARY: Sayyid Jamaluddin Muhaddith has pointed out that this hadith is not found at this place in most copies of Mishkat and it is also not found in the copy from which their teacher narrated ahadith to them. Rather, it is written in the margin at this place in that book. Hence, it is proper that it should be omitted from this chapter. (Besides, this hadith is found in Mishkat's Book of zakah (Annual due charity) with minor changes of words # 1836. So, it is not proper here again).

WORSHIP IS REJECTED IF WEALTH IS REQUIRED UNLAWFULLY HOWSOEVER INSIGNIFICANT

(٢٧٨٩) وَعَنِ ابْنِ عُمَرَ قَالَ مَنِ اشْتَرٰى ثَوْبًا بِعَشَرَةِ دَرَاهِمَ وَفِيْهِ دِرْهَمٌ حَرَامٌ لَمْ يَقْبَلِ اللّٰهُ تَعَالٰى لَهٗ صَلَاةً مَادَامَ عَلَيْهِ ثُمَّ اَدْخَلَ اِصْبَعَيْهِ فِيْ اُذُنَيْهِ وَقَالَ صُمَّتَا اِنْ لَمْ يَكُنِ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ سَمِعْتُهٗ يَقُوْلُهٗ رَوَاهُ اَحْمَدُ وَالْبَيْهَقِيُّ فِيْ شُعَبِ الْاِيْمَانِ وَقَالَ اِسْنَادُهٗ ضَعِيْفٌ۔

2789. Sayyiduna Ibn Umar رضی اللہ عنہ said that if any one buys a clothing, say for ten dirhams, of which one dirham is unlawfully acquired, Allah, the Exalted, shall not accept from him *salah (prayer)* as long as that is on his body. Then, he put a finger (his fore fingers) in each ear and said, "May they (both ears) become deaf if I had

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[1] Bayhaqi in Sha'bul Eeman.

[2] Parenthesis depict translation as in Urdu text for Ajabahu (pleased him). - Mazahir Haq p 52.

[3] Bayhaqi in Shu'ab ul eeman # 5771.

not heard the Prophet صلی اللہ علیہ وسلم say it!"[1]

COMMENTARY: Even a small amount of wealth illegally acquired will have the effect of *salah (prayer)* not being accepted to get him reward for it though his obligation will have been discharged. It is like one offering *salah (prayer)* on illegally taken property belonging to someone else in which case his obligation may stand discharged but he will get no reward for his *salah (prayer)*.

Ibn Umar رضی اللہ عنہ confirmed that he had heard the hadith from the Prophet صلی اللہ علیہ وسلم.

CHAPTER - II

BEING GENTLE IN DEALINGS بَابُ الْمُسَاهَلَةِ فِي الْمُعَامَلَةِ

It is very necessary to be genfle in mutual dealings and in business affairs. This will strengthen social relations and mutual cooperation and kindness. Ahadith on this subject are narrated in this chapter.

SECTION I اَلْفَصْلُ الْاَوَّلُ

PROPHET'S PRAYER FOR THE GENTLE

(۲۷۹۰) عَنْ جَابِرٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ رَحِمَ اللّٰهُ رَجُلًا سَمْحًا اِذَا بَاعَ وَاِذَا اشْتَرٰى وَاِذَا اقْتَضٰى۔ (رواه البخارى)

2790. Sayyiduna Jabir رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "May Allah have mercy on a man who is gentle when he sells, when he buys and when he demands."[2]

BE MILD ALLAH WILL SHOW MILDNESS TO YOU

(۲۷۹۱) وَعَنْ حُذَيْفَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِنَّ رَجُلًا كَانَ فِيْمَنْ كَانَ قَبْلَكُمْ اَتَاهُ الْمَلَكُ لِيَقْبِضَ رُوْحَهٗ فَقِيْلَ لَهٗ هَلْ عَمِلْتَ مِنْ خَيْرٍ قَالَ مَا اَعْلَمُ قِيْلَ لَهٗ اُنْظُرْ قَالَ مَا اَعْلَمُ شَيْئًا غَيْرَ اَنِّيْ كُنْتُ اُبَايِعُ النَّاسَ فِي الدُّنْيَا وَاُجَازِيْهِمْ فَاُنْظِرُ الْمُوْسِرَ وَاَتَجَاوَزُ عَنِ الْمُعْسِرِ فَاَدْخَلَهُ اللّٰهُ الْجَنَّةَ! مُتَّفَقٌ عَلَيْهِ وَفِيْ رِوَايَةٍ لِمُسْلِمٍ نَحْوَهٗ عَنْ عُقْبَةَ بْنِ عَامِرٍ وَاَبِيْ مَسْعُوْدٍ الْاَنْصَارِيِّ فَقَالَ اللّٰهُ اَنَا اَحَقُّ بِذَا مِنْكَ تَجَاوَزُوْا عَنْ عَبْدِيْ۔

2791. Sayyiduna Hudhayfah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "There was a man among the people who preceded you. The angel came to him to take away his soul. He was asked, 'Have you done any thing good?' He said, 'I do not know.' He was asked to think over. He said, 'I do not know anything beyond that I had business dealings with people in the world and when I demanded my dues from them, I allowed respite to the rich and let the poor off.' So Allah admitted him to paradise."[3]

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[1] Bayhaqi in Sha'b ul eeman 6114, Musnad Ahmad.

[2] Bukhari # 2056, Ibn Majah # 2203.

[3] Bukhari # 3451, Muslim # 26-1560, Darimi # 2546, Musnad Ahmad 5-395.

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2292. Sayyiduna Uqbah ibn 'Aamir رضی اللہ عنہ and Sayyiduna Abu Mas'ud Ansari رضی اللہ عنہ narrated samething like it: Allah said, "I have more right to do that than you have forgive my slave!"[1]

COMMENTARY: The angel who came to the man was either Sayyiduna Izra'il علیہ السلام himself or one of his sub-ordinates to take away his soul. It is more likely that he (Izra'il) علیہ السلام had come as Allah says:

قُلْ يَتَوَفّٰكُمْ مَّلَكُ الْمَوْتِ الَّذِيْ وُكِّلَ بِكُمْ

{Say, 'The angel of death who has been given your charge shall take your souls.} (32: 11)

If it is a pure soul, the angels of mercy take it but if it is a bad soul, the angels of punishment get hold of it. However, it must be known that the angel of death (whether Izra'il علیہ السلام or any other angel) is only a means of extracting anyone's soul otherwise the soul is taken and death given only by Allah, the Exalted, as the says so:

اَللّٰهُ يَتَوَفَّى الْاَنْفُسَ حِيْنَ مَوْتِهَا

{Allah takes the souls (of people) at the time of their death....} (89: 42)

As for the question to the man (when his soul was being taken), it was asked either by Allah himself, or by the angels. The greater possibility is that the question was put to him before his soul was taken as understood from the hadith. But, it is also possible that it was put after he was buried in grave as Shaykh Mazhar رحمہ اللہ said. At the same time, Allamah Teebi رحمہ اللہ has also sounded the possibility that the question shall be asked (in the hereafter) after resurrection.

The hadith says that it is very rewarding to give respite to one who is able to repay and to write off for one who is unable.

AVOID SWEARING OFTEN WHILE TRADING

(۲۷۹۳) وَعَنْ اَبِيْ قَتَادَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِيَّاكُمْ وَكَثْرَةَ الْحَلْفِ فِي الْبَيْعِ فَاِنَّهٗ يُنَفِّقُ ثُمَّ يَمْحَقُ۔ (رواہ مسلم)

2793. Sayyiduna Abu Qatadah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Beware of much swearing while buying and selling, for, though it may promote sale yet it removes blessing."[2]

COMMENTARY: A man who swears much tends to lie too. That removes blessings and people begin to mistrust him. They gradually stop buying from him.

(۲۷۹٤) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ الْحَلْفُ مُنْفِقَةٌ لِلسِّلْعَةِ مُمْحِقَةٌ لِلْبَرَكَةِ۔ (متفق علیہ)

2794. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that he heard Allah's Messenger صلی اللہ علیہ وسلم say, "Swearing does get quick sale (in the beginning) for the merchandise but (eventually) removes blessing."[3]

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[1] Muslim # 26-1560, Musnad Ahmad 4-118.

[2] Muslim # 132-1607, Ibn Majah # 2209, Musnad Ahmad 4-118.

[3] Bukhari # 2087, Muslim # 131-1606, Abu Dawud #.3335, Nasa'i # 4461.

COMMENTARY: The hadith might mean too much swearing as also false swearing. Whatever it be, swearing wipes out blessings from the merchandise and property. Eventually, it is either misused or lost. There is no benefit in this world or the next.

WARNING AGAINST FALSE SWEARING

(٢٧٩٥) وَعَنْ اَبِيْ ذَرٍّ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ ثَلَاثَةٌ لَا يُكَلِّمُهُمُ اللّٰهُ يَوْمَ الْقِيَامَةِ وَلَا يَنْظُرُ اِلَيْهِمْ وَلَا يُزَكِّيْهِمْ وَلَهُمْ عَذَابٌ اَلِيْمٌ قَالَ اَبُوْذَرٍّ خَابُوْا وَخَسِرُوْا مَنْ هُمْ يَارَسُوْلَ اللّٰهِ قَالَ الْمُسْبِلُ وَالْمَنَّانُ وَالْمُنَفِّقُ سِلْعَتَهُ بِالْحَلْفِ الْكَاذِبِ۔ (رواه مسلم)

2795. Sayyiduna Abu Dharr رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "Three people there are to whom Allah will not speak (kindly) on the day of resurrection at whom He shall not look (mercifully), and whom He shall not purify (from sins). For them is a painful punishment." Sayyiduna Abu Dharr رضی اللہ عنہ exclaimed, "They are failures and lost!" (And, he asked) "Who are they, O Messenger of Allah?" He said, "He who wears a trailing robe. He who recounts his favours. And, He who expands his business by false swearing."[1]

COMMENTARY: A trailing robe may also be any (trailing) lower garment hanging down the ankles out of arrogance.

Anyone who reminds of his favours gets no reward for it whether it is an act of kindness, of charity, or help.

Previously, anyone who swears falsely is defined.

SECTION II اَلْفَصْلُ الثَّانِيْ

TRUTHFUL MERCHANT

(٢٧٩٦-٢٧٩٧) عَنْ اَبِيْ سَعِيْدٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ التَّاجِرُ الصَّدُوْقُ الْاَمِيْنُ مَعَ النَّبِيِّيْنَ وَالصِّدِّيْقِيْنَ وَالشُّهَدَاءِ۔ رَوَاهُ التِّرْمِذِيُّ وَالدَّارِمِيُّ وَالدَّارَ قُطْنِيُّ وَرَوَاهُ ابْنُ مَاجَةَ عَنِ ابْنِ عُمَرَ وَقَالَ التِّرْمِذِيُّ هٰذَا حَدِيْثٌ غَرِيْبٌ۔

2796. Sayyiduna Abu Sa'eed narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "The truthful, trustworthy merchant will be (bracketed) with the Prophet علیہ السلام, the upright true one and the martyrs."[2]

2797. Sayyiduna Ibn Umar رضی اللہ عنہ also narrated this hadith.[3]

COMMENTARY: The merchant may be an ordinary trader or monopolist. The best of all trades is business of cloth followed by a perfumes (drapery and perfumery).

This person could be with those three great men in place of gathering in the shade of mercy, or with them in paradise as their companion. He will be with the Prophets علیہ السلام because of obedience to them, with the truthful people because of his own quality of truthfulness and with the martyrs because they shall bear testimony to his honesty (the word shuhada means martyrs and witnesses).

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[1] Muslim # 171-106, Nasa'i # 4458, Ibn Majah # 2208, Darimi # 2605, Musnad Ahmad 5-158.

[2] Tirmidhi # 1213, Darimi # 2539.

[3] Ibn Majah # 2139.

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CHARITY NECESSARY WITH TRADING

(٢٧٩٨) وَعَنْ قَيْسِ بْنِ اَبِيْ غَرَزَةَ قَالَ كُنَّا نُسَمّٰى فِيْ عَهْدِ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ السَّمَاسِرَةَ فَمَرَّ بِنَا رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَسَمَّانَا بِاسْمٍ هُوَ اَحْسَنُ مِنْهُ فَقَالَ يَامَعْشَرَ التُّجَّارِ اِنَّ الْبَيْعَ يَحْضُرُهُ اللَّغْوُ وَالْحَلْفُ فَشُوْبُوْهُ بِالصَّدَقَةِ۔ (رواه ابوداؤد والترمذى والنسائى وابن ماجة)

2798. Sayyiduna Qays ibn Abu Gharazah رضی اللہ عنہ narrated that during the time of Allah's Messenger صلی اللہ علیہ وسلم they were known as as-Samasirah (brokers). One day, Allah's Meşsenger صلی اللہ علیہ وسلم passed by them and give them a name better than that. He said, "O company of traders (tujjar), surely, in business vain talk and swearing do crop up, so blend that with sadaqah (charity) (or charity)."[1]

COMMENTARY: Samasirah is plural of samsar meaning a broker or a proprietor or supervisor. The Prophet صلی اللہ علیہ وسلم called them tujjar which is a plural of tajir (merchant, trader). It is a better name and Allah has used it to praise business as in the verse:

هَلْ اَدُلُّكُمْ عَلٰى تِجَارَةٍ تُنْجِيْكُمْ مِنْ عَذَابٍ اَلِيْمٍ

{Shall I direct you to a commerce that shall deliver you from a painful chastisement?} (61: 10)

Or:

تِجَارَةً عَنْ تَرَاضٍ

{trading between you by mutual agreement....} (4: 29)

Or:

تِجَارَةً لَنْ تَبُوْرَ

{A commerce that perishes not } (35: 29)

The concluding command is to blend 'meaningless talk and swearing' with charity as an expiation for inviting Allah's anger. Charity removes Divine wrath.

WARNING TO MERCHANTS

(٢٧٩٩-٢٨٠٠) وَعَنْ عُبَيْدِ بْنِ رِفَاعَةَ عَنْ اَبِيْهِ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ التُّجَّارُ يُحْشَرُوْنَ يَوْمَ الْقِيَامَةِ فُجَّارًا اِلَّا مَنِ اتَّقٰى وَبَرَّ وَصَدَقَ۔ رَوَاهُ التِّرْمِذِيُّ وَابْنُ مَاجَةَ وَالدَّارِمِيُّ وَرَوَى الْبَيْهَقِيُّ فِيْ شُعَبِ الْاِيْمَانِ عَنِ الْبَرَآءِ وَقَالَ التِّرْمِذِيُّ هٰذَا حَدِيْثٌ حَسَنٌ صَحِيْحٌ۔

2799. Sayyiduna Ubayd ibn Rifa'ah رحمہ اللہ narrated that from his father that the Prophet صلی اللہ علیہ وسلم said, "The merchant shall be raised on the day of resurrection as sinners, except those who fear Allah and are pious and truthful."[2]

2800. Sayyiduna Al-Bara رضی اللہ عنہ also narrated that this hadith.[3]

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[1] Tirmidhi # 1212, Abu Dawud # 3325, Nasa'i # 3803, Ibn Majah # 2145, Musnad Ahmad # 16134.

[2] Tirmidhi # 1214, Ibn Majah # 2146, Darimi # 2538, Musnad Ahmad 3-428.

[3] Bayhaqi in shu'b ul eeman.

CHAPTER - III

OPTION TO CONFIRM OR TO REVOKE A TRANSACTION بَابُ الْخِيَارِ

The word Khiyar is derived from ikhtiyar which means 'to select or choose one of two things.' Thus, the choice to cancel or retain a business transaction available to both parties is called al-khiyar in the terminology of figh. There are many kinds of al-khiyar in business transactions details of which may be seen in books of fiqh (Islamic jurisprudence). However, we deem it necessary to name those kinds and to define them.

KHIYAR ASH SHART: (choice of stipulation) After a transaction is concluded, the seller or the buyer or both have the right to revoke or retain the transaction. This is called khiyar ash-shart. For instance, a seller sells something which a buyer buys, but, thereafter, one of them says. "Though the sale is transacted, have the right for one day, two days or three days to confirm or annual it." This kind of stipulation is allowed in such transactions and if a transaction is revoked within the stipulated period then it would be cancelled but if it is confirmed, or nothing is said, then after the stipulated period it will became final. The period of stipulation is a maximum of three days according to Imam Abu Hanifah. رحمه الله

KHIYAR UL AYB (CHOICE WHEN DEFECTIVE): It is the option available to the buyer, after a sale transaction is concluded, on discovery of a defect, to hold on the purchased item or to return it and get a refund of the price he had paid. However, if at the time of sale, the seller had declared to the buyer that he is not responsible for any kind of defect detected in the commodity so he may or may not purchase it. If the buyer buys is willingly in spite of that, then whatever defect he discovers thereafter he has no right to return it.

KHIYAR US RU'YAH (OPTION TO INSPECT: The right of a buyer, who had bought the merchandise without inspecting it, to return it, after having examined it, is called khiyar ur riyah. A buyer is allowed to buy anything without examing it. Then, on seeing it, whenever he likes, he may keep it or return it to the seller.

KHIYAR AT-TAYYIN (OPTION TO DETERMINE): It is the option available to the buyer, who has bought a few things, to retain what he likes and return the others to the seller. When he buys, he stipulates that he would keep one (or some) and return the others.

OTHERS: One more kind of Khiyar will be mentioned in this chapter Khiyar ul majlis. It is that when buyer and seller conclude a transaction at a place then before that assembly closes and they separate, both of them have the option individually to revoke the agreement. Once the assembly is over, none of them has the option to annul the agreement to transact. However, opinion differ on this kind of khiyar. Imam Shafi'I رحمه الله and some other ulama (Scholars) accept this option but Imam Abu Hanifah رحمه الله and a few others do not subscribe to this option, saying that when a transaction was concluded by mutual agreement, no one has the right to annul it. If khiyar ush shart was agreed at that time and its maximum limit is three days then after three days this option too expires.

SECTION I الْفَصْلُ الْأَوَّلُ

ABOUT KHIYAR UL MAJLIS

(٢٨٠١) عَنِ ابْنِ عُمَرَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ الْمُتَبَايِعَانِ كُلُّ وَاحِدٍ مِنْهُمَا بِالْخِيَارِ عَلٰى صَاحِبِهٖ مَالَمْ يَتَفَرَّقَا اِلَّا بَيْعَ الْخِيَارِ۔ مُتَّفَقٌ عَلَيْهِ وَفِيْ رِوَايَةٍ لِمُسْلِمٍ اِذَا تَبَايَعَ الْمُتَبَايِعَانِ فَكُلُّ وَاحِدٍ مِنْهُمَا

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بِالْخِيَارِ مِنْ بَيْعِهِ مَالَمْ يَتَفَرَّقَا اَوْ يَكُوْنُ بَيْعُهُمَا عَنْ خِيَارٍ فَاِذَا كَانَ بَيْعُهُمَا عَنْ خِيَارٍ فَقَدْ وَجَبَ وَفِيْ رِوَايَةٍ لِلتِّرْمِذِيِّ اَلْبَيِّعَانِ بِالْخِيَارِ مَالَمْ يَتَفَرَّقَا اَوْيَخْتَارَا وَفِي الْمُتَّفَقِ عَلَيْهِ اَوْ يَقُوْلُ اَحَدُهُمَا لِصَاحِبِهِ اخْتَرْ بَدَلَ اَوْ يَخْتَارَا۔

2801. Sayyiduna Ibn Umar رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "The two parties (buyer and seller) in a business transaction own a right to annul it as long as they have not separated except in *Bai* ul Khiyar (a transaction of optional sale in which they enjoy the right to annul it).
A version in Muslim says: "The two parties in a business transaction enjoy a right to revoke it till they do not separate, or the right to cancel is stipulated therein. When that condition is made it remains valid."
A version in Tirmidhi says: "The two parties (to a transaction) have a right to revoke the transaction as long as they do not separate, or retain the right (to cancel it later)."
A version: in Bukhari and Muslim says: "Or one of them says to the other party, 'exercise the right stipulated' (and the other agrees)" instead of 'or retain the right (to cancel it later.'[1]

COMMENTARY: This hadith seems to uphold Khiyar ul majlis, but those who do not agree that khiyar ul majlis is a permitted kind (like Imam Abu Hanifah) رحمہ اللہ say that, 'separating from one another' is not the same as 'conclusion of the assembly.' Rather, they say that separating signifies 'conclusion of their discussion about the trade transaction and suspension.' While the offer and acceptance is yet unconcluded, each of them has choice to call it off or continue it. However, once the seller confirms the sale and the buyer affirms that he has bought it, neither of them has a right to revoke the transaction. These people cite in support of this meaning of 'separating' in this verse

وَاِنْ يَّتَفَرَّقَا يُغْنِ اللّٰهُ كُلًّا مِّنْ سَعَتِهٖ

{And if they separate, Allah will enrich each of them out of His abundance} (4: 130)
This verse does not imply separating from an assembly. Rather, it is divorce, parting of husband and wife.

(٢٨٠٢) وَعَنْ حَكِيْمِ بْنِ حِزَامٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَلْبَيِّعَانِ بِالْخِيَارِ مَالَمْ يَتَفَرَّقَا فَاِنْ صَدَقَا وَبَيَّنَا بُوْرِكَ لَهُمَا فِيْ بَيْعِهِمَا وَاِنْ كَتَمَا وَكَذَبَا مُحِقَتْ بَرَكَةُ بَيْعِهِمَا۔ (متفق علیہ)

2802. Sayyiduna Hakim ibn Hizam رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Both (the seller and the buyer) have the option to annul (or retain their transaction) as long as they do not separate. If they speak the truth and disclose everything they are blessed in their business transaction. But, if they conceal something and speak lies, the blessing is withdrawn from their transaction."[2]

DO NOT DECEIVE

(٢٨٠٣) وَعَنِ ابْنِ عُمَرَ قَالَ قَالَ رَجُلٌ لِلنَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِنِّيْ اُخْدَعُ فِي الْبُيُوْعِ فَقَالَ اِذَا بَايَعْتَ فَقُلْ

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[1] Bukhari # 2107, Muslim # 431531, Abu Dawud # 3454, Tirmidhi # 1249, Nasa'i # 4465, Ibn Majah # 2181, Muwatta Maalik # 79 (Buyu), Musnad Ahmad 2-52.
[2] Bukhari # 2079, Muslim # 47-1532, Tirmidhi # 1250, Musnad Ahmad 3-403.

لَا خِلَابَةَ فَكَانَ الرَّجُلُ يَقُوْلُهٗ۔ (متفق علیه)

2803. Sayyiduna Ibn Umar رضی اللہ عنہ narrated that a man submitted to the Prophet صلی اللہ علیہ وسلم, "I become a prey to deception in business transactions." He instructed him, "When you make a transaction, say (لاخلابة) (there is no deception)." The man made it a practice of saying that.[1]

[(لاخلابة) - la khilabah no deception.]

COMMENTARY: Different meanings have been attributed to the concluding words 'there is no deception.' Of these, the explanation offered by Toorpushti رحمہ اللہ which Teebi رحمہ اللہ has preferred is that the man was instructed to say to the seller. "I am naive in these matters. So, be straight forward with me. Do not try to deceive me." In those days, every Muslim was a well-wisher of another Muslim. So, they took great care of such a one.

SECTION II اَلْفَصْلُ الثَّانِیْ

MUTUAL CONSENT

(۲۸۰٤) عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ اَبِيْهِ عَنْ جَدِّهٖ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ الْبَيِّعَانِ بِالْخِيَارِ مَالَمْ يَتَفَرَّقَا اِلَّا اَنْ يَكُوْنَ صَفْقَةُ خِيَارٍ وَلَا يَحِلُّ لَهٗ اَنْ يُفَارِقَ صَاحِبَهٗ خَشْيَةَ اَنْ يَسْتَقِيْلَهٗ۔ (رواه الترمذی وابوداؤد والنسائی)

2804. Sayyiduna Amr ibn Shu'ayb رحمہ اللہ reported from his father from his grandfather that Allah's Messenger صلی اللہ علیہ وسلم said, "As long as they do not separate, the seller and the buyer have a right to annul a transaction unless it is a transaction with the right to annul it (even after they separate) included in it. And it is not allowed to either of them to separate from the other apprehending that he might call for an annulment of the transaction."[2]

(۲۸۰۵) وَعَنْ اَبِيْ هُرَيْرَةَ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لَا يَتَفَرَّقَنَّ اثْنَانِ اِلَّا عَنْ تَرَاضٍ۔ (رواه ابوداؤد)

2805. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "The two people (seller and buyer) must not separate except by mutual consent."[3]

COMMENTARY: Both of them must not part from the another before finalising the terms of the transaction with willingness, like price and custody of the item being sold. If they do not follow this procedure, there is possibility of causing loss to one of them. This is disallowed by Shari'ah (divine law). Or, the hadith means that when they have finalised the transaction and one of them intends to depart, he must first ask the other if he has agreed willingly to the terms or has any objection. If he wishes to revoke the transaction then he too must revoke it and if he is willing to retain it, then he may separate after the finalisation. In this way, this hadith will confirm to the previous, meaning wise. It must be understood that the disallowance to separate is nahi tanzihi, because all the ulama

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[1] Bukhari # 2117, Muslim # 48. 1533, Abu Dawud # 3500, Nasai # 4484, Muwatta Maalik # 98 (Bayu) Musnad Ahmad 2-8.

[2] Tirmidhi # 1251, Abu Dawud # 3456, Nasa'i # 4490

[3] Abu Dawud # 3458.

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(Scholars) agree that it is lawful to separate without one another's permission.

SECTION III اَلْفَصْلُ الثَّالِثُ

RIGHT TO REVOKE AFTER AGREEMENT

(٢٨٠٦) عَنْ جَابِرٍ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ خَيَّرَ اَعْرَابِيًّا بَعْدَ الْبَيْعِ۔ رَوَاهُ التِّرْمِذِيُّ وَقَالَ هٰذَا حَدِيْثٌ حَسَنٌ صَحِيْحٌ غَرِيْبٌ۔

2806. Sayyiduna Jabir رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم gave a villager the option to annul a transaction (with the consent of the other party).[1]

CHAPTER - IV

AR-RIBA INTEREST (& USURY) بَابُ الرِّبٰوا

Interest (receiving and paying) is a social curse and an ogre. It has always sucked the blood of the poor to irrigate and feed the rich. Allah has warned those who are involved in this cure with these words:

فَاِنْ لَّمْ تَفْعَلُوْا فَاْذَنُوْا بِحَرْبٍ مِّنَ اللّٰهِ وَرَسُوْلِهٖ۔ (البقرہ: ٢: ٢٧٩)

{And if you do it not, then be notified of war from Allah and His Messenger} (2: 279)

(If you do it not' mean if you obey not the command to desist from taking or paying interest,)

Islam has forbidden interest dealings in both business and loans. To deal in it is a grave sin and if any Muslim does not agree that interest (taking and giving) is forbidden then Islamic law holds that he is a disbeliever.

This malady is very ancient. Even prior to Islam, the quraysh and the Jews, in Makkah and Madinah respectively, were known to do interest business not only against loans, etc. but also in their normal trading activities. At the same time, its evil effects have been acknowledged always and even those who were engaged in interest dealings conceded to its evil effects and unhealthy repercussions. However a fresh development is observed since the Europeans have gained control over the economies of the world. They have introduced it in new fashions with modern nomenclatures, where it was regarded as an evil, now it is an essential element of every business so that no trade, industry of economic activity can progress without interest. However, every learned economist with foresight who casts a deep look into a realizes that it is a virus that must be removed to clear the terrible confusion in the economy.

Interest dealings are so widespread and deep rooted in every economy that let alone individuals and groups, whole nations cannot eliminate it from their lives. Even religious minded, god fearing Muslim have now given up efforts to circumvent it in their day to day businesses. Now, the righteous Muslim who abide by Shariah diligently are at par with ordinary and law ranked Muslims as for as interest dealings are concerned.

In spite of that, it is wrong to take cover behind the common helplessness and be mindless of this great curse; and a huge forbidden thing. The different explanations given for interest and the new forms in which it is presented today are all as unlawful and forbidden as

[1] Tirmidhi # 1259.

interest is in its original form. Hence, Muslims must conduct their businesses in such a manner that they preserve themselves from this curse as for as possible. If they cannot change the current economic set up to rid themselves of interest dealings, they can, at least, correct their private affairs to minimize the curse of interest and as Muslim fulfil the little demand to avoid the forbidden.

In this chapter, ahadith will be mentioned concerning this subject. Relative commands and rulings will be presented under them. It is necessary, however, to first give some basic information on this subject.

DEFINITION OF RIBA: The dictionary meaning of riba is 'increase, addition, elevation.' In the terminology of Shari'ah (divine law), riba is an increase that is receive without a monetary recompense.

DIFFERENCE BETWEEN RIBA AND INTEREST: That which is forbidden in the Quran by the name of riba is translated generally as interest. This often causes a misunderstanding to people and they presume that riba and prevailing interest are two words for the same thing. But, it is not so. Riba is a common and wide meaning word while interest is a kind of riba and its branch. Interest in the current form means 'to loan to someone a specified some of money for a specified period of time at a specified rate of profit or increase.' Certainly, this is one definition of riba, but riba is not merely profit or increase on a loan or debt. Rather, riba has a wider application because the Prophet صلى الله عليه وسلم gave it a wider meaning in the light of divine revelation. Thus he included such exchanges of commodities and such buying and selling of items as involve reduction or increase in their barter or sale in purchase in riba and there is a debt transaction too even though there is no increase in the principal amount but an equal giving and taking.

KIND OF RIBA AND COMMANDS: In the light of the wide meaning of riba, the jurists have classified riba in different kinds of which five are generally known. They are: riba qard, riba rahn, riba sharakat, riba nasi'ah and riba fadl.

RIBA QARD (LOAN): The creditor receives from the debtor, as previously stipulated, more than the principal amount on the expiry of the determined time. Examples are the current form of interest which is payable every month while the principal continues to be payable in full. This form of riba is completely unlawful without any shadow of doubt whatsoever.

RIBA RAHN (MORTGAGE): It is the profit without any monetary recompense a mortgage gets from the mortgagor or from the things mortgaged. An example for it is that someone (the Mortgagor) keeps some of his possession like jewellary or property with someone else (the mortgagee) as a pledge against some amount of money borrowed from him. The mortgagee uses the pledged item to his benefit or receives profit from the mortgagor by way of interest on the loan advanced. Both these kinds of mortgage are unlawful and forbidden.

RIBA SHARAKAT (PARTNERSHIP): It is a partnership in which one partner determines the profit of another partner and himself becomes responsible for loss and eligible for the remaining profit. This too is forbidden and unlawful.

RIBA NASI'AH (ADVANCING MONEY AGAINST INTEREST): It is to better two things on loan against interest or not. For example, a man gives another some grain on spot and the other returns the same amount of grain (in future) a couple of days or a couple of months later without any reduction of excess. However, riba nasi'ah is to increase or

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deduct or the original and it was practiced during the jihiliyah (ignorance period) and is operative currently in the form of interest and is similar to riba qard.

RIBA FADL: It is to barter two commodities on spot but against excess or deduction.

Both these kinds of riba -an nasi'ah and al-fadl-are forms of mutual buying and selling but unwary people do not detect the element of interest in them. Hence, before describing their rules and working, it is proper to mention some warning and precautions to enable an easy understanding of the rules and working.

1. Buying and selling, and trading, can be of three kinds; by weight, be capacity, by any other method. The first two are weighed or measured and in the terminology of Shari'ah (divine law) they are called qadr (قدر). This word must be remembered. (It means quantity, weight or capacity.)

2. Everything is distinct with its reality. It is its jins (جنس) or kind (genus). This word must be remembered too.

3. The things that are exchanged could be identical in qadr (quantity) but different in jins (kind), or identical in jins but different in qadr. Sometimes, they could be identical both in qadr and jins, or not at all identical in either qadr or in jins. These days business is conducted in the last manner because monetary currency (rupees, pounds,etc) is paid for the merchandise which are identical neither in qadr nor in jins. Therefore, there are four kinds of exchanges; (i) identical qadr and identical jins, (ii) identical qadr but verying jins, (iii) identical jins but varying qadr, and (iv) both qadr and jins varying, not identical at all.

Having outlined this introduction, the general rule to be observed when buying and selling, or doing business, should be borne in mind. If that is done then all the rulings of this chapter will be understood easily and also it will be easy to preserve oneself from riba and sin in one's practical life.

The general rule is that when both things are identical in qadr as swell as jins then Shari'ah (divine law) demands two things when they are traded against one another:

(a) They must be equal in weight or measure (capacity) and

(b) They are exchanged on the spot.

For instance, if wheat is paid for wheat, there should be no reduction or increase. The two people involved must pay the same weight to one another, say one kilogram here and there. Also, it is wrong for one to take possession on spot and for the other to receive it the next day or after a while. Rather, it is *wajib (obligatory)* for each to get his right in the same sitting and at the same time.

When the two things are identical in qadr (quantity) but different in jins (kind), or vice-versa (dentical in jins but different in qadr), reduction and increase is allowed in buying or selling them but credit sale is disallowed. For instance, if wheat is exchanged for gram, they are of different jins but identical qadr so it is allowed to reduce or increase their weight and one kg of wheat may be exchanged with 1. 25 kg of gram, but it is not allowed to give one of the spot and get the other commodity later. Similarly, if any one wishes to exchange his goat for another's, the goats are of identical jins but not qadr because they are neither weighed nor measured, so it is permitted to reduce or increase and give one goat for two goats, but credit is disallowed.

When two things are neither of identical jins nor identical qadr, both reduction or increase as well as spot and future delivery are allowed. For instance, if grain is sold against money, it is not necessary that they should be equal in quantity and also credit sale is permitted.

The transaction may be executed on the spot or in the future.
This general rule may be summed up in four parts:

(i) When things are of uniform qadr and jins it is *wajib (obligatory)* that the transaction should be on an equal basis and on spot delivery.

(ii) When they are neither of identical qadr nor of jins, neither of the two foregoing condition is *wajib (obligatory).*

(iii) When they are of identical jins but different qadr, spot delivery is essential but not equal basis.

(iv) When they are of identical qadr but different jins, it is essential that delivery must be spot but not necessary to be on equal basis.

RULINGS: Let us now turn to the rules of riba: nasiyah and fadl. They have been mentioned earlier.

If a transaction involves such things as are uniform or identical both in jins and in qadr. Imam Abu Hanifah رحمه الله holds that both kinds of riba, nisiah and fadl are forbidden. Both jins and qadr have been explained previously. We must remember that such things which the Prophet صلى الله عليه وسلم has called measurable will not be weighed even if in custom they may be regarded as weighable. Similarly, what he has called weighable will not be measurable even though they are customarily measured. For example, the Prophet صلى الله عليه وسلم has included wheat among the measurable items though today it is weighed. (in some places, it continues to be measured.) So, it is not allowed to exchange wheat with wheat by weight.

Similarly, the Prophet صلى الله عليه وسلم has said that silver and gold are weighable. Hence, it is not allowed to barter silver with silver and gold with gold by measure. We must know that a clear command of the Prophet صلى الله عليه وسلم is stronger and more important than general practice and custom, but if he has not given a command for anything to be weighed or measured then custom may be followed.

However, we must know that among the Hanafis, Imam Abu Yusuf رحمه الله has relied completely on general practice and custom. He said that it is allowed to trade by weight those things which Shari'ah (divine law) has prescribed should be measured provided customarily they are trailed by weight. Kamal رحمه الله has given preference to the opinion of Abu Yusuf رحمه الله. Therefore, he has permitted that gold and silver coins may be counted for lending and flour may be traded by weight. Besides, it is stated in the most reliable book Kafi that the Hanafis go by the ruling of Imam Abu Yusuf رحمه الله. This means that though the Prophet صلى الله عليه وسلم had declared wheat (or other provision) as measurable yet it is allowed to trade in them by weight because this is how they are traded now-a-days.

Anyway, it is established that both riba nasiah and riba fadl are forbidden in dealing in things that are an identical jins and qadr. Further, if trading is in such things as are identical in one of two things jins or qadr then riba nasiah is forbidden but riba fadl is not unlawful. Therefore, if wheat is bartered with wheat, gram with gram, lime with lime, gold with gold, iron with iron then both fadl (which is reduction and increase as well as spot exchange) and nasi'ah (which is a credit transaction) are forbidden. The reason is that both qadr and jins are respectively identical.

If wheat is exchanged with gram or gold with silver or iron with copper then fadl (which is trading with deduction and increase as also spot exchange) is allowed but nasiah is disallowed (this being a credit transaction) because only qadr is identical in both items, in the sense that wheat and gram are traded by measure or weight, iron is traded by weight as

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is copper and silver too, but, in these cases, jins is not identical.
If a piece of cloth is traded with another piece of this cloth, or a horse with another horse, even then fadl will be allowed and nasiah forbidden because jins only is identical but not qadr, in the sense that neither is cloth measured or weighed nor is horse, while the standard of Shari'ah (divine law) is by measure or by weight. And yard, etc. are not recognized by Shari'ah (divine law) as standards.
If trading is in such two things as are not identical in qadr as well as jins, then while trading in them both fadl and nasiah are lawful. For example, if wheat is exchanged with silver or iron then both fadl and nasiah are allowed because neither is jins identical nor is qadr identical in the sense that wheat is measurable and silver or iron weighable. Similarly, if iron is bartered with gold, or gold with iron, both fadl and nasiah are allowed, because again they lack the identical aspect in jins and qadr, both. Gold is weighed in a way different from the way iron is weighed. The same ruling applies to trading in wheat against lime, because the same situation presents, itself. The measure of wheat is in a different way from lime, (This applies in places where instead of weighing measurement is the practice)

SECTION I اَلْفَصْلُ الْاَوَّلُ

CURSE ON RECEIVER & GIVER OF INTEREST

(٢٨٠٧) عَنْ جَابِرٍ قَالَ لَعَنَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اٰكِلَ الرِّبَا وَمُؤْكِلَهٗ وَكَاتِبَهٗ وَشَاهِدَيْهِ وَقَالَ هُمْ سَوَاءٌ۔ (رواه مسلم)

2807. Sayyiduna Jabir رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم cursed the person who receives interest, who pays it, who records it (the transaction) and the two who bear witness to it. And he said, "They are alike" (in the sin they commit though degrees of sin may differ).[1]

COMMENTARY: The scribe who record the deal of interest and the witnesses are cursed because they are the one who cooperate in doing the illegal. It is forbidden to do so.

INTEREST ON EXCHANGE OF ITEMS OF SAME KIND

(٢٨٠٨) وَعَنْ عُبَادَةَ بْنِ الصَّامِتِ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ الذَّهَبُ بِالذَّهَبِ وَالْفِضَّةُ بِالْفِضَّةِ وَالْبُرُّ بِالْبُرِّ وَالشَّعِيْرُ بِالشَّعِيْرِ وَالتَّمْرُ بِالتَّمْرِ وَالْمِلْحُ بِالْمِلْحِ مِثْلًا بِمِثْلٍ سَوَاءً بِسَوَاءٍ يَدًا بِيَدٍ فَاِذَا اخْتَلَفَتْ هٰذِهِ الْاَصْنَافُ فَبِيْعُوْا كَيْفَ شِئْتُمْ اِذَا كَانَ يَدًا بِيَدٍ۔ (رواه مسلم)

2808. Sayyiduna Ubadah ibn as-Samit رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "If gold is exchanged with gold, silver with silver, wheat with wheat, barley with barley, dates with dates and salt with salt then the exchange must be like for like and qual for equal (in quantity) and hand to hand. But, if kinds differ (like wheat for barley) then you may sell as you wish provided the exchange is hand to hand (on the spot)."[2]

COMMENTARY: It is this hadith that has given riba a comprehensive meaning to include

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[1] Muslim # 106-1598, Tirmidhi # 1210.
[2] Muslim # 51-1587.

some buying and selling and exchanges within the purview of riba. This hadith means that if the six things mentioned here are exchanged with one another of their own kind or bought and sold (mutually) then it is imperative that the exchange should be like for like and equal for equal and delivery should be on spot. If anyone gives another his wheat against barter than he must take from him the same quantity that he had given him. 'Hand to hand' or 'on spot' means that each party must take hold of his right in the same meeting in which the transaction is finalized, before separating from one another. Neither of them must put off his delivery. If these things mentioned here are not observed then the transaction will fall under the purview of riba.

The question arises whether the ruling of riba applies to only these six things that are mentioned in the hadith, or are they presented by way of example and are other things included in this command? If they are then what is in ruling for them?

The ulama (Scholars) who have studied it deeply, deduce that this hadith mentions the six things by way of example. They have deduced that other things like iron, lime, etc. are also of the same type. They have each made independent deduction for each of these six things to show why riba does not cover them. The detailed explanation follows.

Imam Maalik رحمه الله said that of the six things, gold and silver fall under the purview of riba because of their price factor and the other four things because of their quality of being preservable. Imam Maalik رحمه الله has ruled that the other things will be based on these six if they have the price factor or are preservable. Thus vegetables, fruit and eatables that cannot be preserved for long may be exchanged with their kind or bought and sold with riba meaning decrease or increase, this being allowed.

Imam Shafi agrees that the price factor of gold and silver is the cause of riba, but riba operates in the remaining four things because of their esculent nature (being eatables). According to him, the ruling or riba will be applicable to from sections of vegetables, fruit and medicines. It is permitted to exchange these things (homogeneous) equal to equal but not allowed to deal in them with reduction or excess. Imam Shafi'I رحمه الله also holds that riba will not be operative in the homogeneous trading of iron, copper, tin, minerals, lime and such other things. For instance, it is correct to receive two measure (of capacity) of lime against one measure of lime, of two kilograms of iron or copper against one.

Imam Abu Hanifah رحمه الله holds that riba is present because of qadr cum jins.' On this basis, according to the Hanafis, since weight determines riba and gold and silver, it will applicable in every such thing that is bought or sold by weight, like iron copper etc. As for the remaining four things, riba becomes applicable because of measure (of capacity), so the command of riba will apply to every such thing exchanged on the basis of measure, like lime, etc. Besides, it has been explained previously that the command of Shari'ah (divine law) cannot be amended. Hence, gold and silver are bought and sold by weight as per Shari'ah (divine law) and attract the command of weighable and wheat, barley, dates and salt are defined by Shari'ah (divine law) as measurable so they attract the command of trading by measure. The usage of custom may be otherwise but that does not change the command of Shari'ah (divine law). Hence, the criteria for a transaction of gold or silver being permissible, weight will be considered. If gold is gold for gold and silver for silver then it is necessary for weight to be equal for equal and it Is not allowed that weight should be less or more. If any one sells or buys the measurable like wheat then it will not be allowed if he sells one kilogram of wheat for one kilogram, but it will be correct if wheat is

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equal in measure (of capacity) from both sides (However, we have stated previously that Imam Abu Yusuf رحمه‌الله of the Hanafis contends that custom and usage will dictate whether any things is measurable weighable and the Hanafis go by his verdict.) The same command applies to barley, dates and salt.

If Shari'ah (divine law) has not classified anything as weighable or measurable then custom will be followed. Thus, iron and copper are exchanged by weight in usage, so it is necessary that transactions of these should be by weight - equal for equal. If they are unequal then riba will be deemed to have been applied.[1]

(٢٨٠٩) وَعَنْ اَبِيْ سَعِيْدِ الْخُدْرِيِّ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ الذَّهَبُ بِالذَّهَبِ وَالْفِضَّةُ بِالْفِضَّةِ وَالْبُرُّ بِالْبُرِّ وَالشَّعِيْرُ بِالشَّعِيْرِ وَالتَّمْرُ بِالتَّمْرِ وَالْمِلْحُ بِالْمِلْحِ مِثْلًا بِمِثْلٍ يَدًا بِيَدٍ فَمَنْ زَادَ اَوِ اسْتَزَادَ فَقَدْ اَرْبٰى اَلْاٰخِذُ وَالْمُعْطِيْ فِيْهِ سَوَاءٌ۔ (رواه مسلم)

2809. Sayyiduna Abu Sa'eed al-Khudri رضی‌الله‌عنه narrated that Allah's Messenger صلی‌الله علیه‌وسلم said, "Payment for gold is by gold, for silver by silver, for wheat by wheat, for barley by barley, for dates by dates and for salt by salt, like for like (homogeneous) and (exchange being made) hand to hand. Hence, whose gives more or demands more is as though he has received interest or paid interest. The receiver and giver are at par (in guilt)."[2]

TRANSACTION OF GOLD & SILVER (OF HOMOGENOUS NATURE)

(٢٨١٠) وَعَنْهُ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا تَبِيْعُوا الذَّهَبَ بِالذَّهَبِ اِلَّا مِثْلًا بِمِثْلٍ وَلَا تُشِفُّوْا بَعْضَهَا عَلٰى بَعْضٍ وَلَا تَبِيْعُوا الْوَرِقَ بِالْوَرِقِ اِلَّا مِثْلًا بِمِثْلٍ وَلَا تُشِفُّوْا بَعْضَهَا عَلٰى بَعْضٍ وَلَا تَبِيْعُوا مِنْهَا غَائِبًا بِنَاجِزٍ مُتَّفَقٌ عَلَيْهِ وَفِيْ رِوَايَةٍ لَا تَبِيْعُوا الذَّهَبَ بِالذَّهَبِ وَلَا الْوَرِقَ بِالْوَرِقِ اِلَّا وَزْنًا بِوَزْنٍ۔

2810. Sayyiduna Abu Sa'eed al-Khudri رضی‌الله‌عنه narrated that Allah's Messenger صلی‌الله علیه‌وسلم said, "Do not sell gold, except like for like and do not increase one part over another, Do not sell silver for silver, except like for like and do not increase one part over another. Do not exchange prompt delivery with delayed delivery."[3]

COMMENTARY: This hadith is evidence that even gold jewellery or silver ornaments must be exchanged with gold and silver of (same) equal weight. It is not permitted to collect 'making charges' because that would amount to interest.

EXCHANGE THE HOMOGENEOUS EQUAL FOR EQUAL

(٢٨١١) وَعَنْ مَعْمَرِ بْنِ عَبْدِاللّٰهِ قَالَ كُنْتُ اَسْمَعُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ الطَّعَامُ بِالطَّعَامِ مِثْلًا بِمِثْلٍ۔ (رواه مسلم)

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[1] See: English translation of Hidaya v2 pg 6596. Darul Isha'at Karachi. And Tirmidhi v1 pp 530, 531. (English tr) Darul Ishat, Karachi.

[2] Muslim # 82-1584.

[3] Bukhari # 2177, Muslim # 75-1584, Nasa'i # 4570, Muwatta Maalik # 30 (Buyu), Musnad Ahmad 3-93.

2811. Sayyiduna Ma'mar ibn Abdullah رضی اللہ عنہ said that he often heard Allah's Messenger صلی اللہ علیہ وسلم say "Provision for provision (should be) like for like."[1]

CREDIT IS DISALLOWED IN EXCHANGE OF THE HOMOGENEOUS THINGS

(٢٨١٢) وَعَنْ عُمَرَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَلذَّهَبُ بِالذَّهَبِ رِبًا اِلَّا هَاءَ وَهَاءِ وَالْوَرِقُ بِالْوَرِقِ رِبًا اِلَّا هَاءَ وَهَاءَ وَالْبُرُّ بِالْبُرِّ رِبًا اِلَّا هَاءَ وَهَاءَ وَالشَّعِيْرُ بِالشَّعِيْرِ رِبًا اِلَّا هَاءَ وَهَاءَ وَالتَّمْرُ بِالتَّمْرِ رِبًا اِلَّا هَاءَ وَهَاءَ۔ (متفق علیہ)

2812. Sayyiduna Umar رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Gold for gold (equal for equal too) is riba (interest) unless is hand to hand. Silver for silver is interest unless it is hand to h and. Wheat for wheat is interest unless it is hand to hand. Barley for barley is interest unless it is hand to hand. Dates for dates is interest unless it is hand to hand."[2]

COMMENTARY: There can be three possibilities of exchange of things of the same jins (the homogeneous).

(i) They are either weighable or measurable.
(ii) They are either spot delivery (cash) both ways or deferred both ways.
(iii) They are spot one side but deferred for a few or more days on the other side.

Of these three, the first possibility is allowed for buying and selling provided they are equal for equal in that if they are weighable they are of equal weight and if measurable of equal measure, and both ways they are spot.

The other two are not allowed even though they be equal for equal in qadr and homogeneous because they are deferred payment both way or one way.

SUPERIORITY OR INTERIORITY HAS NO EFFECT ON APPLICATION OF USARY

(٢٨١٣) وَعَنْ اَبِيْ سَعِيْدٍ وَاَبِيْ هُرَيْرَةَ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِسْتَعْمَلَ رَجُلًا عَلٰى خَيْبَرَ فَجَائَهٗ بِتَمْرٍ جَنِيْبٍ فَقَالَ اَكُلُّ تَمْرِ خَيْبَرَ هٰكَذَا قَالَ لَا وَاللّٰهِ يَا رَسُوْلَ اللّٰهِ اِنَّا لَنَاْخُذُ الصَّاعَ مِنْ هٰذَا بِالصَّاعَيْنِ وَالصَّاعَيْنِ بِالثَّلَاثِ فَقَالَ لَا تَفْعَلْ بِعِ الْجَمْعَ بِالدَّرَاهِمِ ثُمَّ ابْتَعْ بِالدَّرَاهِمِ جَنِيْبًا وَ قَالَ فِي الْمِيْزَانِ مِثْلُ ذَالِكَ مُتَّفَقٌ عَلَيْهِ۔

2813. Sayyiduna Abu Sa'eed رضی اللہ عنہ and Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم appointed a man (as an officer) over Khaybar. He brought him (when he came back) dates of very good quality. He asked him. "Are all dates of Khaybar like that?" He said, "No, by Allah, O Messenger of Allah. Rather, we take a sa' of this kind for two (sa') and two sa' for three (sa' of the poor quality)." He said, "Do not do that. Rather, sell them all for dirhams and then buy the dates of very good quality for dirhams.' And, he said, "The same applies when anything is sold by weight."[3]

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[1] Muslim # 93-1592.

[2] Bukhari # 2134, Muslim # 75-1586, Abu Dawud # 3348, Darimi # 1247, Nasa'i # 1558, Ibn majah # 2759, Muwatta Maalik # 38 (Bayu) Damin # 2578.

[3] Bukhari # 2201, Muslim # 95-1593, Nasa'i # 4553, Darimi # 2577, Muwatti Maalik # 21 (Buyu)

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COMMENTARY: The same command applies to things bought and sold by weight as applies to measurable. 'If two homogeneous things are exchanged, it is not allowed to give less weight of the superior things against the interior, Rather, the inferior things may be sold for money and of that money the desired superior may be bought.

(٢٨١٤) وَعَنْ اَبِيْ سَعِيْدٍ قَالَ جَاءَ بِلَالٌ اِلَى النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ بِتَمْرٍ بَرْنِيٍّ فَقَالَ لَهُ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مِنْ اَيْنَ هٰذَا قَالَ عِنْدَنَا تَمْرٌ رَدِيٌّ فَبِعْتُ مِنْهُ صَاعَيْنِ بِصَاعٍ فَقَالَ اَوَّهْ عَيْنُ الرِّبَا لَا تَفْعَلْ وَلٰكِنْ اِذَا اَرَدْتَّ اَنْ تَشْتَرِيَ فَبِعِ التَّمْرَ بَيْعٍ اٰخَرَ ثُمَّ اشْتَرِ بِهٖ۔ (متفق علیه)

2814. Sayyiduna Abu Sa'eed narrated that Sayyiduna Bilal رضی اللہ عنہ came to the Prophet صلی اللہ علیہ وسلم with dates of good quality. So, the Prophet صلی اللہ علیہ وسلم asked him. "From where have you bought these?" He said, "I had some inferior dates. So, I exchange two sa' of that with one sa' (of the superior ones)." He said, "Ah! That's exactly riba! Exactly riba! Do not do it, but when you intend to buy (the choicest), sell the (inferior) dates in a deal apart and then buy (the superior) with it (meaning with the proceeds)."[1]

TWO SLAVES FOR ONE

(٢٨١٥) وَعَنْ جَابِرٍ قَالَ جَآءَ عَبْدٌ فَبَايَعَ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَلَى الْهِجْرَةِ وَلَمْ يَشْعُرْ اَنَّهٗ عَبْدٌ فَجَاءَ سَيِّدُهٗ يُرِيْدُهٗ فَقَالَ لَهُ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ بِعْنِيْهِ فَاشْتَرَاهُ بِعَبْدَيْنِ اَسْوَدَيْنِ وَلَمْ يُبَايِعْ اَحَدًا بَعْدَهٗ حَتّٰى يَسْاَلَهٗ اَعَبْدٌ هُوَ اَوْ حُرٌّ۔ (رواه مسلم)

2815. Sayyiduna Jabir رضی اللہ عنہ narrated that a slave came and pledged allegiance to the Prophet صلی اللہ علیہ وسلم emigrate (promising to move from his native land to the Prophet صلی اللہ علیہ وسلم). He said not know that he was a slave. Then, (after some days) his master came looking for him. The Prophet صلی اللہ علیہ وسلم said to him, "Sell him to me," and he bought him for two black slaves. After that, he never took a pledge of allegiance from any one without (first) asking him whether he was a slave or a free man."[2]

COMMENTARY: We know from this hadith that it is allowed to take or give against one slave two. Also, it is permitted to deal in those things that do not attract riba, in such a way that less is exchanged for more. According to sharh us *sunnah (Prophet's* صلی اللہ علیہ وسلم *practice)*, the ulama (Scholars) have deduced from it that it is allowed to take or give two animals against one on the spot even if they are of the same jins (specifies) both way, or of two jins. But, the ulama (Scholars) differ on whether it is permitted to give and take animal against animal on credit. Some of the sahabah (Prophet's Companions) رضی اللہ عنہم did not approve it, as also Ata ibn Abu Ribah رحمہ اللہ and Imam Abu Hanifah رحمہ اللہ. They cite that the prophet صلی اللہ علیہ وسلم forbade credit transaction of animal against animal. However, some sahabah (Prophet's/Companions) رضی اللہ عنہم said that it is allowed and Imam Shafi'I رحمہ اللہ also subscribed to this opinion.

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[1] Bukhari # 2312, Muslim # 96-1594, Nasa'i # 4557.

[2] Muslim # 123. 1602, Tirmidhi # 1243, Musnad Ahmad # 14778, Ibn Majah # 2869, Abu Dawud # 3358.

HOMOGENEOUS ITEMS OF UNKNOWN QUANTITY AGAINST KNOWN QUANTITY DISALLOWED

(٢٨١٦) وَعَنْهُ قَالَ نَهَى رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعِ الصُّبْرَةِ مِنَ التَّمْرِ لَا يُعْلَمُ مَكِيْلَتُهَا بِالْكَيْلِ الْمُسَمّٰى مِنَ التَّمْرِ۔ (رواه مسلم)

2816. Sayyiduna Jabir رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم forbade the sale of a pile of dates of unknown measure against dates of a specific measure.[1]

COMMENTARY: (the word (كيل), measure, not weight, is used for dates.)

The pile of dates could be more or less than the specific measure of dates. Such exchange would be usurious. This kind of transaction is forbidden for things of a homogeneous nature, of the same jins. But, this kind is not forbidden for heterogeneous things, because it is allowed to buy and sell things of different kinds of more or less quantities against one another.

BUYING SELLING GOLD

(٢٨١٧) وَعَنْ فَضَالَةَ بْنِ اَبِيْ عُبَيْدٍ قَالَ اِشْتَرَيْتُ يَوْمَ خَيْبَرَ قِلَادَةً بِاثْنَى عَشَرَ دِيْنَارًا فِيْهَا ذَهَبٌ وَخَرَزٌ فَفَصَّلْتُهَا فَوَجَدْتُ فِيْهَا اَكْثَرَ مِنَ اثْنَيْ عَشَرَ دِيْنَارًا فَذَكَرْتُ ذٰلِكَ لِلنَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ لَا تُبَاعُ حَتّٰى تُفَصَّلَ۔ (رواه مسلم)

2817. Sayyiduna Fadalah ibn Ubayd رضی اللہ عنہ (Ansari) narrated that on the day (of the battle) of Khaybar he had bought a necklace of gold adorned with gems for twelve dinars. When he removed the gems, he found that it was worth more than twelve dinars. He informed the Prophet صلی اللہ علیہ وسلم about it and he said, "It should never be sold till they are separately valued."[2]

COMMENTARY: If two things on which riba might operate are traded with one another both being of the same jins and one of them contains something heterogeneous then this trade is disallowed. Thus if an ornament has gold and pearls, then it may only be exchange with other gold, like for like and equal for equal, after its pearls are removed from it the same applies to silver. The transaction of exchange in either case may be in money or in any other form, the gems, pearls or such like must be removed first. This command is made to prevent homogeneous things being exchanged with excess or deduction and thus become usurious.

If jewellery of gold with its ornaments (gems, etc.) is sold against silver whether silver coins or otherwise, or silver jewellery with gems etc. is sold against gold whether gold coins (ashrafis) or otherwise, then in such cases the ornaments (gams, etc.) need not be removed. This is because things of different jins may be bought and sold against one another with excess and deduction too. Any reduction or addition does not amount to interest.

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[1] Muslim # 42. 1530, Nasa'i # 4547.

[2] Muslim # 90-1591, Tirmidhi # 1259, Abu Dawud # 3352, Nasa'i # 4573, Musnad Ahmad 6-21.

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SECTION II اَلْفَصْلُ الثَّانِيْ

PROPHET'S صلی اللہ علیہ وسلم PREDICTION ABOUT RIBA

(٢٨١٨) عَنْ اَبِيْ هُرَيْرَةَ عَنْ رَّسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لَيَاْتِيَنَّ عَلَى النَّاسِ زَمَانٌ لَا يَبْقٰى اَحَدٌ اِلَّا اٰكِلَ الرِّبَا فَاِنْ لَّمْ يَاْكُلْهُ اَصَابَهٗ مِنْ بُخَارِهٖ وَيُرْوٰى مِنْ غُبَارِهٖ۔ (رواه احمد وابوداؤد والنسائی وابن ماجة)

2818. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "A time will come over the people, certainly, when no one will be spared from receiving riba. If he does not take it, he will get its vapour nevertheless. (Some versions have instead of 'its vapour':) or get its dust."[1]

COMMENTARY: Its (بخار) or (غبار) (dust) implies its effects. When that time comes and anyone manages to live without consuming interest, he will endure its effects nevertheless. For instance, he might be employed with a person who is engaged in interest taking or giving, or, be associated with him in any way, or have business relations with him etc. when the field of interest expands to every kind of business and industry and economy (as it is today), the merchandise on which interest is paid will come in the hands of everyone. For example, in these our times, a man may be exceptionally pious and god fearing, abstaining even from the doubtful, but when he buys toffees for his children, how can he be sure that what insignificant thing he buys has not gone through any stages of interest payments and receipts. The hadith says the same things: a time will come when the curse of interest will be so wise spread that knowingly or unknowingly every one will be involved in it somehow or other. There will be those who involve themselves in it on purpose, but here will also be some who are absolutely unaware that they are affected by it.

ELEMENT OF INTEREST IN TRANSACTIONS OF HETEROGENEOUS NATURE IS PERMITTED

(٢٨١٩) وَعَنْ عُبَادَةَ بْنِ الصَّامِتِ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لَا تَبِيْعُوا الذَّهَبَ بِالذَّهَبِ وَلَا الْوَرِقَ بِالْوَرِقِ وَلَا الْبُرَّ بِالْبُرِّ وَلَا الشَّعِيْرَ بِالشَّعِيْرِ وَلَا التَّمْرَ بِالتَّمْرِ وَلَا الْمِلْحَ بِالْمِلْحِ اِلَّا سَوَاءً بِسَوَاءٍ عَيْنًا بِعَيْنٍ يَدًا بِيَدٍ وَلٰكِنْ بِيْعُوا الذَّهَبَ بِالْوَرِقِ وَالْوَرِقَ بِالذَّهَبِ وَالْبُرَّ بِالشَّعِيْرِ وَالشَّعِيْرَ بِالْبُرِّ وَالتَّمْرَ بِالْمِلْحِ وَالْمِلْحَ بِالتَّمْرِ يَدًا بِيَدٍ كَيْفَ شِئْتُمْ۔ (رواه الشافعی)

2819. Sayyiduna Ubadah ibn as-Samit narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Sell not gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, or salt for salt except equal for equal and hand to hand. But, you may sell gold for silver, silver for gold, wheat for barley, barley for wheat, dates for salt and salt for dates, hand to hand (meaning spot deliveries), as you wish."[2]

COMMENTARY: If two homogeneous things are bartered then they must be exchanged equal for equal and hand to hand. If two heterogeneous things are bartered than the transaction must be hand to hand and it is not necessary that they be equal for equal.

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[1] Abu Dawud # 4560, Ibn Majah # 2254 (or 2278).

[2] Nasa'i # 4560, Ibn Majah # 2254.

EXCHANGE OF DRY & FRESH DATES

(٢٨٢٠) وَعَنْ سَعْدِ بْنِ اَبِيْ وَقَّاصٍ قَالَ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ سُئِلَ عَنْ شِرَاءِ التَّمْرِ بِالرُّطَبِ فَقَالَ اَيَنْقُصُ الرُّطَبُ اِذَا يَبِسَ فَقَالَ نَعَمْ فَنَهَاهُ عَنْ ذَالِكَ۔ (رواه مالك والترمذى وابوداؤد والنسائى وابن ماجة)

2820. Sayyiduna Sa'd ibn Abu Waqqas رضى الله عنه narrated that he heard Allah's Messenger صلى الله عليه وسلم being asked about purchase of dry dates for fresh dates. So he asked, "Do fresh dates lose weight when they become dry?" He was told "Yes!" He then disallowed that.[1]

COMMENTARY: The Prophet صلى الله عليه وسلم disallowed barter of fresh and dried dates because that defeats the condition of both being and will become a usurious transaction. Imam Maalik رحمه الله, Imam Shafi'I رحمه الله, Imam Ahmad رحمه الله and most other ulama (Scholars) as also the Hanafi imams, Abu Yusuf رحمه الله and Muhammad رحمه الله abide by this hadith. However, Imam Abu Hanifah رحمه الله has said that homogeneous dry and fresh fruit are allowed to be bartered, provided fruit of both sides are equal in weight or quantity (qadr). He classified this hadith as nasi'ah, saying that the disallowance in the hadith is if one p[arty gives prompt delivery while the other defers delivery. His deduction is supported by another hadith: "The Prophet صلى الله عليه وسلم forbade exchange of fresh dates with dried when it is a credit sale."
Besides, the command that applies to dried and fresh dates applies equally to all fruit including grapes, etc. It also applies to dry and fresh meat.

EXCHANGE OF FLESH & ANIMALS

(٢٨٢١) وَعَنْ سَعِيْدِ بْنِ الْمُسَيَّبِ مُرْسَلًا اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ نَهٰى عَنْ بَيْعِ اللَّحْمِ بِالْحَيَوَانِ قَالَ سَعِيْدٌ كَانَ مِنْ مَيْسِرِ اَهْلِ الْجَاهِلِيَّةِ۔ (رواه فى شرح السنة)

2821. Sayyiduna Sa'eed ib al-Musayyib رضى الله عنه reported in a mursal form that Allah's Messenger صلى الله عليه وسلم forbade sale of meat for animals. He also said that sale of meat for animals was a kind of gamble of the days of ignorance.[2]

COMMENTARY: Imam Shafi رحمه الله cites this hadith to say that it is unlawful to barter meat with an animal, even if the meat is of an animal of the same jins as the animal traded or of another species, whether that animal is lawful food or not. But, Imam Abu Hanifah رحمه الله says that this thing is allowed because that which is weighed is sold for that which is not weighed and in such cases it is not necessary that both times be equal. This sort of business is permitted but delivery must be prompt both ways. The hadith disallows the transaction of animal against when delivery is not on spot, but prompt on one side and deferred on the other.

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[1] Tirmidhi # 1229, Abu Dawud # 3359, Nasa'i # 4545, Ibn Majah # 2264, Muwatta Maalik # 22 (Buyu), Musnad Ahmad 1-175.

[2] Sharh us *sunnah (Prophet's* صلى الله عليه وسلم *to practice)* Muwatta Maalik # 64 (Banu)

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BETTER ON DEFERRED BASIS IS DISALLOWED

(٢٨٢٢) وَعَنْ سَمُرَةَ بْنِ جُنْدُبٍ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ نَهٰى عَنْ بَيْعِ الْحَيَوَانِ بِالْحَيَوَانِ نَسِيْئَةً۔

(رواه الترمذی وابوداؤد والنسائی وابن ماجة والدارمی)

2822. Sayyiduna Samurah ibn Jundub رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم forbade sale of animals for animals if payment was to be deferred to a later date.[1]

ABOUT CREDIT ON HETEROGENEOUS THINGS

(٢٨٢٣) وَعَنْ عَبْدِاللّٰهِ بْنِ عَمْرِو بْنِ الْعَاصِ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَمَرَهٗ اَنْ يُجَهِّزَ جَيْشًا فَنَفِدَتِ الْاِبِلُ فَاَمَرَهٗ اَنْ يَّاْخُذَ عَلٰى قَلَائِصِ الصَّدَقَةِ فَكَانَ يَاْخُذُ الْبَعِيْرَ بِالْبَعِيْرَيْنِ اِلٰى اِبِلِ الصَّدَقَةِ۔ (رواه ابوداؤد)

2823. Sayyiduna Abdullah ibn Amr ibnal-Aas رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم instructed him to prepare equipment for an army (to be able to join it himself). So, when the camels fell short (and some people, Abdulllah رضی اللہ عنہ among them, could not get a camel), Prophet صلی اللہ علیہ وسلم instructed him to take (as loan) a camel against the camels of zakah (Annual due charity) (when he could get it). So he took a camel against two camels of zakah (Annual due charity) payable when he got them.[2]

COMMENTARY: Loan or debt is allowed only of such a thing as has a like of it. This means that the debtor will be able to return the like of what he borrows, for example, rice, eggs, meat, cash etc. These things are called (مثلی) (mithli - like). It is not proper to borrow a thing the like of which is difficult to return to the creditor. Such things are called (غیر مثلی) (ghayr mithli - unlike).

In this hadith, the Prophet صلی اللہ علیہ وسلم instructed Sayyiduna Abdullah رضی اللہ عنہ to borrow a camel from someone on the condition that when the camels receivable against zakah (Annual due charity) arrived, he would repay his debt. Now according to Imam Abu Hanifah رحمہ اللہ, it is disallowed to borrow a ghayr mithli thing and the camel is one such. Hence, the Hanafis say that at the time the Prophet صلی اللہ علیہ وسلم had given this instruction, it was permitted to borrow ghayr mithli things too. But, later the permission was withdrawn, so this hadith stands abrogated.

However, Shaykh Abdul Haq رحمہ اللہ has regarded the command of this hadith as based on *Bai'* (buying and selling) and said that it seems that it is allowed to borrow an animal against an animal. However, our ulama (Scholars) (of the Hanafi school) have disallowed it in the light of the (previous) hadith of Samurah رضی اللہ عنہ (# 2822). Hence, Toorpushti رحمہ اللہ has classified this hadith of Abdullah ibn Amr رضی اللہ عنہ as da'if (weak) while the hadith of samurah رضی اللہ عنہ is much more sound than this. Therefore, the Hanafis abide by the hadith of Sayyiduna Samurah رضی اللہ عنہ.

Or, the Prophet صلی اللہ علیہ وسلم had given this instruction when the barter of two homogeneous items was not regarded as riba if exchanged on loan or debt. But, when this sort of exchange was classified as riba, this hadith was abrogated.

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[1] Tirmidhi # 1241, Abu Dawud # 1237. Nasa'i # 4620, Ibn Majah # 2270, Musnad Ahmad 5-12.

[2] Abu Dawud # 3357, Musnad Ahmad 2-171.

SECTION III اَلْفَصْلُ الثَّالِثُ

ABOUT RIBA IN CREDIT TRANSACTION

(٢٨٢٤) عَنْ اُسَامَةَ بْنِ زَيْدٍ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اَلرِّبٰوا فِي النَّسِيْئَةِ وَفِيْ رِوَايَةٍ قَالَ لَا رِبٰوا فِيْمَا كَانَ يَدًا بِيَدٍ۔ (متفق عليه)

2824. Sayyiduna Usamah ibn Zayd رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "Riba (interest) is found in credit transaction."

According to another version: "In a hand-to-hand transaction, there is no riba."[1]

COMMENTARY: If two equal qadr things are bartered on credit, one of them paying cash and the other promising to pay later then though the jins may be different and they be equal for equal, the element of riba is found in the transaction. Thus if anyone gives barley for wheat then deduction and addition is allowed in this transaction provided it is hand to hand transaction but if one of the sides defers payment then this thing is disallowed and it will amount to interest.

If two people exchange two things of the same jins equal for equal and take delivery on the spot then it is allowed and it is without interest. If both things are not of the same jins then reduction and increase is allowed in the transaction and there will be no element of interest provided delivery is on spot both ways.

WARNING AGAINST INTEREST

(٢٨٢٥) وَعَنْ عَبْدِاللّٰهِ ابْنِ حَنْظَلَةَ غَسِيْلِ الْمَلَائِكَةِ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ دِرْهَمُ رِبٰوا يَاْكُلُهُ الرَّجُلُ وَهُوَ يَعْلَمُ اَشَدُّ مِنْ سِتَّةٍ وَثَلَاثِيْنَ زَنْيَةً رَوَاهُ اَحْمَدُ وَالدَّارَ قُطْنِيُّ وَرَوَى الْبَيْهَقِيُّ فِيْ شُعَبِ الْاِيْمَانِ عَنِ ابْنِ عَبَّاسٍ وَزَادَ وَقَالَ مَنْ نَبَتَ لَحْمُهُ مِنَ السُّحْتِ فَالنَّارُ اَوْلٰى بِهٖ۔

2825. Sayyiduna Abdullah ibn Hanzalah رضی اللہ عنہ ghasil al-mala'ikah (meaning, he who was given both by the angels) narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "One dirham of riba that a man takes knowing that it is interest is more serious than committing adultery thirty six times."

Bayhaqi reported it from Sayyiduna Ibn Abbas رضی اللہ عنہ with the addition that the Prophet صلی اللہ علیہ وسلم also said, "If anyone's flesh is nourished with the unlawful then hell is better for him."[2]

COMMENTARY: This warning applies to one who consumes riba knowing. But, it also applies to one who takes riba unknowingly while he is careless in being unaware of the commands.

One who consumes interest is worse than him who commits adultery because Allah has spoken more angrily about him than about the latter. He says about the interest receiver.

فَاْذَنُوْا بِحَرْبٍ مِّنَ اللّٰهِ وَرَسُوْلِهٖ۔ (البقرہ ٢: ٢٧٩)

{....be notified of war from Allah and His Messenger.} (2: 279)

Every sensible man known what a declaration of war means. If Allah and His Messenger

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[1] Bukhari # 2179, Muslim # 102-1596, Nasa'i # 4580, Ibn Majah # 2257, Darimi # 2580, Musnad Ahmad 5-200.

[2] Musnad Ahmad 5-225, Daraqutni and (from Ibn Abbas رضی اللہ عنہ) Bayhaqi in Sha'b ul Eeman.

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declare war against anyone, or if anyone is at war against Allah and His Messenger صلى الله عليه وسلم, then what can be said of his deprivation, wretchedness and utter ruin in both worlds?
The ulama (Scholars) say that such a serious warning and strong anger is not merely because there is a practical straying when one deals in interest but since it is not easily detected one strays into wrong belief too so that most people do not believe that interest is forbidden. They are misled mentally to such an extent that they say that interest is lawful. This leads them to disbelief ultimately. This means that they cannot hope for forgiveness. In contrast, adultery is a very bad thing, a grave sin and every religion condemns it. No one say that it is allowed.
Why is it said to be thirty six times worse? Only Allah and His Messenger صلى الله عليه وسلم know why.

(٢٨٢٦) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ الرِّبٰوا سَبْعُوْنَ جُزْءًا اَيْسَرُهَا اَنْ يَّنْكِحَ الرَّجُلُ اُمَّهٗ۔

2826. Sayyiduna Abu Hurayrah رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "Riba (interest) has seventy parts. The lowest (of these in importance) is that a man has sexual intercourse with his mother."[1]

(٢٨٢٧) وَعَنِ ابْنِ مَسْعُوْدٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِنَّ الرِّبٰوا وَاِنْ كَثُرَ فَاِنَّ عَاقِبَتَهٗ تَصِيْرُ اِلٰى قُلٍّ رَوَاهُمَا ابْنُ مَاجَةَ وَالْبَيْهَقِيُّ فِيْ شُعَبِ الْاِيْمَانِ وَرَوٰى اَحْمَدُ الْاَخِيْرَ۔

2827. Sayyiduna (Abdullah) Ibn Mas'ud رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "Receipts from interest may seem abundant but the end is poverty (meaning deprival of blessings)."[2]

COMMENTARY: This is not a mere warning but a fact that there is not good or blessing in the property derived through interest. The result is it wastes away leaving no trace at all. This reality is observed in our day to day lives. The Qura says about it:

يَمْحَقُ اللّٰهُ الرِّبَا وَيُرْبِي الصَّدَقَاتِ۔ (البقرة ٢: ٢٧٦)

{Allah blots out usury and augments charity} (2: 276)

This verse mentions both interest and charity at once. While pointing out the contradiction in these two things, it also discloses their diverse natures. Without any greed or reimbursement, man gives charity only to please Allah while he devours interest from others without compensating them, out of greed multiplying his disgrace. The intention of doers on both sides is different: one seeks Allah's pleasure the other invites His anger.
The exegetes say that these results will be seen in the next world. The interest-taker will get nothing in the hereafter but punishment while the property given in charity will provide him everlasting honour and comfort. Besides that, some effects of these things are witnessed in this world too. Millionaires become paupers overnight when they have made money through interest earnings. Not all rich men go through this experience but usurous people do lose money so rapidly.
We should not be deceived by the fleeting luxury of the usurous people, for in spite of all

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[1] Ibn Majah # 2274.

[2] Ibn Majah # 2279, Musnad Ahmad 1-395.

things that they possess, they lack comfort. This comfort is available only through spiritual peace. This is available sometimes to people without their possessing anything at all, not only to men but also to animals, but not available to some who have everything. Even sleep evades then.

How stupid are they who wear themselves out for the sake of the means to comfort but have nothing of comfort.

This state of their continuous uneasiness and mental discomfort causes them to be hard-hearted and wretched. They have no mercy for the poor and needy. They are very cruel. These traits can never earn them respect. They are looked down upon and detested. They do not get even the most elementary respect from fellowmen.

INTERNATIONAL UNCERTAINTY IS BROUGHT ABOUT BY THE DEVOURERS OF INTEREST

When we are speaking of it, let us examine another side of interest taking. Progress in the scientific field and intense materialism has changed man's outlook of survival and manner of thinking. He uses all his talents to gain material progress and has deprived his thought and his emotions of the ability to distinguish between good and bad. He now concentrates on the superfluous worldly momentary gains and is a prisoner seeking physical ease.

The result is that the hitherto accepted truths are now rejected. Centuries old ideologies are considered to be worthless and unworkable.

Islam regards interest as unlawful for every individual and every section of people at all times in all conditions. However, some seemingly educated people are put off from the true path of religion and Shari'ah (divine law) by modern thought into the labyrinth of ignorance. They say that the disallowance of interest is not only impossible to observe in these times but also a hurdle and obstacle to commercial success and to material prosperity. They hold that the current economic order based on interest is necessary for the common good of all people and for their prosperity. They consider the large capitalist countries, who have entangled the developing countries in the web of interest, as the only hope for the prosperity of mankind. Rather, it is their own selfish motives that the big powers hope to grind and they suck the blood of the poor in the same manner as individuals used to do in the past.

The poor developing countries are under a burden of debt and mounting interest. The result is that they obey the dictates of the large capitalist countries and there is utter unrest everywhere...

AN OBJECTION: some people having acquired modern education assert that the riba forbidden in the Quran is not the customary interest. It was usury charged on loan advanced to the poor and needy who faced dire circumstances. The cruel lender, instead of helping the hard-stricken, advanced a loan with a specified rate of interest that broke the back of the borrower. He took full advantage of the man's plight. Those people who say that the Quran does not forbid interest assert that it forbade that kind of usury. Any similar usury collected today also falls under purview of that prohibition and such usury is charged by private lenders and individuals. Today's commercial agencies, banks and other such institutions deal in a different kind of interest business. They pay rather than receive interest. The poor people can invest a small sum of money and get regular returns. Hence, according to these people present-day interest is not disallowed.

THE ANSWER: Any command of Islamic Shari'ah (divine law) concerns the principles and

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the entire. Its operations is not changed by parts and kinds. Whatever Shari'ah (divine law) has declared as forbidden, is forbidden wholly with all its parts and kinds. No one has a right to exclude only portion of Allah's Command from operation or to limit its operation. For instance, no one can say about the prohibition of wine that the prohibition applies to wine of the ancient times served in bad quality vessels, but since vessels of today are good quality and production is in a refined, scientific manner, the command should not apply anymore. Only one who is ignorant of the Shari'ah (divine law) will say such a thing. If the commands of the Quran are changed in this way, then nothing will remain prohibited, not even gambling, theft, robbery, adultery, indecency, etc. Every evil is not done in the same way as it was done in the past. This does not mean that they become allowed.

Now, let us examine the question of riba. The Quran prohibits riba not once but in many verses of different surahs. More than forty ahadith declare that it is disallowed. None of these - not even a single word of them - gives a hint that the prohibition of riba is on a particular occasion or a particular situation. Nowhere is it stated that the prohibition applies to individual transactions of riba and not to trade dealings. Rather, historically, it is wrong to say that when the Quran was revealed the only kind of interest applicable was charged to the poor and commercial interest dealings never existed. If we study the background of the revelation of the verses, we shall learn that apart from private transactions, commercial transactions of interest were also common. The Arabs, particularly the Quraysh, were merchants and they paid and received interest for trade purposes. Baghawi رحمه الله has written that Sayyiduna Abbas رضى الله عنه and Sayyiduna Khalid ibn Walid رضى الله عنه did business in partnership. They traded with the Banu Thaqif of Ta'if. Abbas رضى الله عنه ad a heavy amount of interest receivable from them. When he demanded from them his past dues, the prophet reminded him that the Quran had made riba unlawful, and instructed him - his paternal uncle - to write off the large amount of money. He announced this is the sermon of the farewell pilgrimage in these words:

وَرِبَا الْجَاهِلِيَّةِ مَوْضُوْعٌ وَ اَوَّلُ رِبُوا اَضَعُ مِنْ رِبُوا نَا رِبُوا عَبَّاسِ بْنِ عَبْدِالْمُطَّلِبِ

[The riba of pre-Isamic days is written off. The first of these from our riba that I write off is the riba of Abbas ibn Abdul Muttalib.]

There are other examples of tribes and families having claims of interest on other tribes and families because of their mutual business dealings. Loans are not known to have been extended generally for personal needs but there were business transactions continuously. In fact, they had regarded riba to as a kind of business. The Quran rejected this idea and warned those who advocated it.

As for the banks paying interest to the poor on their deposits, this is a deception. These deposits are loaned to businessmen and industrialists expand their businesses and industries. They pay interest to bank out of their huge earnings and banks pay a paltry some to their depositers. The true beneficiaries from the banks are the rich, and the deprived are the poor. Instead of depositing the money at the bank, the poor ought to invest in a small business.

The few rich take large loans and control much of the industry and business and drive out the small traders. Business that could have been of benefit to the whole nation comes down in the hands of a few people. Prices rise and the poor are squeezed. The interest that they earn on their deposits goes into thin air....

This is why Islam has disallowed interest whatever its form.

(٢٨٢٨) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَتَيْتُ لَيْلَةَ اُسْرِيَ بِيْ عَلٰى قَوْمٍ بُطُوْنُهُمْ كَالْبُيُوْتِ فِيْهَا الْحَيَّاتُ تُرٰى مِنْ خَارِجِ بُطُوْنِهِمْ فَقُلْتُ مَنْ هٰؤُلَاءِ يَا جِبْرِيْلُ قَالَ هٰؤُلَاءِ اٰكِلَةُ الرِّبَا۔ (رواه احمد وابن ماجة)

2828. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "On the night I was taken to the heavens (which was the night of al-Isra or al-Miraj). I came across people whose bellies were like houses. There were snakes in them what could be seen from outside their bellies. I asked, 'They are those who consumed riba."[1]

PROPHET'S صلی اللہ علیہ وسلم CURSE ON INTEREST RECEIVERS

(٢٨٢٩) وَعَنْ عَلِيٍّ اَنَّهٗ سَمِعَ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَعَنَ اٰكِلَ الرِّبَا وَمُؤْكِلَهٗ وَكَاتِبَهٗ وَمَانِعَ الصَّدَقَةِ وَكَانَ يَنْهٰى عَنِ النَّوْحِ۔ (رواه النسائی)

2829. Sayyiduna Ali رضی اللہ عنہ narrated that he heard Allah's Messenger صلی اللہ علیہ وسلم curse those people who received interest, those people who paid it those people who recorded the transaction and those people who declined to give sadaqah (charity). Also, he forbade wailing.[2]

COMMENTARY: Those who decline to give sadaqah (charity) could also be those who prevent others from giving sadaqah (charity). They could also be those who do not pay the *wajib (obligatory)* sadaqah (charity) which is zakah (Annual due charity).

Wailing includes to praise the dead person and to cry loudly in a shrieking voice. It is a very undignified act.

UMAR'S رضی اللہ عنہ EXPLANATION OF RIBA

(٢٨٣٠) وَعَنْ عُمَرَ بْنِ الْخَطَّابِ اِنَّ مِنْ اٰخِرِ مَا نَزَلَتْ اٰيَةُ الرِّبَا وَاِنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قُبِضَ وَلَمْ يُفَسِّرْهَا لَنَا فَدَعُوا الرِّبَا وَالرِّيْبَةَ۔ (رواه ابن ماجة والدارمی)

2830. Sayyiduna Umar ibn al-Khattab رضی اللہ عنہ said, "The last of what was revealed (of the Quran) was the verse of riba, but Allah's Messenger صلی اللہ علیہ وسلم was taken without his explaining it to us. So abstain from usury and what is doubtful."[3]

COMMENTARY: We have stated in the very initial pages that even before Islam profit was taken at a specified rate on loans and debts, during the jihiliyah (ignorance period). When the Quran forbade riba, the Prophet صلی اللہ علیہ وسلم not any imposed the command on the interest as known and practice at that time but he also gave it a wider application as explained in the previous pages. However, he did not live long after the verse was revealed and could not expound the command beyond that.

Sayyiduna Umar رضی اللہ عنہ meant to ask "was the application limited to the six things only or

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[1] Ibn Majah # 2273, Musnad Ahmad 2-363.

[2] Nasa'i # 5103.

[3] Ibn Majah # 2276, Darimi.

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did the Prophet صلى الله عليه وسلم name them only or did the Prophet صلى الله عليه وسلم name them only by way of example? (hadith # 2808). (They were gold silver, wheat, barley, dates and salt) As we explained, the imams who came later drew out a rule and included other things too according to the rule.

In short, before the revelation of the Quran, the Arabic word riba was used in the sense; 'to receive profit on the amount given as loan.' It was practiced all over Arabia. The people of Arabia understood only this particular thing as riba and there was no confusion or doubt about this word. Therefore, when the Quran announced that riba was disallowed, no one found it difficult to understand to obey the order. However when the prophet صلى الله عليه وسلم unlarged its sphere in the light of a revelation and they were at variance with what the Arabs had under stood and additional to what they knew as interest and, by a coincidence, the Prophet صلى الله عليه وسلم died before explaining those addition as practically, Sayyiduna Umar رضى الله عنه found it difficult to fathom their details. So, he made ijtihad and pursued a safe course. He said that riba should be abandoned completely where it was very clear and known as per usage, and also the mutual buying and selling which was pointed out by the Prophet صلى الله عليه وسلم to be riba. He also said that anything that created doubt or was similar to riba should be given up too.

A MISUNDERSTANDING: Some people have used this saying of Sayyiduna Umar رضى الله عنه to cast doubt on riba in general. However, he only had wondered whether the six things that the Prophet صلى الله عليه وسلم had named as usurous were the only ones or others which were like them came in the same category. He was worried that the people might suppose that only these six transactions were usurous accord not be careful about others. This is why he instructed the people to abstain from the doubtful and those that were similar to the six things named by the Prophet عليه السلام in which there was likelihood of interest being practiced.

While his words were about these things specifically, these people included all kinds of interest in this saying. They did more mischief by alleging that umar's رضى الله عنه words meant that interest (receiving and giving) was not disallowed.

CREDITOR SHOULD NOT ACCEPT GIFT OF THE DEBTOR

(٢٨٣١) وَعَنْ اَنَسٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِذَا اَقْرَضَ اَحَدُكُمْ قَرْضًا فَاَهْدٰى اِلَيْهِ اَوْ حَمَلَهٗ عَلَى الدَّابَّةِ فَلَا يَرْكَبْهُ وَلَا يَقْبَلْهَا اِلَّا اَنْ يَكُوْنَ جَرٰى بَيْنَهٗ وَبَيْنَهٗ قَبْلَ ذَالِكَ۔ رَوَاهُ ابْنُ مَاجَةَ وَالْبَيْهَقِيُّ فِيْ شُعَبِ الْاِيْمَانِ۔

2831. Sayyiduna Anas رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "When one of you lends some money (to someone) and the debtor sends him a gift or offers him an animal to ride, he must neither ride it nor accept it unless this had been customary between them before that."[1]

COMMENTARY: The creditor must not accept any sort of a gift from his debtor because that might look like interest. Whether the creditor earns from the debtor is counted as interest. However, if the two had been used to exchange gifts then the creditor may

[1] Ibn Majah # 2432, Bayhaqi in Shu'ab ul eeman # 5532.

accepted the debtor's gift because, in this case, he would not be under pressure to give him a present. Rather, it would be a reciprocal gesture.

It is reported about Imam Abu Hanifah رحمه الله that he had lent money to someone. One day, he went to his home to get a repayment. He waited outside in the heat for the man to come out but did not stand in the shade of his house because, though there was no bar to it in Shari'ah (divine law), yet it was against perfect righteousness to benefit from the shade of the man's wall. He stood in the sun for a very long time before the man came out. This was his perfect example of taqwa (piety) that he refrained from the shade of the debtor's wall.

It is written in Malabudminhu that according to a hadith if a loan is liable to benefit the lender then it is regarded as riba. The lender must not accept the borrower's invitation, too unless they were on friendly terms already visiting one another. It is also written that it is makruh (disapproved) for the lender to use the shade of the borrower's wall.

(٢٨٣٢) وَعَنْ اَنَسٍ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اِذَا اَقْرَضَ الرَّجُلُ الرَّجُلَ فَلَا يَاخُذْ هَدِيَّةً۔ رَوَاهُ الْبُخَارِيُّ فِيْ تَارِيْخِهٖ هٰكَذَا فِي الْمُنْتَقٰى۔

2832. Sayyiduna Anas رضی الله عنه narrated that the Prophet صلی الله علیه وسلم said, "When a man extends a loan to another man, he should not take a gift."[1]

(٢٨٣٣) وَعَنْ اَبِيْ بُرْدَةَ ابْنِ اَبِيْ مُوْسٰى قَالَ قَدِمْتُ الْمَدِيْنَةَ فَلَقِيْتُ عَبْدَاللّٰهِ بْنَ سَلَامٍ فَقَالَ اِنَّكَ بِاَرْضٍ فِيْهَا الرِّبٰوا فَاشٍ فَاِذَا كَانَ لَكَ عَلٰى رَجُلٍ حَقٌّ فَاَهْدٰى اِلَيْكَ حِمْلَ تِبْنٍ اَوْحِمْلَ شَعِيْرٍ اَوْحِمْلَ قَتٍّ فَلَا تَاْخُذْهُ فَاِنَّهٗ رِبٰوا۔ (رواه البخاری)

2833. Sayyiduna Abu Burdah رحمه الله son of Abu Musa رضی الله عنه narrated that when he came to Madinah he met Sayyiduna Abdullah ibn Salaam رضی الله عنه who said to him, "You are in a land where riba is common. So, if you have right over anyone (meaning that if any one is your debtor) and he presents you a load of straw, or a load of barley, or a bundle of grass, do not take it because that is interest."[2]

COMMENTARY: The ulama (Scholars) say that every loan to which a condition of some sort of profit is attached is riba (or interest). Every gain that the lender derives from the borrower because of the pressure of the debt of gratitude for it is interest.

RULING: If the creditor derives some benefit from the debtor before advancing to him a loan then it will depend on whether the profit was promised (previously) and was part of a condition. If it was promised and part of a condition then there is no doubt whatsoever of its unlawfulness. That profit is riba (or interest). If it was not previously promised and part of a condition then scholars differ on its status. Imam Muhammad رحمه الله holds that it is allowed. A section of them, however, say that it is disallowed. The correct thing, however, say that it is disallowed. The correct things, however, is that if the profit is bestowed because of a pressure or out of gratitude, or to gain time or to be excused (from repayment), then it is unlawful in any case. If it is out of regard, kindness or already existing relationship then it is u undoubtedly allowed.

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[1] Bukhari in his Tarikh and so it is in al-Muntaqa.

[2] Bukhari # 3814.

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While it is disallowed to fix the terms of the debt, the correct thing is that there is no harm is fixing the term. The ruling is that if a debt is given and received on condition of a fixed period of times, then that period of time will be binding as a condition but noit binding as a debt. If the creditor demands his money before the specified time, then he has the right to do it and the debtor must try his utmost to repay the debt.

If a person loans some money on condition that it should be repaid in a certain city then this condition as a binding is unlawful.

Some people deposit their money in bank for safe keeping without taking profit or interest on it. The fact is that the money which is deposited in banks is not preserved exactly as deposited but is invested in business. So, it is not a trust or safe-keeping, but becomes a debt. These people may not take interest on their money but they do help those who collect interest by loaning money in a way, and to aid those who give or take interest is a sin. Hence, it is not proper to deposit one's money in a bank.

CHAPTER - V

SALES & PURCHASE THAT ARE DIS-ALLOWED بَابُ الْمَنْهِيِّ عَنْهَا مِنَ الْبُيُوْعِ

The Shari'ah (divine law) of Islam has forbidden some forms of business transactions as also buying transactions as also buying and selling of some things. Some of these are forbidden because the dealings and those things are unlawful, like *Bai'* batil (vain sale as of wine, swine, etc.) and *Bai'* fasid (not legal). Some others are disallowed only because of dislike for them, like engaging in business at the time of the adhan on Friday.

Those that are forbidden because the dealings or the merchandise are unlawful are, according to the Hanafi School, of two kinds:

(i) *Bai'* fasid.
(ii) *Bai'* batil.

BAI' FASID: It is a business transaction that is correct in so far as the principles of *Bai'* are found in it, but is not lawful because some conditions for the *Bai'* (sale and purchase) to be sound are lacking, so it is necessary to cancel such a transaction. The jurists call it mashru' binafsihi (legal by itself) but manu biwasfihi (illegal because of the conditions and characteristics)

BAI' BATIL: It is a business transaction that is not recognized by Shari'ah (divine law) because it is neither correct in terms of the principles of *Bai'* (buying and selling) nor lawful as for as its conditions and characteristics are concerned.

We may now present some rulings on this subject to elaborate on the foregoing definitions. It is also necessary to know more of the subject of this chapter.

If the (مبیع) (mabi) – that which is sold and bought is not 'property' in the eyes of Shari'ah (divine law) then sale and purchase of such a thing is *Bai* batil (invalid, void) Examples are blood, carrion, free person, mukatab, urine and a very worthless thing. Also, if the mabi' (merchandise) is 'property' but it is not a decent item then its buying and selling is batil if sold for money, but if it is bartered against another thing then the sale of that thing is fasid and of this property that is not a decent thing is batil. Examples of such things are wine and swine.

The difference between *Bai'* batil and *Bai'* fasid is that in the former case the thing sold never comes in the possession of the buyer. In the latter (*Bai'* fasid), nothing applies to it

before handing over possession but after possession it becomes property of the buyer as an unlawful or forbidden thing, and it is binding on him to pay for it in cash, but it is *wajib (obligatory)* on him to annul the sale even after taking possession provided the mabi' is with the buyer in its exact form.

Selling milk that is yet in the udders of an animal is batil (void), (for, that may not really exist. Its udders may seem to be full and if milk is sold on that basis, there might be no milk at all but the udders could be swollen for some other reason. In such cases, sale of purported milk would be a deceptive, fraudulent act.

It is also not allowed to sell birds that fly in the air unless they are trained to return. It is allowed to sell a flying pigeon.

Similarly, it is disallowed to sell fish that have not been caught but are still in the sea, or are caught and released in a pond from where they can be caught only in a net.

Other sales disallowed are the unborn in the womb of a female slave or an animal, the pearl that is in the shell and the meat of an animal before it is slaughtered and skinned.

It is disallowed to sell the hair of a pig. However, these hair may be used to sew the gunny bags which are laden on the back of beasts of burden after filling them with provision, etc.

Human hair may neither be sold nor put to use in any way.

Any sale that might cause altercation is fasid. Examples are sale of wool on the back of a goat, link of a chain nailed on the ceiling one yard of cloth from a large piece of cloth or a sale in which time of payment of price is defined vaguely like 'when it will rain or high winds will blow I shall pay you. However, if in all these cases, the buyer does not revoke the transaction and the seller gives delivery to the buyer by removing the link from the ceiling or tearing one yard from the large piece of cloth and the buyer specifically defines dates of payment, then the sale shall be carefully transacted.

A sale and purchase transaction is fasid when fasid (not legal) condition is placed. A fasid condition obstructs the correct execution of the transaction. It is favourable either to the seller on to the buyer. For example, the seller may sell a house but impose a condition that he would use it for a month before handed it over, or the buyer may buy a piece of cloth on condition that it is delivered to him duly stitched. Or, the nabi' (that which is sold) may stand to gain when a human being - male or female slave - is sold, when a seller stipulates that the buyer must set the slave he buys free, or get him or her married. Condition of this kind are fasid and a business transaction also becomes fasid because of them.

If a buyer stipulates that he should be handed over ownership then that is not contrary to the correct execution of the agreement to sell. So it is not fasid. If a trader stipulates while selling, say cloth, that the buyer should not re-sell it then though this condition is contrary to the transaction, it is not fasid because no one stands to benefit from it.

If anyone sells a horse and stipulates that the buyer should make the horse fat then though this condition is favourale to what is sold yet, not being a human being who is eligible for the benefit, the condition is not fasid. But, the condition will be vain and dropped and the *Bai'* will be proper.

The books of fiqh (Islamic jurisprudence) have more details of *Bai'* fasid and batil. They must be studied so that such business transactions as are unacceptable by Shari'ah (divine law) may be avoided.

It is necessary to expound some more rulings.

It is unlawful for a seller to cheat in weights and measures and for a buyer to deduct from the agreed price at the time of payment. Those who contravene it, the Quran has warned them thus:

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وَيْلٌ لِّلْمُطَفِّفِيْنَ

{Woe to the defrauders.} (83: 1)

It is unlawful to delay payment without reason; to the seller for the price of the item sold and for a prompt debt and to the labourers. The Prophet صلى الله عليه وسلم said, "Any delay (in payment of demand) by a rich man is oppression (or cruelty). So, pay the labourer his wages before his perspiration dries."

It is reported that when the Prophet صلى الله عليه وسلم paid anyone his dues, he paid more than the *wajib (obligatory)* amount. If the dues were half wasq, then he paid one wasq. If the dues were one wasq, he paid two wasqs. He used to say, "This is your right and as much more is paid from me." We must remember that the additional payment is not interest. It would have been regarded as interest, if the addition was stipulated beforehand. If there is no advance condition and the payer pays more, then it is allowed, and, in fact, it is *mustahab (desirable).*

When dealing with anyone to break a promise is makruh (disapproved), fraud and falsehood. It turns lawful earnings into unlawful. So, it is essential to refrain from these things. Once the Prophet صلى الله عليه وسلم examined a pile of wheat at a shop and found them moist deep inside. The shopkeeper explained that rain water had seeped into the pile. The Prophet صلى الله عليه وسلم said, "You ought to have placed the moist wheat on top (so that no one might be cheated). Know! He who deceives a Muslim does not belong to us."

There are other kinds of business transactions; *Bai'* murabahah (to sell at a profit over cost price) and *Bai* tawliyah ((تولیٰ) to sell at cost price). In these transactions, the cost price must be disclosed to the buyer without reduction nor addition. If the seller has incurred additional cost on that for incidentals like labour cost, octroi, etc., then he must add them to his cost price and disclose to the buyer that he had spend 'so much money' on procuring that thing instead of saying that he bought it for so much, which would be a lie.

If any one sells a piece of cloth for rupees ten and, while the buyer has not paid the money to him, he re-purchases it from the buyer for half the price, or at the same price but with another piece of cloth too then this transaction is not correct. If he does so then it will amount to riba. It is unlawful to use anything bought before obtaining its possession when it is a movable thing (مبیع منقول) - movable thing that is sold/bought). Thus, to sell a movable item before taking possession of it is disallowed.

Someone bought from a seller something that is measured in a scale[1] after measuring it as a measure. He had it duly measured in the scale by the seller. Then he sold by the seller. Then he sold it to another as a measure. Now, it is necessary for this second buyer that he must first have it duly measured in a scale by the first buyer who in his seller. Only after that may he use it or sell it to another person because the first (weighing or) measurement is not sufficient. It is better to have it measured afresh lest it turns out to be more and that could be the seller's property.

If a Muslim makes an offer of a price while he discusses a bargain to buy or sell something, or a Muslim has sent proposal of marriage to a woman then no one else is permitted to make a counter offer or proposal unless the first person has been spurned.

It is makruh (disapproved) to engage in a business transaction at the time of adhan on Friday because any activity at that time interrupts the preparations for the *salah (prayer)*

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[1] Perhaps measure of capacity.

which are *wajib (obligatory)* on the worshipper. If there are many mosques around where the *salah (prayer)* of Friday is observed, then one must suspend business activity when the adhan is called in that mosque in which he will pray.

If two slaves whether both grown up or young, or one grownup and the other young, are closely elated to one another as mahrams then it is makruh (disapproved) and forbidden to sell them separately. Some ulama (Scholars) say that this sale is unlawful.

It is disallowed to sell the fat of the dead.

Imam Abu Hanifah رحمه‌الله regards sale of oil of the impure as allowed. But, other imams regard it as disallowed. Imam Abu Hanifah رحمه‌الله regards as makruh (disapproved) the sale of human excrete when nothing is mixed with it, but if ashes, etc. are mingled with it then it is allowed.

Imam Abu Hanifah رحمه‌الله holds that it is not allowed to sell dung and it is also not allowed to use it for one's benefit.

The king or any ruler should not determine prices of the things. It is makruh (disapproved) for them to do so. However, if the merchants commit excess in raising prices of provision and other things and the masses are worried because of that, then they are allowed to fix prices on the advice of experienced and adept people.

SECTION I اَلْفَصْلُ الْاَوَّلُ

(٢٨٣٤) عَنِ ابْنِ عُمَرَ قَالَ نَهٰى رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَنِ الْمُزَابَنَةِ اَنْ يَّبِيْعَ ثَمَرَ حَائِطِهٖ اِنْ كَانَ نَخْلًا بِتَمْرٍ كَيْلًا وَاِنْ كَانَ كَرْمًا اَنْ يَّبِيْعَهٗ بِزَبِيْبٍ كَيْلًا اَوْ كَانَ زَرْعًا يَّبِيْعَهٗ بِكَيْلِ طَعَامٍ نَهٰى عَنْ ذٰلِكَ كُلِّهٖ۔ مُتَّفَقٌ عَلَيْهِ وَفِيْ رِوَايَةٍ لَهُمَا نَهٰى عَنِ الْمُزَابَنَةِ قَالَ وَالْمُزَابَنَةُ اَنْ يُّبَاعَ مَا فِيْ رُؤُسِ النَّخْلِ بِتَمْرٍ بِكَيْلٍ مُسَمّٰى اِنْ زَادَ فَلِيْ وَاِنْ نَقَصَ فَعَلَيَّ۔ (بخاری و مسلم)

2834. Sayyiduna Ibn Umar رضی الله عنه narrated that Allah's Messenger صلی الله علیه وسلم forbade muzabanah. It is that a man sells the fresh fruit of his garden. If it is dates, then for dried dates by measure. (For instance, if any one has ten measures of dried dates then he takes that for ten measures of fresh dates on his tree by approximate measure). Or, if it is grapes, then for raisins by measure. (So, muzabanah is to sell fresh fruit on the tree for dried fruit). Or – as Muslim transmits – if he has a field then (the muzabanah) he sells it for a measure of corn. (It means that he buys a measure of wheat from another approximating the produce in his field). Are Prophet صلی‌الله‌علیه‌وسلم forbade all these kinds of exchanges.

According to another version (also of Bukhari and Muslim): He forbade muzabanah, saying, "Muzabanah is that fresh dates on the tree are sold to someone for his dried dates by a specified measure. The seller says, 'If it is more, that is mine. And if it is less, that is on me."[1]

COMMENTARY: The word 'muzabanah' is derived from (زبن) (zaban) meaning. 'to push away' 'to put off.'

The prophet صلی الله علیه وسلم forbade *Bai'* muzabanah because this transaction is based on surmise and approximation. The two parties are likely to either benefit or suffer loss. So,

[1] Bukhari # 2205, Muslim # 76-1542, Tirmidhi (narrated zayd ibn habit) # 1304, Nasa'i # 4549, Ibn Majah # 2265, Muwatta Maalik # 23 (Buyu) Musnad Ahmad 2.7

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that might create altercation and bad blood between them. And they might push one another away.

Of the two versions, the first defines muzabanah with fruit implying a general application. The second uses the word 'dates.' It does not exclude other fruit but refers to dates as an examples.

(٢٨٣٥) وَعَنْ جَابِرٍ قَالَ نَهَى رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَنِ الْمُخَابَرَةِ وَالْمُحَاقَلَةِ وَالْمُزَابَنَةِ وَالْمُحَاقَلَةُ اَنْ يَّبِيْعَ الرَّجُلُ الزَّرْعَ بِمِائَةِ فَرَقٍ حِنْطَةٍ وَالْمُزَابَنَةُ اَنْ يَّبِيْعَ التَّمْرَ فِيْ رُءُوْسِ النَّخْلِ بِمِائَةِ فَرَقٍ وَالْمُخَابَرَةُ كِرَاءُ الْاَرْضِ بِالثُّلُثِ وَالرُّبُعِ۔ (رواه مسلم)

2835. Sayyiduna jabir رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم forbade Mukhabarah, muhaqalah and murabanah. And, muhaqalah is that a man sells a cultivated field for one hundred faraqs of wheat. And, muzabanah is that he sells dates on the palm trees for one hundred faraqs (dates that are in stock). And, mukhabarah is to rent one's land at one-third or one fourth portion of cultivation as rent.

COMMENTARY: Faraq is a measure of capacity of three sa's. And farq is also a measure of capacity larger that faraq. It is merely an example that the hadith determines the figure of one hundred faraqs.

A previous hadith gave the same meaning of muzabanah as this gives of muhaqalah. However, muzabanah has a wider application. It covers fruit as well as fields and corns while muhaqalah is used only for fields and corn. However, sometimes muzabanah is used for fruit only.

Mukhabarah is to give one's land for cultivation to someone else. The person to when it is rented may be asked to give as rent one third or one fourth of the produce.

This hadith disallows Mukhbirah, too, because it is a form of wages, and wages remain concealed in it. Besides, that which is to be received in lacking or non-existent. Nothing can be determined of that which is non-existent.

Mukhabah is also called muzari'ah, but they are different in that in the former, seed is provided by the cultivator while in the latter by the owner of the land.

Both muzari'ah (and mukhabarah) are not allowed by Imam Abu Hanifah رحمہ اللہ as clear from this hadith. But, the two companions Imam Abu Yusuf رحمہ اللہ and Imam Muhammad رحمہ اللہ, say that they are correct. The Hanafis observe the ruling of these two imams, because this thing is needed very often and encountered many times. If not allowed then people will face much trouble.

(٢٨٣٦) وَعَنْهُ قَالَ نَهَى رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَنِ الْمُحَاقَلَةِ وَالْمُزَابَنَةِ وَالْمُخَابَرَةِ وَالْمُعَاوَمَةِ وَعَنِ الثُّنْيَا وَرَخَّصَ فِي الْعَرَايَا۔ (رواه مسلم)

2836. Sayyiduna Jabir رضی اللہ عنہ said that Allah's Messenger صلی اللہ علیہ وسلم forbade muhaqalah, muzabanah, mukhabarah, mu'awamah and thunya, but permitted 'araya.[1]

COMMENTARY: The first three kinds have been defined previously. Mu'awanah is to sell fruit on trees one year, two years, three years or more in advance, Thunya is to sell the fruit on the trees excepting on unspecified quantity (which is not sold).

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[1] Muslim # 85-1536, Tirmidhi # 1317, Musnad Ahmad 3-313.

Araya is plural of 'ariyah. It is a palm tree given to a needy and poor person by its owner for its fruit.[1]

The hadith means that after some people gave one tree or two from their garden to a poor man, and when he happened to come to his tree and they too were in the garden with their families, they did not like that, so they gave to him some dates from their own possession instead of from the tree and let him depart. They retained the dates on the tree themselves. The Prophet صلى الله عليه وسلم let this practice continue. However, it is allowed as long as it is less than five wasqs but not proper if more than that. This is stated in the hadith of Sayyiduna Abu Hurayrah رضى الله عنه to follow (# 2838)

(٢٨٣٧) وَعَنْ سَهْلِ بْنِ اَبِيْ حَثْمَةَ قَالَ نَهٰى رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعِ التَّمْرِ بِالتَّمْرِ اِلَّا اَنَّهٗ رَخَّصَ فِي الْعَرِيَّةِ اَنْ تُبَاعَ بِخَرْصِهَا تَمْرًا يَاْكُلُهَا اَهْلُهَا رُطَبًا۔ (متفق عليه)

2837. Sayyiduna Sahl ibn Abu Hathmah رضى الله عنه said that Allah's Messenger صلى الله عليه وسلم disallowed sale of dates (on a tree) for dried dates. But he allowed concerning ariyah after estimating (those on the tree) what they would weigh when dry (so that the poor may be given as many dried dates). The owners may (take the dates on the tree and) eat the fresh dates.[2]

(٢٨٣٨) وَعَنْ اَبِيْ هُرَيْرَةَ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَرْخَصَ فِيْ بَيْعِ الْعَرَايَا بِخَرْصِهَا مِنَ التَّمْرِ فِيْمَا دُوْنَ خَمْسَةِ اَوْسُقٍ اَوْفِيْ خَمْسَةِ اَوْسُقٍ شَكَّ دَاوٗدُ بْنُ الْحُصَيْنِ۔ (متفق عليه)

2838. Sayyiduna Abu Hurayrah رضى الله عنه said that Allah's Messenger صلى الله عليه وسلم gave permission regarding the sale of araya that their amount when they would dry might be estimated (and as many dried dates may be taken against them). But (this kind of sale is) with the proviso that they be less then five wasqs or as many as five wasqs.[3]

COMMENTARY: The proviso of less then five wasqs is because this permission is only for the needy, and anyone (cannot need more then five wasq but) needs only less then five wasqs. The ulama (Scholars) are unanimous about less then five wasqs but disagree about five wasqs. It is better to observe the permission for less than five wasqs. Moreover, the ulama (Scholars) include the rich also in this permission. So, the permission may be said to be for both, rich and poor. Wasq is a measure equal to sixty sa' (It is a camel load.)

RAW FRUIT MUST NOT BE SOLD

(٢٨٣٩) وَعَنْ عَبْدِاللّٰهِ بْنِ عُمَرَ نَهٰى رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعِ الثِّمَارِ حَتّٰى يَبْدُوَ صَلَاحُهَا، نَهَى الْبَائِعَ وَالْمُشْتَرِيَ مُتَّفَقٌ عَلَيْهِ۔ وَفِيْ رِوَايَةٍ لِمُسْلِمٍ نَهٰى عَنْ بَيْعِ النَّخْلِ حَتّٰى تَزْهُوَ وَعَنِ السُّنْبُلِ حَتّٰى يَبْيَضَّ وَيَاْمَنَ الْعَاهَةَ۔ (بخاری و مسلم)

2839. Sayyiduna Abdullah ibn Umar رضى الله عنه said that Allah's Messenger صلى الله عليه وسلم forbade sale of fruit till their good condition was apparent. He forbade both the

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[1] Elsewhere it is stated to be for one year.

[2] Bukhari # 2191, Muslim # 2-1540, Nasa'i # 4542.

[3] Bukhari # 2190, Muslim # 1541, Abu Dawud # 3364, Tirmidhi # 1305, Muwatta Maalik # 14 (Buyu).

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seller and the buyer.

According to another version in Muslim: he forbade sale of palm trees (meaning, dates) till they were red and yellow (meaning, ripe). He also forbade sale of ears of corn till they had turned white and were safe from disease.[1]

COMMENTARY: The seller is forbidden lest he take someone's money without providing him anything. The buyer is forbidden lest he incur loss, for, he might buy unripe fruit but before it ripens a natural calamity might destroy it.

(٢٨٤٠) وَعَنْ اَنَسٍ قَالَ نَهٰى رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعِ الثِّمَارِ حَتّٰى تُزْهِيَ قِيْلَ وَمَا تُزْهِيْ قَالَ حَتّٰى تَحْمَرَّ وَ قَالَ اَرَأَيْتَ اِذَا مَنَعَ اللّٰهُ الثَّمَرَةَ بِمَ يَاْخُذُ اَحَدُكُمْ مَالَ اَخِيْهِ۔ (متفق علیه)

2840. Sayyiduna Anas رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم forbade sale of fruit till it tuzhiya. He was asked, "What is tuzhiya?" He said, "Till it turns red." Then, he said, "What do you say that when Allah withholds the fruit (from becoming ripe), why should any of you take the property of his brother?"[2]

COMMENTARY: Given the two sides of the seller and buyer, the best course is to preserve and wait. When the fruit is ripe, buying and selling may be done.

DISALLOWED TO SELL FRUIT BEARING TREES IN ADVANCE BY MANY YEARS

(٢٨٤١) وَعَنْ جَابِرٍ قَالَ نَهٰى رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعِ السِّنِيْنَ وَاَمَرَ بِوَضْعِ الْجَوَائِحِ۔ (رواه مسلم)

2841. Sayyiduna Jabir رضی اللہ عنہ said that Allah's Messenger صلی اللہ علیہ وسلم forbade that anyone should sell fruit years ahead. He also ordered that anyone stricken by calamity must be *Bai*led out for losses suffered through blight.[3]

COMMENTARY: The hadith recommended to the seller that he should remit some money if he has not received payment from the buyer before some calamity or harm befell his purchases. If he has already received the payment then he should return some money to him though he is not bound to do so but as a gesture of goodwill. The Prophet صلی اللہ علیہ وسلم command in this regard is to show that it is *mustahab (desirable)* and it aims to invite the seller to a moral duty. As for as the juristic ruling is concerned, the seller is under no obligation to make any concession. The buyer is responsible for every profit and loss of that which he has bought. If he bought item is lost through a calamity, the buyer alone suffers the loss. Nothing is *wajib (obligatory)* on the seller once possession is taken of the item.

(٢٨٤٢) وَعَنْهُ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَوْ بِعْتَ مِنْ اَخِيْكَ ثَمَرًا فَاَصَابَتْهُ جَائِحَةٌ فَلَا يَحِلُّ لَكَ اَنْ تَاْخُذَ مِنْهُ شَيْئًا بِمَ تَاْخُذُ مَالَ اَخِيْكَ بِغَيْرِ حَقٍّ۔ (رواه مسلم)

2842. Sayyiduna Jabir رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "If you have sold some fruit to your brother and a calamity (or blight) strikes the fruit, it is not lawful to you to take anything from him. How would you take your brother's Property unjustly?"[4]

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[1] Bukhari # 2794, Muslim # 49-1531, Abu Dawud # 3367, Ibn Majah # 2214.

[2] Bukhari # 2198, Muslim # 15-1555, Nasa'i # 4526, Muwatta Maalik # 11 (Buyu).

[3] Muslim # 101-1536, 17-1554, Abu Dawud # 3374, Nasa'i # 4531, Ibn Majah # 2218, Musnad Ahmad 3-309.

[4] Muslim # 14. 1554, Abu Dawud # 3470, Nasa'i # 4527, Ibn Majah # 2219.

COMMENTARY: The commentary of the previous hadith may be read with this hadith too. The command in this hadith must be observed if the buyer suffers total loss of his property because of a calamity or disease. If there is some loss then the seller must make some compensation.

Ibn Maalik رحمه الله explained that if the sold property is ruined before going into the buyer' hand, the seller must bear the loss. If it happens after the buyer takes possession of the property then the seller must not take anything from the buyer as a mesure of taqwa (piety) and good manners.

MOVABLE PROPERTY MUST NOT BE RESOLD BEFORE RECEIVING POSSESSION

(٢٨٤٣) وَعَنِ ابْنِ عُمَرَ قَالَ كَانُوا يَبْتَاعُوْنَ الطَّعَامَ فِيْ اَعْلَى السُّوْقِ فَيَبِيْعُوْنَهُ فِيْ مَكَانِهِ فَنَهَاهُمْ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعِهِ فِيْ مَكَانِهِ حَتّٰى يَنْقُلُوْهُ رَوَاهُ اَبُوْدَاوٗدَ وَلَمْ اَجِدْهُ فِي الصَّحِيْحَيْنِ۔

2843. Sayyiduna Ibn Umar رضى الله عنه narrated that the People bought grain in the upper area of the market and also sold it there in its place. So, Allah's Messenger صلى الله عليه وسلم forbade them to sell it as its very place. (It should be moved from there and sold thereafter)[1]

COMMENTARY: The bought property must first be taken in one's possession before being re-sold. A movable property is taken possession of by taking it away to some other place, even if it is very near.

If the item purchased is bought by measure or weight then the buyer must have it taken immediately after it is measured or weighed. If it is purchased without weight or measure then it must be taken away without weighing or measuring. In short a movable property is resold only after taking its possession.

This hadith ought to have been placed in Section II because it is not found in both Bukhari and Muslim (but it is there: Bukhari # 2167, Muslim # 33-1527.

(٢٨٤٤-٢٨٤٥) وَعَنْهُ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنِ ابْتَاعَ طَعَامًا فَلَا يَبِعْهُ حَتّٰى يَسْتَوْفِيَهُ وَفِيْ رِوَايَةِ ابْنِ عَبَّاسٍ حَتّٰى يَكْتَالَهُ۔ (متفق عليه)

2844. Sayyiduna Ibn Umar رضى الله عنه said that Allah's Messenger صلى الله عليه وسلم said, "If any one buys grain then he must not re-sell it before taking full possession of it."[2]

2845. Sayyiduna Ibn Abbas رضى الله عنه narrated with the words: "before he has measured it."[3]

COMMENTARY: This had been explained in the previous commentary about first taking possession. Imam Shafi'I رحمه الله and of the Hanafis, Imam Muhammad رحمه الله hold that both movable and immovable property must not be re-sold before first taking possession of it.

Imam Maalik رحمه الله said that only grain should not be sold before taking possession. Other things may be sold. Imam Abu Hanifah رحمه الله and Imam Abu Yusuf رحمه الله hold that it is allowed to re-sell land (immovable property) before taking possession of it but none of the

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[1] Bukhari # 2167, Muslim # 33. 1527, Abu Dawud # 3493, Nasa'i # 4606, Muwatta # 42 (Buyu)

[2] Bukhari # 2126, Muslim # 32-1526, Abu Dawud # 3492, Nasa'i # 4604, Ibn Majah # 2226, Ibn Majah 2-22.

[3] Muslim # 32-1525, Abu Dawud # 3496, Tirmidhi # 1291, Nasa'i # 4597, Ibn Majah # 2227.

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movable properties may be sold before taking possession. The views of Imam Muhammad رحمه الله are the same apparently.

The version of Ibn Abbas رضی الله عنه means that the seller's weighing in the presence of the buyer is sufficient. It is not necessary for the buyer to weigh it all over again.

(٢٨٤٦) وَعَنِ ابْنِ عَبَّاسٍ قَالَ اَمَّا الَّذِی نَهٰی عَنْهُ النَّبِیُّ صَلَّی اللّٰهُ عَلَیْهِ وَسَلَّمَ فَهُوَا لطَّعَامُ اَنْ یُبَاعَ حَتّٰی یُقْبَضَ قَالَ ابْنُ عَبَّاسٍ وَلَا اَحْسِبُ کُلَّ شَیْءٍ اِلَّا مِثْلَهٗ۔ (متفق علیه)

2846. Sayyiduna Ibn Abbas رضی الله عنه narrated that, "That which the prophet صلی الله علیه وسلم disallowed was to sell grain before taking possession of it." And, Sayyiduna Ibn Abbas رضی الله عنه said that he thought that everything was like grain in the application of this command.[1]

COMMENTARY: According to the interpretation of this hadith by Sayyiduna ibn Abbas رضی الله عنه just as it is not allowed to sell grain before taking it into possessions. It is also disallowed to sell any thing before one receives possession of it. This was the presumption of Ibn Abbas رضی الله عنه He felt that the same rule applied to 'everything other than grain' as to grain.

(٢٨٤٧) وَعَنْ اَبِیْ هُرَیْرَةَ اَنَّ رَسُوْلَ اللّٰهِ صَلَّی اللّٰهُ عَلَیْهِ وَسَلَّمَ قَالَ لَا تَلَقَّوُا الرُّکْبَانَ لِبَیْعٍ وَلَا یَبِیْعُ بَعْضُکُمْ عَلٰی بَیْعِ بَعْضٍ وَلَا تَنَاجَشُوْا وَلَا یَبِیْعُ حَاضِرٌ لِبَادٍ وَلَا تُصَرُّوا الْاِبِلَ وَالْغَنَمَ فَمَنِ ابْتَاعَهَا بَعْدَ ذٰلِکَ فَهُوَ بِخَیْرِ النَّظَرَیْنِ بَعْدَ اَنْ یَحْلُبَهَا اِنْ رَضِیَهَا اَمْسَکَهَا وَاِنْ سَخِطَهَا رَدَّهَا وَصَاعًا مِنْ تَمْرٍ مُتَّفَقٌ عَلَیْهِ، وَفِیْ رِوَایَةٍ لِمُسْلِمٍ مَنِ اشْتَرٰی شَاةً مُصَرَّاةً فَهُوَ بِالْخِیَارِ ثَلَاثَةَ اَیَّامٍ فَاِنْ رَدَّهَا رَدَّ مَعَهَا صَاعًا مِنْ طَعَامٍ لَا سَمْرَاءَ۔

2847. Sayyiduna Abu Hurayrah رضی الله عنه narrated that Allah's Messenger صلی الله علیه وسلم said,. Do not go out to meet riders (of the caravan with grain, etc.) to conclude business with them and no one among you must buy against another. Do not bid against each other. No one from the city may sell for a villager (or a man of the desert). Do not tie up the udder of the camels and sheep. If anyone buys such animals after this has been done to then he has two options to choose from other milking them; he may keep them if he is pleased with them or he may giving also no sa' of dates.

Another version say; "He who buys a sheep whose udders were tied up has three days within which he may decide to keep it or return it. If he returns it, their he must also give alongwith it one sa' of grain but not wheat."[2]

COMMENTARY: The Prophet صلی الله علیه وسلم forbade traders in a town or city to go out of it and buy from in-coming trade caravans that which they have brought for sale. This closed the door to deception of the visiting men who might otherwise be deceived into selling at prices lower than those prevailing in the city markets.

If two people are conducting a bargain do not interfere by outbidding the buyer or quoting a lower price than the seller's to the buyer, or persuading the buyer who has bought on

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[1] Bukhari # 2135, Muslim # 30-1525.

[2] Bukhari # 2150, Musilm # 11-1515, Abu Dawud # 3443, Nasa'i # 4487, Ibn Majah # 22389, Muwatta Maalik # 96 (Buyu).

khiyar to return his purchase so that you would get him a better bargain. It is very bad to unsettle someone in order to gather some gain oneself and if it is not done to collect some gain but only to disturb others and mess up their business then it is very bad.

Some ulama (Scholars) say that this thing is disallowed as long as the business of those people does not contravene Shari'ah (divine law). However, if they do something that is disapproved by Shari'ah (divine law) like selling snatched or stolen property, then it is allowed to have their transaction annulled.

The next command is (نجش) is to provoke and to deceive. If two people are finalizing a bargain, a third person intervenes and speaks highly of the thing that is being sold and quotes a higher price for it not within intent to buy but to make it look like a better bargain for the buyer. The prophet disallowed it because it is the worst form of deception.

A city dweller is disallowed to sell for a villager his grain that he brings to the city to sell. He might offer to do the job for him quickly and at a better price but the Prophet صلى الله عليه وسلم forbade this because it is to keep Allah's creatures away from profit. Imam Shafi'I رحمه الله said that this is forbidden and the Hanafis regard it as makruh (disapproved).

To tie the udder of an animal is also a form of deception. A person who wishes to sell his milk-yielding animal stops milking it for a couple of days or a few (times of) milking before offering it for sale. Its udder will bulge and buyers might be deceived into thinking that it has much milk. If anyone is deceived into buying such an animal and discovers that the animal yields little milk, then he has option to return, or retain, the animal. If he returns it then he must also give with it one sa' dates to compensate for the milk of the animal he had used.

A question arises here. Why are dates given instead of returning the milk or paying its price? The answer is that some of the milk may have been produced in the amimal's udder after it became the property of the purchaser and some was already there at the time of purchase. So it is impossible to determine how much milk should be returns. The Prophet صلى الله عليه وسلم, therefore, determined that one sa' of dates be paid alongwith the animal to the seller irrespective of the quantity of milk consumed. It resembles the diyah (or blood money) which is a fixed amount of one hundred camels for unjust killing irrespective of the statues and standing of the slain person.

Imam Shafi'I رحمه الله goes by the hadith and says that the option to cancel or retain the transaction remains with the buyer as stated in the hadith. But, Imam Abu Hanifah رحمه الله disagrees and says that the command in the hadith is withdrawn, saying that it was enforced before riba was made unlawful.

Ibn Hajr رحمه الله explains the concluding portion of the hadith that one sa' dates should be given not wheat. The reason is that dates and milk were the main diet of the Arabs. This is prescribed even if the seller may be willing to take any thing instead of dates. Some people say that if the seller agrees, anything may be given instead of dates.

(٢٨٤٨) وَعَنْهُ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا تَلَقَّوُا الْجَلَبَ فَمَنْ تَلَقَّاهُ فَاشْتَرَى مِنْهُ فَإِذَا أَتَى سَيِّدُهُ السُّوْقَ فَهُوَ بِالْخِيَارِ۔ (رواه مسلم)

2848. Sayyiduna Abu Hurayrah رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "Do not go forward to meet the caravan that brings grain, etc. If anyone goes forward and meets them and buys from them, then when their chief comes to the

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market he has option (to revoke the sale)."[1]

COMMENTARY: The ulama (Scholars) say that it is forbidden to proceed out of the city to the incoming caravan if the intention is to buy from them to the disadvantage of the citizens as well as of the caravan to whom the market price is not disclosed. However, if the citizens are not caused loss and market price is not concealed from the merchants of the caravan who are not cheated, then this is not forbidden.

The Shafi'is say that when the chief or members of the caravan come to the city and discover, the true price structure which is higher than what they had been paid, then they have the option to revoke the sale and take back the grain (or whatever they had sold) or they may keep the sale intact. If they learn that the buyer has paid a higher price or the ruling price then they have no option.

The Hanafi view point is that the Chief on the members of the caravan will have this option only when they learn on coming to the city that the buyer had committed a fraud with them. If it is not so then they have no option.

(٢٨٤٩) وَعَنِ ابْنِ عُمَرَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا تَلَقَّوُا السِّلَعَ حَتّٰى يُهْبَطَ بِهَا إِلَى السُّوْقِ۔

(متفق علیه)

2849. Sayyiduna Ibn Umar رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Do not go out to meet the (merchants who bring the) merchandise. Rather, wait till it is brought to the market."[2]

INTERFERE NOT IN OTHER'S BUSINESS DEALINGS

(٢٨٥٠) وَعَنْهُ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا يَبِيْعُ الرَّجُلُ عَلٰى بَيْعِ أَخِيْهِ وَلَا يَخْطُبُ عَلٰى خِطْبَةِ أَخِيْهِ إِلَّا أَنْ يَّأْذَنَ لَهٗ۔ (رواه مسلم)

2850. Sayyiduna Ibn Umar رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "No one must make an offer above his brother's deal. And, no one must propose a woman when his brother has already made a proposal unless he gives him permission."[3]

COMMENTARY: The first part of the hadith has been explained against hadith # 2847. Similarly, if anyone has proposed marriage to a woman, then no one else may propose to her. This is disallowed if the two sides have agreed on a dower and other formalities attached to marriage and only the formal ceremony (of oath taking) remaining to be concluded.

These disallowances of interference in anyone's business bargains and marriage proposal are only for so long as the two sides do not give up their efforts or withdraw from their discussions.

(٢٨٥١) وَعَنْ أَبِيْ هُرَيْرَةَ أَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لَا يَسُمِ الرَّجُلُ عَلٰى سَوْمِ أَخِيْهِ الْمُسْلِمِ۔ (رواه مسلم)

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[1] Muslim # 17-1519, Abu Dawud # 3437, Tirmidhi # 1225, Nasa'i # 4501, Ibn Majah # 2178, Darimi # 2566.

[2] Bukhari # 2165, Muslim # 14-1517, Abu Dawud # 3436, Tirmidhi # 1224, Darimi # 2567, Musnad Ahmad 2567, Musnad Ahmad 2-91.

[3] Bukhari # 5142, Muslim # 8-1412, Abu Dawud # 2081, Nasa'i # 3243, Ibn Majah # 1868, Darimi # 2176, Muwatta Maalik # 2 (Mikah), Musnad Ahmad 2-42.

2851. Sayyiduna Abu Hurayrah رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "No one should outbid the bidding of his brother Muslim."[1]

COMMENTARY: This command applies when the two sides have agreed on a price. After this, it is makruh (disapproved) for anyone to offer a higher price and mess up their transaction. However, though makruh (disapproved), the sale will be correct.

Ibn Hajar رحمه الله said that the 'Muslim' in the hadith includes the dhimmi (non-Muslim resident of a Muslim country who pays the jizyah), the mu'ahid (with whom a Muslim has an accord) and the mustamin (who is under a Muslim's protection).

A CITY DWELLER MUST NOT SELL FOR VILLAGER

(٢٨٥٢) وَعَنْ جَابِرٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا يَبِعْ حَاضِرٌ لِبَادٍ دَعُوا النَّاسَ يَرْزُقُ اللّٰهُ بَعْضَهُمْ مِنْ بَعْضٍ۔ (رواه مسلم)

2852. Sayyiduna Jabir رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "No city dweller must sell for a villager. Leave people alone, Allah gives them provision, some from others."[2]

COMMENTARY: The villagers may be left to themselves so that they may sell grain brought by them to the city dwellers at low prices. This will benefit the city dwellers too. The remaining portion of the hadith has been explained against the hadith # 2847.

TWO WAYS OF DRESSING AND BUSINESSES DISALLOWED

(٢٨٥٣) وَعَنْ اَبِيْ سَعِيْدِنِ الْخُدْرِيِّ قَالَ نَهٰى رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَنْ لِبْسَتَيْنِ وَعَنْ بَيْعَتَيْنِ نَهٰى عَنِ الْمُلَامَسَةِ وَالْمُنَابَذَةِ فِي الْبَيْعِ وَالْمُلَامَسَةُ لَمْسُ الرَّجُلِ ثَوْبَ الْآخَرِ بِيَدِهٖ بِاللَّيْلِ اَوْ بِالنَّهَارِ وَلَا يُقَلِّبُهٗ اِلَّا بِذٰلِكَ وَالْمُنَابَذَةُ اَنْ يَنْبِذَ الرَّجُلُ اِلَى الرَّجُلِ بِثَوْبِهٖ وَيَنْبِذَ الْآخَرُ ثَوْبَهٗ وَيَكُوْنُ ذٰلِكَ بَيْعُهُمَا عَنْ غَيْرِ نَظَرٍ وَلَا تَرَاضٍ وَاللِّبْسَتَيْنِ اشْتِمَالُ الصَّمَّاءِ وَالصَّمَّاءُ اَنْ يَجْعَلَ ثَوْبَهٗ عَلٰى اَحَدِ عَاتِقَيْهِ فَيَبْدُوْ اَحَدُ شِقَّيْهِ لَيْسَ عَلَيْهِ ثَوْبٌ وَاللِّبْسَةُ الْاُخْرٰى اِحْتِبَاؤُهٗ بِثَوْبِهٖ وَهُوَ جَالِسٌ لَيْسَ عَلٰى فَرْجِهٖ مِنْهُ شَيْءٌ۔ (متفق عليه)

2853. Sayyiduna Abu Sa'eed al Khudri رضى الله عنه said that Allah's Messenger صلى الله عليه وسلم forbade two ways of dressing and two kinds of business transactions. He disallowed mulama (Scholars)rah and munabadhah. In a business transaction. Mulama (Scholars)sah is that a man (the buyer) touches another's (seller's) garment (that he wishes to buy) with his hand whether it is night or day, without turning it over beyond that (touching). And, munabadhah is that a man throws his garment to another and the other throws his garment. This confirms their deal, without any inspection or (verbal) expression of willingness. One of the ways of dressing is to wrap the Samma' and samma' is for a man to put his garment over one of his shoulders in such a way that his other side is bare. The other (manner of dressing which is disallowed) is for a man to wrap himself up in his garment while he sits in such a way that nothing of it covers his private parts.[3]

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[1] Muslim # 9-1515, Ibn Majah # 2172, Musnad Ahmad 2-259.

[2] Muslim # 20-1522, Tirmidhi # 1227, Abu Dawud # 3443, Nasa'i # 4495, Ibn Majah # 2176.

[3] Bukhari # 5820, Muslim # 3-1512, Abu Dawud # 3377, Nasa'i # 4515, Ibn Majah # 2710, Darimi # 2562, Musnad Ahmad 3-95.

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COMMENTARY: Mulama (Scholars)sah was a way of buying and selling without any oral exchange of words during the jahliyah. It was a wrong method, so the Prophet صلى الله عليه وسلم disallowed it.

Munabadhah was a method in which both parties did not find it necessary to examine the merchandise. They simply threw their garment on one another. This too was a practice of the jihiliyah (ignorance period). So it was disallowed, too.

Samma is as described in the hadith. However, it has another meaning, more clear and well-known it is that someone puts a garment over himself in such a way that he is covered from head to toe and his hands too are inside. His body is not bare from where. Obviously, a person in this garb is totally helpless and immovable. So, the Prophet صلى الله عليه وسلم disallowed this sort of dressing.

He also prohibited the form of dress in which a person sits on this buttocks and keeps his knees erect wrapping a garment round his knees and back leaving his satr (private parts) (private parts) uncovered (so if it disallowed). But if any one wraps a garment round himself in this way with his private parts covered too then this is not disallowed

In passing we may say that it is masnun to sit with hands round one's upright knees (soles on the ground, flat).

BAI' HASAH AND GHARAR FORBIDDEN

(٢٨٥٤) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ نَهٰى رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعِ الْحَصَاةِ وَعَنْ بَيْعِ الْغَرَرِ۔ (رواه مسلم)

2854. Sayyiduna Abu Hurayrah رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم forbade *Bai'* hasah and *Bai'* gharar.[1]

COMMENTARY: *Bai'* hasah is when a buyer tells the seller that when he hits a pebble at his ware, *Bai'* would become *wajib (obligatory)*. Or, the seller tells the buyer that he has sold him that thing of his merchandise on which his pebble lands. Or, he says, "I have sold to you this piece of land till where your pebble falls." This method of business was customary during the jahiliyah (ignorance period). The Prophet صلى الله عليه وسلم disallowed it.

Bai' gharar is the transaction in which the thing sold is unknown or not in the hands of the seller. It is like fish in the water, a bird in the air or a runaway slave.

BAI' HABAL UL HABLAH DISALLOWED

(٢٨٥٥) وَعَنِ ابْنِ عُمَرَ قَالَ نَهٰى رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعِ حَبَلِ الْحَبَلَةِ وَكَانَ بَيْعًا يَتَبَا يَعُهٗ اَهْلُ الْجَاهِلِيَّةِ كَانَ الرَّجُلُ يَبْتَاعُ الْجَزُوْرَ اِلٰى اَنْ تُنْتَجَ النَّاقَةُ ثُمَّ تُنْتَجُ الَّتِيْ فِيْ بَطْنِهَا۔ (متفق عليه)

2855. Sayyiduna Ibn Umar رضى الله عنه said that Allah's Messenger صلى الله عليه وسلم forbade *Bai'* hablul habalah. This was practiced by the people of the jahiliyah (ignorance period). It was that a man would buy a she-camel that would be born to a she-camel that was yet in its mother's womb (He would not pay its price till then.)[2]

COMMENTARY: It is disallowed because that which is offered for sale is non-existent. When it is not allowed to sell what an animal carries in its womb then how could it be

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[1] Muslim # 4-1513, Tirmidhi # 1234, Abu Dawud # 3376, Nasa'i # 4518, Ibn Majah # 2194, Darimi 2563, Musnad Ahmad 2-250.

[2] Bukhari # 2143, Muslim # 5-1514, Tirmidhi # 1233, Abu Dawud # 3380, Nasa'i # 4625, Ibn Majah # 2197, Muwatta Maalik # 62, (Buyu) Musnad Ahmad 2-15.

allowed to sell what the yet unborn would deliver?
Some people define *Bai' habal ul habalah* is the sale of a pregnant she camel on the promise of payment for it when her young one is born. Sayyiduna Ibn Umar رضی اللہ عنہ took this meaning, for this is how he has explained the concluding portion of the hadith from (وکان مبیعا) (and would pay then).

DISALLOWED TO CHARGE FOR A STALLION'S COVERING

(۲۸۵٦) وَعَنْهُ قَالَ نَهٰى رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَنْ عَسْبِ الْفَحْلِ۔ (رواه البخاری)

2856. Sayyiduna Ibn Umar رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم disallowed (them) to charge for pairing male and female (animals).[1]

COMMENTARY: It is forbidden to charge money for letting someone use one's male animal to copulate with his females. For one thing, the male may or may not pair with the female when left among them, and the other is that the female might or might not become pregnant most of the sahabah and jurists said that this thing is unlawful. However, to lend the male animal to pair with the females is *mustahab (desirable)*, and it is proper to accept any gift from the owner of the female animal after the male is lent.

DISALLOWED TO SELL WATER

(۲۸۵۷) وَعَنْ جَابِرٍ قَالَ نَهٰى رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعِ ضِرَابِ الْجَمَلِ وَعَنْ بَيْعِ الْمَاءِ وَالْاَرْضِ لِتُحْرَثَ۔ (رواه مسلم)

2857. Sayyiduna Jabir رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم forbade seeking a return for pairing a he camel with a she camel and selling water and land to be tilled.[2]

COMMENTARY: If anyone gives to another person his land and water on condition that the two things belong to him while the other would toil on the land and sow his seed but he would take a certain share of the produce. This is called mukhabarah. See commentary to hadith # 2835, 2836 for this term.

DISALLOWED TO SELL EXCESS WATER

(۲۸۵۸) وَعَنْهُ قَالَ نَهٰى رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعِ فَضْلِ الْمَاءِ۔ (رواه مسلم)

2858. Sayyiduna Jabir رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم forbade the sale of excess water.[3]

COMMENTARY: If anyone has water beyond his needs then he must not keep it away from others to sell it. Rather, he must disburse it gratis, if they need it to drink or to water their animals. However, if they need it for their plants and fields then he may charge them for the water.

(۲۸۵۹) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا يُبَاعُ فَضْلُ الْمَاءِ لِيُبَاعَ بِهِ الْكَلَاءُ۔ (متفق علیه)

2859. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ

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[1] Bukhari # 2284, Tirmidhi # 1277, Abu Dawud # 3429, Musnad Ahmad 2-14.
[2] Muslim # 35-1565, Nasa'i # # 4670.
[3] Muslim # 34-1565, Ibn Majah # 2477.

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وسلم said, "Do not sell excess water lest it become necessary to sell herbage that grows from it."[1]

COMMENTARY: Selling water necessitates selling herbage. If animals cannot have water without paying for it then it amounts to selling herbage of pasture. This means the it is disallowed to sell herbage too.

However, the ulama (Scholars) disagree on whether the disallowance is tahrimi or tanzihi. It seems more probable that it is tanzihi.

DO NOT DECEIVE

(٢٨٦٠) وَعَنْهُ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَرَّ عَلٰى صُبْرَةِ طَعَامٍ فَاَدْخَلَ يَدَهٗ فِيْهَا فَنَالَتْ اَصَابِعُهٗ بَلَلًا فَقَالَ مَا هٰذَا يَا صَاحِبَ الطَّعَامِ قَالَ اَصَابَتْهُ السَّمَاءُ يَا رَسُوْلَ اللّٰهِ قَالَ اَفَلَا جَعَلْتَهٗ فَوْقَ الطَّعَامِ حَتّٰى يَرَاهُ النَّاسُ۔ مَنْ غَشَّ فَلَيْسَ مِنِّيْ۔ (رواه مسلم)

2860. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم passed by a heap of grain. When he put his hand into it, his finger felt the moistness there. He asked, "What is this, O owner of the gain?" He said, "Rain water has gone into it" So he asked, "Why did you not bring the moist portion on the top? The people would have seen it. He who deceives does not belong to me (and does not follow my path)."[2]

SECTION II اَلْفَصْلُ الثَّانِيْ

BAI' THUNYA FORBIDDEN

(٢٨٦١) عَنْ جَابِرٍ قَالَ اِنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ نَهٰى عَنِ الثُّنْيَا اِلَّا اَنْ يُّعْلَمَ۔ (رواه الترمذی)

2861. Sayyiduna Jabir رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم forbade the *Bai'* thunya unless (the exception) was specified.[3]

COMMENTARY: When a seller sells something but makes an exception of a part of it without disclosing how much, then it is *Bai'* thunya. The Prophet صلی اللہ علیہ وسلم forbade this transaction. But, if he says clearly how much of the sales he would exclude, then this sale is allowed.

SELL FRUIT ONLY WHEN RIPE

(٢٨٦٢) وَعَنْ اَنَسٍ قَالَ نَهٰى رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعِ الْعِنَبِ حَتّٰى يَسْوَدَّ وَعَنْ بَيْعِ الْحَبِّ حَتّٰى يَشْتَدَّ هٰكَذَا رَوَاهُ التِّرْمِذِيُّ وَ اَبُوْدَاوٗدَ وَلَيْسَ عِنْدَهُمَا بِرِوَايَتِهٖ نَهٰى عَنْ بَيْعِ التَّمْرِ حَتّٰى تَزْهُوَ اِلَّا بِرِوَايَةِ ابْنِ عُمَرَ قَالَ نَهٰى عَنْ بَيْعِ التَّمْرِ حَتّٰى تَزْهُوَ وَرَوَاهُ التِّرْمِذِيُّ وَاَبُوْدَاوٗدَ عَنْ اَنَسٍ وَالزِّيَادَةُ الَّتِيْ فِي الْمَصَابِيْحِ وَهِيَ قَوْلُهٗ نَهٰى عَنْ بَيْعِ التَّمْرِ حَتّٰى تَزْهُوَ اِنَّمَا ثَبَتَتْ فِيْ رِوَايَتِهِمَا عَنِ ابْنِ عُمَرَ قَالَ نَهٰى عَنْ بَيْعِ النَّخْلِ حَتّٰى تَزْهُوَ وَقَالَ التِّرْمِذِيُّ هٰذَا حَدِيْثٌ حَسَنٌ غَرِيْبٌ۔

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[1] Bukhari # 2353, Muslim # 38. 1563, Tirmidhi # 1276, Abu Dawud # 3473, Ibn Majah # 2478, Muwatta Maalik # 29 (Abdiyah) Musnad Ahmad 2-273.

[2] Muslim # 164-102, Tirmidhi # 1319, Ibn Majah # 2224.

[3] Muslim # 85-1536, Abu Dawud # 3404, Tirmidhi # 1294, Nasa'i # 4633, Musnad Ahmad 3-364.

2862. Sayyiduna Anas رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم disallowed sale of grapes till they were black and of grain till they hardened.[1] (Tirmjidhi Abu Dawud did transmit it from Anas رضى الله عنه) (And) Sayyiduna Anas رضى الله عنه said that he forbade the sale of dates till they were ripe. This is the addition is al-Masabih, but it is transmitted by them from) Ibn Umar رضى الله عنه (who) narrated that the Prophet صلى الله عليه وسلم forbade sale of palm trees till the fruit was ripe (brilliant in colour).[2]

COMMENTARY: The compiler of Mishkat has pointed out two discrepancies in al-Masabih by Baghawi. رحمه الله. The second portion is narrated by Ibn Umar رضى الله عنه not Anas رضى الله عنه, and the words in it are (بيع الثمر) not (بيع النخل).

WRITING OFF DEBT WITH DEBT

(٢٨٦٣) وَعَنِ ابْنِ عُمَرَ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ نَهٰى عَنْ بَيْعِ الْكَالِئِ بِالْكَالِئِ۔ (رواه الدارقطنى)

2863. Sayyiduna Ibn Umar رضى الله عنه narrated that the Prophet صلى الله عليه وسلم forbade *Bai'* al-Kali bil Kali (debt for debt at a later date).[3]

COMMENTARY: The word kali' or kali is derived from kala (كلاء). It means 'delay, deferring, deb.'

Selling debt for debt is to buy something on the promise of payment at a future date when the merchandise would be delivered. But, the buyer is unable to pay on the due date, so he requests the seller to put off the due date with a raised sale price. The seller concedes. The transaction is thus concluded without delivery of the item or payment of money. The Prophet صلى الله عليه وسلم forbade this sale because possession is not handed over in this kind.

Some people describe this sale in another manner. It is that a debt is transferred from one debtor to another. This too is disallowed.

BAI' URBAN

(٢٨٦٤) وَعَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ اَبِيْهِ عَنْ جَدِّهٖ قَالَ نَهٰى رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعِ الْعُرْبَانِ۔ (رواه مالك وابوداؤد وابن ماجة)

2864. Sayyiduna Amr ibn Shu'ayb رحمه الله reported from his father from his grandfather that Allah's Messenger صلى الله عليه وسلم forbade *Bai'* urban [4] (which is a transaction with an unrefundable deposit if the buyer retracts).[5]

COMMENTARY: *Bai'* urban is a transaction in which a buyer pays an advance to the seller which would be adjusted when the balance price is paid, but if the buyer fails to pay the balance and take delivery then the advance would be forfeited. The Prophet صلى الله عليه وسلم forbade because the sale is invalid.

However, Sayyiduna Ibn Umar رضى الله عنه and Imam Ahmad رحمه الله hold that *Bai'* urban is allowed. The Hanafis say that if the advance is returned to the buyer when he fails to make

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[1] Tirmidhi # 1232, Abu Dawud # 3371, Ibn Majah # 2217, Musnad Ahmad 3. 221.

[2] Tirmidhi # 1230, Abu Dawud # 3308, Muslim # 1535, Nasa'i # 4565, Musnad Ahmad # 4493.

[3] Daraqutni # 269 (Buyu)

[4] Some places it is spelt urban

[5] Abu Dawud # 3502, Ibn Majah # 2192, Muwatta ibn Maalik # 1 (Buyu)

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the payment and complete the deal then it is permitted.

BAI' MUD TAR DISALLOWED

(٢٨٦٥) وَعَنْ عَلِيٍّ قَالَ نَهٰى رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعِ الْمُضْطَرِّ وَعَنْ بَيْعِ الْغَرَرِ وَعَنْ بَيْعِ الثَّمَرَةِ قَبْلَ اَنْ تُدْرِكَ۔ (رواه ابوداؤد)

2865. Sayyiduna Ali رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم forbade *Bai'* mudtar, *Bai'* gharar and sale for fruit before it turns ripe.[1]

COMMENTARY: *Bai'* mudtar is a forced buying in which the buyer compels the seller to sell. It falls under the purview of *Bai* fasid (defined in the introduction to chapter V). The word *Bai'* is used here in the sense of buying.

Alternatively, mudtar means 'helpless.' 'needy,' who is compelled to sell his property owing to a hardship or circumstances for example, a debtor might sell his belonging or some of them to repay his debt and he does that throwawav prices. So it is not proper for anyone to buy his property at low prices and take advantage of his plight. Rather, he should be helped by advancing a loan to him or paying him the full price for what he sells. In this case the buying will not void or invalid, but it will be correct though with dislike.

Previously, *Bai'* gharar has been explained (see hadith # 2854).

Also, sale of unripe fruit has been treated earlier (see hadith # 2839, 2840).

NOT ALLOWED TO CHARGE FOR PAIRING ANIMALS

(٢٨٦٦) وَعَنْ اَنَسٍ اَنَّ رَجُلًا مِنْ كِلَابٍ سَأَلَ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَنْ عَسْبِ الْفَحْلِ فَنَهَاهُ فَقَالَ يَا رَسُوْلَ اللّٰهِ اِنَّا نُطْرِقُ الْفَحْلَ فَنُكْرَمُ فَرَخَّصَ لَهٗ فِي الْكَرَامَةِ۔ (رواه الترمذی)

2866. Sayyiduna Anas رضی اللہ عنہ narrated that a man from kilab asked the Prophet صلی اللہ علیہ وسلم about lending a male animal to pair with a female on hire. He disallowed him to do so. However, the man said, "O Messenger صلی اللہ علیہ وسلم of Allah. We lend the male to pair with a female and are given a gift." So, he gave him permission to receive the gift.[2]

DO NOT SELL WHAT YOU DO NOT POSSESS

(٢٨٦٧) وَعَنْ حَكِيْمِ بْنِ حِزَامٍ قَالَ نَهَانِيْ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَنْ اَبِيْعَ مَا لَيْسَ عِنْدِيْ رَوَاهُ التِّرْمِذِيُّ۔ وَفِيْ رِوَايَةٍ لَهٗ وَلِاَبِيْ دَاوٗدَ وَالنَّسَائِيِّ قَالَ قُلْتُ يَا رَسُوْلَ اللّٰهِ يَأْتِيْنِي الرَّجُلُ فَيُرِيْدُ مِنِّي الْبَيْعَ وَلَيْسَ عِنْدِيْ فَاَبْتَاعُ لَهٗ مِنَ السُّوْقِ قَالَ لَا تَبِعْ مَا لَيْسَ عِنْدَكَ۔

2867. Sayyiduna Hakim ibn Hizam رضی اللہ عنہ said, "Allah's Messenger صلی اللہ علیہ وسلم forbade me to sell that which I do not possess."

According to another version: He said, "I asked, O Messenger of Allah, someone comes to me and wishes to buy from me something that I do not have, so I buy it from the market for him.' He said, 'Do not sell what you do not have.'[3]

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[1] Abu Dawud # 3382, Musnad Ahmad 1-116.

[2] Tirmidhi # 1278.

[3] Tirmidhi # 1237, Abu Dawud # 3503, Musnad Ahmad 3-402, Nasa'i # 4613, Ibn Majah # 2787

COMMENTARY: There can be two cases of this:

(1) He neither owns that thing nor has it with him. In this case, the sale is not correct at all.

(2) He does not own it but has it in his hands and it belongs to someone else. In this case, the sale is correct only with the owner's permission. If he sells it without the owner's permission then Imam Ahmad رحمه الله Imam Maalik رحمه الله and Imam Ahmad رحمه الله hold that the soundness of otherwise of the sale depends on the owner's willingness. If he approves then it is correct, otherwise not. On the other hand, Imam Shafi'I رحمه الله contends that it is not correct at all irrespective of the owner's approval or otherwise.

The first case includes sale of such a thing as has not been possessed, or has been lost, or has disappeared like a slave, or he is not able deliver it to the buyer like birds in the air and fish in the sea.

It must be borne in mind that the disallowance is in cases apart from *Bai'* as-salam because it is allowed in the sight of all the ulama (Scholars) with specified and known conditions. A detailed discourse on *Bai'* as-salam will follow in the chapter on it, insha Allah.

DO NOT COMBINE TWO SALES IN ONE

(٢٨٦٨) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ نَهٰى رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعَتَيْنِ فِيْ بَيْعَةٍ۔ (رواه مالك والترمذى وابوداؤد والنسائى)

2868. Sayyiduna Abu Hurayrah رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم forbade that two transactions should be combined in one.[1]

COMMENTARY: There can be two ways of combining two sales in one.

(1) Someone offers to sell to another a thing for a certain sum of money but stipulates that he too should sell a certain thing belonging to him for a certain sum of money. This kind of sale is not correct.

(2) Someone offers to sell to another person something belonging to him on part cash and part deferred. This too is disallowed, provided one of these two things is not determined and the buyer has choice to either pay cash or to pay later. If one of them is determined and the transaction is not dubious then it is a correct bargain.

(٢٨٦٩) وَعَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ اَبِيْهِ عَنْ جَدِّهٖ قَالَ نَهٰى رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعَتَيْنِ فِيْ صَفْقَةٍ وَاحِدَةٍ۔ (رواه فى شرح السنة)

2869. Sayyiduna Amr ibn Shu'ayb رحمه الله narrated on the authority of his father (Shu'ayb) رحمه الله from his grandfather (Sayyiduna Abdullah ibn Amr) رضى الله عنه that Allah's Messenger صلى الله عليه وسلم forbade two sales in a single transaction.

COMMENTARY: The commentary of the previous hadith applies here too.

DO NOT LINK CREDIT WITH SALE

(٢٨٧٠) وَعَنْهُ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا يَحِلُّ سَلَفٌ وَبَيْعٌ وَلَا شَرْطَانِ فِيْ بَيْعٍ وَلَا رِبْحُ مَا لَمْ

[1] Tirmidhi # 1235, Abu Dawud # 3461, Nasa'i # 4632.

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يُضْمَنُ وَلَا بَيْعُ مَا لَيْسَ عِنْدَكَ۔ رَوَاهُ التِّرْمِذِيُّ وَاَبُوْدَاوٗدَ وَالنَّسَائِيُّ وَقَالَ التِّرْمِذِيُّ هٰذَا حَدِيْثٌ صَحِيْحٌ۔

2870. Sayyiduna Amr ibn Shu'ayb رحمه الله reported that Allah's Messenger صلى الله عليه وسلم said, "linking a loan to a sale is not lawful. Placing two conditions for one sale is not allowed. Profit on that of which he is not a possessor is not allowed. And, it is not lawful to sell what is not in your possession."[1]

COMMENTARY: The two things loan and selling (or business transaction) must not be connected together. Thus, it is not allowed to any one to sell anything to a person on condition that he give him a loan. Or, it is forbidden also that any one who lends money to another, sells to the debtor something at higher than prevailing rates. This is unlawful because the debtor pays more only for the loan he has received. If any one derives a profit from a loan extended then that is unlawful. It is a ploy worked out by the interest takers or usurers.

The issue of combining two sales in one transaction has been explained previously (see commentary on hadith # 2868, 2869). Some ulama (Scholars) say, however, that it means that the seller must not sell anything of his on two conditions. For instance, a seller might say to the buyer, "I sell to you this piece of cloth at so much on condition that I shall get it washed too." This is not allowed. The hadith forbids two conditions by a coincidence otherwise even one condition in a business transaction is disallowed.

Profit of what one is not a possessor is not allowed to him. If someone buys a thing from a seller but has not yet received in it his possession and meanwhile, the seller gets rent on it, the buyer cannot claim the rent himself as its owner because if that thing had been destroyed, in the hands of the seller, the loss would be borne by the seller and the buyer would not lose anything. On the same basis, whatever profit accrues in this course belongs to the seller. The buyer has no right over it.[2]

CHANGE OF CURRENCY ALLOWED WHILE PAYING PRICE

(٢٨٧١) وَعَنِ ابْنِ عُمَرَ قَالَ كُنْتُ اَبِيْعُ الْاِبِلَ بِالنَّقِيْعِ بِالدَّنَانِيْرِ فَاٰخُذُ مَكَانَهَا الدَّرَاهِمَ وَاَبِيْعُ بِالدَّرَاهِمِ فَاٰخُذُ مَكَانَهَا الدَّنَانِيْرَ فَاَتَيْتُ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَذَكَرْتُ ذٰلِكَ لَهٗ فَقَالَ لَا بَأْسَ اَنْ تَاْخُذَهَا بِسِعْرِ يَوْمِهَا مَا لَمْ تَفْتَرِقَا وَبَيْنَكُمَا شَيْءٌ۔ (رواه الترمذى وابوداؤد والنسائى والدارمى)

2871. Sayyiduna Ibn Umar رضى الله عنه said, "I used to sell the camels at an Naqi' for

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[1] Tirmidhi # 1238, Abu Dawud # 3504, Nasa'i # 4611 or 4642, Ibn Majah # 2198, Musnad Ahmad 2-178.

[2] We reproduce comments on this hadith from Tirmidhi (hadith # 1238)

Ishaq ibn Mansur asked Ahmad what was meant by prohibition of salaf and *Bai*? He said, "Someone gives a loan to another and then sells something to him for more then its price. It is also possible that someone offers the cost of something as loan, saying that if he could not pay back the loan the thing stand sold to him." Ishaq then asked Ahmed what it meant to say that profit is not allowed if one is not a guarantor. He said, "I think this concerns only grain and the like, till it is in one's possession." Ishaq said that the same ruling applied to that which is weighed and measured, meaning it is not lawful to sell them before they are on hand. Ahmed said: If anyone says, "I have sold you this piece of cloth on condition that I am responsible for stitching and washing". Then it is an example of two conditions in one transaction. But if he says, "I sell you this piece of cloth and its stitching is also on me", then there is no harm in that. Similarly, if only the condition washing applies then too it is allowed because that is only one condition.

(Tirmidhi English translation Darul Isha'at Karachi vol I)

dinars but take in their place dirhams. And I would sell for dirhams but take in place of them dinars. Then I came to the Prophet صلى الله عليه وسلم and mentioned this to him. He said, 'It does not matter if you take them at the rate of the day as long as you do not part from one another with something unfinished (between you two).'"[1]

COMMENTARY: It is *mustahab (desirable)* to exchange currency at the prevailing rate but allowed to charge any rate.

The two parties must settle their matter in the very meeting in which they make the bargain. They must take hold of their things when they decide on buying and selling and it is on this condition that they are allowed to exchange dirhams for dinars and vice versa (any currency). If this is not done then the cash transaction will fall under the purview of a credit transaction and become unlawful because of resemblance to riba. It is said of Shaykh ali Muttaqi رحمه الله that when he sent his servant to the market in Makkah, he gave him instructions to ensure hand to hand delivery when concluding a bargain.

Ibn Hammam رحمه الله said that the currency (dirham) is fluctuating (in value). So if a shopkeeper is shown a dirhams against which he is asked to sell something then the dirham may be replaced with another dirham provided it is of the same value.

A DOCUMENT FROM THE PROPHET صلى الله عليه وسلم

(٢٨٧٢) وَعَنِ الْعَدَّاءِ بْنِ خَالِدِ بْنِ هَوْذَةَ اَخْرَجَ كِتَابًا هٰذَا مَا اشْتَرَى الْعَدَّاءُ بْنُ خَالِدِ بْنِ هَوْذَةَ مِنْ مُحَمَّدٍ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اشْتَرَى مِنْهُ عَبْدًا اَوْاَمَةً لَادَاءَ وَلَا غَائِلَةَ وَلَا خِبْثَةَ بَيْعَ الْمُسْلِمِ الْمُسْلِمَ۔ رَوَاهُ التِّرْمِذِيُّ وَقَالَ هٰذَا حَدِيْثٌ غَرِيْبٌ۔

2872. Sayyiduna Al 'Adda' ibn Khalid ibn Hawdhah رضى الله عنه is known to have taken out a writing that read; "This is what al-Adda ibn Khalid ibn Hawdhah bought from Muhammad Messenger of Allah. He bought from him a slave, or a female slave, with no disease and no wickedness, and he is not unlawful. This is a transaction between two Muslims."[2]

COMMENTARY: The words 'a slave or a female slave' express the narrator's uncertainty as to the correct word used, for he had forgotten which was said.

'There is no disease' means that there is no insanity in him, no leprosy or any other contagious disease.

'There is no wickedness' means that he is not a thief and not liable to runaway.

'He is not unlawful' means that his nature is good and he has no evil manner or deeds. He is not an illegitimate child, an indecent, a liar or a robber.

The concluding words are 'a transaction between a Muslim and a Muslim.' These words call for mutual respect, goodwill and giving rights of Islam. Every Muslim must be mindful of these things in his dealings with other Muslims.

In short, this 'writing' confirms that the slave is good with no defect. It also confirms that the two parties have not deceived one another.

Imam Tirmidhi رحمه الله has said that this hadith is hasan gharib. It is transmitted only

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[1] Tirmidhi # 1242, Abu Dawud # 3354, Nasa'i # 4582, Ibn Majah # 2262, Darimi # 2581.

[2] Bukhari book of Buyu ch 19 subheading above hadith 2079, Tirmidhi # 1220, Ibn Majah # 2251, Musnad Ahmad # 20357.

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through Abbad ibn Layth and through no other sanad. Moreover, the scholars of hadith regard Abbad as da'if (weak) in transmission.

The ulama (Scholars) say that the Prophet صلى الله عليه وسلم did not engage in any business transaction of a worthwhile nature after hijrah. If he had, then that was of a rare degree. Before hijrah, of course, he had engaged in both buying and selling.
The version in Bukhari is:

هٰذَا مَا اشْتَرَى مُحَمَّدٌ رَّسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مِنْ عَدَّاءِ بْنِ خَالِدٍ

{This is what Muhammad, Allah's Messenger صلى الله عليه وسلم bought from al-Adda ibn Khalid رضى الله عنه.....}

Thus, Bukhari's version means that the Prophet صلى الله عليه وسلم was the buyer and al'Adda رضى الله عنه the seller. However, the version narrated here is contrary to it, for, it say that Al-Adda ibn Khalid رضى الله عنه was the buyer and the Prophet صلى الله عليه وسلم was the seller.

AUCTION SALE IS ALLOWED

(٢٨٧٣) وَعَنْ اَنَسٍ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ بَاعَ حِلْسًا وَقَدَحًا فَقَالَ مَنْ يَّشْتَرِيْ هٰذَا الْحِلْسَ وَالْقَدَحَ فَقَالَ رَجُلٌ اٰخُذُهُمَا بِدِرْهَمٍ فَقَالَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ يَّزِيْدُ عَلٰى دِرْهَمٍ فَاَعْطَاهُ رَجُلٌ دِرْهَمَيْنِ فَبَاعَهُمَا مِنْهُ۔ (رواه الترمذى وابوداؤد وابن ماجة)

2873. Sayyiduna Anas رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم offered for sale a woolen covering (placed under a saddle) and bowl, asking, "who will buy this woolen covering and bowl?" A man offered, "I shall take them both for a dirhams." The Prophet صلى الله عليه وسلم then asked, "Who will give more than a dirham?" So, another man paid him two dirhams and he sold the two things to him."[1]

COMMENTARY: The background of this sale is that a man requested the Prophet صلى الله عليه وسلم for some help. He asked him if he possessed something and he said that he had only a woolen covering that is kept under a saddle cloth over a camel and a bowl. So, the Prophet صلى الله عليه وسلم asked him to sell them and get something to feed himself. After that, when he had nothing, he might ask for charity. Then, the two things were sold as described in the hadith. This kind of sale is called (بيع من يزيد) (sale to one who will increase or raise price) and (حراج) (haraj - auction or public sale). This kind of sale is allowed in Shari'ah (divine law).

As for the prohibition to bid against anyone else or outbid him, that is when buyer and seller have agreed on a transaction. In such cases, it is disallowed to interfere in their deal and mess up their transaction. The kind of sale here is quite different. The seller's intention is to invite higher bids as in an auction.

It is enough that the seller gives the merchandise and the buyer gives the price, even if they say nothing.

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[1] Tirmidhi # 1222, Abu Dawud # 1614, Nasa'i # 4508, Ibn Majah # 2198, Musnad Ahmad 3. 114.

SECTION III الْفَصْلُ الثَّالِثُ

WARNING TO SELLER OF DEFECTIVE THINGS FRAUDULENTLY

(٢٨٧٤) عَنْ وَاثِلَةَ بْنِ الْاَسْقَعِ قَالَ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ مَنْ بَاعَ عَيْبًا لَمْ يُبَيِّنْهُ لَمْ يَزَلْ فِيْ مَقْتِ اللّٰهِ اَوْلَمْ تَزَلِ الْمَلَائِكَةُ تَلْعَنُهُ۔ (رواه ابن ماجة)

2874. Sayyiduna Wathilah ibn Asqa رضی اللہ عنہ narrated that he heard Allah's Messenger صلی اللہ علیہ وسلم say, "If anyone sells something that is defective without disclosing the defect, then he does not cease to be in Allah's anger" - or (he said) "the angels do not cease to curse him."[1]

CHAPTER - VI

(MORE CONCERNING THE PREVIOUS CHAPTER) بَابٌ

SECTION I اَلْفَصْلُ الْاَوَّلُ

SALE OF FRUIT BEARING TREES

(٢٨٧٥) عَنِ ابْنِ عُمَرَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنِ ابْتَاعَ نَخْلًا بَعْدَ اَنْ تُؤَبَّرَ فَثَمَرَتُهَا لِلْبَائِعِ اِلَّا اَنْ يَشْتَرِطَ الْمُبْتَاعُ وَمَنِ ابْتَاعَ عَبْدًا وَلَهٗ مَالٌ فَمَالُهٗ لِلْبَائِعِ اِلَّا اَنْ يَشْتَرِطَ الْمُبْتَاعُ۔ رَوَاهُ مُسْلِمٌ وَرَوَى الْبُخَارِيُّ الْمَعْنٰى الْاَوَّلَ وَحْدَهٗ۔

2875. Sayyiduna Ibn Umar رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "If anyone buys palm trees after the dates are fertilized then its fruit belongs to the seller unless the buyer places a condition. And if anyone buys a slave who owns property then the property belongs to the seller unless the buyer places a condition."[2]
Bukhari has only something like the first part.

COMMENTARY: The Arabs believed that if the flower of a male palm tree was placed in the female palm tree, they would have more fruit.

The hadith speaks of such a tree. If anyone buys from the seller a fertised tree, then the fruit that is on the tree at the time of the bargain belong to the seller unless the buyer stipulates that he buys the tree with the fruit on it. In the latter case, the fruit will belong to the buyer. The Hanafis hold that this command applies also to the trees that are not fertilized. But, Imam Shafi'I رحمہ اللہ and Imam Ahmad رحمہ اللہ hold that the fruit of trees that are not fertilized are not part of the bargain at all.

A slave does not own any property, so the hadith indicates that if he has something when the bargain is struck then that belongs to the seller unless the buyer makes it a provide of the contract.

The clothes that a slave wears at the time of the bargain are not included in the sale unless the buyer makes them part of the transaction. Some ulama (Scholars) of the Hanafi school

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[1] Ibn Majah # 2274.

[2] Bukhari # 1106, Muslim # 80-1543, Tirmidhi # 1248, Ibn Majah # 2211, Abu Dawud # 3433, Nasa'i # 4636, Musnad Ahmad 2-178.

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say that the clothes are part of the bargain. Some others say that only the clothes that are enough to cover his satr (private parts) are part of the bargain. (Satr is that part of the body that must be covered before other people in all circumstances.) However, the more correct thing is that, according to the apparent meaning of the hadith, nothing meaning of the hadith, nothing belonging to him and no part of it (like clothing) can be part of the sale.

CONDITIONAL BARGAIN

(٢٨٧٦) وَعَنْ جَابِرٍ اَنَّهٗ كَانَ يَسِيْرُ عَلٰى جَمَلٍ لَهٗ قَدْ اَعْيٰى فَمَرَّ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ بِهٖ فَضَرَبَهٗ فَسَارَ سَيْرًا لَيْسَ يَسِيْرُ مِثْلَهٗ ثُمَّ قَالَ بِعْنِيْهِ بِوُقِيَّةٍ قَالَ فَبِعْتُهٗ فَاسْتَثْنَيْتُ حُمْلَانَهٗ اِلٰى اَهْلِيْ فَلَمَّا قَدِمْتُ الْمَدِيْنَةَ اَتَيْتُهٗ بِالْجَمَلِ وَ نَقَدَنِيْ ثَمَنَهٗ۔ وَفِيْ رِوَايَةٍ فَاَعْطَانِيْ ثَمَنَهٗ وَرَدَّهٗ عَلَيَّ مُتَّفَقٌ عَلَيْهِ وَفِيْ رِوَايَةٍ لِلْبُخَارِيِّ اِنَّهٗ قَالَ لِبِلَالٍ اِقْضِهٖ وَزِدْهُ فَاَعْطَاهُ وَزَادَهٗ قِيْرَاطًا۔

2876. Sayyiduna Jabir رضی اللہ عنہ narrated that while he was travelling on a camel of his (to Madinah), it had fatigued (seemingly unable to walk). So, when the Prophet صلی اللہ علیہ وسلم passed by it, he struck it (with a stick or whip). Thus, it ran (as fast) as it had never before sped. Then he said, "Sell it to me for one ooqiyah (or waqiyay)." He said, "I have sold it to you but I stipulated that I should ride it up to my family." When he came to Madinah, he brought it to him (the Prophet) صلی اللہ علیہ وسلم and he paid him its price promptly.

According to a version: He paid him its price and turned it to him.

According to another version (only in Bukhari): He said to Bilal, "Pay him and increase on that." So he paid him and gave one qirat over that.[1]

COMMENTARY: Waqiyah or ooqiyah was about forty dirhams.

It is allowed for a seller to stipulate that he would keep the animal for a certain period of time before delivering it. Imam Ahmad رحمہ اللہ abides by it. Imam Maalik رحمہ اللہ says that it is allowed to place this condition when selling something provided the distance is short and in this case Jabir رضی اللہ عنہ had to go only till Madinah. Hence, he placed the condition because of the short distance and it was accepted. However, Imam Abu Hanifah رحمہ اللہ and Imam Shafi'I with any such condition in which the seller or the buyer stands to gain whether the distance is short or long. They cite the hadith in which the Prophet صلی اللہ علیہ وسلم forbade a conditional sale. They explain this hadith as an exceptional concession to Sayyiduna Jabir رضی اللہ عنہ not allowed to any one else. Or, Jabir رضی اللہ عنہ may have sought permission to use the animal after the sale was transacted and the Prophet صلی اللہ علیہ وسلم let him use his animal up to Madinah.[2]

RIGHT OF WALA BELONGS TO ONE WHO SETS FREE

(٢٨٧٧) وَعَنْ عَائِشَةَ قَالَتْ جَاءَتْ بَرِيْرَةُ فَقَالَتْ اِنِّيْ كَاتَبْتُ عَلٰى تِسْعِ اَوَاقٍ فِيْ كُلِّ عَامٍ وُقِيَّةٌ فَاَعِيْنِيْنِيْ فَقَالَتْ عَائِشَةُ اِنْ اَحَبَّ اَهْلُكِ اِنْ اَعُدَّهَا لَهُمْ عَدَّةً وَاحِدَةً وَاُعْتِقَكِ فَعَلْتُ وَيَكُوْنُ وَلَاؤُكِ لِيْ فَذَهَبَتْ اِلٰى

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[1] Bukhari # 2718, Muslim # 109-715.

[2] See 'The life of Prophet Muhammad p 845 (English of Ibn Kathir sirat) urdu MIrades - Dar ul Isha'at, Karachi.

اَهْلِهَا فَاَبَوْا اِلَّا اَنْ تَكُوْنَ الْوَلَاءُ لَهُمْ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ خُذِيْهَا وَاَعْتِقِيْهَا ثُمَّ قَامَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فِي النَّاسِ فَحَمِدَ اللّٰهَ وَ اَثْنٰى عَلَيْهِ ثُمَّ قَالَ اَمَّا بَعْدُ فَمَا بَالُ رِجَالٍ يَشْتَرِطُوْنَ شُرُوْطًا لَيْسَتْ فِيْ كِتَابِ اللّٰهِ مَاكَانَ مِنْ شَرْطٍ لَيْسَ فِيْ كِتَابِ اللّٰهِ فَهُوَ بَاطِلٌ وَاِنْ كَانَ مِائَةَ شَرْطٍ فَقَضَاءُ اللّٰهِ اَحَقُّ وَشَرْطُ اللّٰهِ اَوْثَقُ وَاِنَّمَا الْوَلَاءُ لِمَنْ اَعْتَقَ۔ (متفق علیه)

2877. Sayyiduna Ayshah رضی اللہ عنہا narrated that Sayyidah Barirah رضی اللہ عنہا came to her and said, "I have concluded a mukatabah (to buy my own freedom from my masters) for nine ooqiyas, at one ooqiyah every year. So, help me." Sayyiduna Ayshah رضی اللہ عنہا said, "If your masters wish then I shall count them out to them all at once for setting you free and I shall have the right of wala (which is the right of inheritance) from you." She went to her masters but they declined unless wala' belonged to them. So, Allah's Messenger صلی اللہ علیہ وسلم (on learning of it) and, "Take her and set her free." Afterwards he stood before the people, praised and glorified Allah and addressed them, "To proceed, what is wrong with the people who impose conditions that are not found in Allah's Book? A condition not found in Allah's Book is of no standing, even if they are one hundred conditions. Allah's decree is the most valid and Allah's condition is the most obligatory. And, wala is only for one who sets (a slave) free."[1]

COMMENTARY: Mukatabah is an agreement between a slave and his master in which the slave commits to pay a specified sum of money to buy his freedom when his master sets this condition. If he fails to pay the amount he remains in slavery. The agreement is called mukatabah or kitabah and the slave (male or female) is mukatab.

Wala is the right conferred on the slave's master on setting him free. If such a slave dies as a freeman and leaves behind some property and has no relatives surviving him then all his legacy goes to the master who set him free.

Sayyidah Barirah رضی اللہ عنہا was the female slave of Sayyidah Ayshah رضی اللہ عنہا. She belonged to a Jews before that. The rest of the account is apparent from the hadith.[2]

NOT ALLOWED TO TRANSFER RIGHT OF WALA TO ANYONE

(۲۸۷۸) وَعَنِ ابْنِ عُمَرَ قَالَ نَهٰى رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعِ الْوَلَاءِ وَعَنْ هِبَتِهٖ۔ (متفق علیه)

2878. Sayyiduna Ibn Umar رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم forbade the selling or giving away as gift the right of wala (inheritance from an emancipated slave).[3]

COMMENTARY: If anyone gets a right of wala on setting his slave free then he cannot sell his right nor make a gift of it because it is not a property of any kind. All the ulama (Scholars) hold this contention.

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[1] Bukhari # 2168, Muslim # 6-1504, Abu Dawud # 3929, Tirmidhi # 1260, Ibn Majah # 2525, Muwatta Maalik # 17 (Irq) Musnad Ahmad 6-213.

[2] See also 'Sirat un Nabi Allama Shibli Numani and Sajjad Suleman Nadvi (v7 p 47) English translation Darul Ishaat, Karachi.

[3] Bukhari # 2135, Muslim # 16. 1502 Tirmidhi # 1240, Abu Dawud # 2919, Ibn Majah # 2747, Darimi # 3156, Muwatta Maalik # 20 (Itq) Musnad Ahmad # 4560.

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SECTION II اَلْفَصْلُ الثَّانِيْ

PROFIT BELONGS TO ONE WHO BEARS LOSS

(٢٨٧٩) عَنْ مَخْلَدِ بْنِ خُفَافٍ قَالَ اِبْتَعْتُ غُلَامًا فَاسْتَغْلَلْتُهُ ثُمَّ ظَهَرْتُ مِنْهُ عَلٰى عَيْبٍ فَخَاصَمْتُ فِيْهِ اِلٰى عُمَرَ بْنِ عَبْدِالْعَزِيْزِ فَقَضٰى لِيْ بِرَدِّهٖ وَقَضٰى عَلَيَّ بِرَدِّ غَلَّتِهٖ فَاَتَيْتُ عُرْوَةَ فَاَخْبَرْتُهُ فَقَالَ اَرُوْحُ اِلَيْهِ الْعَشِيَّةَ فَاُخْبِرُهُ اَنَّ عَائِشَةَ اَخْبَرَتْنِيْ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَضٰى فِيْ مِثْلِ هٰذَا اَنَّ الْخَرَاجَ بِالضَّمَانِ فَرَاحَ اِلَيْهِ عُرْوَةُ فَقَضٰى لِيْ اَنْ اٰخُذَ الْخَرَاجَ مِنَ الَّذِيْ قَضٰى بِهٖ عَلَيَّ لَهٗ رَوَاهُ فِيْ شَرْحِ السُّنَّةِ۔

2879. Sayyiduna Makhlad ibn Khufaf رحمه الله said that he bought a slave when he engaged to earn something for him. But, after that, he detected a defect in him (that was inherent in him but the seller had not informed him of it). So he raised the dispute before Sayyiduna Umar ibn Abdul Aziz رحمه الله. He decided in his favour that he might return the slave (to the seller) and against him that his earnings should be returned (to him too). Therefore, (not satisfied) he met Sayyiduna Urwah (ibn Zubayr, رحمه الله a learned tabi'e jurist) and informed him (of Umar's judgement). He said that he would go to him that evening and enlighten him that Sayyidah Ayshah رضى الله عنها had informed him that Allah's Messenger صلى الله عليه وسلم had passed judgement in a case like it that after a sale any profit belongs to the buyer (who shoulders responsibility). Urwah رحمه الله went to him and (informed him of it, and) he decided in his favour that he should take the Kharaj (homage revenue) (profit) from him for whom he had decided against him.[1]

COMMENTARY: If the slave dies or a defect grows in him while he is in the buyer's possession that would be the buyer's loss. So, by the some taken, all (profit) earnings by the slave while in his possession will go to him.

WHEN BUYER & SELLER DISAGREE

(٢٨٨٠) وَعَنْ عَبْدِاللّٰهِ بْنِ مَسْعُوْدٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِذَا اخْتَلَفَ الْبَيِّعَانِ فَالْقَوْلُ قَوْلُ الْبَائِعِ وَ الْمُبْتَاعُ بِالْخِيَارِ رَوَاهُ التِّرْمِذِيُّ۔ وَفِيْ رِوَايَةِ ابْنِ مَاجَةَ وَالدَّارِمِيِّ قَالَ الْبَيِّعَانِ اِذَا اخْتَلَفَا وَالْمَبِيْعُ قَائِمٌ بِعَيْنِهٖ وَلَيْسَ بَيْنَهُمَا بَيِّنَةٌ فَالْقَوْلُ مَا قَالَ الْبَائِعُ اَوْ يَتَرَادَّانِ الْبَيْعَ۔ (ترمذی)

2880. Sayyiduna Abdullah ibn Mas'ud رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "when the buyer and seller disagree, the seller's word prevails and the buyer has option to revoke the bargain or retain it."[2]

According to another version: "When the buyer and seller disagree and the item being sold and bought is there intact (in its original condition) and there is no witness between them, then the seller's word prevails or they both may revoke the bargain."[3]

COMMENTARY: Buyer and seller do disagree now and then on different aspects of the

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[1] Tirmidhi # 1289, Abu Dawud # 3509, Nasa'i # 4490, Musnad Ahmad 6. 49, Sharh us *Sunnah (Prophet's صلى الله عليه وسلم practice).*

[2] Tirmidhi # 1274.

[3] Abu Dawud # 3511, Nasa'i # 4648, Ibn Majah # 2186, Darimi # 2549, Musnad Ahmad 1-466.

bargain. The hadith says that the seller's word held good, if he speaks on oath. After that the buyer has option to retain the deal or make a counter statement on oath in which case the deal will be maintained only when one of then accepts the other's word. If none of them submits, then the judge or ruler may conceal the deal whether the commodity is there in its original condition or not. This is the option of Imam Shafi'I رحمه الله. But, Imam Abu Hanifah رحمه الله and Imam Maalik رحمه الله contend that if the commodity is not intact then both the parties need not swear both the parties need not swear but the word of the buyer on oath will be reliable. The words if the item that is being sold and bought is intact' support the contention of these two (imams). The words in the second version that 'the sellers' word prevails also up hold the Hanafi view. If the item remains in its original from then the seller should affirm on oath what he says. If he does, then the buyer has option to accept the seller's word or counter him with his own word on oath. Or, both of them may annul the bargain. If the item is not intact in its original form then the buyer's word on oath will be accepted, and the seller will not be asked to swear.

This issue has been treated here briefly but the Hidayah has dealt with it exhaustively. The scholars may refer to it.[1]

THE ISSUE OF IQALAH *BAI'*

(٢٨٨١) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ اَقَالَ مُسْلِمًا اَقَالَهُ اللّٰهُ عَثْرَتَهٗ يَوْمَ الْقِيَامَةِ۔ رَوَاهُ اَبُوْدَاوٗدَ وَابْنُ مَاجَةَ وَفِيْ شَرْحِ السُّنَّةِ بِلَفْظِ الْمَصَابِيْحِ عَنْ شُرَيْحٍ الشَّامِيِّ مُرْسَلًا۔

2881. Sayyiduna Abu Hurayrah رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "If anyone cancels a sale with a Muslim, then Allah will forgive him his sins on the day of resurrection.[2]

COMMENTARY: Iqalah is to cancel a transaction, to return the commodity purchases. It is stated in Saharh us *sunnah (Prophet's* صلى الله عليه وسلم *practice)* that in *Bai'* and salam iqalah is permitted both before and after possession.

This hadith is transmitted muttasil by Abu Dawud and Ibn Majah and even Haakim. But Masabih has reported it in a mursal form.

SECTION III اَلْفَصْلُ الثَّالِثُ

A DIDACTIC EVENT

(٢٨٨٢) عَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اشْتَرٰى رَجُلٌ مِمَّنْ كَانَ قَبْلَكُمْ عَقَارًا مِنْ رَجُلٍ فَوَجَدَ الَّذِيْ اشْتَرَى الْعَقَارَ فِيْ عَقَارِهٖ جَرَّةً فِيْهَا ذَهَبٌ فَقَالَ لَهُ الَّذِيْ اشْتَرَى الْعَقَارَ خُذْ ذَهَبَكَ عَنِّيْ اِنَّمَا اشْتَرَيْتُ الْعَقَارَ وَلَمْ اَبْتَعْ مِنْكَ الذَّهَبَ فَقَالَ بَائِعُ الْاَرْضِ اِنَّمَا بِعْتُكَ الْاَرْضَ وَمَا فِيْهَا فَتَحَاكَمَا اِلٰى رَجُلٍ فَقَالَ الَّذِيْ تَحَاكَمَا اِلَيْهِ اَلَكُمَا وَلَدٌ فَقَالَ اَحَدُهُمَا لِيْ غُلَامٌ وَقَالَ الْاٰخَرُ لِيْ جَارِيَةٌ فَقَالَ اَنْكِحُوا الْغُلَامَ الْجَارِيَةَ وَاَنْفِقُوْا عَلَيْهِمَا مِنْهُ وَتَصَدَّقُوْا۔ (متفق عليه)

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[1] The Hidaya v2 p578 etc (Eng tr) Darul Isha'at, Karachi (in two volumes)

[2] Abu Dawud # 3460, Ibn Majah # 2199. Musnad Ahmad 2-252.

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2882. Sayyiduna Abu Hurayurah صلى الله عليه وسلم said, "A man among those who lived before you bought a piece of land from another man. This man who had bought it found in it a pit that had gold inside. So, the buyer said to him (the seller). Take your gold from me, for, I had bought only the piece of land and did not buy gold from you." The seller of the land said, 'I had indeed sold to you the (piece of) land and whatever was in it.' So, they took their affair to a man to arbitrate between them. The arbitrator asked them, "Do you have children?" One of them said, "I have a son. The other said, 'I have a daughter.' So he said, 'Marry the boy to the girl and spend on them both from it and give charity."[1]

COMMENTARY: This had taken place in the times of prophet Dawud عليه السلام. Some ulama (Scholars) assert that the two men had requested him to decide their case for them. He gave a judgment that only a Prophet could give. This hadith is evidence that it is meritorious to reconcile two people. It is *mustahab (desirable)* to do so both for a judge or ruler and for one who is not a judge or ruler.

CHAPTER - VII

AS-SALAM WA AR RAHN (PROMPT PAYMENT & PLEDGING OR PAWNING)

بَابُ السَّلَمِ وَالرَّهْنِ

Salam is a business transaction in which the thing purchased is deferred while payment is prompt. Delivery of what is bought is given later and of price is on the spot.

This kind of bargain is called *salam* and also *salaf*. The buyer is called rabbus salaam the price is rasul maal, the seller is *musallam ilaihi* (or *musallam us salaam*) and the thing bought is musallam fihi.

This kind of sale is allowed by Shari'ah (divine law) provided all its conditions are met. There are sixteen conditions, six pertain to ra'sul maal and ten to musallam fihi (respectively price and the wares bought and sold).

The six conditions pertaining to ra'sul maal are:

(1) To disclose the jins, meaning to name the currency: dinar or dirham or ashrafi or rupees, etc.

(2) To disclose what nature of currency: silver, gilt or paper.

(3) To disclose their kind: genuine or counterfeit.

(4) To disclose how many: one hundred or more, or less.

(5) To pay cash on spot and not defer payment.

(6) The seller should take possession of ra'sul maal in the very meeting in which the business contract is concluded.

The ten conditions pertaining to musallam fihi (the item purchased) are:

(1) To disclose the jins which is to say explicitly what the commodity is, for instance, wheat, barley, gram.

(2) To disclose its peculiarity, like wheat of such a kind and origin.

(3) To disclose its quality: good, bad, mediocre.

(4) To disclose clearly its quantity.

(5) To disclose whether it is weighable, measurable in capacity or in cubits, or in numbers.

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[1] Bukhari # 3472, Muslim # 21-1721, Ibn Majah # 2511, Musnad Ahmad 2-316.

(6) To define time of delivery: when will it be taken and the least time is one month.
(7) The item sold and bought should be available continuously in the market from the time of agreement till the time of delivery, so that the transaction is not of something non-existent.
(8) *Bai'* salam should be concluded without the condition of khiyar, meaning it should not include the option to retain or cancel the transaction of sale and purchase.
(9) If the item sold is very heavy that it has to be transported then place of delivery must be defined, meaning that it should be stipulated in clear terms that it would be handed over at such-and-such a place.
(10) The item bought should be such as is determined and known by mentioning its jins, kind and nature. If anything cannot be known and determined by mentioning its jins, nature and kind like an animal or cloth of some kind then its *Bai'* salam is not lawful.

SECTION I الفصل الاوّل

SOUND CONDITIONS OF *BAI'* SALAM

(٢٨٨٣) عَنِ ابْنِ عَبَّاسٍ قَالَ قَدِمَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَلْمَدِيْنَةَ وَهُمْ يُسْلِفُوْنَ فِي الثِّمَارِ السَّنَةَ وَالسَّنَتَيْنِ وَالثَّلٰثَ فَقَالَ مَنْ اَسْلَفَ فِيْ شَيْءٍ فَلْيُسْلِفْ فِيْ كَيْلٍ مَعْلُوْمٍ وَوَزْنٍ مَعْلُوْمٍ اِلٰى اَجَلٍ مَعْلُوْمٍ۔

(متفق علیه)

2883. Sayyiduna Ibn Abbas رضی اللہ عنہ narrated that when Allah's Messenger صلی اللہ علیہ وسلم came to Madinah; they contracted *Bai'* salam for fruit for one, two or three years (which is to pay in advance and ask for delivery after one, two or three years). So, he said, "Those who make *Bai'* slam must make it for a specified measure, specified weight with a specified time period."[1]

COMMENTARY: Apart from fixing the weight and measure of the commodity that is sold under salam, the time too should be fixed.
Fixing the time is a condition for the *Bai'* to be sound. Imam Abu Hanifah رحمہ اللہ. Imam Maalik رحمہ اللہ and Imam Ahmad رحمہ اللہ go by this hadith but Imam Shafi رحمہ اللہ holds that it is not necessary and not a condition to determine the time period.

BUYING ON CREDIT & PLEDGING ARE ALLOWED

(٢٨٨٤) وَعَنْ عَآئِشَةَ قَالَتْ اِشْتَرٰى رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ طَعَامًا مِنْ يَهُوْدِيٍّ اِلٰى اَجَلٍ وَرَهَنَهٗ دِرْعًا لَهٗ مِنْ حَدِيْدٍ۔ (متفق علیه)

2884. Sayyidah Ayshah رضی اللہ عنہا narrated that Allah's Messenger صلی اللہ علیہ وسلم bought some grain from a Jew on credit payable at a specified time and pledged with him a coat of mail belonging to him.

COMMENTARY: This hadith teaches us some rulings.
First, it is allowed to buy something on credit and pledge any of one's belongings.
Secondly, it is allowed to pledge something in one's residence too apart from during a journey, though the Quran has restricted pledging any thing only during a journey:

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[1] Bukhari # 2239, Muslim # 127. 1604, Abu Dawud # 3463, Tirmidhi # 1315, Nasa'i # 4616, (4620), Ibn Majah # 2280, Darimi # 2583, Musnad Ahmad 1-217.

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وَإِنْ كُنْتُمْ عَلَى سَفَرٍ وَّلَمْ تَجِدُوْا كَاتِبًا فَرِهَانٌ مَّقْبُوْضَةٌ۔ (البقرة ۲: ۲۸۳)

{And if you are on a journey and you cannot find a scribe, a pledge in hand may be taken.} (2: 283)

The ulama (Scholars) write that the conditional clause 'if you are on a journey' is merely accidental. This command is equally operated 'in residence' when one is not on a journey.

Thirdly, it is allowed to engage in transactions with the dhimmis (the peoples of the Book, Jews or Christians, who reside in the Islamic state after paying jizyah). All the ulama (Scholars) say that it is allowed to buy sell with the dhimmis and the infidels, provided it is established that what they have is not unlawful. But, Muslims are not allowed to sell weapons or war materials to the enemy or people on war with the Muslims. Similarly, it Is not allowed to sell to any disbeliever anything as may propagate or give strength to his religion. It is also not allowed to sell to the disbeliever the mashaf (copy of the Quran) and a Muslim's slave.

Allamah Nawawi رحمه الله said that this hadith makes it very clear that the Prophet صلى الله عليه وسلم did not own worldly property. It is strong example of his indifference to material wealth and of his trust in Allah.

This hadith is proof that it is allowed to pledge war equipment of the Muslims with the dhimmis. The Prophet صلى الله عليه وسلم did this to show that this thing is allowed otherwise he could have pledged the weapon with one of the sahabah (Prophet's Companions) رضى الله عنهم. This is what the u lama say. However, some ulama (Scholars) say that the Prophet صلى الله عليه وسلم pledge his coat of mail with a Jew because no one but Jews had surplus grain at that time.

(۲۸۸۵) وَعَنْهَا قَالَتْ تُوُفِّيَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَدِرْعُهُ مَرْهُوْنَةٌ عِنْدَ يَهُوْدِيٍّ بِثَلَاثِيْنَ صَاعًا مِنْ شَعِيْرٍ۔ (رواه البخارى)

2885. Sayyidah Ayshah رضى الله عنها narrated that Allah's Messenger صلى الله عليه وسلم died leaving his coat of mail in pledge with a Jew for thirty sa' of barley.[1]

(۲۸۸٦) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ الظَّهْرُ يُرْكَبُ بِنَفَقَتِهٖ إِذَا كَانَ مَرْهُوْنًا وَلَبَنُ الدَّرِّ يُشْرَبُ بِنَفَقَتِهٖ إِذَا كَانَ مَرْهُوْنًا وَعَلَى الَّذِيْ يَرْكَبُ وَيَشْرَبُ النَّفَقَةُ۔ (رواه البخارى)

2886. Sayyiduna Abu Hurayrah رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "The pledged animal may be ridden if it is fed and so the milk of the pledged which animals may be drunk if payment is made for it. He who rides and he who drinks is responsible for the expenses incurred."[2]

COMMENTARY: Mulla Ali Qari رحمه الله has deduced a ruling from the first portion of the hadith. The gist of it is that if any one pledges his animal with anyone else then its expenses of feeding etc are on him (the mortgagor), so he may use it for transporting. Imam Abu Hanifah رحمه الله and Imam Shafi رحمه الله rule accordingly.

However, Shaykh Abdul Haq رحمه الله has concluded from the last portion of the hadith that whosoever rides, or uses the milk of a pledge animal will be liable to shoulder its expenses

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[1] Bukhari # 4467.

[2] Bukhari # 2512, Abu Dawud # 3526, Tirmidhi # 1258, Ibn Majah # 2440, Musnad Ahmad 2-472.

whether he is the mortgagor (pledger) or the mortgagee. In other words, whichever of the two bears the expenses of feeding, etc. of the mortgaged animal is authorized to use to for riding and milking.

Thus, the hadith would mean that one with whom the animal is pledged or mortgaged is allowed to expend on it and use it to his benefit. But, most ulama (Scholars) disagree. Accordingly, the Hidayah, too says that the mortgagee is not allowed to use the animal and the mortgagor is responsible for its upkeep and feeding. The mortgagee is not permitted because any debt that fetches profit is unlawful. Therefore, the ulama (Scholars) say that this hadith is abrogated by the hadith following.

SECTION II اَلْفَصْلُ الثَّانِي

MORTGAGED THING IS MORTGAGOR'S PROPERTY

(۲۸۸۷-۲۸۸۸) عَنْ سَعِيْدِ بْنِ الْمُسَيِّبِ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لَا يَغْلَقُ الرَّهْنُ الرَّهْنَ مِنْ صَاحِبِهِ الَّذِيْ رَهَنَهُ لَهُ غُنْمُهُ وَعَلَيْهِ غُرْمُهُ۔ رَوَاهُ الشَّافِعِيُّ مُرْسَلًا وَرُوِيَ مِثْلُهُ اَوْ مِثْلُ مَعْنَاهُ لَا يُخَالِفُ عَنْهُ عَنْ اَبِيْ هُرَيْرَةَ مُتَّصِلًا۔

2887. Sayyiduna Sa'eed ibn Musayyib رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "A pledge is never lost to its owner if he does not redeem it in time. So, every profit or appreciation in its value is for him and every loss will be borne by him."[1]

2888. Sayyiduna Abu Hurayrah رضی اللہ عنہ is also known to have narrated that like of it or of like meaning in a muffasil (connected) manner.[2]

COMMENTARY: If a person places some of his property in mortgage, he does not lose ownership over it. That thing continues to be his property. If rent accrues on it or there are other kinds of income from it, the mortgagor is the beneficiary. If it is an animal, he can use it and if it breeds, its young belong to him.

In the same way, he is liable to bear all loss even if it occurs in the custody of the mortgagee. In that case, nothing of the rights of the mortgagee will be forfeited and he will get the full amount loaned by him.

In some copies of Mishkat, Imam Shafi'I رحمہ اللہ is the transmitter of the hadith (2888) of Abu Hurayrah رضی اللہ عنہ.

THE CUSTOMARY FORM OF MEASURING OR WEIGHING IS THE STANDARD

(۲۸۸۹) وَعَنِ ابْنِ عُمَرَ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ الْمِكْيَالُ مِكْيَالُ اَهْلِ الْمَدِيْنَةِ وَالْمِيْزَانُ مِيْزَانُ اَهْلِ مَكَّةَ۔ (رواہ ابوداؤد والنسائی)

2889. Sayyiduna Ibn Umar رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "The measure (of capacity) is what the people of Madinah use and the (measure of) weight is what the people of Makkah use."[3]

COMMENTARY: For zakah (Annual due charity) and other Shari'ah (divine law) rights,

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[1] Daraqutni # 133 (Buyu)

[2] Mustadrak Haakim 3-51.

[3] Abu Dawud # 3340, Nasa'i # 2594.

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the standard for buying and selling is the measure of capacity that is used in Madinah and the weighing as used in Makkah. In the times of the Prophet صلى الله عليه وسلم forms of measure and weight used in Makkah and Madinah were different. This might have caused some confusion in calculating zakah (Annual due charity), sadaqatul fitr, etc. Thus, zakah (Annual due charity) would be *wajib (obligatory)* on dirhams when they confirm to the weight of Makkah and are two hundred. For sadaqatul fitr and other *wajib (obligatory)* sadaqat the sa' of the people of Madinah is reliable. In those days, grain was transacted by measure of capacity and the people of Madinah were agriculturists who were adopt at these measure the merchants of Makkah could use weight better.

WARNING TO THE DEFRAUDER

(٢٨٩٠) وَعَنِ ابْنِ عَبَّاسٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لِاَصْحَابِ الْكَيْلِ وَالْمِيْزَانِ اِنَّكُمْ قَدْ وُلِّيْتُمْ اَمْرَيْنِ هَلَكَتْ فِيْهِمَا الْاُمَمُ السَّابِقَةُ قَبْلَكُمْ۔ (الترمذی)

2890. Sayyiduna Ibn Abbas رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said to the people who (when they bought and sold) measured by capacity and by weight, 'you are, indeed, entrusted with two matters on account of which people who lived before your time perished."[1]

COMMENTARY: People of ancient times were known for giving less weight and measure but receiving in full. This is why Allah punished them. The most evil of them were the people of Prophet Shu'ayb عليه السلام.

SECTION III اَلْفَصْلُ الثَّالِثُ

ADVANCE SALE OF PURCHASE OF *BAI'* PURCHASE OF *BAI'* SALAM DISALLOWED

(٢٨٩١) عَنْ اَبِيْ سَعِيْدِنِ الْخُدْرِيِّ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ اَسْلَفَ فِيْ شَيْءٍ فَلَا يَصْرِفْهُ اِلٰى غَيْرِهٖ قَبْلَ اَنْ يَقْبِضَهٗ۔ (رواه ابوداؤد وابن ماجة)

2891. Sayyiduna Abu Sa'eed al-Khudri رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "If anyone concludes *Bai'* salam (with anyone) for something (paying cash for a later delivery) then he must not transfer it to another before taking possession of it."[2]

COMMENTARY: He must not sell or present to anyone that thing (for which he has paid advance) till he gets hold of it. It may also mean that he should not change that thing for any other thing before he gets delivery of it.

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[1] Tirmidhi # 1221.

[2] Abu Dawud # 3468, Ibn Majah # 2283.

CHAPTER - VIII

AL-IHTIKAR WITH HOLDING FOOD ITEMS TILL THEIR PRICES RISE

بَابُ الْاِحْتِكَارِ

MEANING OF IHTIKAR: The dictionary meaning of ihtikar is 'to hoard grain and provision to be able to sell at higher prices.' In the terminology of Shari'ah (divine law) ihtikar means 'to withhold all kinds of food items of men and animals to be able to sell at higher prices.' An example is of a person who buys grain, etc. when prices are rising and Allah's creatures need it more. His intention is to hoard it with him till inflation goes higher when he would sell it.

THE COMMAND: In the eyes of Shari'ah (divine law), ihtikar is haram (forbidden, unlawful). One how perpetrates this deed is extremely disliked by Shariah. However, if any one stores grain from the produce of his own land, or grain that he bought when it was cheap to sell when it becomes dear then it is not haram (unlawful, forbidden). Similarly, it is not forbidden to withhold such things as are not used as provision and are not food necessities.

According to the Hidayah, however, it is makruh (disapproved) to withhold food necessities of men and animals provided when it will cause harm to the dwellers of the city, like a small city. It is disallowed in such places. In a large city where it is not likely to hart anyone, it is not disallowed.

It is also mentioned in the Hidayah, that if any one withholds grain of his own land or what he brings from another city after buying it there, then this person will not be a withholder in the eyes of Shari'ah (divine law).[1]

SECTION I — اَلْفَصْلُ الْاَوَّلُ

WITHHOLDER OF GRAIN IS A SINNER

(٢٨٩٢) عَنْ مَعْمَرٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنِ احْتَكَرَ فَهُوَ خَاطِئٌ۔ (رواه مسلم)

2892. Sayyiduna Ma'mar رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "He who holds back grain till price goes up is a sinner."[2]

We shall narrate the hadith of Sayyiduna Umar رضی اللہ عنہ (کانت اموال بنی نضیر) in the chapter Fai (Book XVIII Ch XII Hadith # 4052)

SECTION II — اَلْفَصْلُ الثَّانِيْ

WARNING TO THE WITHHOLDER

(٢٨٩٣) عَنْ عُمَرَ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ الْجَالِبُ مَرْزُوْقٌ وَالْمُحْتَكِرُ مَلْعُوْنٌ۔ رَوَاهُ ابْنُ مَاجَةَ وَالدَّارِمِيُّ

2893. Sayyiduna Umar رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "The trader is given provision while the withholder till prices rise is accured."[3]

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[1] Hidayah v2 p 458 (English tr) Darul Ish'at, Karachi.

[2] Muslim # 129-1605, Abu Dawud # 3447, Ibn Majah # 2154, Darimi # 2543, Musnad Ahmad 6-400.

[3] Ibn Majah # 2153, Darimi # 2544

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COMMENTARY: Allah blesses with provision the person who buys and brings grain from other places to the city and sells it to its dwellers at normal, prevailing rates. In contrast, one who takes advantage of the plight of people enduring shortage of people enduring shortage of food and hoards items of food, is a sinner. He is far removed from good. As long as he is involved in it, he is deprived of blessing.

RULER SHOULD NOT FIX PRICES

(٢٨٩٤) وَعَنْ اَنَسٍ قَالَ غَلَا السِّعْرُ عَلٰى عَهْدِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالُوْا يَا رَسُوْلَ اللّٰهِ سَعِّرْلَنَا فَقَالَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِنَّ اللّٰهَ هُوَ الْمُسَعِّرُ الْقَابِضُ الْبَاسِطُ الرَّازِقُ وَاِنِّيْ لَاَرْجُوْاَنْ اَلْقٰى رَبِّيْ وَلَيْسَ اَحَدٌ مِّنْكُمْ يَطْلُبُنِيْ بِمَظْلِمَةٍ بِدَمٍ وَلَا مَالٍ۔ (رواه الترمذى، وابوداؤد و ابن ماجة)

2894. Sayyiduna Anas رضى الله عنه narrated that prices increased in the times of Allah's Messenger صلى الله عليه وسلم. So they pleaded, 'O Messenger of Allah, do fix the prices for us." He said, Indeed, Allah is (المسعر) (Al-Musa'ir - one who fixes prices), (القابض) (Al-Qabid - He who withholds), (الباسط) (Al-Basit He who bestows). And (الرزاق) (Ar Razzaq - one who provided provision). And, I hope that I meet my Lord in such a condition that none of you has a demand over me for an injustice concerning blood and property."[1]

COMMENTARY: Rise and decline of prices is only in Allah's hand. He causes provision of the people to be generous through changes in prices. Some people call it 'heavenly rates.' So, when it is time of high prices and inflation, resort must be had to Allah and help must be sought from Him. One must correct one's beliefs and deeds and seek to earn Allah's pleasure so that He may be pleased with His slaves and multiply their provision.

The Prophet صلى الله عليه وسلم declined to fix prices because that would be an unnecessary interference in the affairs of people. It amounts to using their property without their permission and wish. This is a kind of oppression and may drive people to wind up their businesses, causing trading activities to suffer a depression. It might lead to scarcity and famine-like conditions. The result is that the step taken purportedly for the good of the creatures turns out to be means of worry and hardship for them.

The Prophet's صلى الله عليه وسلم words mean that traders must be motivated to show compassion and love for the people and be just and well-wishing to them. Their conscience must be awakened to the plight of the people.

SECTION III اَلْفَصْلُ الثَّالِثُ

MORE WARNING TO HOARDER

(٢٨٩٥) عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ مَنِ احْتَكَرَ عَلَى الْمُسْلِمِيْنَ طَعَامَهُمْ ضَرَبَهُ اللّٰهُ بِالْجُذَامِ وَالْاِفْلَاسِ۔ رَوَاهُ ابْنُ مَاجَةَ وَالْبَيْهَقِيُّ فِيْ شُعَبِ الْاِيْمَانِ وَرَزِيْنٌ فِيْ كِتَابِهٖ۔ (ابن ماجه، بيهقى، رزين)

2895. Sayyiduna Umar ibn al-Khattab رضى الله عنه narrated that he heard Allah's

[1] Tirmidhi # 1318, Abu Dawud # 3451, Ibn Majah # 2200, Musnad Ahmad 3-156, Darimi # 2545.

Messenger صلى الله عليه وسلم say, "If anyone keeps away grain from the Muslims to sell at higher prices then Allah smites him with tubercular leprosy and poverty."[1]

COMMENTARY: If anyone hurts Allah's creatures, particularly the Muslims, then Allah imposes on him trials, both physical and monetary. But, as for him who causes them to benefit, Allah blesses him both in his body and property.

(٢٨٩٦) وَعَنِ ابْنِ عُمَرَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنِ احْتَكَرَ طَعَامًا اَرْبَعِيْنَ يَوْمًا يُرِيْدُ بِهِ الْغَلَاءَ فَقَدْ بَرِئَ مِنَ اللّٰهِ وَبَرِئَ اللّٰهُ مِنْهُ۔ (رواه رزين) .

2896. Sayyiduna Ibn Umar رضى الله عنه said that Allah's Messenger صلى الله عليه وسلم said, "He who withholds grain for forty days waiting for prices to rise has sort of absolved himself of Allah and Allah absolves himself of him."[2]

COMMENTARY: This means that he has violated his covenant with Allah to abide by the commands of Shari'ah (divine law) and to show compassion to His creatures,
When Allah absolves himself of anyone, He removes his protection and kind sight from Him.

(٢٨٩٧) وَعَنْ مُعَاذٍ قَالَ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ بِئْسَ الْعَبْدُ الْمُحْتَكِرُ اِنْ اَرْخَصَ اللّٰهُ الْاَسْعَارَ حَزِنَ وَاِنْ اَغْلَاهَا فَرِحَ۔ رَوَاهُ الْبَيْهَقِيُّ فِيْ شُعَبِ الْاِيْمَانِ وَرَزِيْنٌ فِيْ كِتَابِهٖ۔

2897. Sayyiduna Mu'adh رضى الله عنه narrated that he heard Allah's Messenger صلى الله عليه وسلم say, "Evil is the man who hoards grain (to get higher price)! If Allah lowers prices, he is grieved. But, if He raises them, then he is jubilant."[3]

(٢٨٩٨) وَعَنْ اَبِيْ اُمَامَةَ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ مَنِ احْتَكَرَ طَعَامًا اَرْبَعِيْنَ يَوْمًا ثُمَّ تَصَدَّقَ بِهٖ لَمْ يَكُنْ لَهٗ كَفَّارَةً۔ (رواه رزين)

2898. Sayyiduna Abu Umamah رضى الله عنه said that Allah's Messenger صلى الله عليه وسلم said, "If anyone withholds grain for forty days seeking higher prices thereby here after disburses it in charity, then that cannot serve as an expiation for him."[4]

COMMENTARY: This is punishment for any one who withholds grain for forty days. If any one does it for fewer days, then he too is punished but to a lesser degree.

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[1] Ibn Majah # 2155, Musnad Ahmad # 1-21.
[2] Razin.
[3] Bayhaqi in Shu'ab ul Eeman # 112150, Razin.
[4] Razin.

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CHAPTER - IX

BANKRUPTCY & RESPITE

بَابُ الْإِفْلَاسِ وَالْإِنْظَارِ

Humam life is never stable and alike all the time. It is common experience that circumstances keep changing. Pampers become millionaires overnight and great affluent men tumble down to poverty in no time. This is the working of destiny. No one has over been able to maintain himself on one condition, and no one will ever be able to do so. The vicissitudes of life as ordained by Allah.

However, it is in human hands to adjust with changed circumstances and to help others to adjust with them. Man can sympathise with others and they are able to share each other's problems and grief. They get help to correct their affairs.

The ahadith in this chapter urge people to fulfil their duty and sympathise with the stricken and if he is unable to honour his commitment then the owner of right should give him respite till he is in a better position to discharge his obligation.

SECTION I

اَلْفَصْلُ الْاَوَّلُ

BANKRUPTCY & THE CREDITOR

(٢٨٩٩) عَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَيُّمَا رَجُلٍ اَفْلَسَ فَاَدْرَكَ رَجُلٌ مَالَهُ بِعَيْنِهٖ فَهُوَ اَحَقُّ بِهٖ مِنْ غَيْرِهٖ۔ (متفق علیه)

2899. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "If anyone becomes insolvent and a man (who had loaned him something) finds his property in its exact position with him, then he is more entitled to it then others besides him."[1]

COMMENTARY: Suppose, Zayd bought some good from Bakr but become bankrupt before paying for it and the ruler too declared him to be bankrupt. Bakr finds his proper intact, as it was, with zayd. Neither is it used in the practical sense nor is it lost in the sense of Shari'ah (divine law), like through a gift or a waqf, figuratively. So, in this case, Bakr has a right to annual the sale and take back his goods from Zayd. He has first preference over other creditors. If zayd had made a part payment at the time of buying the goods, then Bakr must take only so much of the goods and remain unpaid. Imam Sahfi'I رحمہ اللہ and Imam Maalik رحمہ اللہ hold this contention and they interpret the hadith in this way.

However, the Hanafis say that the seller has no right to cancel the bargain or to take back the goods. They say that this hadith is about a transaction based on Khiyar. It means that the bargain included the clause that he seller had option to nullify the sale up to a certain time. So, if the buyer become a pauper and an insolvent after the transaction and the seller learns of it within the period of option then it is better for him to cancel the sale and take back his goods.

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[1] Bukhari # 2402, Muslim # 1559, Tirmidhi # 1266, Abu Dawud # 3520, Nasa'i # 4676, Ibn Majah # 2590, Muwatta Maalik # 88 (Buyu) Musnad Ahmad 2-468.

HELP ONE WHO TURNS POOR

(٢٩٠٠) وَعَنْ اَبِيْ سَعِيْدٍ قَالَ اُصِيْبَ رَجُلٌ فِيْ عَهْدِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فِيْ ثِمَارٍ ابْتَاعَهَا فَكَثُرَ دَيْنُهٗ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ تَصَدَّقُوْا عَلَيْهِ فَتَصَدَّقَ النَّاسُ عَلَيْهِ فَلَمْ يَبْلُغْ ذٰلِكَ وَفَاءَ دَيْنِهٖ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لِغُرَمَائِهٖ خُذُوْا مَا وَجَدْتُّمْ وَلَيْسَ لَكُمْ اِلَّا ذٰلِكَ۔ (رواه مسلم)

2900. Sayyiduna Abu Sa'eed رضی اللہ عنہ narrated that in the time of the Prophet صلی اللہ علیہ وسلم a man suffered loss of fruit that he had bought and (as a result) he became indebted (and was in bad condition). So, Allah's Messenger صلی اللہ علیہ وسلم said, "Give him charity." The people gave him charity but that was not enough to pay off the debt, so Allah's Messenger صلی اللہ علیہ وسلم said to his creditors, "Take what you find and that is all you can have."[1]

COMMENTARY: This man had bought a fruit bearing tree. However, he had not been able to use the fruit before they were lost though a calamity. He had yet to pay for them, so he borrowed money from different people and paid the dues of the seller so that he become heavily indebted. The prophet صلی اللہ علیہ وسلم called people's attention to him that they might help him out. The people tried to *Bail* him out but his debts very still un paid. When he was utterly helpless to pay the remaining debts, the Prophet صلی اللہ علیہ وسلم said to the creditors, "that is all you can have."

In other words, seeing the man's plight and total inability, it was not proper for them to pester him and threaten him. They ought to give him respite and when he had earned enough, they could demand their money. The prophet صلی اللہ علیہ وسلم certainly did not mean that the creditors had lost their right. He only meant that they should give him time to recover.

REWARD FOR WAIVING DEBT

(٢٩٠١) وَعَنْ اَبِيْ هُرَيْرَةَ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ كَانَ رَجُلٌ يُدَايِنُ النَّاسَ فَكَانَ يَقُوْلُ لِفَتَاهُ اِذَا اَتَيْتَ مُعْسِرًا تَجَاوَزْ عَنْهُ لَعَلَّ اللّٰهَ اَنْ يَتَجَاوَزَ عَنَّا قَالَ فَلَقِيَ اللّٰهَ فَتَجَاوَزَ عَنْهُ۔ (متفق عليه)

2901. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم related that there was a man who loaned money to people often. He would say to hi servant, "When you came to one who is in straitened circumstances (to recover the debt), forgive him. Perhaps Allah will forgive us." He said further, "when he met Allah (meaning, after his death). He forgave him (and did not ask him about his sins)."[2]

(٢٩٠٢) وَعَنْ اَبِيْ قَتَادَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ سَرَّهٗ اَنْ يُنْجِيَهُ اللّٰهُ مِنْ كُرَبِ يَوْمِ الْقِيَامَةِ فَلْيُنَفِّسْ عَنْ مُعْسِرٍ اَوْ يَضَعْ عَنْهُ۔ (رواه مسلم)

2902. Sayyiduna Abu Qatadah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "He to whom it would please that Allah should save him from the anxieties of the day of resurrection, should give respite to one who is in straitened

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[1] Muslim # 18-1556, Tirmidhi # 655, Abu Dawud # 3469, 4678, Ibn Majah # 2356, Musnad Ahmad # 11551.

[2] Bukhari # 2078, Muslim # 31-1562, Musnad Ahmad 2-263.

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circumstances, or he should write off his debt."[1]

COMMENTARY: Normally *fard (compulsory)* deeds are more excellent than the nafl (optional) by seventy degrees. However, in some cases the optional deeds are superior to the *fard (compulsory)* (or obligatory, prescribed). One of them is to forgive one's right on the hard pressed or one in difficulty, like remitting his debt. Which act is *mustahab (desirable)* yet better than giving respite to the debtor in difficulty which is *wajib (obligatory)*.
Secondly, to be the first one to greet with salaam is *sunnah (Prophet's* صلى الله عليه وسلم *practice)*, but it is better than giving a response to salaam which is *fard (compulsory)*.
Thirdly, it is *mustahab (desirable)* to perform ablution. But, it is better than performing ablution after the time (of *salah (prayer)*) begins which is *fard (compulsory)*.

(٢٩٠٣) وَعَنْهُ قَالَ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ مَنْ اَنْظَرَ مُعْسِرًا اَوْ وَضَعَ عَنْهُ اَنْجَاهُ اللّٰهُ مِنْ كُرَبِ يَوْمِ الْقِيَامَةِ۔ (رواه مسلم)

2903. Sayyiduna Abu Qatadah رضى الله عنه **narrated that he heard Allah's Messenger** صلى الله عليه وسلم **say, "IF anyone grants respite to a person who is in straitened circumstance, or remits his debt, then Allah will deliver him from the anxieties of the day of resurrection."[2]**

(٢٩٠٤) وَعَنْ اَبِي الْيَسَرِ قَالَ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ مَنْ اَنْظَرَ مُعْسِرًا اَوْ وَضَعَ عَنْهُ اَظَلَّهُ اللّٰهُ فِيْ ظِلِّهٖ۔ (رواه مسلم)

2904. Sayyiduna Abu Al-Yasar رضى الله عنه **narrated that he heard Allah's Messenger** صلى الله عليه وسلم **say, "He who gives respite to one who is in straitened circumstances or remits his debt Allah will take him in the shade of His mercy (on the day of resurrection)."**

COMMENTARY: Imam Ahmad رضى الله عنه, Ibn Majah رحمه الله and Haakim رحمه الله have reported that the Prophet صلى الله عليه وسلم said that if anyone grants respite to a poor person then till the day of repayment comes, he will get reward every day for charity equivalent, to the debt. The same recurs when he gives him further respite on the day of repayment, and again on the day of repayment, he will get every day the reward of charity equal to twice the loan extended.

BEST IS HE WHO REPAYS DEBT WILLINGLY

(٢٩٠٥) وَعَنْ اَبِيْ رَافِعٍ قَالَ اسْتَسْلَفَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ بَكْرًا فَجَاءَتْهُ اِبِلٌ مِّنَ الصَّدَقَةِ قَالَ اَبُوْرَافِعٍ فَاَمَرَنِيْ اَنْ اَقْضِيَ الرَّجُلَ بَكْرَهٗ فَقُلْتُ لَا اَجِدُ اِلَّا جَمَلًا خِيَارًا رَبَاعِيًا فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَعْطِهٖ اِيَّاهُ فَاِنَّ خَيْرَ النَّاسِ اَحْسَنُهُمْ قَضَاءً۔ (رواه مسلم)

2905. Sayyiduna Abu Rafi رضى الله عنه **narrated that Allah's Messenger** صلى الله عليه وسلم **borrowed a young camel. When he received the camels of sadaqah (charity) (zakah (Annual due charity)) he instructed him (Abu Rafi)** رضى الله عنه **to return to the man a young camel. He said (to him), "I do not find but a camel better than that and (which is) in its seventh year." He said, "Give it to him. The best of all people is he**

[1] Muslim # 32-1563.
[2] Muslim.

who discharge his debt in the best way."[1]

COMMENTARY: According to this hadith, it is allowed to borrow an animal. Imam Shafi'I رحمه الله, Imam Maalik رضی الله عنه and most ulama (Scholars) abide by it. But, Imam Abu Hanifah رحمه الله does not hold it as allowed. He regards this hadith as abrogated.

It is *mustahab (desirable)* to return a loan with something better provided no such condition was placed at the time of borrowing.

CREDITOR MAY DEMAND

(٢٩٠٦) وَعَنْ اَبِيْ هُرَيْرَةَ اَنَّ رَجُلًا تَقَاضٰى رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَاَغْلَظَ لَهٗ فَهَمَّ اَصْحَابُهٗ فَقَالَ دَعُوْهُ فَاِنَّ لِصَاحِبِ الْحَقِّ مَقَالًا فَاشْتَرُوْا لَهٗ بَعِيْرًا فَاَعْطُوْهُ اِيَّاهُ قَالُوْا لَانَجِدُ اِلَّا اَفْضَلَ مِنْ سِنِّهٖ قَالَ اشْتَرُوْهُ فَاَعْطُوْهُ اِيَّاهُ فَاِنَّ خَيْرَكُمْ اَحْسَنُكُمْ قَضَاءً۔ (متفق علیه)

2906. Sayyiduna Abu Hurayrah رضی الله عنه narrated that a man demanded repayment of a debt in a rough manner from the Messenger صلی الله علیه وسلم of Allah. His sahabah (Prophet's Companions) رضی الله عنهم become angry, but he said, "Leave him alone. One who has a right is allowed to speak out. Buy for him camel and give it to him." They submitted, "We do not find but a camel of a better age then what he had given." He said, "Buy it and give it to him. The best of you is he who repays his debt in the best way."[2]

COMMENTARY: The rude man may have been a non-Muslim or an ignorant villager, unaware of the manners of the Prophet's صلی الله علیه وسلم assembly and of the respect due t o him. But, the prophet صلی الله علیه وسلم tolerated his rude behaviour in a way as only a prophet can do.

Ibn Maalik رحمه الله interpreted the words of the Prophet صلی الله علیه وسلم to mean that a creditor may demand his dues strictly if there is a delay in repayment. If he does not repay then he may have recourse to the ruler or judges.

WRONG TO DELAY REPAYMENT IN SPITE OF ABILITY

(٢٩٠٧) وَعَنْهُ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ مَطْلُ الْغَنِيِّ ظُلْمٌ فَاِذَا اُتْبِعَ اَحَدُكُمْ عَلٰى مَلِئٍ فَلْيَتْبَعْ۔ (متفق علیه)

2907. Sayyiduna Abu Hurayrah رضی الله عنه narrated that Allah's Messenger صلی الله علیه وسلم said, "The rich man's delay in repayment is unjust. If any of you is referred for payment to a man of means then he should accept the referral."[3]

COMMENTARY: Some ulama (Scholars) say that if anyone delays repayment of debt or payment for purchases in spite of ability to pay then he commits sin. The testimony of such people is rejected even if they may have done it the first time. But, some other u lama say that the testimony of a habitual delayer of payment is spite of ability is rejected.

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[1] Muslim # 118-1600, Abu Dawud # 3346, Tirmidhi # 1322, Nasa'i # 4617, Ibn Majah # 2285, Darimi # 2565.

[2] Bukhari # 2306, Muslim # 120. 1601, Tirmidhi # 1321, Musnad Ahmad 2-416.

[3] Bukhari # 2287, Muslim # 33-1564, Abu Dawud # 3345, Tirmidhi # 1308, Nasa'i # 4651, Ibn Majah # 2304, Muwatta 84 (Buyu) Musnad Ahmad 2-71.

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If a debtor transfer his debt to another person who is able to pay then the transfer must be accepted. In this way the creditor's money would not be lost. This command is a recommendation actually, *mustahab (desirable)*. But, some ulama (Scholars) say that it is *wajib (obligatory)* (obligatory), yet others say that is merely a permission.

ALLOWED TO RECONCILE CREDITOR & DEBTOR

(٢٩٠٨) وَعَنْ كَعْبِ بْنِ مَالِكٍ اَنَّهٗ تَقَاضٰى ابْنَ اَبِيْ حَدْرَدٍ دَيْنًا لَهٗ عَلَيْهِ فِيْ عَهْدِ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فِي الْمَسْجِدِ فَارْتَفَعَتْ اَصْوَاتُهُمَا حَتّٰى سَمِعَهَا رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَهُوَ فِيْ بَيْتِهٖ فَخَرَجَ اِلَيْهِمَا رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ حَتّٰى كَشَفَ سَجْفَ حُجْرَتِهٖ وَنَادٰى كَعْبَ بْنَ مَالِكٍ قَالَ يَا كَعْبُ قَالَ لَبَّيْكَ يَارَسُوْلَ اللّٰهِ فَاَشَارَ بِيَدِهٖ اَنْ ضَعِ الشَّطْرَ مِنْ دَيْنِكَ قَالَ كَعْبٌ قَدْفَعَلْتُ يَارَسُوْلَ اللّٰهِ قَالَ قُمْ فَاقْضِهٖ۔

(متفق علیه)

2908. Sayyiduna Ka'b ibn Maalik رضی اللہ عنہ is reported to have demanded repayment of debt due to him from Sayyiduna Ibn Abu Hadrad رضی اللہ عنہ in the mosque (Masjid Nabawi) in the time of Allah's Messenger صلی اللہ علیہ وسلم. Their voices rose and Allah's Messenger صلی اللہ علیہ وسلم, who was in his room heard them. He came towards them by pulling aside the curtain over (the door of) his room. He called Sayyiduna Ka'b ibn Maalik رضی اللہ عنہ, "O Ka'b!" He said, "Here am I, O Messenger of Allah!" He gestured with his hand to say that he should write off half the debt receivable by him. Ka'b رضی اللہ عنہ said, "Indeed, I have done that, O Messenger of Allah!" Then he said (to Ibn Abu Hadar) رضی اللہ عنہ, "Get up and pay it" (meaning, the balance).[1]

COMMENTARY: This hadith says that it is allowed to ask for repayment of debt while one is in the mosque. It is allowed also to intercede for one who has a right due to him, to reconcile the quarrelling duo, to accept someone's recommendation provided it is not to promote sin and disobedience,

A TERRIFYING CASE OF A DELAYER OF REPAYMENT OF DEBT

(٢٩٠٩) وَعَنْ سَلَمَةَ بْنِ الْاَكْوَعِ قَالَ كُنَّا جُلُوْسًا عِنْدَ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِذْ اُتِيَ بِجَنَازَةٍ فَقَالُوْا صَلِّ عَلَيْهَا فَقَالَ هَلْ عَلَيْهِ دَيْنٌ قَالُوْا لَا فَصَلّٰى عَلَيْهَا ثُمَّ اُتِيَ بِجَنَازَةٍ اُخْرٰى فَقَالَ هَلْ عَلَيْهِ دَيْنٌ قَبْلَ نَعَمْ قَالَ فَهَلْ تَرَكَ شَيْئًا قَالُوْا ثَلَاثَةَ دَنَانِيْرَ فَصَلّٰى عَلَيْهَا ثُمَّ اُتِيَ بِالثَّالِثَةِ فَقَالَ هَلْ عَلَيْهِ دَيْنٌ قَالُوْا ثَلَاثَةُ دَنَانِيْرَ قَالَ هَلْ تَرَكَ شَيْئًا قَالُوْا لَا قَالَ صَلُّوْا عَلٰى صَاحِبِكُمْ قَالَ اَبُوْ قَتَادَةَ صَلِّ عَلَيْهِ يَا رَسُوْلَ اللّٰهِ وَعَلَيَّ دَيْنُهٗ فَصَلّٰى عَلَيْهِ۔ (رواه البخاری)

2909. Sayyiduna Salamah ibn al-Akwa رضی اللہ عنہ narrated that while they were seated with the Prophet صلی اللہ علیہ وسلم a funeral was brought and they (People who brought it) requested him to offer the *salah (prayer)* over it. He asked, "Had he a debt payable?" They said, "No!" So, he offered the funeral *salah (prayer)* over him. Then another

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[1] Bukhari # 457, Muslim # 20. 1558, Abu Dawud # 3595, Nasa'i # 5408, Ibn Majah # 2429, Musnad Ahmad 6-390.

funeral was brought and he asked, "Had he a debt over him?" when it was said, "Yes," he asked, "Did he leave behind anything?" They said, "Three dinar." So, he offer the funeral *salah (prayer)* over it. Then, a third (bier) was brought and he asked, "Was he in debt?" They said, "(He owed) three dinars" He asked "Did he leave behind anything?" They said, "No!" He said, "Offer *salah (prayer)* over your companion" Abu Qataday رضی اللہ عنہ said, "Do offer *salah (prayer)* over him, O Messenger of Allah. His debt is over me." So, he offered the *salah (prayer)* over him.[1]

COMMENTARY: These three funerals may have been brought one after the other or on different occasions.

The Prophet صلی اللہ علیہ وسلم declined to lead the funeral *salah (prayer)* of the man who had a debt over him. Perhaps he intended to teach the people that they should refrain from borrowing and if they have to, then they must not delay repayment. Or he may have feared that his prayer may not be accepted because the man had rights of man dischargeable by him.

It is allowed to give guarantee on behalf of the dead person. Imam Shafi'I رحمہ اللہ and most ulama (Scholars) abide by this verdict. Imam Abu Hanifah رحمہ اللہ said that it is not allowed. However, some Hanafi ulama (Scholars) say Imam Maalik رحمہ اللہ, Imam Shafi'I رحمہ اللہ, Imam Ahmad رحمہ اللہ and from the Hanafis, Imam Abu Yusuf رحمہ اللہ and Imam Muhammad رحمہ اللہ deduce from this hadith that if a dead person has not left behind anything and is in debt then it is allowed to stand guarantee for him. They point our that if it was allowed, then the Prophet صلی اللہ علیہ وسلم would not have offered the funeral *salah (prayer)* over the third funeral.

Imam Abu Hanifah رحمہ اللہ disagree, saying that it is not correct to stand guarantee over a poor, indigent dead person. He said that it amounts is standing guarantee over a dropped debt. Guarantee over such a debt is invalid.

As for this hadith, Imam Abu Hanifah رحمہ اللہ say that it cannot be established by the words of the hadith that Sayyiduna Abu Qatadah رضی اللہ عنہ had not given guarantee for that man during his life time. Here, he is quoted to affirm merely that he had stood guarantor for that man. He was then responsible for his debt. So, the Prophet صلی اللہ علیہ وسلم accepted his confirmation and offered the funeral *salah (prayer)*.

We may also say that Sayyiduna Abu Qatadah رضی اللہ عنہ had not stood guarantee for the dead man but he had shown kindness and promised to pay his debt.

ALLAH HELPS HIM WHO HAS INTENTION TO PAY HIS DEBT

(٢٩١٠) وَعَنْ اَبِيْ هُرَيْرَةَ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ مَنْ اَخَذَ اَمْوَالَ النَّاسِ يُرِيْدُ اَدَاءَ هَا اَدَّى اللّٰهُ عَنْهُ وَمَنْ اَخَذَ يُرِيْدُ اِتْلَافَهَا اَتْلَفَهُ اللّٰهُ عَلَيْهِ۔ (رواه البخاری)

2910. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "If anyone takes the property of other people intending to repay it, then Allah gets it re-paid back for him. If anyone takes it intending to waste it, then Allah destroys his property."[2]

ALLAH DOES NOT FORGIVE RIGHTS OF CREATURES AGAINST EACH OTHER

(٢٩١١) وَعَنْ اَبِيْ قَتَادَةَ قَالَ قَالَ رَجُلٌ يَارَسُوْلَ اللّٰهِ اَرَاَيْتَ اِنْ قُتِلْتُ فِيْ سَبِيْلِ اللّٰهِ صَابِرًا مُحْتَسِبًا مُقْبِلًا

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[1] Bukhari # 2289, Abu Dawud # 3843.

[2] Bukhari # 2387, Musnad Ahmad 1-361

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غَيْرَ مُدْبِرٍ يُكَفِّرُ اللّٰهُ عَنِّيْ خَطَايَايَ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ نَعَمْ فَلَمَّا اَدْبَرَ نَادَاهُ فَقَالَ نَعَمْ اِلَّا الدَّيْنَ كَذٰلِكَ قَالَ جِبْرِيْلُ۔ (رواه مسلم)

2911. Sayyiduna Abu Qatabah رضی اللہ عنہ narrated that a man asked, "O Messenger of Allah, what do you say if I am slain in Allah's path being patient and hopeful of reward, on the advance and not retreat, will Allah forgive me my sins? Allah's Messenger صلی اللہ علیہ وسلم said, "Yes!" However, when he turned to go, he called him and said, "Yes! But not a debt. This is what Jibril علیہ السلام said to me."[1]

COMMENTARY: The issue of rights of fellowmen is very serious. Allah forgives His right pertaining to worship, disobedience and sin. HE does not forgive rights of men, like debts. We also learn from this hadith that Jibril علیہ السلام brought to the Prophet صلی اللہ علیہ وسلم not only the revelation which is the Qur'an but also other guidance and commands regularly.

(۲۹۱۲) وَعَنْ عَبْدِاللّٰهِ بْنِ عَمْرٍو اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ يُغْفَرُ لِلشَّهِيْدِ كُلُّ ذَنْبٍ اِلَّا الدَّيْنَ۔ (رواه مسلم)

2912. Sayyiduna Abdullah ibn Amr رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "The martyr is forgiven everything but a debt."[2]

COMMENTARY: Debt (دین) covers rights of fellowmen. Allah does not forgive rights of men.However, Ibn Maalik رحمہ اللہ said that some u lama say that martyrs in this hadith excludes those who are slain in a naval war. There is in hadith in Ibn Majah of Sayyiduna Abu Umamah رضی اللہ عنہ that Allah's Messenger صلی اللہ علیہ وسلم said, "Those who are martyred in a naval battle have all their sins forgiven, even debt (meaning rights of fellow men)." (Hadith # 2778.)

PROPHET صلی اللہ علیہ وسلم DID NOT OFFER *SALAH (PRAYER)* OVER A DEBTOR

(۲۹۱۳) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ كَانَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يُؤْتٰى بِالرَّجُلِ الْمُتَوَفّٰى عَلَيْهِ الدَّيْنُ فَيَسْأَلُ هَلْ تَرَكَ لِدَيْنِهٖ قَضَاءً فَاِنْ حُدِّثَ اَنَّهٗ تَرَكَ وَفَاءً صَلّٰى وَاِلَّا قَالَ لِلْمُسْلِمِيْنَ صَلُّوْا عَلٰى صَاحِبِكُمْ فَلَمَّا فَتَحَ اللّٰهُ عَلَيْهِ الْفُتُوْحَ قَامَ قَالَ اَنَا اَوْلٰى بِالْمُؤْمِنِيْنَ مِنْ اَنْفُسِهِمْ فَمَنْ تُوُفِّيَ مِنَ الْمُؤْمِنِيْنَ فَتَرَكَ دَيْنًا فَعَلَيَّ قَضَاؤُهٗ وَمَنْ تَرَكَ مَالًا فَهُوَ لِوَرَثَتِهٖ۔ (متفق عليه)

2913. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that if a debtor's body was brought to Allah's Messenger صلی اللہ علیہ وسلم for the funeral *salah (prayer)*, he would ask, "Has he left anything to repay debts?" If he was told that he had left enough to pay off his debts, then he would lead his funeral *salah (prayer)*, otherwise he would ask the Muslims to pray over their companion. Then, when Allah opened for him (a number of) victories, he stood up and said, "I am better for the believers then their own selves. Hence, if any of the believers dies leaving a debt, then his debt is on

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[1] Muslim # 117-1885, Tirmidhi # 1718, Nasa'i # 3156, Darimi # 2412, Muwatta Maalik # 31 (Jihad), Musnad Ahmad 5-297.

[2] Muslim # 119-1886.

me. If he leaves behind property then that belongs to his heirs."[1]

COMMENTARY: The words 'I am better for the Muslim' imply that the Prophet صلى الله عليه وسلم has a better right over them then their own selves. Hence, it is established that it is *wajib (obligatory)* on the Muslims that they should hold him dearer and more loved than themselves. They should prefer his command and his wishes over all other things and regards his right worthier than the right of their own lives.

The Prophet صلى الله عليه وسلم is more kind and compassionate to the Muslims than they are to themselves. Their lives and honour are dearer to him than to them. When Allah enabled him to make many conquests, he continued to live a simple, content life but spent the spoils over the Muslims. He undertook to pay the debts of those Muslims who died under a burden of debt.

He paid their outstanding debts from the Bayt ul Maal (State Treasury) though some say that he paid them from his own resources.

Some say that it was *wajib (obligatory)* on him to pay their debts but others say that it was not *wajib (obligatory)*. He paid them as a gesture of goodwill, on his own accord.

SECTION II اَلْفَصْلُ الثَّانِيْ

THE BANKRUPT'S PROPERTY

(٢٩١٤) عَنْ اَبِيْ خَلْدَةَ الزُّرَقِيِّ قَالَ جِئْنَا اَبَاهُرَيْرَةَ فِيْ صَاحِبٍ لَنَا قَدْ اَفْلَسَ فَقَالَ هٰذَا الَّذِيْ قَضٰى فِيْهِ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَيُّمَارَجُلٍ مَاتَ اَوْ اَفْلَسَ فَصَاحِبُ الْمَتَاعِ اَحَقُّ بِمَتَاعِهٖ اِذَا وَجَدَهٗ بِعَيْنِهٖ۔ رَوَاهُ الشَّافِعِيُّ وَابْنُ مَاجَةَ۔

2914. Sayyiduna Abu Khaldah az-Zaraqi رحمه الله narrated that they went to Sayyiduna Abu Hurayrah رضى الله عنه (to ask) about one of their friends who had become insolvent (but had with him the properties of others for which he had not paid). He said, "This is like what Allah's Messenger صلى الله عليه وسلم had decided about one. If a person dies or becomes insolvent (having debts payable and the owner of goods finds them as they had been originally, then he has more right to them (then anyone else."[2] (See hadith # 2899 for commentary.)

DEBTOR'S SOUL REMAINS SUSPENDED TILL DEBT IS PAID

(٢٩١٥) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ نَفْسُ الْمُؤْمِنِ مُعَلَّقَةٌ بِدَيْنِهٖ حَتّٰى يُقْضٰى عَنْهُ۔ (رواه الشافعي واحمد والترمذي وابن ماجة والدارمي)

2915. Sayyiduna Abu Hurayrah رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "A believer's soul remains suspended because of his debt till it is paid (for him).[3]

COMMENTARY: Some ulama (Scholars) say that it is the debt that is borrowed without reason from someone and is used on unnecessary cause extravagantly. However, if a debt

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[1] Bukhari # 2299, Muslim # 4-1618, Tirmidhi # 1072, Abu Dawud # 3343, Nasa'i # 1963, Ibn Majah # 2415, Musnad Ahmad 2-453.

[2] Abu Dawud # 3523, Ibn Majah # 2360, Shafi'I.

[3] Tirmidhi # 1080, Ibn Majah # 2413, Darimi # 2518, Musnad Ahmad 2-440

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is incurred for genuine reasons and the debtor dies then, insha Allah, it will not preclude him from entering paradise and the company of the righteous.
However, it is a moral duty of the ruler (or the debtor's relatives who are well-off) to pay his debt. If they do not do it, then Allah will please the creditor on the day of resurrection so that they do not make any demand on the debtor in the hereafter.

(٢٩١٦-٢٩١٧-٢٩١٨) وَعَنِ الْبَرَاءِ بْنِ عَازِبٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ صَاحِبُ الدَّيْنِ مَأْسُوْرٌ بِدَيْنِهٖ يَشْكُوْ إِلٰى رَبِّهِ الْوَحْدَةَ يَوْمَ الْقِيَامَةِ رَوَاهُ فِيْ شَرْحِ السُّنَّةِ وَرُوِيَ اَنَّ مُعَاذًا كَانَ يَدَّانُ فَاَتٰى غُرَمَاؤُهٗ إِلَى النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَبَاعَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَالَهٗ كُلَّهٗ فِيْ دَيْنِهٖ حَتّٰى قَامَ مُعَاذٌ بِغَيْرِ شَيْءٍ مُرْسَلٌ هٰذَا لَفْظُ الْمَصَابِيْحِ وَلَمْ اَجِدْهُ فِي الْاُصُوْلِ إِلَّا فِي الْمُنْتَقٰى. وَعَنْ عَبْدِالرَّحْمٰنِ بْنِ كَعْبِ بْنِ مَالِكٍ قَالَ كَانَ مُعَاذُ بْنُ جَبَلٍ شَابًّا سَخِيًّا وَكَانَ لَا يُمْسِكُ شَيْئًا فَلَمْ يَزَلْ يَدَّانُ حَتّٰى اَغْرَقَ مَالَهٗ كُلَّهٗ فِي الدَّيْنِ فَاَتَى النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَكَلَّمَهٗ لِيُكَلِّمَ غُرَمَاءَهٗ فَلَوْ تَرَكُوْا لِاَحَدٍ لَتَرَكُوْا لِمُعَاذٍ لِاَجْلِ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَبَاعَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَهُمْ مَالَهٗ حَتّٰى قَامَ مُعَاذٌ بِغَيْرِ شَيْءٍ۔ رَوَاهُ سَعِيْدٌ فِيْ سُنَنِهٖ مُرْسَلًا۔

2916. Sayyiduna Al-Bara' ibn Aazib رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "The debtor will be confined because of his debt (not being allowed admittance to paradise and the company of the righteous). So, on the day of resurrection, he will complain to his Lord of his loneliness."[1]

2917. Sayyiduna Mu'adh ibn Jabal رضی اللہ عنہ is reported to have been in debt. His creditors (once) come to the Prophet صلی اللہ علیہ وسلم who sold all the property of Mu'adh رضی اللہ عنہ was left with nothing. (This is as in al-Masabih but I did not find it in the usul (six books of hadith) and found it only in al-Muntaqa, but it is in the form as in # 2918)

2918. Sayyiduna Abdur Rahman ibn Ka'b ibn Maalik رضی اللہ عنہ narrated that (Sayyiduna) MU'adh ibn Jabal رضی اللہ عنہ was a generous young man who could not save anything with him. He borrowed continuously and spent all he had on debts. So, he met the prophet صلی اللہ علیہ وسلم and requested him to pay in a word (for him) with his creditors. If they had written off debts for anyone, they would have written off (debts) of Mu'adh رضی اللہ عنہ for the sake of Allah's Messenger صلی اللہ علیہ وسلم sold to them his property till Mu'adh رضی اللہ عنہ was left with nothing.[2]

COMMENTARY: On the day of resurrection, the debtor will find himself deprived of paradise and pious company. He will also not find anyone to intercede for him. He will be terrified and complain to his Lord. He will get relief only after surrendering his pieties to the creditors or shouldering their sins against the debt payable by him. Or, Allah will show mercy and grace and please the creditors so that they would forgive the debtor. Till this happens, he will remain lonely. This will be like a punishment to him from which he will feel grieved and painful.
According to another narration, the debtor will be confined in his grave because of the debts over him. He will complain to Allah.

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[1] Baghawi in Sharh us *sunnah (Prophet's صلی اللہ علیہ وسلم practice)* # 2148.

[2] Daraqutni # 95 (المراۃ تقتل اذا), Saed in his *sunnah (Prophet's صلی اللہ علیہ وسلم practice)* in a Mursal form.

The usul are the books of hadith in which they are transmitted with the line of transmission. Muntaqa is a book of Ibn Taymiyah رحمه الله. The compiler of Mishkat says that he could not find the hadith as transmitted in the Masabih in the usul but he found it in Muntaqa from Abdur Rahman رضى الله عنه.

Allamah Teebi رحمه الله point out that the compiler of Mishkat has reproduced the words of Muntaqa. If it had not found a place in the usul then the compiler of Muntaqa would not have reproduced it.

DEBTOR WHO IS ABLE TO PAY BUT PROCRASTINATES

(٢٩١٩) وَعَنِ الشَّرِيْدِ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَيُّ الْوَاجِدِ يُحِلُّ عِرْضَهٗ وَعُقُوْبَتَهٗ قَالَ ابْنُ الْمُبَارَكِ يُحِلُّ عِرْضَهٗ يُغَلِّظُ لَهٗ وَعُقُوْبَتَهٗ يُحْبَسُ لَهٗ۔ (رواه ابوداؤد والنسائى)

2919. Sayyiduna Ash Sharid رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "If anyone delays repayment (of debt) in spite of being able (to pay), then it is lawful to disgrace and punish him." Ibn Mubarak رحمه الله said that to disgrace him is to speak to him in harsh tones and to punish is to imprison him for it.[1]

COMMENTARY: To procrastinate in repayment of debt in spite of having the means to pay is unjust. Recourse should be had to the ruler or court of law to lock him in prison.

PROPHET صلى الله عليه وسلم DECLINED TO OFFER FUNERAL *SALAH (PRAYER)* OF DEBTOR

(٢٩٢٠) وَعَنْ اَبِيْ سَعِيْدِنِ الْخُدْرِيِّ قَالَ اُتِيَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ بِجَنَازَةٍ لِيُصَلِّيَ عَلَيْهَا فَقَالَ هَلْ عَلٰى صَاحِبِكُمْ دَيْنٌ قَالُوْا نَعَمْ قَالَ هَلْ تَرَكَ لَهٗ مِنْ وَفَاءٍ قَالُوْا لَا قَالَ صَلُّوْا عَلٰى صَاحِبِكُمْ قَالَ عَلِيُّ بْنُ اَبِيْ طَالِبٍ عَلَيَّ دَيْنُهٗ يَارَسُوْلَ اللّٰهِ فَتَقَدَّمَ فَصَلّٰى عَلَيْهِ وَفِيْ رِوَايَةٍ مَعْنَاهُ وَقَالَ فَكَّ اللّٰهُ رِهَانَكَ مِنَ النَّارِ كَمَا فَكَكْتَ رِهَانَ اَخِيْكَ الْمُسْلِمِ لَيْسَ مِنْ عَبْدٍ مُسْلِمٍ يَقْضِيْ عَنْ اَخِيْهِ دَيْنَهٗ اِلَّا فَكَّ اللّٰهُ رِهَانَهٗ يَوْمَ الْقِيَامَةِ۔ (رواه فى شرح السنة)

2920. Sayyiduna Abu Sa'eed al-Khudri رضى الله عنه narrated that a funeral was brought to the prophet صلى الله عليه وسلم that he might offer the funeral *salah (prayer)* over it. He asked, 'Did your friend have a debt to pay?" They said, "Yes!" He asked, "Did he leave behind enough to pay it?" They submitted "No!" He said, "Offer *salah (prayer)* (Yourselves) over your friend." (He declined to offer it.) Sayyiduna Ali ibn Abu Talib رضى الله عنه submitted, "On me is his debt, O Messenger of Allah." So, he stopped forward and offered his funeral *salah (prayer)*.

According to another version of about the same meaning, he then said, (to Sayyiduna Ali) رضى الله عنه, "May Allah deliver your soul from hell fire just as you have delivered your Muslim brother's soul (from debt). There is no Muslim person who pays off his brother's debt but Allah delivers his soul on the day of resurrection."[2]

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[1] Abu Dawud # 3628, Nasa'i # 4690, Ibn Majah # 2427, Musnad Ahmad 4-389.

[2] BAghawi in Sharh us *sunnah (Prophet's صلى الله عليه وسلم practice)* # 2155, Daraqutni # 291 (Buyu).

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GOOD NEWS TO ONE WHO REPAY HIS DEBT BEFORE HE DIES

(٢٩٢١) وَعَنْ ثَوْبَانَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ مَاتَ وَهُوَ بَرِيْءٌ مِنَ الْكِبْرِ وَالْغُلُوْلِ وَالدَّيْنِ دَخَلَ الْجَنَّةَ۔ (رواه الترمذی وابن ماجة والدارمی)

2921. Sayyiduna Thawban رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "He who dies while he is without pride, free of cheating in spoils (of war) and of debt, will enter paradise."[1]

GRAVE SIN TO DIE IN INSOLVENCY AS A DEBTOR

(٢٩٢٢) وَعَنْ اَبِيْ مُوْسٰى عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اِنَّ اَعْظَمَ الذُّنُوْبِ عِنْدَ اللّٰهِ اَنْ يَلْقَاهُ بِهَا عَبْدٌ بَعْدَ الْكَبَائِرِ الَّتِيْ نَهَى اللّٰهُ عَنْهَا اَنْ يَمُوْتَ رَجُلٌ وَعَلَيْهِ دَيْنٌ لَا يَدَعُ لَهٗ قَضَاءً۔ (رواه احمد وابوداؤد)

2922. Sayyiduna Abu Musa رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "The greatest sin in the sight of Allah which a man can come to Him, after the grave sins that Allah has prohibited, is that he should die in debt leaving not enough to clear it."[2]

COMMENTARY: Dying with debt remaining payable and being insolvent is called the greatest sin after grave sins because the letter are forbidden while borrowing in itself is not disallowed. Rather, according to some ahadith it is *mustahab (desirable)* to borrow to meet one's real needs. It is disallowed at certain times because sometimes rights of people are violated and their property is wasted when the debtor does not repay the debt. In such cases borrowing becomes a sin.

Some people say that dying in insolvency with a debt over one is among those grave sins that are other than the more notorious than grave sins, like polytheism, adultery etc.

FORBIDDEN TO COMPROMISE ON THE UNLAWFUL

(٢٩٢٣) وَعَنْ عَمْرِو بْنِ عَوْفٍ الْمُزَنِيِّ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ الصُّلْحُ جَائِزٌ بَيْنَ الْمُسْلِمِيْنَ اِلَّا صُلْحًا حَرَّمَ حَلَالًا اَوْ اَحَلَّ حَرَامًا وَالْمُسْلِمُوْنَ عَلٰى شُرُوْطِهِمْ اِلَّا شَرْطًا حَرَّمَ حَلَالًا اَوْ اَحَلَّ حَرَامًا رَوَاهُ التِّرْمِذِيُّ وَابْنُ مَاجَةَ وَاَبُوْدَاوٗدَ وَانْتَهَتْ رِوَايَتُهٗ عِنْدَ قَوْلِهٖ عَلٰى شُرُوْطِهِمْ۔

2923. Sayyiduna Amr ibn Awf al-Muzami رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "Reconciliation between Muslim is permitted but not that which makes lawful to be unlawful and the forbidden to be permissible. And, Muslims must be faithful to the conditions they have accepted, but not a condition that turns the lawful into unlawful and the unlawful into lawful."[3]

COMMENTARY: A forbidden reconciliation can be like a man compromising with his wife not to have sexual intercourse with his second wife. This is not a correct reconciliation because he makes unlawful to himself that which is perfectly allowed.

An example of a compromise that makes what is unlawful to be lawful is to agree to consume wine or pork. In this case, a person makes it lawful for himself that which is

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[1] Tirmidhi # 1578, Ibn Majah # 2412, Darami # 2592, Musnad Ahmad 5-276.

[2] Abu Dawud # 3342, Musnad Ahmad 4-392.

[3] Tirmidhi # 1357, Abu Dawud # 3594, Ibn Majah # 2353, Musnad Ahmad # 8792.

perfectly unlawful.
Example of conditions are to assure one's wife that one would not have sexual intercourse with one's female slave though that is allowed. Or, a man may stipulate that he would marry his wife's sister while his wife is alive and their matrimonial relations are intact, though he makes lawful that which is clearly forbidden.
This hadith does not seem to belong to this chapter. However, it does happen in buying and selling that when anyone becomes insolvent, compromise has to be made and condition are to be placed now and then. So this hadith is placed here.

SECTION III اَلْفَصْلُ الثَّالِثُ

THE PROPHET صلى الله عليه وسلم BOUGHT TROUSERS

(٢٩٢٤) عَنْ سُوَيْدِ بْنِ قَيْسٍ قَالَ جَلَبْتُ اَنَا وَمُخَرَّفَةُ الْعَبْدِيُّ بَزًّا مِنْ هَجَرٍ فَاَتَيْنَا بِهٖ مَكَّةَ فَجَاءَنَا رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَمْشِيْ فَسَاوَمَنَا بِسَرَاوِيْلَ فَبِعْنَاهُ وَثُمَّ رَجُلٌ يَزِنُ بِالْاَجْرِ فَقَالَ لَهٗ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ زِنْ وَارْجِحْ۔ رَوَاهُ اَحْمَدُ وَاَبُوْدَاوٗدَ وَالتِّرْمِذِيُّ وَابْنُ مَاجَةَ وَالدَّارِمِيُّ وَقَالَ التِّرْمِذِيُّ هٰذَا حَدِيْثٌ حَسَنٌ صَحِيْحٌ۔

2924. Sayyiduna Suwayd ibn Qays رضى الله عنه narrated that he and Mukhrafah al-Abdi رضى الله عنه bought some clothing from Hajar and brought it to Makkah. Allah's Messenger صلى الله عليه وسلم walked up to them and struck a deal for trousers. They sold them to him Allah's Messenger صلى الله عليه وسلم then said to the man who was weighing things for the people against wages, "weigh and tilt the scale (to give them more silver coins than agreed).[1]

COMMENTARY: Sayyiduna Abu Layla رحمه الله narrated that from Sayyiduna Abu Hurayrah رضى الله عنه that the Prophet صلى الله عليه وسلم bought those trousers for four dirhams. The ahadith do establish that he bought the trousers but do not say whether he wore them or not.
Also he paid to the seller more than the agreed sum of money.
This hadith, too, does not belong here. However, it is placed here to show that more than the agreed may be paid to the seller who may be poor.

ALLOWED TO PAY MORE THAN DEBT PROVIDED NOT AGREED BEFORE HAND

(٢٩٢٥) وَعَنْ جَابِرٍ قَالَ كَانَ لِيْ عَلَى النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ دَيْنٌ فَقَضَانِيْ وَزَادَنِيْ۔ (رواه ابوداؤد)

2925. Sayyiduna Jabir رضى الله عنه narrated that he had a debt receivable from the Prophet صلى الله عليه وسلم he repaid it to Jabir رضى الله عنه and gave him something over it.[2]

COMMENTARY: The two foregoing narrations make it clear that if anyone returns a demand (like debt, etc) against him, he may give something extra on his own without that being agreed previously. This extra is not interest which is a condition placed by the creditor when he extends a loan. That condition is interest and is forbidden.

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[1] Tirmidhi # 1309, Abu Dawud # 3336, Nasa'i # 2592, Darimi # 2585, Musnad 4. 352.
[2] Abu Dawud # 3347, Nasa'i # 4591.

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REPAY DEBT QUICKLY

(٢٩٢٦) وَعَنْ عَبْدِاللّٰهِ بْنِ اَبِيْ رَبِيْعَةَ قَالَ اسْتَقْرَضَ مِنِّي النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَرْبَعِيْنَ اَلْفًا فَجَاءَهٗ مَالٌ فَدَفَعَهٗ اِلَيَّ وَقَالَ بَارَكَ اللّٰهُ تَعَالٰى فِيْ اَهْلِكَ وَمَالِكَ اِنَّمَا جَزَاءُ السَّلَفِ الْحَمْدُ وَالْاَدَاءُ۔ (رواه النسائی)

2926. Sayyiduna Abdullah ibn Abu Rairah رضی اللہ عنہ narrated: The Prophet صلی اللہ علیہ وسلم borrowed from me forty thousand (perhaps, dirham). When he received abundant property (or receipts), he repaid (all that) to me, saying: (بارک اللہ تعالیٰ فی اھلک ومالک) "[may Allah, the exalted, bless you and your family and your property]. The reward for a loan is nothing but gratitude and repayment."[1]

REWARD ACCRUES TO ONE WHO GIVES RESPITE

(٢٩٢٧) وَعَنْ عِمْرَانَ بْنِ حُصَيْنٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ كَانَ لَهٗ عَلٰى رَجُلٍ حَقٌّ فَمَنْ اَخَّرَهٗ كَانَ لَهٗ بِكُلِّ يَوْمٍ صَدَقَةٌ۔ (رواه احمد)

2927. Sayyiduna Imran ibn Husayn رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "If anyone has a sight (like a debt) receivable from a man and he puts it off (giving respite to the man) then he earns a reward of sadaqah (charity) for every day (that he allows to the other)."[2]

DEBT IS PAID FIRST OF ALL

(٢٩٢٨) وَعَنْ سَعْدِ بْنِ الْاَطْوَلِ قَالَ مَاتَ اَخِيْ وَتَرَكَ ثَلَاثَمِائَةِ دِيْنَارٍ وَتَرَكَ وَلَدًا صِغَارًا فَاَرَدْتُ اَنْ اُنْفِقَ عَلَيْهِمْ فَقَالَ لِيْ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِنَّ اَخَاكَ مَحْبُوْسٌ بِدَيْنِهٖ فَاقْضِ عَنْهُ قَالَ فَذَهَبْتُ فَقَضَيْتُ عَنْهُ ثُمَّ جِئْتُ فَقُلْتُ يَارَسُوْلَ اللّٰهِ قَدْقَضَيْتُ عَنْهُ وَلَمْ تَبْقَ اِلَّا امْرَاَةٌ تَدَّعِيْ دِيْنَارَيْنِ وَلَيْسَتْ لَهَا بَيِّنَةٌ قَالَ اَعْطِهَا فَاِنَّهَا صَادِقَةٌ۔ (رواه احمد)

2928. Sayyiduna Sa'd ibn al-Atwal رضی اللہ عنہ narrated that his brother died leaving behind three hundred dinars and some young kids (children). He decided to put them for their upkeep, but Allah's Messenger صلی اللہ علیہ وسلم instructed him to repay his brother's debt who was confined because of it. So, he went and did that and returned to confirm to Allah's Messenger صلی اللہ علیہ وسلم that he had done that but only one woman remained with a claim of two dinars for which she could produce no proof. He said, "Give that (money demanded to her, for, she is truthful."[3]

COMMENTARY: The ruler is allowed to use his information and issue a command as the Prophet صلی اللہ علیہ وسلم did with Sa'd رضی اللہ عنہ.

This hadith is evidence that debt repayment takes precedence over inheritance.

MARTYRDOM AFTER MARTYRDOM MANY TIMES WILL NOT ATONE FOR DEBT

(٢٩٢٩) وَعَنْ مُحَمَّدِ بْنِ عَبْدِاللّٰهِ بْنِ جَحْشٍ قَالَ كُنَّا جُلُوْسًا بِفِنَاءِ الْمَسْجِدِ حَيْثُ يُوْضَعُ الْجَنَائِزُ وَرَسُوْلُ

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[1] Nasa'i # 4683, Ibn Majah # 2424.

[2] Musnad Ahmad 4-442.

[3] Musnad Ahmad 4-136.

اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ جَالِسٌ بَيْنَ ظَهْرَيْنَا فَرَفَعَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ بَصَرَهٗ قِبَلَ السَّمَاءِ فَنَظَرَ ثُمَّ طَأْطَأَ بَصَرَهٗ وَوَضَعَ يَدَهٗ عَلٰى جَبْهَتِهٖ قَالَ سُبْحَانَ اللّٰهِ سُبْحَانَ اللّٰهِ مَاذَا نَزَلَ مِنَ التَّشْدِيْدِ قَالَ فَسَكَتْنَا يَوْمَنَا وَلَيْلَتَنَا فَلَمْ نَرَ إِلَّا خَيْرًا حَتّٰى اَصْبَحْنَا قَالَ مُحَمَّدٌ فَسَأَلْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَا التَّشْدِيْدُ الَّذِيْ نَزَلَ قَالَ فِي الدَّيْنِ وَالَّذِيْ نَفْسُ مُحَمَّدٍ بِيَدِهٖ لَوْ اَنَّ رَجُلًا قُتِلَ فِيْ سَبِيْلِ اللّٰهِ ثُمَّ عَاشَ ثُمَّ قُتِلَ فِيْ سَبِيْلِ اللّٰهِ ثُمَّ عَاشَ ثُمَّ قُتِلَ فِيْ سَبِيْلِ اللّٰهِ ثُمَّ عَاشَ وَعَلَيْهِ دَيْنٌ مَادَخَلَ الْجَنَّةَ حَتّٰى يُقْضٰى دَيْنُهٗ۔ رَوَاهُ اَحْمَدُ وَفِيْ شَرْحِ السُّنَّةِ نَحْوُهٗ۔

2929. Sayyiduna Muhammad ibn Abdullah ibn Jahsh رضی اللہ عنہ said, "we were sitting in the courtyard of the mosque (Masjid Nabawi) where the biers were put down (for *salah (prayer)* over them). Allah's Messenger صلی اللہ علیہ وسلم was sitting with us. Suddenly, he raised his sight to the sky and looked. Then he lowered his sight, put his hand on his forehead and said (سبحن اللہ) - (سبحن اللہ) (Allah is without blemish! Allah is without blemish!) what has come down of the dreadful thing!' We did not say any thing that day and night and nothing but good prevailed till we came to morning."

Muhammad رضی اللہ عنہ added, "Then I asked Allah's Messenger صلی اللہ علیہ وسلم, 'What is the dreaded that has come down?' He said, "It concerns debt. By Allah in whose hand is the soul of Muhammad if a man was slain in Allah's path and again rose up alive, and was slain again in Allah's path and revived again, and was slain again and arose alive once more, having a debt payable by him, then he would not get admittance to paradise till his debt was settled.'[1]

This is a similar tradition is *Sharh us sunnah (Prophet's صلی اللہ علیہ وسلم practice).*

COMMENTARY: This hadith is evidence that the Prophet صلی اللہ علیہ وسلم and his sahabah (Prophet's Companions) رضی اللہ عنہم did not offer the funeral *salah (prayer)* in the mosque. They offered it outside the mosque, elsewhere.

CHAPTER - X

PARTNERSHIP & AGENCY بَابُ الشِّرْكَةِ وَالْوَكَالَةِ

In common parlance, shirkah is to join together. In the terminology of Shari'ah (divine law), it is a partnership or a contract between two (or more) people in which they are partners in the capital as well as in profits.

There are two kinds of shirkah. Shirkatu milk (شرکۃ ملک) and shirkatu uqd (شرکۃ عقد).

Shirkatu milk applies where two are more person are proprietors of one thing. They may have purchased it, or it may have been presented to them as a gift (which they accept), or it may have been left to them be bequest (which they accept). Or, it is where two person acquire jointly something that is permissible, for example, two men may hunt together and

[1] Musnad Ahmad 5-289.

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the game will be their joint property. Or, where their separate properties of the same kind may be united in such a way that one is not distinguishable from the other, or where they unite their properties deliberately. These are examples of Shirkatu milk.

In this kind of partnership, each partner is like a stranger with respect to the other's share. But, either partner is allowed to sell his own share to the other partner or to others without his partner's consent, excepting only in the last two cases (when their separate properties unite together, or when they are combined with one another deliberately). In both these instances, neither partner can lawfully sell the share of the other to a third person without his partner's permission.

Shirakatu uqd or partnership by contract is effected by proposal and consent. It is to combine or unite the rights and properties of one another. A person may say to another, "I make you my partner in such a property, right and transactions, meaning business." And, the other confirms, "I consent." There should be no condition as defeats the basic principles of Shirkah like one of them stipulating that he would take away so much money from the profits of their business each month. This condition is totally against a combined partnership and defeats the basic principles and objectives of Shirkah.

There are four kinds of Shirakatu uqd:

(1) Shirkatu mufawidah or partnership by reciprocacy.
(2) Shirkatu inan (عنان), or partnership in traffic or in purchase and sale.
(3) Shirkatu Sana'I (صنائع) or shirakatu taqbil or partnership in arts & industry.
(4) Shirakatu wujooh or partnership on personal credit (without any capital)

(1)**SHIRAKATU MUFAWIDAH:** Two person agree to be partners in disposal of property and debt as agent of one another and as guarantors of one another. However both should have a common religion and be equal, so there can be no partnership between a Muslim and a dhimmi, a slave and a free man, a minor and an adult, because both have to be equal status and station.

It is necessary to explain the word mufawidah (equality) and its demands. It is not necessary for the partners to unite or give their properties or goods at the time of the contract or agreement. If anyone of them buys anything, apart from the substance of his family, of food and clothing, then it will belong to all the partners.

Imam Muhammad رحمه الله contends that shirakatu Mufawidah and Shirkatu inan can be correct only in such capital and property as is in the shape of prevailing currency that is legal tender. It is also allowed in gold and silver bars (bullions) and pieces, provided they are used in transactions. If anyone of the partners inherits or gets ownership in some other way of such property as is valid for shirakatu mufawidah, then shirkatu mufawidah becomes void and it will become shirakatu inan. However, if any of the partners inherits such property in which shirakatu mufawidah is not valid, like thing, piece of land, house, etc then shirakatu mufawidah survives.

(2)**SHIRKATU INAN:** Two person enter into partnership for a particular business, like trading, and both of them are at par and equal in the foregoing things, like use religion and sect, etc. or they are not par and equal. While this partnership make one another's agency necessary, if does not necessitate their guarantee of one another. Of course, the partners while they are agents mutually may be guarantors and trustees too but in only the affair in which they are partners.

(3)**SHIRAKATU SANA'I OR TAQBIL:** Two artisans or professionals become partners on

condition that they would undertake work in partnership and do it together, like tailoring, dyeing, etc, and they would share the wages. If they agree to do the work equally but to divide their profit two third and one-third then this condition is allowed whichever of the two gets business, both will have to do it equally and it cannot be that the one who is given work (by the customer) will have to do it by himself. Also, the person who gives them work may ask either of them to hand over the finished work and either of them may receive the wages from their customer who will be absolved of his responsibility. Both the partners will share the profit accruing from their work whether they both do it or either of them does that piece of work.

(4)**SHIRAKATU WUJOOH:** Two persons who have no asset of their own agree to engage in business jointly by using their own influence to bring goods on credit and sell them and then drive the profit between them.

If they agree to the conditions of Mufawidah then that would be correct but if they do not include the condition of mufawidah and leave it independent then it will be shirkatu inan. This partnership makes attorney ship necessary for goods purchased for business. They will be attorneys of the another concerning their trade merchandise. The ratio of profit will be according to their share in the merchandise purchase for their trade. Any condition that reduces or increases profit will be void. They cannot share equally in the stock or trade goods and yet have different ratio of share in profits. The reason for his is that profit is according to ownership. Each can have the some share of profit as his share of ownership of goods is. Profit is deserved according to responsibility which is turn depends on the ownership of that which is bought. Profit will be according to ownership.

Partnership is not allowed where they agency is defective. Examples are chopping wood, cutting grass, hunting and getting water. Whichever of the two fetches water will be its owner. If the other helps him then he will be entitled to the customary wages.

Wakalah or agency is to make another one's substitute in one's rights and property (meaning in buying and selling or transactions). It is correct when one who appoints an agent is the owner of what he deals in, and the agent must be knowledgeable and aware of t hat for which he is made an agent.

A person is allowed to appoint an attorney for that thing which he himself is allowed to do. On the same basis, that which a person is not allowed to do, he cannot appoint on attorney for that. For example, it is disallowed to appoint an attorney to transact in wine, interest or any other forbidden things.

It is allowed to appoint an attorney to give or receive all kinds of rights, Similarly, it is allowed to appoint on attorney to get possession of one's rights. However, it is not permitted to appoint an attorney in matters of hudood (prescribed punishments) and qisas (retribution). Even if the person himself is not present, it is not proper to appoint a representive for such things.

Imam Abu Hanifah رحمه الله said that it is not allowed to appoint an agent (or attorney) to represent is disposing of rights without the permission of the second party. However, it is allowed, if the principal (who appoints the attorney) is ill or away at a distance of three manzils or more.

And, Imam Abu Yusuf رحمه الله and Imam Muhammad رحمه الله say that it is allowed to appoint an attorney to oversee the rights even without the permission of the second party.

These basic information about shirkah and wakalah and derived from the books of fiqh

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(Islamic jurisprudence). Scholars may see those books.[1]

SECTION I اَلْفَصْلُ الْاَوَّلُ

PARTNERSHIP IN BARGAIN

(۲۹۳۰) عَنْ زُهْرَةَ بْنِ مَعْبَدٍ اَنَّهٗ كَانَ يَخْرُجُ بِهٖ جَدُّهٗ عَبْدُاللّٰهِ بْنُ هِشَامٍ اِلَى السُّوْقِ فَيَشْتَرِى الطَّعَامَ فَيَلْقَاهُ ابْنُ عُمَرَ وَابْنُ الزُّبَيْرِ فَيَقُوْلَانِ لَهٗ اَشْرِكْنَا فَاِنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَدْدَعَا لَكَ بِالْبَرَكَةِ فَيُشْرِكُهُمْ فَرُبَّمَا اَصَابَ الرَّاحِلَةَ كَمَا هِيَ فَيَبْعَثُ بِهَا اِلَى الْمَنْزِلِ وَكَانَ عَبْدُاللّٰهِ ابْنُ هِشَامٍ ذَهَبَتْ بِهٖ اُمُّهٗ اِلَى النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَمَسَحَ رَأْسَهٗ وَدَعَالَهٗ بِالْبَرَكَةِ۔ (رواه البخارى)

2930. Sayyiduna Zuhrah ibn Ma'bad رحمه الله narrated that his grandfather Sayyiduna Abdullah ibn Hisham رضى الله عنه used to take him out to the market where he purchased grain. Sayyiduna Ibn Umar رضى الله عنه and Sayyiduna Ibn Az-Zubayr رضى الله عنه met him there often. They would request him to take them as (his) partners because the Prophet صلى الله عليه وسلم had prayed for a blessing on him. So, he would take them as his partners. He often earned a camel-load as profit which he sent home. Indeed Sayyiduna Abdullah ibn HIsham رضى الله عنه has been taken to the Prophet صلى الله عليه وسلم by his mother. He had stroked his head with his hand and had prayed for a blessing on him.[2]

SHARING WITH THE ANSAR BY THE MUHAJIR

(۲۹۳۱) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَتِ الْاَنْصَارُ لِلنَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اقْسِمْ بَيْنَنَا وَبَيْنَ اِخْوَانِنَا النَّخِيْلَ قَالَ لَا تَكْفُوْنَنَا الْمُؤْنَةَ وَنُشْرِكُكُمْ فِي الثَّمَرَةِ قَالُوْا سَمِعْنَا وَاَطَعْنَا۔ (رواه البخارى)

2931. Sayyiduna Abu Hurayrah رضى الله عنه narrated that the ansar requested the Prophet صلى الله عليه وسلم. "Divide the palm trees between us and our brothers (the muhajirs (emigrants))." He said, "No Rather, you do that upkeep for us (meaning, the muhajirs (emigrants)). We shall share with you the fruit" (meaning, only the produce not the trees). They submitted "we hear and we obey."[3]

COMMENTARY: When the emigrants left their belongings in Makkah and came to Madinah, the ansar (helpers, who were people of Madinah) offered to share their belongings with the Makkans. The ansar took upon themselves the responsibility to look after the muhajirs (emigrants) (emigrants). So, they are called ansar (helpers). The Prophet صلى الله عليه وسلم had established a fraternity between the two and the ansar had made the muhajirs (emigrants) their partners in their properties.

When they offered to share the palm trees too, the Prophet صلى الله عليه وسلم said to them that the emigrants would not be able to maintain them so they should retain them and maintain them and he would divide the fruit when it is produced.

It is *mustahab (desirable)* to help fellow Muslims and to work and behalf of them. Also,

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[1] See the Hidaya (English translation) v1 pp 540, Darul Isha'at Karachi.

[2] Bukhari # 2501.

[3] Bukhari # 2325.

Shirkah or sharing together is a correct thing.[1]

AN AGENT MAY BE APPOINTED

(٢٩٣٢) وَعَنْ عُرْوَةَ بْنِ اَبِي الْجَعْدِ الْبَارِقِيِّ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَعْطَاهُ دِيْنَارًا لِيَشْتَرِيَ لَهُ شَاةً فَاشْتَرٰى لَهُ شَاتَيْنِ فَبَاعَ اِحْدٰاهُمَا بِدِيْنَارٍ وَاَتَاهُ بِشَاةٍ وَّدِيْنَارٍ فَدَعَالَهُ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فِيْ بَيْعِهٖ بِالْبَرَكَةِ فَكَانَ لَوِاشْتَرَى تُرَابًا لَرَبِحَ فِيْهِ۔ (رواه البخاری)

2932. Sayyiduna Urwah ibn Abu Al-jad Al-Bariqi رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم gave him one dinar to buy a sheep for him. However, he bought two sheep for him, sold one of them for one dinar and brought to him one sheep and one dinar. Then, Allah's Messenger صلی اللہ علیہ وسلم invoked a blessing on him in his buying and selling. So, he prospered to the extent that if he had bought dust even that would have earned him profit.[2]

COMMENTARY: Ibn Malik رحمہ اللہ says that it is allowed to appoint an agent to conduct one's business dealings as also to transact all those things for which a deputy or a representative may take over.

If any one sells another's property without his consent, then the sale is effected but the owner's permission makes it correct. This is the contention of the Hanafis, but Imam Shafi'I رحمہ اللہ said that it is absolutely disallowed to sell anything without the permission of its owner even if he gives his permission afterwords.

SECTION II اَلْفَصْلُ الثَّانِيْ

ALLAH PROTECT TRUSTWORTHY PARTNERS

(٢٩٣٣) عَنْ اَبِيْ هُرَيْرَةَ رَفَعَهٗ قَالَ اِنَّ اللّٰهَ عَزَّوَجَلَّ يَقُوْلُ اَنَا ثَالِثُ الشَّرِيْكَيْنِ مَالَمْ يَخُنْ اَحَدُهُمَا صَاحِبَهٗ فَاِذَا خَانَهٗ خَرَجْتُ مِنْ بَيْنِهِمَا۔ رَوَاهُ اَبُوْدَاوٗدَ وَزَادَ رَزِيْنٌ وَجَاءَ الشَّيْطَانُ۔

2933. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that the hadith in a marfu form! Surely, Allah, mighty and glorious say, "I am between two partners as a third (watching over) till one of them does not deceive the other. When he deceives him, I go out from them."[3]

COMMENTARY: Till such time as partners in a venture are honest and faithful to each other, Allah protects them and blesses them. They prosper and he helps them, too.

However when they begin to cheat and dupe each other, Allah removes the shade of His mercy and blessing from them. The devil misleads them and they fall into loss.

Partnership in dealings particularly business, is *mustahab (desirable)*. It attracts such blessings as sole proprietorship does not get. As long as a person is engeaged in helping his brother, Allah's help is for him.

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[1] The hadith (2325) in Bukhari differs both in Arabic text And in translation (see v3 #.2325 Darus Salam, Riyadh).

[2] Bukhari # 3642, Tirmidhi # 1262, Abu Dawud # 3384, Ibn Majah # 2402, Musnad Ahmad 4. 375.

[3] Abu Dawud # 3383.

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DO NOT AVENGE THE DECEIVER WITH DECEPTION

(٢٩٣٤) وَعَنْهُ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اَدِّ الْاَمَانَةَ اِلٰى مَنِ ائْتَمَنَكَ وَلَا تَخُنْ مَنْ خَانَكَ۔ (رواه الترمذی، وابوداؤد، والدارمی)

2934. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that the prophet صلی اللہ علیہ وسلم said, "Return the trust to him who has placed it with you. But, do not deceive one who deceives you."[1]

COMMENTARY: If you do the same thing to one who deceives you then you are in the same class as he is –a deceiver! This excludes one who takes back his property from an unjust person who had taken his property and denies having taken it. Imam Abu Hanifah رضی اللہ عنہ said that he may take back the unjust man's property if it is of the same kind as his (and as much as his, the rest the must leave alone).

(٢٩٣٥) وَعَنْ جَابِرٍ قَالَ اَرَدْتُّ الْخُرُوْجَ اِلٰى خَيْبَرَ فَاَتَيْتُ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَسَلَّمْتُ عَلَيْهِ وَقُلْتُ اِنِّيْ اَرَدْتُّ الْخُرُوْجَ اِلٰى خَيْبَرَ فَقَالَ اِذَا اَتَيْتَ وَكِيْلِيْ فَخُذْ مِنْهُ خَمْسَةَ عَشَرَ وَسْقًا فَاِنِ ابْتَغٰى مِنْكَ اٰيَةً فَضَعْ يَدَكَ عَلٰى تَرْقُوَتِهٖ۔ (رواه ابوداؤد)

2935. Sayyiduna Jabir رضی اللہ عنہ narrated that he decided to go to Khaybar, so he met the Prophet صلی اللہ علیہ وسلم and offered him salaam (the greeting). Then he said, "I wish to go to Khaybar."He said, "when you meet my agent, take from him fifteen wasqs (camel-loads). If he seeks a sign from you put your h and on his caller bone."[2]

COMMENTARY: The Prophet صلی اللہ علیہ وسلم had arranged beforehand with his agent in Khaybar to ask for a sign from any one who came from him. It was to place hand on his clavicle. Sayyiduna Jabir رضی اللہ عنہ was to take fifteen wasqs of dates from him.

SECTION III اَلْفَصْلُ الثَّالِثُ

BLESSING IN SHIRKAH MUQARADAH

(٢٩٣٦) عَنْ صُهَيْبٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ ثَلَاثٌ فِيْهِنَّ الْبَرَكَةُ الْبَيْعُ اِلٰى اَجَلٍ وَالْمُقَارَضَةُ وَاِخْلَاطُ الْبُرِّ بِالشَّعِيْرِ لِلْبَيْتِ لَا لِلْبَيْعِ۔ (رواه ابن ماجة)

2936. Sayyiduna Suhayb رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Three things contain blessing (meaning that they have much good in them):
(1) To sell with time specified (meaning to allow the buyer time to pay)
(2) Muqaradah (mudarabah)
(3) To mix wheat and barley for domestic consumption (of oneself) but not for sale."[3]

COMMENTARY: Mudarabah is that a man gives his money or property to another to do business and he works. When any profit is received, they divide it between them.
Wheat and barley are mixed for domestic consumption to economise. However, this is disallowed for sale and is sinful.

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[1] Tirmidhi # 1268,. Abu Dawud # 1535, Darimi # 1597.

[2] Abu Dawud # 3632.

[3] Ibn Majah # 2289.

AN AGENT'S INITIATIVE

(٢٩٣٧) وَعَنْ حَكِيْمِ بْنِ حِزَامٍ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ بَعَثَ مَعَهٗ بِدِيْنَارٍ لِيَشْتَرِيَ لَهٗ بِهٖ اُضْحِيَّةً فَاشْتَرٰى كَبْشًا بِدِيْنَارٍ وَبَاعَهٗ بِدِيْنَارَيْنِ فَرَجَعَ فَاشْتَرٰى اُضْحِيَّةً بِدِيْنَارٍ فَجَاءَ بِهَاوَ بِالدِّيْنَارِ الَّذِيْ اسْتَفْضَلَ مِنَ الْاُخْرٰى فَتَصَدَّقَ رَسُوْلُ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ بِالدِّيْنَارِ فَدَعَا لَهٗ اَنْ يُّبَارَكَ لَهٗ فِيْ تِجَارَتِهٖ۔

(رواه الترمذی وابوداؤد)

2937. Sayyiduna Haakim ibn HIzam رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم sent him with a dinar to buy a sacrificial animal for him. He bought a sheep for one dinar and sold it for two. Then he returned and bought a sacrificial animal for one dinar. He came with it and with the dinar that he had saved from the other. Allah's Messenger صلی اللہ علیہ وسلم gave that dinar as sadaqah (charity) and invoked a blessing on him in his trading.[1] (See hadith # 2932)

SOME RULINGS ON PARTNERSHIP & AGENCY

Some basic things have been mentioned as introduction to this chapter on Shirkah and wakalah. Some rulings have followed in the commentaries of the ahadith. The chapter concludes, so we think it appropriate to mention some more necessary issue regarding this subject.

PARTNERSHIP CONCERN: The persons who constitute a partnership in a business concern can be of two forms.

(1) Each partner is the proprietor or owner and absolute authority, or the absolute authority only. This concern works on the mutual consultation of all the partners. Of this form are those four kinds mentioned in the introduction to this chapter: Shirkatu mufawidah, shirkatu inan, shirakatu taqbil and shirkatu wujooh.

(2) Some people combine to be partners and share holder in a business enterprise and they are bound by a set of laws rules and regulations. Each partner (shareholder) must regard himself without ownership. This form may be said to be like the current trading associations and joint stock companies.

The juristic ruling in this regards is:

1. The company should be run and its day to day affairs conducted, by one man or a committee of men who should be nominated from among the share-holders or from outside their body.
2. None of the share holders enjoys any authority but every one of them has the right of property.
3. All the shareholders as a single entity will be owner and authority and this single entity may be received by consensus or by a majority decision.
4. Any of these share-holders may become a servant or employee of his jointstock company.
5. None of the share-holders can separate (from the company) but may transfer his share through a gift or sale.
6. When the number of share holders becomes limited and complete and any of them desires to sell his share, the other share-holders will be given preference.
7. If a share is divided through inheritance or sale, etc. then the employees and officers of

[1] Tirmidhi # 1201, Abu Dawud # 3386

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the company will be compelled to endure deal with the heirs and rightful owners of t his share either with all of them jointly or through their agent. The group of partners of such a share will be considered to be a single entity.

8. The shareholders of the company will be bound to observe the rules that are drafted to run the company. However, it is a sin to frame a rule contrary to Shari'ah (divine law) and it is disallowed to obey it.

9. All such rules and regulations that are drafted to maintain discipline and order will be merely of the permissible kind. They will not overrun the laws and canons of Shari'ah (divine law).

10. The stipulation that the share-holders will not be responsible for a debt or loss in their individual capacity will be valid only when this is announced.

DISSOLUTION OF PARTNERSHIP: There are two reasons for winding up a partnership or trading or any activity conducted in the association of two people.

(1) Both parties agree to terminate their business.

(2) One of the two parties wishes to withdraw. He might die, lose sanity, has to surrender his assets so become capital-less or there is some other reason for withdrawal.

In all these cases the partnership will stand dissolved and division will be effective even if the heirs of the dead of the insane wish to retain it.

The juristic guidance in this regard is:

(1) All the demands (dues) must be settled first of all.

(2) All commitments must be honoured.

(3) The rights should be disbursed as though valuable property.

(4) The outstandings would be disbursed according to share of every shareholder as and when received and each shareholder will be considered to be the agent of the other and continue to demand and obtain (the outstandings).

(5) In case of the second reason for winding up two things must necessary observed: (a) the withdrawing party or his representative (heir, etc) will not be absolved of responsibilities, and (b) he will have no claim or right on the assets like property, goodwill, etc.

(6) The dissolution will have no effect no other companies apart from the prescribed law or ruler's directives because it is not concerned with any individual's death, insanity, etc.

DIVIDING AFTER DISSOLUTION: When the partnership dissolves and the assets, etc are disbursed to the outgoing partners or shareholders, these factors must be observed:

1. Allowance must be made for the demand on the company to be paid and the contracts must be honoured.

2. The rights and valuables must be evaluated. In case of dispute, it is permitted by Shari'ah (divine law) to decide by ballot.

3. The retiring party is not entitled to rights anymore but is not absolved of responsibility.

4. Demands of the company on others will remain as heretofore and will be distributed according to share as and when received.

RULES ABOUT AGENCY

(1) The agent and the principal must not be insane, minor, slave or confined.

(2) It is not allowed to appoint an agent for that which one does not own. Like

gathering grass or chopping wood from somewhere, fetching water or pearls from a river or collecting charity.

(3) It is allowed to an agent to work free, or ask for remuneration, or share in profits.

(4) In such actions in which, the agent may represent both himself and his principal, he is like the real person and can be plaintiff or defendant as in buying and selling. On the other h and, when he cannot represent himself, he has no concern with the rights of contract, like marriage, divorce.

(5) An agent cannot use authority as of the owner for his personal ends because he is only a trustee.

(6) The principal may dismiss his agent before he begins work or does something. Once the agent begin to take any action, he has no right but to accept and approve the works done by the agent.

(7) The agent is within his rights to hand over what ever he has brought for his principal only after receiving payment for it, but he cannot take it back after handing it over.

(8) As long as the agent does not withhold what he has brought, he is a trustee, but once he withholds it, he is a guarantor.

(9) An agent is not allowed to use the authority vested in him for his own needs.

MISCELLANEOUS RULINGS

1. If Zayd sends his servant to buy something from a shop and he purchases it on credit, the shopkeeper cannot demand payment from Zayd. He can ask the servant for it and he will ask Zayd for it if he has not paid him already. Similarly, if Zayd's servant sells for him something then he cannot demand payment from the purchaser who will pay to him from whom he has received it, But, if the buyer pays the money to Zayd of his own accord then it is allowed and if he does not pay him, Zayd cannot demand it, nor compel him.

2. If Zayd instructs his servant to buy for him one kilogram of wheat and he brings one and a half kilogram then Zayd is not bound to take the extra half kilogram. If he does not take it, the servant will have to keep it.

3. If an agent is instructed to buy something specific (like the goat belonging to so-and-so) then he cannot buy that for himself at the price given to him. However, it is allowed to him if he buys it for more than the price at which his principal had instructed him to buy. If the principal had mentioned no price beyond instructing him to buy the goat, then the agent is not allowed to buy it at all.

4. The agent bought a goat for Zayd but before he could give it to him, the goat died or was stolen, zayd will have to bear the coast of the goat. If Zayd alleges that his agent had bought it for himself, not for Zayd, then his word will not believed, provided Zayd had paid the agent for it beforehand. If Zayd had not paid him in advance and Zayd says on oath that his agent had bought it for himself then zayd will be believed and the agent will have to bear the loss of the goat. If Zayd does not say on oath then the agent will be believed.

5. If Zayd's servant buys for Zayd something at a higher price and there is not much of a difference, then Zayd will have to take it and pay for it. But, if the difference is much and no one would buy it at that high price then it is not *wajib (obligatory)* for Zayd to take it. If Zayd does not take it, the servant will be responsible for it.

6. If Zayd gives something to Bakr to sell then it is not allowed to Bakr to buy it himself and pay its price to Zayd similarly, if Zayd asks Bakr to buy something for him then Bakr is not allowed to give Zayd what he has with him and get from him its price.

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These may be done, however, if Zayd is told by Bakr explicitly that he takes that thing and he may give it to him, or Zayd may take what he has, but it is disallowed to do so without informing him.

7. If Zayd had sent his servant to bring for him goat's meat but he get s him beef then Zayd may or may not take it. Or if he sent him to bring potatoes but he gets onion, Zayd is at liberty to refuse to take that. If Zayd refuses to take it, his servant will have to keep it.

8. If Zayd sends two men to buy something for him from the market, then it is necessary for both of them to be present at the time of buying. It is not allowed for only one to buy the thing and if only one of them buys it, the transaction will be suspended, unless Zayd accepts the purchase by only one man.

9. If Zayd asks someone to buy for him something from the market and he deputes another person to buy it for him, then it Is not *wajib (obligatory)* for Zyad to take that thing. He has option to take it or refuse to take it. If that (Zayd's) man buys it himself then Zayd will have to take the thing.

DISMISSING THE AGENT

The agent may be dismissed any time before he discharge the responsibility assigned to him. For instance, Zayd asked someone to buy for him a goat, but soon reversed his decision and asked him not to buy it. If he buys it in spite of that, then Zayd need not keep that goat. But, if he had bought the animal before Zayd asked him not to buy then it is *wajib (obligatory)* for Zayd to take the goat from him, and pay him for that.

If Zayd does not forbid him directly but writes to him a letter to the effect or sends that message to him through someone, then too he is no more Zayd's agent.

If Zayd does not inform him but another man tells him that Zayd has removed him then this will be deemed to be a reliable information if that man is trustworthy and an adherent of Shari'ah (divine law), or if two men give him this information, and the agent will have been displaced. If it is not so, then the agent will continue to be in his assignment and if he has bought the goat, Zayd will have to keep it.

CHAPTER - XI

UNJUST & COMPULSORY APPROPRIATION AND ASSIGNING SOMETHING TO ANOTHER

بَابُ الْغَصْبِ وَالْعَارِيَةِ

Ghasab (غصب) is to 'snatch', In the terminology of Shari'ah (divine law) it is to appropriate someone's property unjustly and coercion, as distinct from stealing. The person who does it is Ghasib. The thing that is taken away unjustly is ma'sub (معصوب) whatever it be.

Aariyyah (عارية) is what is taken by request. In the terminology of Shari'ah (divine law) it is to make another the recipient of one's profit without seeking a return for it.

SECTION I

اَلْفَصْلُ الْاَوَّلُ

PUNISHMENT TO THE UNJUST SNATCHER

(٢٩٣٨) عَنْ سَعِيْدِ بْنِ زَيْدٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ اَخَذَ شِبْرًا مِنَ الْاَرْضِ ظُلْمًا فَاِنَّهٗ يُطَوَّقُهٗ يَوْمَ الْقِيَامَةِ مِنْ سَبْعِ اَرْضِيْنَ۔ (متفق علیه)

2938. Sayyiduna Sa'eed ibn Zayd رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم

said, "If anyone takes a span of land unjustly, then, on the day of resurrection, as much earth taken from the seven earths will be put round his neck."[1]

COMMENTARY: Apart from a social evil, to take away anything belonging to another unjustly is a severe crime in the eyes of Shari'ah (divine law) and so a grave sin. This is an example of the punishment Islam aware to those who usurp even so much as a span of land. Not merely that earth, but seven such will be garlanded round his neck (we seek refuge in Allah.)

Sharh us *sunnah (Prophet's* صلى الله عليه وسلم *practice)* explains the hadith thus: On the day of resurrection, Allah will cause him to be swallowed by the earth and the piece of the land that he had usurped would squeeze his neck as a garland on it.

MILK AN ANIMAL WITH OWNER'S PERMISSION

(٢٩٣٩) وَعَنِ ابْنِ عُمَرَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا يَحْلُبَنَّ اَحَدٌ مَاشِيَةَ اِمْرِئٍ بِغَيْرِ اِذْنِهٖ اَيُحِبُّ اَحَدُكُمْ اَنْ يُؤْتٰى مَشْرُبَتَهٗ فَتُكْسَرَ خِزَانَتُهٗ فَيُنْتَقَلَ طَعَامُهٗ وَاِنَّمَا تَخْزُنُ لَهُمْ ضُرُوْعُ مَوَاشِيْهِمْ اَطْعِمَاتِهِمْ۔ (رواه مسلم)

2939. Sayyiduna Ibn Umar رضى الله عنه **narrated that Allah's Messenger** صلى الله عليه وسلم **said, "Let no one milk another man's animal without his permission. Would one of you like that his storeroom should be intruded into and his provision taken away? It is only for them that the udders of their animals preserve their food."[2]**

COMMENTARY: The hadith says: "Do not keep your eyes on other's property with evil intention." Sharh us *sunnah (Prophet's* صلى الله عليه وسلم *practice)* quotes most of the ulama (Scholars) to say that only when one is compelled by hunger may be milk another's animal but only enough to help at that moment. Then he must pay for it promptly but if he has not the money at the time then later.

A JEALOUS MOTHER

(٢٩٤٠) وَعَنْ اَنَسٍ قَالَ كَانَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عِنْدَ بَعْضِ نِسَائِهٖ فَاَرْسَلَتْ اِحْدٰى اُمَّهَاتِ الْمُؤْمِنِيْنَ بِصَحْفَةٍ فِيْهَا طَعَامٌ فَضَرَبَتِ الَّتِي النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فِيْ بَيْتِهَا يَدَ الْخَادِمِ فَسَقَطَتِ الصَّحْفَةُ فَانْفَلَقَتْ فَجَمَعَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فِلَقَ الصَّحْفَةِ ثُمَّ جَعَلَ يَجْمَعُ فِيْهَا الطَّعَامَ الَّذِيْ كَانَ فِي الصَّحْفَةِ وَيَقُوْلُ غَارَتْ اُمُّكُمْ ثُمَّ حَبَسَ الْخَادِمَ حَتّٰى اُتِيَ بِصَحْفَةٍ مِنْ عِنْدِ الَّتِيْ هُوَ فِيْ بَيْتِهَا فَدَفَعَ الصَّحْفَةَ الصَّحِيْحَةَ اِلَى الَّتِيْ كُسِرَتْ صَحْفَتُهَا وَاَمْسَكَ الْمَكْسُوْرَةَ فِيْ بَيْتِ الَّتِيْ كَسَرَتْ۔ (رواه البخارى)

2940. Sayyiduna Anas رضى الله عنه **narrated that the Prophet** صلى الله عليه وسلم **was with one of his wives** رضى الله عنه **(Sayyidah Ayshah)** رضى الله عنه, **when another of the mothers of the faithful (Sayyidah Zaynab** رضى الله عنه **or Sayyidah Safiyah** رضى الله عنه **or Sayyidah Umm Salamah** رضى الله عنه**) sent a bowl in which was some food. She in whose house was the**

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[1] Bukhari # 3198, Muslim # 140. 1610, Tirmidhi # 1422, Darimi # 2606, Musnad Ahmad 1-187.

[2] Bukhari # 2435, Muslim # 13-1226, Abu Dawud # 2623, Ibn Majah # 2303, Muwattaa Maalik 17 (Ista'zan)

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Prophet صلى الله عليه وسلم struck the servant's hand (in such a way) that the bowl fell and broke into pieces. The prophet صلى الله عليه وسلم picked up the pieces of the bowl and collect ed the food it had contained into it. He said, "Your mother is envious." He made the servant wait till another bowl was presented by her in whose house he was. He gave the sound bowl to her whose bowl had been broken and retained the broken one in the house of the one who had broken it.[1]

COMMENTARY: The servant was the female slave who worked with Sayyidah Ayshash رضى الله عنها. The Prophet صلى الله عليه وسلم showed extreme forbearance and Humbleness and he was very kind and loving to his wives رضى الله عنهن. Also, he displayed much respect to Allah's blessing of food.

The Prophet صلى الله عليه وسلم made it sure that people did not think of the work of Sayyidah Ayshah رضى الله عنها as bad. He reminded them that any woman may envy a co-wife, that being human nature.

The hadith finds place in thus chapter because the bowl was broken intentionally. This is a kind of compulsory appropriation through it was for a different reason. Also, the food was sent as a gift but the bowl in which it was sent an aariyyah.

FORBIDDEN TO PLUNDER

(٢٩٤١) وَعَنْ عَبْدِاللّٰهِ بْنِ يَزِيْدَ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَنَّهٗ نَهٰى عَنِ النُّهْبَةِ وَالْمُثْلَةِ۔ (رواه البخارى)

2941. Sayyiduna Abdullah ibn Yazid رضى الله عنه narrated that the Prophet صلى الله عليه وسلم forbade plundering and mutilation.[2]

COMMENTARY: It is forbidden to plunder anyone's property Muslim or non Muslim. It violates right of fellowmen and creates chaos and disorder in society.

Mutilation is to cut off limbs of the body. Shari'ah (divine law) has forbidden it. It amounts to spoiling Allah's creation.

STEALING FROM PILGRIMS

(٢٩٤٢) وَعَنْ جَابِرٍ قَالَ انْكَسَفَتِ الشَّمْسُ فِيْ عَهْدِ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَوْمَ مَاتَ اِبْرَاهِيْمُ ابْنُ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَصَلّٰى بِالنَّاسِ سِتَّ رَكَعَاتٍ بِاَرْبَعِ سَجَدَاتٍ فَانْصَرَفَ وَقَدْ اٰضَتِ الشَّمْسُ وَقَالَ مَا مِنْ شَيْءٍ تُوْعَدُوْنَهٗ اِلَّا قَدْرَاَيْتُهٗ فِيْ صَلَاتِيْ هٰذِهٖ لَقَدْ جِيْءَ بِالنَّارِ وَذٰلِكَ حِيْنَ رَاَيْتُمُوْنِيْ تَاَخَّرْتُ مَخَافَةَ اَنْ يُصِيْبَنِيْ مِنْ لَفْحِهَا وَحَتّٰى رَاَيْتُ فِيْهَا صَاحِبَ الْمِحْجَنِ يَجُرُّ قُصْبَهٗ فِي النَّارِ وَكَانَ يَسْرِقُ الْحَاجَّ بِمِحْجَنِهٖ فَاِنْ فُطِنَ لَهٗ قَالَ اِنَّمَا تَعَلَّقَ بِمِحْجَنِيْ وَاِنْ غُفِلَ عَنْهُ ذَهَبَ بِهٖ وَحَتّٰى رَاَيْتُ فِيْهَا صَاحِبَةَ الْهِرَّةِ الَّتِيْ رَبَطَتْهَا فَلَمْ تُطْعِمْهَا وَلَمْ تَدَعْهَا تَاْكُلُ مِنْ خَشَاشِ الْاَرْضِ حَتّٰى مَاتَتْ جُوْعًا ثُمَّ جِيْءَ بِالْجَنَّةِ وَذٰلِكَ حِيْنَ رَاَيْتُمُوْنِيْ تَقَدَّمْتُ حَتّٰى قُمْتُ فِيْ مَقَامِيْ وَلَقَدْ مَدَدْتُ يَدَيَّ وَاَنَا اُرِيْدُ اَنْ اَتَنَاوَلَ مِنْ ثَمَرِهَا لِتَنْظُرُوْا اِلَيْهِ ثُمَّ بَدَالِيْ اَنْ لَا اَفْعَلَ۔ (رواه مسلم)

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[1] Bukhari # 5225, Nasa'i # 3955, Musnad Ahmad 3-263.

[2] Bukhari # 2474.

2942. Sayyiduna Jabir رضى الله عنه narrated that the sun was eclipsed in the time of Allah's Messenger صلى الله عليه وسلم on the day Ibrahim, his son, died. He offered *salah (prayer)* leading the people through six ruku (bowings) and four sajdah (prostrations),[1] and finished (the *salah (prayer)*) as the sun emerged from the eclipse. Then he said, "All that you have been promised (of paradise and hell), I have seen during this *salah (prayer)* of mine. Hell was brought (before me). That was when you saw me move back lest some of its heat cover me. I saw in it the one with the etched stick (Amr ibn Luhayy) drag his intestines in the fire. He stole (the things) of the pilgrims with his etched stick. If he was detected, he would say 'If entangled to my stick by itself, "If he was not seen, he went off with it. I saw too the woman owner of the cat which she had tied up. She neither fed it nor allowed it to go and eat the insects on the earth till it died of hunger. Then paradise was brought (before me). That was when you saw me lean forward. Then I stood still in my place and stretched out my hand that I might pick some of its fruit and you might see it. But, it dawned on me that I should not do it (So that your belief in the unseen may not falter)."[2]

COMMENTARY: We lean from this hadith:

(i) Paradise and hell are in existence.

(ii) It is *sunnah (Prophet's صلى الله عليه وسلم practice)* to move away from the place where punishment is being given and destruction is likely.

(iii) Some people are already being punished in hell.

(iv) A slight movement in *salah (prayer)* (or action) does not make *salah (prayer)* invalid. The Prophet صلى الله عليه وسلم leaned forward and drew back on seeing paradise and hell during the *salah (prayer)*.

MAY BORROW AN ANIMAL

(٢٩٤٣) وَعَنْ قَتَادَةَ قَالَ سَمِعْتُ اَنَسًا يَقُوْلُ كَانَ فَزَعٌ بِالْمَدِيْنَةِ فَاسْتَعَارَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَرَسًا مِنْ اَبِيْ طَلْحَةَ يُقَالُ لَهُ الْمَنْدُوْبُ فَرَكِبَ فَلَمَّا رَجَعَ قَالَ مَا رَأَيْنَا مِنْ شَيْءٍ وَاِنْ وَجَدْنَاهُ لَبَحْرًا۔ (متفق عليه)

2943. Sayyiduna Qatadah رضى الله عنه narrated that he heard Sayyiduna Anas رضى الله عنه say that (once) fear griped Madinah. So, the Prophet صلى الله عليه وسلم borrowed a horse called al-Mundub (lazy) from Sayyiduna Abu Talhah رضى الله عنه. He rode it. When he returned, he said, "I found nothing (of alarm). I found, however, that the horse could run as swiftly as a river."[3]

COMMENTARY: It is allowed to borrow an animal from someone and to name an animal. It is also allowed to name equipment of war.

SECTION II اَلْفَصْلُ الثَّانِيْ

BARREN LAND BELONGS TO HIM WHO MAKES IT FERTILE

(٢٩٤٤-٢٩٤٥) عَنْ سَعِيْدِ بْنِ زَيْدٍ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَنَّهُ قَالَ مَنْ اَحْيٰى اَرْضًا مَيْتَةً فَهِيَ لَهُ وَلَيْسَ

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[1] In two raka'at, he made three bowing and two prostrations in each, making them six and four.

[2] Muslim # 10. 904, Musnad Ahmad 3-318.

[3] Bukhari # 2627, Muslim # 49-2307, Abu Dawud # 4988, Tirmidhi # 1691, Musnad Ahmad 3. 171.

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لِعِرْقٍ ظَالِمٍ حَقٌّ۔ رَوَاهُ اَحْمَدُ وَالتِّرْمِذِيُّ وَاَبُوْدَاوٗدَ وَ رَوَاهُ مَالِكٌ عَنْ عُرْوَةَ مُرْسَلًا وَقَالَ التِّرْمِذِيُّ هٰذَا حَدِيْثٌ حَسَنٌ غَرِيْبٌ۔

2944. Sayyiduna Sa'eed ibn Zayd رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "If anyone revives a dead land (meaning, cultivate an infertile land) then it belongs to him, but if anyone wrongfully plants (a tree) on a land already cultivated then he gets no right on it."[1]

2945. Sayyiduna Urwah رضی اللہ عنہ narrated that it in a mursal form.[2]

COMMENTARY: The person who revives an infertile, barren land owns it if it is not already a Muslim's property nor is it an amenity plot in a city or a village for animals, to stack and pile hay, etc. for washroom, or for any common good. Imam Abu Hanifah رحمہ اللہ holds that permission of the government is essential. Imam Shafi'I رحمہ اللہ, Imam Ahmad رحمہ اللہ and of the Hanafis Imam Abu Yusuf رحمہ اللہ and Imam Muhammad رحمہ اللہ - all say that permission is not necessary. Their arguments may be seen in books of fiqh (Islamic jurisprudence).

If anyone plants or cultivates another person's fertile land then he does not become its owner because of that.

PROPERTY OF OTHER PEOPLE

(٢٩٤٦) وَعَنْ اَبِيْ حُرَّةَ الرَّقَاشِيِّ عَنْ عَمِّهٖ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَلَا لَا تَظْلِمُوْا اَلَا لَا يَحِلُّ مَالُ امْرِءٍ اِلَّا بِطِيْبِ نَفْسٍ مِنْهُ۔ رَوَاهُ الْبَيْهَقِيُّ فِيْ شُعَبِ الْاِيْمَانِ وَالدَّارُ قُطْنِيُّ فِي الْمُجْتَبٰى۔

2946. Sayyiduna Abu Hurayrah Ar-Raqashi رحمہ اللہ narrated on the authority of his paternal uncle that Allah's Messenger صلی اللہ علیہ وسلم said, "Do not oppress anyone. And, know! The property of another is not lawful unless it is with his willingness."[3]

PLUNDERER IS UNWORTHY OF ISLAMIC FRATERNITY

(٢٩٤٧) وَعَنْ عِمْرَانَ بْنِ حُصَيْنٍ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَنَّهٗ قَالَ لَا جَلَبَ وَلَا جَنَبَ وَلَا شِغَارَ فِي الْاِسْلَامِ وَمَنِ انْتَهَبَ نُهْبَةً فَلَيْسَ مِنَّا۔ (رواه الترمذی)

2947. Sayyiduna Imran ibn Husayn رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "There is no jalaba, no janaba and no Shighar in Islam and he who plunders is not one of us."[4]

EXPLANATION: Jalab and Janab may refer to racing or to sadaqah (charity). Jalab is that one man runs after a horse urging it forward in a race between two horses. Janab is to keep a spare horse along in case the one that is ridden get tired it may be replaced.

Or, if it is sadaqah (charity), jalaba is that the collector should encamp outside habitation and not go to the people. He must send a messenger to the inhabitants to say that whoever is liable to pay zakah (Annual due charity) must bring his zakah (Annual due charity) to

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[1] Tirmidhi # 1383, Abu Dawud # 3078.

[2] Muwatta Maalik # 26 (al-Aqdiyah).

[3] Musnad Ahmad 5-72, Bayhaqi in Shu'ab al Eeman, Daraqutni in al-Mujtaba.

[4] Tirmidhi # 1126, Abu Dawud # 2581, Nasa'i # 3832, Musnad Ahmad 4. 439.

him outside the city or village limits.
Janab, in this case, is that the payer takes away his property to a distance from his house and informs the zakah (Annual due charity) collector get his zakah (Annual due charity) from him at that place.
This has been mentioned previously in the Book of Zakah (Annual due charity). (see hadith # 1785) The two things, jalab and janab are disallowed here too whether they mean racing or sadaqah (charity) (zakah (Annual due charity)).
Shighar is that a man marries his sister or daughter to someone without fixing a dower but on condition that the dower would be that the other man marry his sister or daughter to him. The hadith declares this kind of reciprocal marriage as contrary to Islam. Most u lama say that such a contract is void. Imam Abu Hanifah رحمه الله and Sufyan رحمه الله say that this marriage is correct, but mahr mithal (proper dower) is *wajib (obligatory)*. Moreover anyone who does it is a sinner, so it should not be done.

DO NOT TAKE AWAY ANOTHER'S THING JOKINGLY

(٢٩٤٨) وَعَنِ السَّائِبِ بْنِ يَزِيْدَ عَنْ اَبِيْهِ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لَا يَأْخُذُ اَحَدُكُمْ عَصَا اَخِيْهِ لَاعِبًا جَادًّا فَمَنْ اَخَذَ عَصَا اَخِيْهِ فَلْيَرُدَّهَا اِلَيْهِ۔ رَوَاهُ التِّرْمِذِيُّ وَاَبُوْدَاوٗدَ وَ رِوَايَتُهٗ اِلٰى قَوْلِهٖ جَادًّا۔

2948. Sayyiduna Sa'ib ibn Yazid رحمه الله narrated on the authority of his father that the Prophet صلى الله عليه وسلم said, "Let none of you take away a staff of his brother in jest to keep it with himself. He who takes his brother's staff must return it to him."[1]

COMMENTARY: In this hadith, Staff is mentioned by way of example to show that even such little things should not be taken away from anyone.

STOLEN PROPERTY IF DISCOVERED, TAKE IT BACK

(٢٩٤٩) وَعَنْ سَمُرَةَ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ مَنْ وَجَدَ عَيْنَ مَالِهٖ عِنْدَ رَجُلٍ فَهُوَ اَحَقُّ بِهٖ وَيَتَّبِعُ الْبَيِّعَ مَنْ بَاعَهٗ۔ (رواه احمد وابوداؤد والنسائی)

2949. Sayyiduna Samurah رضى الله عنه narrated that the Prophet صلى الله عليه وسلم said, "He who find his property, exactly his, has perfect right to it. (and to take it back). The buyer must pursue the person who had sold it to him."[2]

COMMENTARY: If anyone finds his own thing that was lost or snatched from him, then he has every right to take it back from whoso has it. This person may then demand his money from the one who had sold it to him.

RETURN WHAT YOU TAKE

(٢٩٥٠) وَعَنْهُ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ عَلَى الْيَدِ مَا اَخَذَتْ حَتّٰى تُؤَدِّيَ۔ (رواه الترمذی وابوداؤدوابن ماجة)

2950. Sayyiduna Samurah رضى الله عنه narrated that the Prophet صلى الله عليه وسلم said, "The hand is responsible for what it takes till it returns it."[3]

COMMENTARY: It is *wajib (obligatory)* to return to the owner what is snatched from him even if he does not demand it. What is borrowed must be returned to the owner when it

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[1] Tirmidhi # 2167, Abu Dawud # 5003, Musnad Ahmad 4-221.

[2] Abu Dawud # 3531, Nasa'i # 461, Musnad Ahmad 5-13.

[3] Tirmidhi # 1270, Abu Dawud # 3561, Ibn Majah # 2400, Darimi # 2596, Musnad Ahmad 5-8.

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becomes returnable at the expiry of the period of borrowing. What is placed with anyone as a trust must be returned when it is demanded though it is not *wajib (obligatory)* to return it before demand.

DAMAGE TO PLANTS BY SOMEONE'S ANIMAL

(٢٩٥١) وَعَنْ حَرَامِ بْنِ سَعْدِ بْنِ مُحَيِّصَة اَنَّ نَاقَةً لِلْبَرَاءِ بْنِ عَازِبٍ دَخَلَتْ حَائِطًا فَاَفْسَدَتْ فَقَضٰى رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَنَّ عَلٰى اَهْلِ الْحَوَائِطِ حِفْظَهَا بِالنَّهَارِ وَاَنَّ مَا اَفْسَدَتِ الْمَوَاشِيْ بِاللَّيْلِ ضَامِنٌ عَلٰى اَهْلِهَا۔ (رواه مالك وابوداؤد و ابن ماجة)

2951. Sayyiduna Haraam ibn Sa'd ibn Muhayyisah رضی اللہ عنہ narrated that a she camel of Sayyiduna Bara ibn Azib رضی اللہ عنہ went into a garden and caused some damage. Allah's Messenger صلی اللہ علیہ وسلم passed judgement that the owners of the garden are responsible to guard it during the day, and that if the animals cause any damage during the night, the responsibility rests on their owners.[1]

COMMENTARY: The owner of the animal must pay damage for his animal's intrusion and mischief in the garden during the night. As for day time, the garden must be looked after by its owner and the animal's entry prevented. In spite of that, if the animal's owner is with it in the day time then he will be responsible for his animals doings whether it causes loss with its legs or with its month.

This is what Imam Maalik رحمہ اللہ and Imam Shafi'I رحمہ اللہ hold. The Hanafi's contention is that if the animal's owner is not with it then damages are not on him whether it is during day or during night.

(٢٩٥٢) وَعَنْ اَبِيْ هُرَيْرَةَ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ الرِّجْلُ جُبَارٌ وَقَالَ النَّارُ جُبَارٌ۔ (رواه ابوداؤد)

2952. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "The treading on (something) of the foot is forgiven." And, he said, "Burning of the fire is forgiven."[2]

COMMENTARY: No demand is made on an animal's owner if it crushes and, ruins something with its feet provided he is not with it at that time.

If anyone kindles fire for his need with no intention to hurt anyone and a spark of fire lands on another's property burning it down then he is not responsible in any way provided it is not breezy at that time. However, it he kindles the fire when the wind blows and causes it to spared then he will be made to pay damages.

MILK OF ANOTHER'S ANIMAL

(٢٩٥٣) وَعَنِ الْحَسَنِ عَنْ سَمُرَةَ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اِذَا اَتٰى اَحَدُكُمْ عَلٰى مَاشِيَةٍ فَاِنْ كَانَ فِيْهَا صَاحِبُهَا فَلْيَسْتَاْذِنْهُ وَاِنْ لَمْ يَكُنْ فِيْهَا فَلْيُصَوِّتْ ثَلَاثًا فَاِنْ اَجَابَهُ اَحَدٌ فَلْيَسْتَاْذِنْهُ وَاِنْ لَمْ يُجِبْهُ اَحَدٌ فَلْيَحْتَلِبْ وَلْيَشْرَبْ وَلَا يَحْمِلْ۔ (رواه ابوداؤد)

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[1] Abu Dawud # 3569, Ibn Majah # 2332, Muwatta Maalik # 37 (Al-Aqdiyah), Musnad Ahmad 5-436.

[2] Abu Dawud # 4592, Ibn Majah # 2676.

2953. Sayyiduna Hasan رحمه الله narrated on the authority of Sayyiduna Samurah رضى الله عنه that the Prophet صلى الله عليه وسلم said, "when one of you comes upon (milk yielding) animals and their owner is present there, he must get his permission (to drink their milk). And, if he is not there, then he must call three times and if anyone responds, he must get his permission. If no response is had, then he may draw some milk (only to quench his thirst for it) and drink it, but he must not carry any milk (with him)."[1]

COMMENTARY: This hadith applies to one who is in dire need of some food.

FRUIT FROM ANOTHER'S GARDEN

(٢٩٥٤) وَعَنِ ابْنِ عُمَرَ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ مَنْ دَخَلَ حَائِطًا فَلْيَأْكُلْ وَلَا يَتَّخِذْ خُبْنَةً۔ رَوَاهُ التِّرْمِذِيُّ وَابْنُ مَاجَةَ وَقَالَ التِّرْمِذِيُّ هٰذَا حَدِيْثٌ غَرِيْبٌ۔

2954. Sayyiduna Ibn Umar رضى الله عنه narrated that the Prophet صلى الله عليه وسلم said, "He who goes into (someone's) garden may eat (its fruit), but not take anything in his clothing."[2]

COMMENTARY: This is not a permission for everyone to eat from other people's property. Rather, like the previous hadith it gives permission to anyone driven by hunger and compulsion. Or, it applies to garden where it is not necessary to get the owner's permission.

BORROWED THINGS ARE RETURNABLE

(٢٩٥٥) وَعَنْ اُمَيَّةَ بْنِ صَفْوَانَ عَنْ اَبِيْهِ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اسْتَعَارَ مِنْهُ اَدْرَاعَهُ يَوْمَ حُنَيْنٍ فَقَالَ اَغَصْبًا يَا مُحَمَّدُ قَالَ بَلْ عَارِيَةً مَضْمُوْنَةً۔ (رواه ابوداؤد)

2955. Sayyiduna Umayyah ibn Safwan رضى الله عنه said that his father (Safwan who had not embraced Islam when this took place) narrated that the Prophet صلى الله عليه وسلم borrowed from him (several) coats of nail on the day of Hunayn. He asked, 'O Muhammad, do you take them by force?" He said, "Rather, I borrow them on assurance of returning them."[3]

COMMENTARY: At the time of the Battle of Hunayn, Safwan had not embraced Islam. So he put that question in a rude manner. Later, he become a Muslim رضى الله عنه.

Sayyiduna Shurayh, Nakh'ee, Sufyan Thawri, Imam Abu Hanifah رحمه الله say that whatever is borrowed is a trust with the borrower. If it is wasted or damaged then it is not *wajib (obligatory)* to replace it. But if the borrower is negligent and he is responsible for wasting it deliberately then it is *wajib (obligatory)* on him to replace that thing. However, Sayyiduna Ibn Abbas رضى الله عنه Sayyiduna Abu Hurayrah رضى الله عنه Imam Shafi'I رحمه الله and Imam Ahmad رحمه الله hold that it is *wajib (obligatory)* on the borrower to pay the price of what he had borrowed and is damage (while in his possession). This is why they translate the word (مقمونة) (...returning them) as 'will be replaced.'

WAJIB (OBLIGATORY) TO RETURN WHAT IS BORROWED

(٢٩٥٦) وَعَنْ اَبِيْ اُمَامَةَ قَالَ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ اَلْعَارِيَةُ مُؤَدَّاةٌ وَالْمِنْحَةُ مَرْدُوْدَةٌ

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[1] Abu Dawud # 2619, Tirmidhi # 1300.

[2] Tirmidhi # 1291, Ibn Majah # 2301.

[3] Abu Dawud # 3562, Musnad Ahmad 6-465.

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وَالدَّيْنُ مَقْضِيٌّ وَالزَّعِيْمُ غَارِمٌ۔ (رواه الترمذی وابوداؤد)

2956. Sayyiduna Abu Umamah رضی اللہ عنہ narrated that he heard Allah's Messenger صلی اللہ علیہ وسلم say, "what is borrowed must be repaid, a minhah must be returned, a debt must be cleared and the guarantor is responsible."[1]

FRUIT THAT DROPS FROM TREES

(۲۹۵۷) وَعَنْ رَافِعِ بْنِ عَمْرٍو بْنِ الْغِفَارِيِّ قَالَ كُنْتُ غُلَامًا اَرْمِيْ نَخْلَ الْاَنْصَارِ فَاُتِيَ بِيْ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ يَا غُلَامُ لِمَ تَرْمِيْ النَّخْلَ قُلْتُ اٰكُلُ قَالَ فَلَاتَرْمِ وَكُلْ مِمَّا سَقَطَ فِيْ اَسْفَلِهَا ثُمَّ مَسَحَ رَأْسَهٗ فَقَالَ اللّٰهُمَّ اَشْبِعْ بَطْنَهٗ۔ (رواه الترمذی و ابوداود و ابن ماجة)

2957. Sayyiduna Rafi' ibn Amr al Ghifari رحمہ اللہ narrated that when he was a boy he threw stones at palm trees belonging to the ansar. He was (caught by them and) taken to the Prophet صلی اللہ علیہ وسلم who asked, "O boy, why do you throw stones at the palm. Trees?" He said, "To eat something (that drops)." He said, "Do not throw stones. But, eat what falls down (the trees)." Then he stroked his head and prayed. "O Allah, satiate his belly."[2]

COMMENTARY: Allamah Teebi رحمہ اللہ said that if Sayyiduna Rafi was pressed by hunger, the prophet صلی اللہ علیہ وسلم would not have forbidden him to pluck fruit from the trees.

وَسَنَذْكُرُ حَدِيْثَ عَمْرِو بْنِ شُعَيْبٍ فِيْ بَابِ اللُّقَطَةِ اِنْ شَاءَ اللّٰهُ تَعَالٰى

We shall mention the hadith of Sayyiduna Amr ibn Shu'ayb رضی اللہ عنہ in the chapter of al-Luqtah (اللقطة) - finds, insha Allah Ta'ala (hadith # 3036).

SECTION III اَلْفَصْلُ الثَّالِثُ

WRONG APPROPRIATION OF PIECE OF LAND

(۲۹۵۸) عَنْ سَالِمٍ عَنْ اَبِيْهِ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ اَخَذَ مِنَ الْاَرْضِ شَيْئًا بِغَيْرِ حَقِّهٖ خُسِفَ بِهٖ يَوْمَ الْقِيَامَةِ اِلٰى سَبْعِ اَرَضِيْنَ۔ (رواه البخاری)

2958. Sayyiduna Saalim رحمہ اللہ narrated on the authority of his father that Allah's Messenger صلی اللہ علیہ وسلم said, "If anyone takes any land (belonging to some others) without possessing a right (over it) then he will be swallowed up seven earths deep on the day of resurrection."[3]
(see hadith 2938)

(۲۹۵۹) وَعَنْ يَعْلَى بْنِ مُرَّةَ قَالَ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ مَنْ اَخَذَ اَرْضًا بِغَيْرِ حَقِّهَا كُلِّفَ اَنْ يَحْمِلَ تُرَابَهَا الْمَحْشَرَ۔ (رواه احمد)

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[1] Tirmidhi # 1269, Abu Dawud # 3565, Ibn Majah # 2398, Musnad Ahjmad 5-267.
[2] Tirmidhi # 1292, Abu Dawud # 2622, Ibn Majah # 2299, Musnad Ahmad 6-31.
[3] Bukhari # 2454, Musnad Ahmad 2-99.

2959. Sayyiduna Ya'la ibn Murrah رضی اللہ عنہ said that he heard Allah's Messenger صلی اللہ علیہ وسلم say. "If anyone takes any land to which he has no right then he will be charged on the day of gathering with carrying (all) its earth (on his head)."[1]

COMMENTARY: Different kinds of punishment are mentioned for people who appropriate land of anyone else unjustly. We have seen the hadith # 2938 earlier and two traditions (# 2958 and 2959) here. Another (# 2960) follows.

Different wrongdoers will get punishment of a different kind.

(٢٩٦٠) وَعَنْهُ قَالَ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ اَيُّمَا رَجُلٍ ظَلَمَ شِبْرًا مِنَ الْاَرْضِ كَلَّفَهُ اللّٰهُ عَزَّوَجَلَّ اَنْ يَحْفِرَهُ حَتّٰى يَبْلُغَ اٰخِرَ سَبْعِ اَرْضِيْنَ ثُمَّ يُطَوَّقَهُ اِلٰى يَوْمِ الْقِيَامَةِ حَتّٰى يَقْضِيَ بَيْنَ النَّاسِ۔ (رواہ احمد)

2960. Sayyiduna Ya'la ibn Murrab رضی اللہ عنہ narrated that he heard Allah's Messenger صلی اللہ علیہ وسلم say, "If anyone takes a span of land unjustly then Allah, Mighty and Glorious, will impose on him the task of digging it till he comes to the end of seven earths. Then He will get it tied round his neck (leaving him in this manner) till the day of resurrection when the people have gone through judgement."[2]

CHAPTER - XII

ASH SHUF'AH RIGHT OF PRE-EMPTION بَابُ الشُّفْعَةِ

Ash-Shuf'ah is derived from Shafa (شفع) which is 'to complement, join, double, couple.' In the terminology of fiqh (Islamic jurisprudence) it means 'neighbourhood or sharing.' This gives right to a neighbour or partner to buy the land or house of his neighbour or partner that is being sold and it is an exclusive right. This right is further specific with land or house. The person who enjoys this right is called shafi (شفیع) (one possessing the right of premption). This right is called Shuf'ah because this specific right joins the land or house being sold to the land or house of the shafi.

Imam Shafi'I رحمہ اللہ Imam Maalik رحمہ اللہ and Imam Ahmad رحمہ اللہ hold that the right of Shuf'ah is available only to a partner. It is not allowed to the neighbour. Imam Abu Hanifah رحمہ اللہ said that like a partner, a neighbour too is entitled to this right.

A sound tradition affirms that Imam Ahmad رحمہ اللہ too subscribes to this contention. Ahadith are narrated establishing the right of Shuf'ah for the neighbour and they are of the rank of sahih. In the light of that, it is meaningless to deny the right of shuf'ah to the neighbour.

According to the Hanafis, there are three ranks of Shafi':

(1) (خلیط فی النفس المبیع) meaning that many people are partners in the ownership of the house that is being sold. They may all have inherited the house. Or, they may have all bought it jointly. Or, someone may have given it to all of them jointly as a gift.

(2) (خلیط فی حق المبیع) meaning that they are not partners in the ownership of the house or land that is being, sold. Rather, they are partners in the rights to this land or

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[1] Musnad Ahmad 4-172.

[2] Musnad Ahmad 4-173.

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house, like the right to come to it and to go out of it, the right to draw water from it and the right to irrigate its fields through channels. Etc.

(3) (جار) meaning the neighbour whose house adjoins the house that is being sold. The walls of these two houses are attached (or common) and their doors have a common path.

There can be no other shafi' apart from these three. Therefore, the right of Shuf'ah is deserved first of all by the person who is a partner in the ownership of the house or land that is being sold. If he is there, then the right will be available neither to the partner in rights nor to the neighbour. If this partner withdraws from the right of Shuf'ah, then this right of pre-emption will go to him who is a partner in rights. If he too chooses to withdraw, then the right of Shuf'ah will belong to the neighbour. If this person also abandons his right, then no one else has the right of Shuf'ah.

SECTION I اَلْفَصْلُ الْاَوَّلُ

RIGHT OF SHUF'AH ONLY FOR PARTNER OR NEIGHBOUR TOO

(٢٩٦١) عَنْ جَابِرٍ قَالَ قَضَى النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ بِالشُّفْعَةِ فِيْ كُلِّ مَالَمْ يُقْسَمْ فَاِذَا وَقَعَتِ الْحُدُوْدُ وَصُرِفَتِ الطُّرُقُ فَلَا شُفْعَةَ۔ (رواه البخاری)

2961. Sayyiduna Jabir رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم gave a ruling that the right of pre-emption to neighbouring property applied to everything that is undivided. However, when boundaries are defined and separate `roads curved out, no option available. (No one has the right of Shuf'ah.)[1]

COMMENTARY: When a land or house has many joint owners, each of them as a partner has a right or Shufah till so long as the land or house is not divided among them. If the partners have divided it and defined everyone's portion with a separate path to each portion, then none of them enjoys the right of shuf'ah. In this sense, this hadith is evidence that only partners own this right but not neighbours. This is with what Imam Shafi'I رحمہ اللہ abides.

Imam Abu Hanifah رحمہ اللہ holds that the neighbour also enjoys the right of shuf'ah and he cites other ahadith and he interprets this hadith to mean that shuf'ah for the partners lapses after the division of the land or house. So if this meaning is taken of the hadith then it does not imply denial of the neighbours right of shuf'ah.

SHUF'AH ONLY APPLIES TO HOUSE AND LAND

(٢٩٦٢) وَعَنْ جَابِرٍ قَالَ قَضٰى رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ بِالشُّفْعَةِ فِيْ كُلِّ شِرْكَةٍ لَمْ تُقْسَمْ رَبْعَةٍ اَوْ حَائِطٍ لَايَحِلُّ لَهٗ اَنْ يَبِيْعَ حَتّٰى يُؤْذِنَ شَرِيْكَهٗ فَاِنْ شَاءَ اَخَذَ وَاِنْ شَاءَ تَرَكَ فَاِذَا بَاعَ وَلَمْ يُؤْذِنْهُ فَهُوَ اَحَقُّ بِهٖ۔ (رواه مسلم)

2962. Sayyiduna Jabir رحمہ اللہ narrated that Allah's Messenger صلی اللہ علیہ وسلم gave a ruling that the right to pre-emption applied to all that is shared, be it a house or a garden, as long as it is undivided. It is not lawful (to any of the partners of such jointly

[1] Bukhari # 2213, Abu Dawud # 3513, Tirmidhi # 1370, Ibn Majah # 2499, Musnad Ahmad 3-399.

shared land) to sell his share before informing his partner. Then he may take it or leave it as he choose. If, however, he sells without informing his partner, then he (the partner) is most rightful to it (to buy the portion sold)."[1]

COMMENTARY: This hadith make it clear that the right to Shufah applies only to immovable property. Besides, it is not restricted only to Muslim, but may be concluded between a Muslim and a dhimmi.

It is also clear that if a partner of land or house jointly owner wished to sell his share then at the time of selling, he must inform his partner(s) so that he might buy it if he wishes to buy. If he does not inform then the partner has the right to acquire the portion through Shuf'ah.

NEIGHBOUR HAS A RIGHT TO SHUF'AH

(٢٩٦٣) وَعَنْ اَبِيْ رَافِعٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَلْجَارُ اَحَقُّ بِسَقَبِهٖ۔ (رواه البخاری)

2963. Sayyiduna Abu Rafi رضی اللہ عنہ said that Allah's Messenger صلی اللہ علیہ وسلم said, "The neighbour enjoys more right because of his nearness."[2]

COMMENTARY: The neighbour has more right to Shuf'ah if he is near and adjacent.

This hadith is evidence that the right of Shuf'ah is not only for a partner. It also is for a neighbour.

RIGHT OF NEIGHBOURHOOD

(٢٩٦٤) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا يَمْنَعُ جَارٌ جَارَهٗ اَنْ يَّغْرِزَ خَشَبَةً فِيْ جِدَارِهٖ۔ (متفق علیه)

2964. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Let no neighbour forbid his neighbour to fix a beam in his wall."[3]

COMMENTARY: This command not to forbid is on condition that fixing the beam will not cause damage. Imam Ahmad رحمہ اللہ and the scholars of hadith hold that the command is of the level of *wajib (obligatory)* (obligatory). Imam Abu Hanifah رحمہ اللہ, Imam Maalik رحمہ اللہ and Imam Shafi'I رحمہ اللہ hold that it is of the level of *mustahab (desirable)* (recommended).

BREADTH OF ROAD

(٢٩٦٥) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِذَا اخْتَلَفْتُمْ فِي الطَّرِيْقِ جُعِلَ عَرْضُهٗ سَبْعَةَ اَذْرُعٍ۔ (رواه مسلم)

2965. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "when you differ concerning a road, let its breadth be seven cubits."[4]

COMMENTARY: If a road exists on a piece of land and some people wish to erect a house and a difference of opinion crops up on the width of the road, then it should be left seven cubits wide. No kind of construction should be raised on it.

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[1] Muslim # 134-1608.

[2] Bukhari # 2258.

[3] Bukhari # 2463, Muslim # 36. 1609, Tirmidhi # 1358, Abu Dawud # 3634, Ibn Majah # 2335, Muwatta Maalik # 32 (Aqdiyah), Musnad Ahmad 2-463.

[4] Bukhari # 2474, Muslim # 143-1613, Tirmidhi # 1361, Abu Dawud # 3633, Ibn Majah # 2338.

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However, if a road is already more than seven cubits broad, no one should raise anything on it. Its breadth should not be narrowed under any circumstances

SECTION II اَلْفَصْلُ الثَّانِيْ

BETTER NOT TO SELL IMMOVABLE PROPERTY

(٢٩٦٦) عَنْ سَعِيْدِ بْنِ حُرَيْثٍ قَالَ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ مَنْ بَاعَ مِنْكُمْ دَارًا اَوْعَقَارًا فَمِنْ اَنْ لَا يُبَارَكَ لَهُ اِلَّا اَنْ يَجْعَلَهُ فِيْ مِثْلِهٖ۔ (رواه ابن ماجة والدارمی)

2966. Sayyiduna Sa'eed ibn Hurayth رضی اللہ عنہ narrated that he heard Allah's Messenger صلی اللہ علیہ وسلم say, "If anyone of you sells a house or piece of land, then it is appropriate that he has no blessing (in its price) unless he uses what he gets (by way of its price) on (buying) something like it (of on immovable property)."[1]

COMMENTARY: It is not advisable to sell immovable property unnecessarily. There is much profit in it and it is a safe investment. Only if other immovable property is bought from its proceeds may it be sold."

NEIGHBOUR HAS RIGHT OF SHUF'AH

(٢٩٦٧) وَعَنْ جَابِرٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَلْجَارُ اَحَقُّ بِشُفْعَتِهٖ يُنْتَظَرُ لَهَا وَاِنْ كَانَ غَائِبًا اِذَا كَانَ طَرِيْقُهُمَا وَاحِدًا۔ (رواه احمد والترمذی وابوداؤد وابن ماجة والدارمی)

2967. Sayyiduna Jabir رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "The neighbour has a greater right of Shuf'ah. If he is absent, its operation must be deferred if both properties have the some path."[2]

SHUF'AH APPLIES TO ALL IMMOVABLE PROPERTIES

(٢٩٦٨-٢٩٦٩) وَعَنِ ابْنِ عَبَّاسٍ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ الشَّرِيْكُ شَفِيْعٌ وَالشُّفْعَةُ فِيْ كُلِّ شَيْءٍ۔ رَوَاهُ التِّرْمِذِيُّ قَالَ وَقَدْرُوِيَ عَنِ ابْنِ اَبِيْ مُلَيْكَةَ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مُرْسَلًا وَهُوَ اَصَحُّ۔

2968. Sayyiduna Ibn Abbas رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said. The partner is shafi (being a right holder to buy neighbouring property) and shuf'ah (the option to buy) covers everything (that is immovable)."[3]

2969. Sayyiduan ibn Abu Mulaykah narrated from the Prophet صلی اللہ علیہ وسلم (the same hadith) in a mursal form. It is more sahih.[4]

DO NOT CHOP DOWN LOTE TREE

(٢٩٧٠) وَعَنْ عَبْدِاللّٰهِ ابْنِ حُبْشِيٍّ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ قَطَعَ سِدْرَةً صَوَّبَ اللّٰهُ رَأْسَهٗ فِي النَّارِ۔ رَوَاهُ اَبُوْدَاوٗدَ وَقَالَ هٰذَا الْحَدِيْثُ مُخْتَصَرٌ يَعْنِيْ مَنْ قَطَعَ سِدْرَةً فِيْ فَلَاةٍ يَسْتَظِلُّ بِهَا ابْنُ السَّبِيْلِ

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[1] Ibn Majah # 2490, Darimi # 2625, Musnad Ahmad 4-307 (3-303)

[2] Tirmidhi # 1374, Abu Dawud # 3518, Ibn Majah # 2494, Musnad Ahmad # 14257.

[3] Tirmidhi # 1376.

[4] Tirmidhi # 1376.

وَالْبَهَائِمُ غَشْمًا وَظُلْمًا بِغَيْرِ حَقٍّ يَكُوْنُ لَهُ فِيْهَا صَوَّبَ اللّٰهُ رَأْسَهُ فِي النَّارِ۔

2970. Sayyidūna Abdullah ibn Hubaysh رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "He who chops down a lote tree, Allah will fling him face down in the fire."
Abu Dawud transmitted it saying that this hadith is shortened, meaning.
"He who chops down a lote tree in a desert cruelly, unjustly without right to it, and in whose shade the travellers and animals get rest, Allah will cast him in the Fire head first."[1]

COMMENTARY: The words in the hadith (غشما و ظلما بغیر حق) are emphatic (ظلما بغیر حق) lay stress on (غشما) (cruelly). Or, (ظلما) (unjustly) emphasizes (غشما) while (بغیر حق) means shaf'ah.
It is stated in the book Mirqat as-Sa'ood of Abu Dawud that Tabarani has explained in his book Awsat that this warning applies to one who chops down a lote tree in the limits of the Haram. Some others say that here reference is to the lote tree of Madinah. Some describe it as the lote tree in a desert under which travellers and animals get shade. Some ulama (Scholars) say that the warning is to the person who cut down a lote tree of another cruelly and unjustly.

SECTION III — اَلْفَصْلُ الثَّالِثُ

SHUF'AH APPLIES TO EVERY IMMOVABLE PROPERTY

(٢٩٧١) عَنْ عُثْمَانَ بْنِ عَفَّانَ قَالَ إِذَا وَقَعَتِ الْحُدُوْدُ فِي الْأَرْضِ فَلَا شُفْعَةَ فِيْهَا وَلَا شُفْعَةَ فِيْ بِئْرٍ وَلَا فَحْلِ النَّخْلِ۔ (رواه مالك)

2971. Sayyiduna Uthman ibn Affan رضی اللہ عنہ said, "There is no pre-emption when boundaries are fixed on land (meaning the joint and is divided among the partner and shares of each have been determined separately). And, pre-emption (or shuf'ah or option) does not apply to a well, or to male palm trees."[2]

COMMENTARY: The well cannot be divided. Shuf'ah applies only to the land that can be divided (usefully), so there is no Shuf'ah with a well. Imam shafi'I رحمہ اللہ abides by it but the Hanafis hold that shuf'ah is known and confirmed in every land whether divisible like houses. Gardens etc. or indivisible like wells baths, Hand mills. They cite the prophet's صلی اللہ علیہ وسلم words (الشفعة فی کل شئی) (Shuf'ah applies to every thing - immovable).
A male palm tree is indivisible and it is not a piece of land. Hence, Shuf'ah does not apply to it. The partners have no right of pre-emption with it.

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[1] Abu Dawud # 5239.
[2] Muwatta Maalik # 4-35. 2.

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CHAPTER - XIII

AL-MUSAQAH WA AL-MUZARA'AH TENDING PALM-TREES & TILLING LAND AGAINST SOME PRODUCE (CROP SHARING)

بَابُ الْمُسَاقَاةِ وَالْمُزَارَعَةِ

Musaqah is that one person hands over his palm-trees to another to tend them and water them on condition that they could share the fruit at an agreed proportion, half and half, one third and two thirds, or one fourth and three fourths, etc.

Muzara'ah is to hand over one's land to another to cultivate it on condition that the owner would receive a fixed share of the produce (as agreed between them: half, one-fourth, etc).

In other words, both musaqah and muzara'ah have a common significance which is a division of crop between cultivator and landlord. The only difference that the former has to do with trees and the latter with land. The same command of fiqh (Islamic jurisprudence) applies to both of them.

Musaqah and muzara'ah - that is, using one's trees and land between oneself and cultivator by dividing the crop - is invalid according to Imam Abu Hanifah رحمه الله, but it is permitted according to Imam Shafi'I رحمه الله Imam Maalik رحمه الله, Imam Ahmad رحمه الله and the two disciples (of Abu Hanifah رضى الله عنه) Imam Abu Yusuf رحمه الله and Imam Muhammad رحمه الله.

The argument of Imam Abu Hanifah رحمه الله is that each of these is such a contract or lease in which the return is unkown and non-existent. Besides, the prophet صلى الله عليه وسلم is known to have rejected al-mukhabarah (muzara'ah). But, the Hanafis go by the verdict of Imam Abu Yusuf and Imam Muhammad رحمه الله, so they too regard musaqah and muzara'ah as permitted.

SECTION I اَلْفَصْلُ الْاَوَّلُ

ARRANGEMENT AT KHAYBAR FIELDS

(٢٩٧٢) عَنْ عَبْدِاللّٰهِ ابْنِ عُمَرَ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ دَفَعَ اِلٰى يَهُوْدَ خَيْبَرَ نَخْلَ خَيْبَرَ وَاَرْضَهَا اِلٰى اَنْ يَعْتَمِلُوْهَا مِنْ اَمْوَالِهِمْ وَلِرَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ شَطْرُ ثَمَرِهَا۔ رَوَاهُ مُسْلِمٌ وَفِيْ رِوَايَةِ الْبُخَارِيِّ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَعْطٰى خَيْبَرَ الْيَهُوْدَ اَنْ يَعْمَلُوْهَا وَيَزْرَعُوْهَا وَلَهُمْ شَطْرُ مَا يَخْرُجُ مِنْهَا۔

2972. Sayyiduna Abdullah ibn Umar رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم entrusted to the Jews of Khaybar the palm - trees and land of Khaybar on the condition that they exert their selves and use their properties in toiling on them. And for Allah's Messenger صلى الله عليه وسلم should be half of its fruit. (This is as in Muslim. The version in Bukhari is:) Allah's Messenger صلى الله عليه وسلم gave (the land and trees of) khaybar to the Jews that they should work on it and cultivate it and collect half of what it produces (the other half being for him).[1]

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[1] Bukhari # 2285, Muslim # 5-551, Tirmidhi # 1388, Abu Dawud # 3409, Ibn Majah # 2467, Darimi # 2614, Musnad Ahmad 2-17.

COMMENTARY: Khaybar is a habitation about sixty miles from Madinah to the north, It used to be a famous place where the Jews resided. Today, it is made up of a few villages. People do not lie to reside there because its climate is not suitable. Its prime produce is dates. The hadith is cited by all those scholars who say that musaqah and muzara'ah are permitted. Imam Abu Hanifah رحمه الله (who is the lane dissenter) says that the entrusting of the land and trees of Khaybar to the Jews has nothing to do with musaqah and muzara'ah because they did not belong to the Prophet صلى الله عليه وسلم that he would give to the Jews by way of musaqah and muzara'ah. Rather that land and those trees were the properties of the Jews. The Prophet صلى الله عليه وسلم entrusted to them their properties and fixed half of the produce as Kharaj (homage revenue) for himself.

Kharaj (homage revenue) is of two kinds:

(1) Kharaj (homage revenue) (wazifah or) muwazzif

(2) Muqasamah.

The first kind is that the ruler specifies some amount to be taken every year from those on whom the Islamic state imposes kharaj (homage revenue). For example, the people of Najran were made to pay one thousand two hundred pairs of clothing each year.

The second kind, muqasamah, is that when kharaj (homage revenue) is imposed on some people, the produce of their land is divided between them and the Islamic state in a specified manner. This is as with the people of Khaybar produce of whose land and trees was divided between them and the Prophet صلى الله عليه وسلم half and half.

MUKHABARAH DISALLOWED

(٢٩٧٣) وَعَنْ عَبْدِاللّٰهِ بْنِ عُمَرَ قَالَ كُنَّا نُخَابِرُ وَلَا نَرٰى بِذٰلِكَ بَأْسًا حَتّٰى زَعَمَ رَافِعُ بْنُ خُدَيْجٍ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ نَهٰى عَنْهَا فَتَرَكْنَاهَا مِنْ اَجْلِ ذٰلِكَ۔ (رواه مسلم)

2973. Sayyiduna Abdullah ibn Umar رضى الله عنه said that they used to observe makhabarah and found nothing wrong in it. However, when (Sayyiduna) Rafi ibn Khadij رضى الله عنه informed them that the Prophet صلى الله عليه وسلم had forbidden it, they gave it up for that reason.[1]

COMMENTARY: Mukhabarah is what is mentioned in the hadith (2972) preceding this. Imam Abu Hanifah رحمه الله cites this hadith to establish his point that muzara'ah is forbidden.

RANTING LAND FOR PRODUCE

(٢٩٧٤) وَعَنْ حَنْظَلَةَ بْنِ قَيْسٍ عَنْ رَافِعِ بْنِ خَدِيْجٍ قَالَ اَخْبَرَنِيْ عَمَّايَ اَنَّهُمْ كَانُوْا يُكْرُوْنَ الْاَرْضَ عَلٰى عَهْدِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ بِمَا يَنْبُتُ عَلَى الْاَرْبَعَاءِ اَوْ شَيْءٍ يَسْتَثْنِيْهِ صَاحِبُ الْاَرْضِ فَنَهَانَا النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَنْ ذٰلِكَ فَقُلْتُ لِرَافِعٍ فَكَيْفَ هِيَ بِالدِّرَاهِمِ وَالدَّنَانِيْرِ فَقَالَ لَيْسَ بِهَا بَأْسٌ وَكَانَ الَّذِيْ نُهِيَ عَنْ ذٰلِكَ مَالَوْ نَظَرَ فِيْهِ ذَوُوا الْفَهْمِ بِالْحَلَالِ وَالْحَرَامِ لَمْ يُجِيْزُوْهُ لِمَا فِيْهِ مِنَ الْمُخَاطَرَةِ۔ (متفق عليه)

2974. Sayyiduna Hanzalah ibn Qays رحمه الله reported on the authority of Sayyiduna Rafi ibn Khadij رضى الله عنه that his two paternal uncles narrated to him that, in the time of the Prophet صلى الله عليه وسلم they used to rent land and receive (for that) the produce

[1] Muslim # 106-1547, Ibn Majah # 2450.

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(that was) along the streamlets, or (the produce) of the (portion of) land set aside by the landlord. (Those to whom they rented out the land retained the produce of the remaining portion of the land.) The Prophet صلى الله عليه وسلم forbade them to do that (because it was an uncertain proposition).

He (Hanzalah) رحمه الله asked Rafi رضى الله عنه, "How it would be if dirhams and dinars were paid?" He said, "There would be no harm in that (payment)."

That which was disallowed (meaning, the two forms of muzara'ah) are such that anyone with some knowledge of the lawful and unlawful would not allow, if he gave some thought to it realizing the risk factor in it.[1]

COMMENTARY: The ulama (Scholars) who maintain that muzara'ah is allowed are also among those who agree that these two forms of renting out one's land for cultivation are not permitted.

Both sides of the ulama (Scholars) who regard muzara'ah as permitted and who consider it as disallowed cite ahadith as evidence for their points of view, there being different ahadith on this subject.

As stated earlier, most of the ulama (Scholars) hold that muzara'ah is allowed. Imam Abu Hanifah رحمه الله disagrees, but his two students Abu Yusuf رحمه الله and Muhammad رحمه الله are among those who say it is allowed. Besides, it is a necessary practice, so the Hanifah give the verdict that Muzara'ah is allowed.

DISALLOWED FORM OF MUZARA'AH

(٢٩٧٥) وَعَنْ رَافِعِ بْنِ خَدِيْجٍ قَالَ كُنَّا اَكْثَرَ اَهْلِ الْمَدِيْنَةِ حَقْلًا وَكَانَ اَحَدُنَا يُكْرِىْ اَرْضَهُ فَيَقُوْلُ هٰذِهِ الْقِطْعَةُ لِىْ وَهٰذِهِ لَكَ فَرُبَّمَا اَخْرَجَتْ ذِهِ وَلَمْ تُخْرِجْ ذِهٖ فَنَهَاهُمُ النَّبِىُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ۔ (متفق عليه)

2975. Sayyiduna Rafi ibn Khadij رضى الله عنه narrated that most of them, the people of Madinah, were cultivators. Some of them let out their land agreeing (with the tenant) that they would have what was produced in a certain portion (towards their rent) while the produce of the other portion should go to him (to whom it was rented). Sometimes, there was production on one portion but none on the other. So, the Prophet صلى الله عليه وسلم disallowed them to do that.[2]

BETTER TO RENT OUT LAND

(٢٩٧٦) وَعَنْ عَمْرٍو قَالَ قُلْتُ لِطَاؤُسٍ لَوْتَرَكْتَ الْمُخَابَرَةَ فَاِنَّهُمْ يَزْعُمُوْنَ اَنَّ النَّبِىَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ نَهٰى عَنْهُ قَالَ اَىْ عَمْرُو اِنِّىْ اُعْطِيْهِمْ وَاُعِيْنُهُمْ وَاِنَّ اَعْلَمَهُمْ اَخْبَرَنِىْ يَعْنِى ابْنَ عَبَّاسٍ اَنَّ النَّبِىَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَمْ يَنْهَ عَنْهُ وَلٰكِنْ قَالَ اَنْ يَمْنَحَ اَحَدُكُمْ اَخَاهُ خَيْرٌلَهٗ مِنْ اَنْ يَاْخُذَ عَلَيْهِ خَرْجًا مَعْلُوْمًا۔ (متفق عليه)

2976. Sayyiduna Amr (ibn Dinar) رحمه الله said that he said to Sayyiduna Tawus رضى الله عنه, "If you abandon muzara'ah that would be better, because the ulama (Scholars) assert that the Prophet صلى الله عليه وسلم had forbidden it." He said, "O Amr! I give them

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[1] Bukhari # 2332, Musnad Ahmad 4-142, Muslim # 115-1547.

[2] Bukhari # 2332, Muslim # 117-1547.

my land and help them (thereby). The most learned of men, Ibn Abbas رضی اللہ عنہ informed me that the Prophet صلی اللہ علیہ وسلم had not forbidden it, but has said, 'It is better for any of you to lend to his brother (his land) to cultivate) than to receive from him a specified sum (of revenue)."[1]

COMMENTARY: Muza'ra'ah is to give something and get something. But, if someone is shown favour by giving him one's land as a concession so that he might earn something from it then it is better.

CULTIVATE OR LEND YOUR FIELD

(۲۹۷۷) وَعَنْ جَابِرٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ كَانَتْ لَهُ اَرْضٌ فَلْيَزْرَعْهَا اَوْ لِيَمْنَحْهَا اَخَاهُ فَاِنْ اَبٰى فَلْيُمْسِكْ اَرْضَهُ۔ (متفق علیہ)

2977. Sayyiduna Jabir رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "If anyone has land then he should cultivate it (himself), or (if he cannot do it then) he must lend it to his brother, If he refuses then he must keep it with himself."[2]

COMMENTARY: Shaykh Mazhar رحمہ اللہ says that this hadith calls upon man to put his property to profitable use. If he does not cultivate his own land then he may land it to a Muslim brother to earn a livelihood for himself and his family. If the owner does not choose either of the two courses, then he may keep his land with himself but not give it to anyone by way of muzara'ah. This also is a warning to those who do not use their property for their own good nor give benefit to others from it (and earn reward from Allah for themselves).

Some people interpret the hadith to mean that if no one is willing to take the land on loan, then he may keep his land with himself. In this case, the command is to show that it is permissible to do so. (This is a sin hadith # 2632 or Bukhari.)

WORKING TO CULTIVATORS WHO ABANDOM JIHAD

(۲۹۷۸) وَعَنْ اَبِيْ اُمَامَةَ وَرَاٰى سِكَّةً وَشَيْئًا مِنْ اٰلَةِ الْحَرْثِ فَقَالَ سَمِعْتُ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ لَا يَدْخُلُ هٰذَا بَيْتَ قَوْمٍ اِلَّا اَدْخَلَهُ اللّٰهُ الذُّلَّ۔ (رواہ البخاری)

2978. Sayyiduna Abu Umamah رضی اللہ عنہ saw a ploughshare and some agricultural implements, and said that he had heard the Prophet صلی اللہ علیہ وسلم say, "This will not enter the house of a people but Allah will make shame to enter it."[3]

COMMENTARY: The Prophet صلی اللہ علیہ وسلم did not condemn agriculture but he meant that jihad should not be neglected because of agriculture.

If anyone engages in cultivation for a livelihood the that is not a disliked thing.

Some ulama (Scholars) say that it applies to those who have their fields along the borders with the enemy. If they concentrate on cultivation and neglect jihad, then the enemy will invade and overpower them, thereby disgracing them.

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[1] Bukhari # 2330, Muslim # 120. 1550, Abu Dawud # 3389, Nasa'i # 3873, Musnad Ahmad 1-234.

[2] Bukhari # 2340, Muslim # 89. 1536, Nasa'i # 3874, Ibn Majah # 2451, Musnad Ahmad 3-373.

[3] Bukhari # 2321.

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SECTION II اَلْفَصْلُ الثَّانِي

DO NOT SOW IN FIELDS OF OTHER WITHOUT PERMISSION

(٢٩٧٩) عَنْ رَافِعِ بْنِ خَدِيْجٍ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ مَنْ زَرَعَ فِيْ اَرْضِ قَوْمٍ بِغَيْرِ اِذْنِهِمْ فَلَيْسَ لَهٗ مِنَ الزَّرْعِ شَيْءٌ وَلَهٗ نَفَقَتُهٗ۔ رَوَاهُ التِّرْمِذِيُّ وَاَبُوْدَاوٗدَ وَقَالَ التِّرْمِذِيُّ هٰذَا حَدِيْثٌ غَرِيْبٌ۔

2979. Sayyiduna Rafi ibn Khadij رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "He who sows on a land belonging to other people without their permission, has no right to any of its produce, but he may take his cost from it."[1]

COMMENTARY: If anyone sows on someone's field without his permission, then all the production on it belongs to the owner of the land. Of course, he will get his expenses on sowing the field, nothing more. Imam Ahmad goes by this hadith.

Other ulama (Scholars) say that he who sows will get all its crop, but will have to pay to the owner of the land the loss of the land. Some ulama (Scholars) of the Hanafis say the same thing. Ibn Maalik رحمہ اللہ said that he will have to bear, as a *wajib (obligatory)*, the reimbursement of the land from the day of took over the land till the day of cultivation when he clears the land. The produce will belong to him.

SECTION III اَلْفَصْلُ الثَّالِثُ

PROOF OF VALIDITY OF MUZARA'AH

(٢٩٨٠) عَنْ قَيْسِ بْنِ مُسْلِمٍ عَنْ اَبِيْ جَعْفَرٍ قَالَ مَا بِالْمَدِيْنَةِ اَهْلُ بَيْتِ هِجْرَةٍ اِلَّا يَزْرَعُوْنَ عَلَى الثُّلُثِ وَالرُّبُعِ وَزَارَعَ عَلِيٌّ وَسَعْدُ بْنُ مَالِكٍ وَعَبْدُاللّٰهِ بْنُ مَسْعُوْدٍ وَعُمَرُ بْنُ عَبْدِالْعَزِيْزِ وَالْقَاسِمُ وَعُرْوَةُ وَاٰلُ اَبِيْ بَكْرٍ وَاٰلُ عَلِيٍّ وَابْنُ سِيْرِيْنَ وَقَالَ عَبْدُالرَّحْمٰنِ بْنُ الْاَسْوَدِ كُنْتُ اُشَارِكُ عَبْدَالرَّحْمٰنِ بْنَ يَزِيْدَ فِي الزَّرْعِ وَعَامَلَ عُمَرُ النَّاسَ عَلٰى اِنْ جَاءَ عُمَرُ بِالْبَذْرِ مِنْ عِنْدِهٖ فَلَهُ الشَّطْرُ وَاِنْ جَاءُوْا بِالْبَذْرِ فَلَهُمْ كَذَا۔ (رواه البخاری)

2980. Sayyiduna Qays ibn Muslim رضی اللہ عنہ reported on the authority of Sayyiduan Abu Ja'far رضی اللہ عنہ that there was not any house of the muhajirs (emigrants) in Madinah that did not cultivae land (for the ansars) for one third on one fourth of the yield.

(Sayyiduna) Ali, Sa'd ibn Maalik, Abdullah ibn Mas'ud, Umar ibn Abdul Aziz, al Qasim, Urwa, the family of Abu Bakr, the family of Umar, the family Ali and Ibn Sirin رضی اللہ عنہ cultivates the land against a part of the produce.

Abdur Rahman ibn al Aswad رحمہ اللہ said that he was partner of Abdur Rahman ibn Yazid رحمہ اللہ in cultivation. Umar رضی اللہ عنہ contracted with people that if he supplied the seed, he would receive half of the produce and if they provided the seed they would get a certain share.[2]

COMMENTARY: Mirak Shah رحمہ اللہ said that it is clear even from Bukhari's text that

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[1] Tirmidhi # 1371, Abu Dawud # 3404, Ibn Majah # 2466, Musnad Ahmad 3-465.

[2] Bukhari (Book 41, Chapter 8 – Heading, sub-heading before hadith # 2328).

Sayyiduan Abu Ja'far's رضی اللہ عنہ words end at (والربع) (and one fourth of the yield). This is apparent also from its expositions. The words after that are Bukhari's own, and are all aathar, meaning words of the sahabah and the tabi'un. Bukhari has reproduced them without a chain of transmission, so has placed them as a sub-heading.

CHAPTER - XIV

AL-*IJARAH* - HIRE

بَابُ الْإِجَارَةِ

Ijarah means to give something on rent. In the terminology of Shari'ah (divine law), it means to make someone owner of the use of something belong to oneself.
From the point of view of fiqh (Islamic jurisprudence), since profit is lacking from *Ijarah*, it should not be permitted. However, in view of the need of the people, Shari'ah (divine law) has declared it to be lawful. Also it is established through ahadith and aather.

SECTION I — اَلْفَصْلُ الْاَوَّلُ

IJARAH IS ALLOWED

(۲۹۸۱) عَنْ عَبْدِاللّٰهِ بْنِ مُغَفَّلٍ قَالَ زَعَمَ ثَابِتُ بْنُ الضَّحَّاكِ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ نَهٰى عَنِ الْمُزَارَعَةِ وَاَمَرَ بِالْمُوَاجَرَةِ وَقَالَ لَا بَأْسَ بِهَا۔ (رواه مسلم)

2981. Sayyiduna Abdullah ibn Mughaffal رحمہ اللہ said that (Sayyiduna) Thabit ibn Dahhak رضی اللہ عنہ said that Allah's Messenger صلی اللہ علیہ وسلم forbade muzara'ah but commanded that *Ijarah* should be observed. He said, 'There is no harm in it."[1]

COMMENTARY: The disallowance of Muzara'ah is of its two forms that are mentioned in hadith # 2974. (They are the land along streamlets and setting aside portion of the land, both whose produce is reserved for the owner.)

(۲۹۸۲) وَعَنِ ابْنِ عَبَّاسٍ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِحْتَجَمَ فَاَعْطَى الْحَجَّامَ اَجْرَهٗ وَاسْتَعَطَ۔ (متفق علیه)

2982. Sayyiduna Ibn Abbas رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم had himself cupped (once) and paid the cupper his wages. And, he poured medicine into his nose.[2]

COMMENTARY: This hadith clarifies that the profession of the cupper is lawful. To pay wages is permissible and so it is to use medicine.

THE PROPHET صلی اللہ علیہ وسلم GRAZED SHEEP AGAINST WAGES.

(۲۹۸۳) وَعَنْ اَبِيْ هُرَيْرَةَ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ مَا بَعَثَ اللّٰهُ نَبِيًّا اِلَّا رَعَى الْغَنَمَ فَقَالَ اَصْحَابُهٗ وَاَنْتَ فَقَالَ نَعَمْ كُنْتُ اَرْعٰى عَلٰى قَرَارِيْطَ لِاَهْلِ مَكَّةَ۔ (رواه البخاری)

2983. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that the prophet صلی اللہ علیہ وسلم said, "Allah has not sent such a prophet who has not grazed sheep." The sahabah (Prophet's Companions) رضی اللہ عنہم asked, "And you too?" He said, "Yes, I was a shepherd for the people of Makkah for a payment of (some) qararit."[3]

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[1] Muslim # 119-1549.

[2] Bukhari # 5691, Muslim # 65-1202, Abu Dawud # 3423, Ibn Majah # 2162, Musnad Ahmad 1-258.

[3] Bukhari # 2263, Ibn Majah # 2149.

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COMMENTARY: Given the responsibilities of a prophet, he has to experience every kind of life and profession to be able to propagate religion effectively. The shepherd's profession is one such. This seems to be very lowly but if we examine it, this profession promotes love and compassion, hard work and toiling, mutual cooperation and well wishing, and supervision. Those qualities are essential for a guide and reformer. Every Prophet had this experience to be able to lead his people. It enables him to endure hardship and obstinacy of his people. Besides, this life enables him to go through attitude which is necessary during the initial life of prophethood.

WARNING FOR NOT PAYING WAGES TO LABOURER

(٢٩٨٤) وَعَنْهُ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اللّٰهُ تَعَالٰى ثَلَاثَةٌ اَنَا خَصْمُهُمْ يَوْمَ الْقِيَامَةِ رَجُلٌ اَعْطٰى بِيْ ثُمَّ غَدَرَ وَرَجُلٌ بَاعَ حُرًّا فَاَكَلَ ثَمَنَهٗ وَرَجُلٌ اسْتَاْجَرَ اَجِيْرًا فَاسْتَوْفٰى مِنْهُ وَلَمْ يُعْطِهٖ اَجْرَهٗ۔ (رواه البخارى)

2984. Sayyiduna Abu Hurayrah رضی اللہ عنہ **narrated that Allah's Messenger** صلی اللہ علیہ وسلم **said that Allah, the exalted, says, "Three there are against whom I shall initiate action on the day of resurrection: a man who holds out an assurance in my name, but then fails to fulfil it, a man who sells a free man and devours the proceeds. And a man who hires a labourer and gets the work done by him but does not pay him his wages."**[1]

COMMENTARY: To break a promise is wrong and when it is given in Allah's name, it is extremely bad to break it.

To sell a freeman is wrong too. The words 'devours the proceeds' are to stress that it is very bad.As for not paying the wages, it is very sinful and cruel. The perpetrator deserves to be punished.

WAGES FOR INCANTATION

(٢٩٨٥) وَعَنِ ابْنِ عَبَّاسٍ اَنَّ نَفَرًا مِنْ اَصْحَابِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَرُّوْا بِمَاءٍ فِيْهِمْ لَدِيْغٌ اَوْ سَلِيْمٌ فَعَرَضَ لَهُمْ رَجُلٌ مِنْ اَهْلِ الْمَاءِ فَقَالَ هَلْ فِيْكُمْ مِنْ رَاقٍ اِنَّ فِي الْمَاءِ لَدِيْغًا اَوْ سَلِيْمًا فَانْطَلَقَ رَجُلٌ مِنْهُمْ فَقَرَأَ بِفَاتِحَةِ الْكِتَابِ عَلٰى شَاءٍ فَبَرَأَ فَجَاءَ بِالشَّاءِ اِلٰى اَصْحَابِهٖ فَكَرِهُوْا ذٰلِكَ وَقَالُوْا اَخَذْتَ عَلٰى كِتَابِ اللّٰهِ اَجْرًا حَتّٰى قَدِمُوا الْمَدِيْنَةَ فَقَالُوْا يَا رَسُوْلَ اللّٰهِ اَخَذَ عَلٰى كِتَابِ اللّٰهِ اَجْرًا فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِنَّ اَحَقَّ مَا اَخَذْتُمْ عَلَيْهِ اَجْرًا كِتَابُ اللّٰهِ۔ رَوَاهُ الْبُخَارِيُّ وَفِيْ رِوَايَةٍ اَصَبْتُمْ اِقْسِمُوْا وَاضْرِبُوْا لِيْ مَعَكُمْ سَهْمًا۔

2985. Sayyiduna Ibn Abbas رضی اللہ عنہ **narrated that some of the sahabah (Prophet's Companions)** رضی اللہ عنہم **of the Prophet** صلی اللہ علیہ وسلم **came to a watering place or a village) where someone had been stung by a scorpion or by a snake. One of the dwellers of that place came to the sahabah (Prophet's Companions)** رضی اللہ عنہم **and asked, "Can anyone of you invoke (to cure snake bite), for a man at the watering place is stung by a scorpion or a snake?" One of the sahabah accompanied him and**

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[1] Bukhari # 2227, Ibn Majah # 2156, Musnad Ahmad 3-83.

recited surah al-fatihah against some sheep. The man was cured. However, when he came with the sheep to his colleagues, they did not like it and complained. "You have taken payment for Allah's Book." On coming to Madinah, they complained to Allah's Messenger صلى الله عليه وسلم that he had collected payment for Allah's Book. He said, "The most rightful thing for which you receive wages is Allah's Book." According to a version, he also said, "you did the right thing. Divide the sheep (among yourselves) and let me have a share along with you."[1]

COMMENTARY: Some ulama (Scholars) say that the sahabi who had recited surah al-Fatihah was Sayyiduna Abu Sa'eed Khudri رضى الله عنه. There were thirty sahabah in that group. So he had taken thirty sheep.

The Prophet صلى الله عليه وسلم asked for his share too because that would make clear to the sahabah (Prophet's Companions) رضى الله عنهم that it was correct to collect wages for the recital.

It is correct to apply charm with the verses of the Quran and get wages for it. So, there is nothing wrong in asking for payment to apply charm or make talisman with verses of the Quran or other known supplication.

However, we cannot say because of this it is allowed to get a payment for reciting the Quran. Reciting the Quran is a form of worship for which it is not permitted to get wages. To blow on a patient who is cured because of it is not a worship, so wages may be collected for that. This also makes clear that wages may be had for writing down the Quran and other religious books and to buy and sell them.

The letter day (or succeeding) ulama (Scholars) have given an identical ruling about teaching the Quran. However, the preceding ulama (Scholars), like Imam Abu Hanifah رحمه الله had said that it is unlawful to seek wages for teaching the Quran.

SECTION II اَلْفَصْلُ الثَّانِي

INCANTATION NOT SANCTIONED BY SHARI'AH (DIVINE LAW) IS UNLAWFUL

(٢٩٨٦) عَنْ خَارِجَةَ بْنِ الصَّلْتِ عَنْ عَمِّهٖ قَالَ اَقْبَلْنَا مِنْ عِنْدِ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَاَتَيْنَا عَلٰى حَيٍّ مِنَ الْعَرَبِ فَقَالُوْا اِنَّا اُنْبِئْنَا اَنَّكُمْ قَدْ جِئْتُمْ مِنْ عِنْدِ هٰذَا الرَّجُلِ بِخَيْرٍ فَهَلْ عِنْدَكُمْ مِنْ دَوَاءٍ اَوْ رُقْيَةٍ فَاِنَّ عِنْدَنَا مَعْتُوْهًا فِي الْقُيُوْدِ فَقُلْنَا نَعَمْ قَالَ فَجَاءُوْا بِمَعْتُوْهٍ فِي الْقُيُوْدِ فَقَرَأْتُ عَلَيْهِ بِفَاتِحَةِ الْكِتَابِ ثَلَاثَةَ اَيَّامٍ غُدْوَةً وَعَشِيَّةً اَجْمَعُ بُزَاقِيْ ثُمَّ اَتْفُلُ قَالَ فَكَاَنَّمَا اُنْشِطَ مِنْ عِقَالٍ فَاَعْطَوْنِيْ جُعْلًا فَقُلْتُ لَا حَتّٰى اَسْاَلَ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ كُلْ فَلَعَمْرِيْ لَمَنْ اَكَلَ بِرُقْيَةِ بَاطِلٍ لَقَدْ اَكَلْتَ بِرُقْيَةِ حَقٍّ۔ (رواه احمد وابوداؤد)

2986. Sayyiduna Kharijah ibn Salt (as in sullt) reported from his paternal uncle that he said, "When we departed from Allah's Messenger صلى الله عليه وسلم we met a tribe of the Arabs (on the way) who said to us that they had learnt that we had brought from this man (Allah's Messenger) صلى الله عليه وسلم what is good and had we a medicine or a charm because they had a mad man in chains? We confirmed that we had and they brought (to us) a mad man in chains and I recited surah al-Fatihah over him for three days, morning and evening, I a such a way that I collected my saliva (while

[1] Bukhari #5737, Ibn Majah # 2156, Musnad Ahmad 3-83.

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reciting) and (after I finished) I spat on him."
The narrator reported that his paternal uncle continued to say, 'After that (he recovered quickly so that) be seemed to have been released from fetters. They paid me something but I said, 'Not till in have asked the Prophet صلی اللہ علیہ وسلم!' He said, 'Take it (or eat it)! By my life, he who accepts for a wrong (invalid) incantation (does bad). You have taken for a true charm.'[1]

COMMENTARY: A wrong or invalid incantation or charm is what refers to the stars, evil spirits, jinns and other things besides Allah. Help is sought from them. They are not approved by Shari'ah (divine law). It is not allowed to use them and to get wages for them. The true incantation or charm is mention of Allah and verses of the Quran and they are either recited and blown or written down as talismans or amulets.

The words (لعمری) (by my life) are not an oath. Rather, the Arabs use the words (Arabic) in their speech. Perhaps when the Prophet صلی اللہ علیہ وسلم spoke these words there was no disallowance to take oath on others besides Allah at that time (but was disallowed later). Allamah Teebi رحمہ اللہ said that perhaps Prophet صلی اللہ علیہ وسلم. It may have been one of those things permitted to him but not to the others.

DO NOT DELAY PAYMENT OF WAGES

(۲۹۸۷) وَعَنْ عَبْدِاللّٰهِ بْنِ عُمَرَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَعْطُوا الْاَجِيْرَ اَجْرَهٗ قَبْلَ اَنْ يَّجِفَّ عَرَقُهٗ۔ (رواه ابن ماجة)

2987. Sayyiduna Abdullah ibn Umar رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Pay the wages to the labourere before his perspiration dries."[2]

(۲۹۸۸) وَعَنِ الْحُسَيْنِ بْنِ عَلِيٍّ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لِلسَّائِلِ حَقٌّ وَاِنْ جَاءَ عَلٰى فَرَسٍ۔ رَوَاهُ اَحْمَدُ وَاَبُوْدَاوٗدَ وَفِي الْمَصَابِيْحِ مُرْسَلٌ۔

2988. Sayyiduna Hussain ibn Ali رضی اللہ عنہ said that Allah's Messenger صلی اللہ علیہ وسلم said, "The begger has a right even if he comes on a horse."[3]

COMMENTARY: This hadith means to say that a beggar must not be returned empty handed. Qadi رحمہ اللہ said that if anyone begs though his apparent condition shows that he is well-off, he must be given something, for without need he would not have disgraced himself. This hadith has no bearing with this chapter unless that which is given to the beggar is regarded as his wages.

The ulama (Scholars) have questioned the Isnad of this hadith. Imam Ahmad رحمہ اللہ has rejected it as without base. But, Abu Dawud رحمہ اللہ has adopted silence which means that he considers it worthy of reference.

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[1] Abu Dawud # 3420, Musnad Ahmad 5-210.
[2] Ibn Majah # 2443.
[3] Abu Dawud # 1665, Musnad Ahmad # 1-201, Muwatta Maalik # 58. 1-3.

SECTION III اَلْفَصْلُ الثَّالِثُ

PROPHET MUSA عليه السلام AS A LABOURERE

(۲۹۸۹) عَنْ عُتْبَةَ بْنِ الْمُنْذِرِ قَالَ كُنَّا عِنْدَ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَرَأَ طٰسٓمٓ حَتّٰى بَلَغَ قِصَّةَ مُوْسٰى قَالَ اِنَّ مُوْسٰى عَلَيْهِ السَّلَامُ اٰجَرَ نَفْسَهٗ ثَمَانَ سِنِيْنَ اَوْ عَشْرًا عَلٰى عِفَّةِ فَرْجِهٖ وَطَعَامِ بَطْنِهٖ۔ (رواه احمد وابن ماجة)

2989. Sayyiduna Utbah ibn Mundhir رضی اللہ عنہ narrated that they were with Allah's Messenger صلی اللہ علیہ وسلم when he recited (طسم) (Ta seen meem, 28:1-28). As he came to the story of (Prophet) Musa علیہ السلام, he said, Musa علیہ السلام had submitted himself to manual labour for eight or ten year to be able to preserve his chastity and till his belly with food."[1]

COMMENTARY: Ta seem meem is the surah al-Qasas. Prophet Musa علیہ السلام came to Madyan where he met Sayyiduna Shuayb علیہ السلام who married his daughter to him and he hired himself with Sayyiduna Shu'ayb علیہ السلام in return.

To preserve his chastity means to marry. Prophet Musa علیہ السلام married the daughter of Sayyiduna Shu'ayb علیہ السلام on the terms that he would tend his sheep for eight or ten years. He described that as her dower. This practice was allowed in their Shari'ah (divine law). The service of a free man was declared as the dower of his wife. In this case of Prophet Musa علیہ السلام, howeve,r it is possible that he may have determined something else as his wife's dower and agreed to act as a shepherd as a gesture of goodwill.

HUSBAND'S SERVICE AS WIFE'S DOWER: The jurists differ on this question. The Hanafis say that it is not allowed for a woman to be married on condition that her husband who is a free man (not a slave) would serve her for some time (like a year). However, it is permitted for her to marry him on condition that his slave would serve her for a certain time, say one year.

The Shafi'is hold that it is permitted to marry against some kind of service provided the work done by the servant and the service offered are known and specified.[2]

REMUNERATION FOR TEACHING RELIGION

(۲۹۹۰) وَعَنْ عُبَادَةَ بْنِ الصَّامِتِ قَالَ قُلْتُ يَارَسُوْلَ اللّٰهِ رَجُلٌ اَهْدٰى اِلَيَّ قَوْسًا مِمَّنْ كُنْتُ اُعَلِّمُهُ الْكِتَابَ وَالْقُرْاٰنَ وَلَيْسَتْ بِمَالٍ فَاَرْمِيْ عَلَيْهَا فِيْ سَبِيْلِ اللّٰهِ قَالَ اِنْ كُنْتَ تُحِبُّ اَنْ تُطَوَّقَ طَوْقًا مِنْ نَارٍ فَاقْبَلْهَا۔ (رواه ابوداؤد وابن ماجة)

2990. Sayyiduna Ubadah ibn Samit رضی اللہ عنہ said that he submitted, "O Messenger of Allah, a man has presented me with a bow. He is one of those whom I used to teach the Book and the Quran. It cannot be deemed to be a property (so I think that there is no harm in accepting it). I shall shoot (arrows) with it in Allah's path." He said, "If you like that a necklace of fire be put on you, then do take it."[3]

COMMENTARY: Sayyiduna Ubadah رضی اللہ عنہ said that a bow was not a worthwhile

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[1] Ibn Majah # 2444, Musnad Ahmad.

[2] See stories of the Prophet. Ibn Kathir English translation pp 1906, Dar ul Isha'at Karachi.

[3] Abu Dawud # 3416, Ibn Majah # 2157, Musnad Ahmad 5-315.

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property. The Prophet صلى الله عليه وسلم worked him that it would wipe out his sincerity with which he had taught those people religion and the Quran. So he should not accept it. Those scholars who say that it is unlawful to ask for wages for teaching religion and the Quran cite this hadith.

CHAPTER - XV

REVIVING BARREN LAND AND IRRIGATING بَابُ إِحْيَاءِ الْمَوَاتِ وَالشِّرْبِ

It is stated in 'Nihayah' that (الموات) Mawat (dead, barren) is the land that has no cultivation, no house and no owner. And, it is written in 'Hidayah:[1] "Mawat (rendered here as waste land) signifies any pieces of ground incapable of yielding advantage either from want of water, an inundation, or any other cause, such as prevents tillage. It is termed mawat or dead because like the dead it is of no use."

It is described thus: Any piece of land that from a long time has lain waste without belonging to any person, or which has been formerly the property of Muslim, who is not then known, and is likewise so far removed from a village that, if a person call out from thence his voice cannot be heard there.[2] Such a land is termed mawat.

The word (احياءموات) (*ahya mawat*) in the title in Arabic (literally 'revival of the dead,' in plural form) mean 'to make the lands habitable.' This may be done by building homes on it, by planting trees by sowing seeds, by cultivating it or by irrigating it or by ploughing it.

The command of Shari'ah (divine law) is that whoever revives it becomes its owner. However, the scholars differ on it slightly. Imam Abu Hanifah رحمه الله said that before doing any revival work on it permission to proceed must be obtained from the imam (the relevant authority). Imam shafi'I رحمه الله and the two disciples (of Abu Hanifah رحمه الله, namely Imam Abu Yusuf رحمه الله and Imam Muhammad) رضى الله عنه said that it is not necessary to obtain permission. Shurb (شرب) means 'drinking water' in the literal sense. It is a share of water, riverside or place of drawing water. In the terminology of Shari'ah (divine law), the word means: 'the right to seize advantage of water for drinking, using, watering field or garden or watering the animals that is available to every person. As long as water is in its source (like river, pond, etc), it is not anyone's personal property. Everyone, without distinction, has a right to use it to his benefit and no one is permitted to prevent access to it.

However, there is a difference between water of rivers, streams, aqueducts on the one hand and the water that is collected in vessels. The books of fiqh (Islamic jurisprudence) may be consulted for details on this subject. It is enough to know here that according to the Hanafis, every human being has an equal right to the water of the river, howsoever he may use it. He may use it for drinking and irrigating and may channel it to the fields and gardens. No one can prevent him from using it. It is like using to advantage the moon, the sun and the air, Allah has placed these blessings at the disposal of everyone without distinction. Their benefit is not for any specific person or group. All are equal partners in taking advantage from them.

Similarly, everyone has a right to use the water of a well or river. However, if anyone

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[1] Vol 2 p 465, Darul Isha'at, Karachi.

[2] ibid.

wishes to irrigate his field or garden with the water of the well or river, then the people of the area where they are situated have a right to forbid him and prevent him whether their water will decrease or not. They have every right to the well and river because they are situated in their locality.

The water that is filled in a vessels or tank belongs to the owner of these things and to none else. It is like game that becomes, the property of the hunter who hunts it.

If a well or river lies in someone's private land then he is authorized to prevent entry and access to other people, provided they are able to get water from the vicinity and not belonging to anyone. If there is no water nearby, then the owner of that land will have to bring them water from his well or river himself, or allow them to enter his land and get it themselves, on condition that they cause no damage to the well or the bank of the river.

If a well had been dug in a mawat land already, then one who inhabits the land has no right to prevent people from drawing water from the well because though the land comes in his ownership when he make it habitable, the water of the well is not his property. If he disallows a person who wants to drink the water himself or to water his animal and he or his animal is liable to die of thirst, then he may get water by force even if he had to fight for it and use weapons.

A well can be anyone's property but its water is not owned by him or by any one else. Rather, it is allowed to everyone. This is in contrast to the water that a person fills in his vessel, for that is his personal property. However, if anyone is dying of thirst and this person refuses to give him water then he is within his right if he fights him and gets the water by force, provided there really is threat to life if he does not get water and he does not use a weapon against him. It is exactly like the case of a hungry man who may die of hunger if he does not eat any food and another person with enough food refuses to oblige him then he has a right to force the other person to give him to eat to save his life. He may even fight but he is not allowed to use weapons.

Some ulama (Scholars) say that if an owner does not permit a thirsty person to collect water then the least permitted to him is to fight against him without weapons. This is permitted because it is a sin to stop a person from a general blessing of Allah like water. To fight such a person is like enforcing Allah's limits on him.

SECTION I اَلْفَصْلُ الْاَوَّلُ

DEVELOPING A LAND THAT HAS NO OWNER

(٢٩٩١) عَنْ عَائِشَةَ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ مَنْ عَمَرَ اَرْضًا لَيْسَتْ لِاَحَدٍ فَهُوَ اَحَقُّ قَالَ عُرْوَةُ قَضٰى بِهٖ عُمَرُ فِيْ خِلَافَتِهٖ۔ (رواه البخارى)

2991. Sayyidah Ayshah رضی اللہ عنہا narrated that the Prophet صلی اللہ علیہ وسلم said, "He who habitates a land that has no owner has more right to it (than anyone else)." Sayyiduna Urwah رحمہ اللہ said that Sayyiduna Umar رضی اللہ عنہ decided according to this (saying) during his khilafah (caliphate).[1]

COMMENTARY: Urwah's رضی اللہ عنہ words are evidence that his hadith is not abrogated.

[1] Bukhari # 2335, Musnad Ahmad 6-120.

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CANNOT MAKE GRAZING LAND EXCLUSIVE

(٢٩٩٢) وَعَنِ ابْنِ عَبَّاسٍ اَنَّ الصَّعْبَ بْنَ جَثَّامَةَ قَالَ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ لَاحِمٰى اِلَّا لِلّٰهِ وَرَسُوْلِهٖ۔ (رواه البخارى)

2992. Sayyiduna Ibn Abbas رضی اللہ عنہ reported that Sayyiduna Sa'b ibn Jath thamah رضی اللہ عنہ narrated that he heard Allah's Messenger صلی اللہ علیہ وسلم say, "There is no sanctuary (or grazing land exclusive for anyone) except that which belong to Allah."[1]

COMMENTARY: Hima is a restricted grazing ground for animals to which other people are not allowed to send their animals.

The hadith says that it is not proper to reserve pastures without permission of Allah and his Messenger صلی اللہ علیہ وسلم.

During the Jahiliyah (ignorance period), the chiefs of tribes disallowed animals of other people to such lands that had much grass and profuse water and reserved these lands for themselves. The Prophet صلی اللہ علیہ وسلم disallowed this practice but did permit creation of exclusive grazing grounds for such animals as were used in jihad and for the animals received against zakah (Annual due charity). Now, however, after the death of the Prophet صلی اللہ علیہ وسلم no ruler is permitted to set aside a grazing ground for himself or for any purpose. Some ulama (Scholars) do say that a grazing ground may be reserved when it is exigent for the general body of Muslims unless it causes difficulty to most citizens.

A DISPUTE ABOUT WATER

(٢٩٩٣) وَعَنْ عُرْوَةَ قَالَ خَاصَمَ الزُّبَيْرُ رَجُلًا مِنَ الْاَنْصَارِ فِيْ شِرَاجٍ مِنَ الْحَرَّةِ فَقَالَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اسْقِ يَازُبَيْرُ ثُمَّ اَرْسِلِ الْمَاءَ اِلٰى جَارِكَ فَقَالَ الْاَنْصَارِيُّ اَنْ كَانَ ابْنُ عَمَّتِكَ فَتَلَوَّنَ وَجْهُهٗ ثُمَّ قَالَ اِسْقِ يَازُبَيْرُ ثُمَّ احْبِسِ الْمَاءَ حَتّٰى يَرْجِعَ اِلَى الْجَدْرِ ثُمَّ اَرْسِلِ الْمَاءَ اِلٰى جَارِكَ فَاسْتَوْعَى النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لِلزُّبَيْرِ حَقَّهٗ فِيْ صَرِيْحِ الْحُكْمِ حِيْنَ اَحْفَظَهُ الْاَنْصَارِيُّ وَكَانَ اَشَارَ عَلَيْهِمَا بِاَمْرٍ لَهُمَا فِيْهِ سِعَةٌ۔ (متفق عليه)

2993. Sayyiduna Urwah رحمہ اللہ narrated that Sayyiduna Zubayr رضی اللہ عنہ had a dispute with an ansar about the streamlets originating form the mountains (to the fields). The Prophet صلی اللہ علیہ وسلم (when it was brought to him) said, "O Zubayr, water your field, the let it flow to your neighbour." The ansar complained, "Of course, he is your cousin." That brought a change of colour on his face and he said,"Zubair! Irrigate your land and hold in till it flows to the embankment. Then let it flow to your neighbour!" Thus, the Prophet صلی اللہ علیہ وسلم allowed Zubayr رضی اللہ عنہ his right by the clear judgement when the ansar angered him though he had offered them an advice that could have made it convenient for each of them.[2]

COMMENTARY: Sayyiduna Urwah ibn zubayr ibn al-Awam رحمہ اللہ was a great glorious tabi. He was one of the seven great jurists of Madinah. His mother was the famous sahabiyah Sayyidah Asma رضی اللہ عنہ daughter of Sayyiduna Abu Bakr رضی اللہ عنہ His (Urwah's)

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[1] Bukhari # 2370, Musnad Ahmad 4-38.

[2] Bukhari # 2359, Muslim # 129-2357, Tirmidhi # 1368, Abu Dawud # 3637, Nasa'i # 5407, Ibn Majah # 2480, Musnad Ahmad 4-5.

رضی اللہ عنہ father was Sayyiduna Zubayr رضی اللہ عنہ the famous sahabi (Prophet's Companion) and son of Sayyidah Safiyah bint Abdul Muttalib, the aunt of the Prophet صلی اللہ علیہ وسلم one of the chief distinctions of Sayyiduna Zubayr رضی اللہ عنہ is that he was among the earliest to embrace Islam. He had embraced Islam in the very beginning of the Prophet's صلی اللہ علیہ وسلم call. At that time he was only sixteen years old, but his cruel paternal uncle gave him different kinds of punishment for it, like throwing him in smoke. The young man did not falter. Rather, he continued to stop forward. He participated in all battles with the prophet صلی اللہ علیہ وسلم and displayed exemplary bravery. He was one the ten fortunate sahabah (Prophet's Companions) رضی اللہ عنہم whom the Prophet صلی اللہ علیہ وسلم gave glad tiding of paradise in this world and who are called the ashrah mubashshirah.

It is about Sayyiduna Zubayr رضی اللہ عنہ that he had an nasar irrigated their respective fields through the same channel. Once they had an altercation about who had right of water before the other since they could not agree with one another, they took their case to the Prophet صلی اللہ علیہ وسلم for a judgement.

He gave the judgment considering that Zubayr's رضی اللہ عنہ land was on a higher level and nearer to the channel then the ansar's رضی اللہ عنہ. The latter, however, accused him of bias and favouritism.

The result was that the Prophet صلی اللہ علیہ وسلم withdraw the little concession he had given to the ansar رضی اللہ عنہ.

The concluding words of the hadith suggest that the Prophet صلی اللہ علیہ وسلم had advised Zubayr رضی اللہ عنہ to forgo some of his rights as a matter of goodwill. On the reaction of the ansar, he asked Zybayr رضی اللہ عنہ to seize all his right without consideration.

Some people say that the ansar was actually a hypocrite. Hypocrites never let an opportunity go to hurt the Prophet صلی اللہ علیہ وسلم. He was called and ansar because he belonged to the tribe of ansars. Some of them were hypocrites like Abdullah ibn Ubayy.

If that is so, then why was he not punished? He ought to have been killed at that moment for being rude to the Prophet صلی اللہ علیہ وسلم. The answer is that either it was to get him to the straight path by showing him leniency, or the Prophet's صلی اللہ علیہ وسلم patience did not allow him to kill him, for, he always endured and mischief of the hypocrites, and their taunts. Besides the enemies would have said, "Muhammad kills his companions," for, the hypocrites did call themselves Muslims and presented themselves as the Prophet's صلی اللہ علیہ وسلم companions.

However, some ulama (Scholars) have dug up an unearthed that the ansar was reallv a believer. Annoyance and impatience had made his mind restless and he blundered into misbehaving with the Prophet صلی اللہ علیہ وسلم.[1]

DO NOT WITHHOLD EXCESS WATER

(٢٩٩٤) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا تَمْنَعُوْا فَضْلَ الْمَاءِ لِتَمْنَعُوْا بِهِ فَضْلَ الْكَلَاءِ۔ (متفق علیہ)

2994. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم

[1] See also Siratun Nabi, Shibli Nu'mani, Dar ul Isha'at Karachi, v7 p46, v1 p195 and v2 p78.

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said, "Do not withhold excess water (from the animals) lest it stop extra herbage from growing."[1]

COMMENTARY: If animals are prevented from water, no one will get their animals there to graze. Once who disallows water directly, prevents grazing. It is the main diet of the animals, so it is not correct to disallow it. Of course, if there is no excess water then it is not wrong to prefer one's needs.

(٢٩٩٥) وَعَنْهُ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ ثَلَاثَةٌ لَا يُكَلِّمُهُمُ اللّٰهُ يَوْمَ الْقِيَامَةِ وَلَا يَنْظُرُ إِلَيْهِمْ رَجُلٌ حَلَفَ عَلَى سِلْعَةٍ لَقَدْ أُعْطِيَ بِهَا أَكْثَرَ مِمَّا أُعْطِيَ وَهُوَ كَاذِبٌ وَرَجُلٌ حَلَفَ عَلَى يَمِيْنٍ كَاذِبَةٍ بَعْدَ الْعَصْرِ لِيَقْتَطِعَ بِهَا مَالَ رَجُلٍ مُسْلِمٍ وَرَجُلٌ مَنَعَ فَضْلَ مَاءٍ فَيَقُوْلُ اللّٰهُ الْيَوْمَ أَمْنَعُكَ فَضْلِيْ كَمَا مَنَعْتَ فَضْلَ مَاءٍ لَمْ تَعْمَلْ يَدَاكَ۔ (متفق علیہ)

2995. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Three there are to whom Allah shall not speak on the day of resurrection and shall not look at them (with mercy), (they are:)

1. A man who swears (falsely) about his goods (to the buyer) that he was getting a better price than what he is being given, and he is a liar.

2. A man who swears a false oath after *asr* (*salah* (*prayer*)) to cheat a Muslim of his property.

3. A man who denies (to others) excess water. So Allah will say (on the day of resurrection)."Today, I deny you My favour just as you had denied excess water that your hands had not produced."[2]

COMMENTARY: The time 'after *asr*' has been mentioned either because false swearing is made at this time generally or it is more sinful to swear falsely after *asr*.

Allah will say to him that he acted unjustly though he had no hand in producing the water. How would he have acted if the water was his product? He denied Allah's blessing to other, so Allah will deny His blessing to him.

Though a well or stream may have man's effort in building them, yet the water therein is Allah's blessing and favour. The owner cannot deny it to others.

وَذُكِرَ حَدِيْثُ جَابِرٍ فِيْ بَابِ الْمَنْهِيِّ عَنْهَا مِنَ الْبُيُوْعِ

(Jabir's رضی اللہ عنہ hadith is mentioned previously in the chapter of 'Sales and purchases that are disallowed.' # 2857)

SECTION II اَلْفَصْلُ الثَّانِيْ

WALL ROUND A BARREN LAND

(٢٩٩٦) عَنِ الْحَسَنِ عَنْ سَمُرَةَ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ مَنْ أَحَاطَ حَائِطًا عَلَى الْأَرْضِ فَهُوَ لَهُ۔

(رواہ ابوداؤد)

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[1] Bukhari # 2354, Muslim # 37-1566, Tirmidhi # 1276, Abu Dawud # 3473, Ibn Majah # 2478, Musnad Ahmad 2. 244.

[2] Bukhari # 2369, Muslim # 173-103, Abu Dawud # 3474, Nasa'i # 4462, Ibn Majah # 2207, Musnad Ahmad 2-253.

2996. Sayyiduna Hasan (Busri) رحمه الله reported that Sayyiduna Samurah رضى الله عنه narrated that the Prophet صلى الله عليه وسلم said, "He who surrounded a (barren) land with a wall, it belongs to him."

COMMENTARY: According to the hadith, ownership of a barren land is established by the erection of a boundary wall round it. Imam Ahmad رحمه الله abides by this direction while the other three imam hold that ownership of such land is established only after it is made habitable. This has been explained in the beginning of the chapter. The hadith will be interpreted to mean that the wall is put up round the land to enable residence thereon.

PROPHET'S صلى الله عليه وسلم GIFTS OF BARREN LAND TO THE SAHABAH (PROPHET'S COMPANIONS) رضى الله عنهم

(۲۹۹۷) وَعَنْ اَسْمَاءَ بِنْتِ اَبِيْ بَكْرٍ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَقْطَعَ لِلزُّبَيْرِ نَخِيْلًا۔ (رواه ابوداؤد)

2997. Sayyidah Asma bint Abu Bakr رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم handed over ownership of some palm trees to (Sayyiduna) Zubayr رضى الله عنه[1]

COMMENTARY: Those trees were either from the Khums, or they stood on the barren land presented to Sayyiduna Zubayr رضى الله عنه.

(۲۹۹۸) وَعَنِ ابْنِ عُمَرَ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَقْطَعَ لِلزُّبَيْرِ حُضْرَ فَرَسِهٖ فَاَجْرٰى فَرَسَهٗ حَتّٰى قَامَ ثُمَّ رَمٰى بِسَوْطِهٖ فَقَالَ اَعْطُوْهُ مِنْ حَيْثُ بَلَغَ السَّوْطُ۔ (رواه ابوداؤد)

2998. Sayyiduna Ibn Umar رضى الله عنه narrated that the Prophet صلى الله عليه وسلم allot ed to (Sayyiduna) Zubayr رضى الله عنه all the land his horse could cover at a run so, he made it run and when it stopped (at a distance), he threw his whip (from there), so, the Prophet صلى الله عليه وسلم said, "Let him have it till where his whip has reached."[2]

(۲۹۹۹) وَعَنْ عَلْقَمَةَ بْنِ وَائِلٍ عَنْ اَبِيْهِ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَقْطَعَهٗ اَرْضًا بِحَضْرَمَوْتَ قَالَ فَاَرْسَلَ مَعِيْ مُعَاوِيَةَ قَالَ اَعْطِهَا اِيَّاهُ۔ (رواه الترمذى والدارمى)

2999. Sayyiduna Alqamah ibn Wa'il رحمه الله narrated on the authority of his father that the Prophet صلى الله عليه وسلم allotted to him a piece of land in Hadramawt. He said, "He sent Mu'awiyah with me instructing him, 'Give it to him.'[3]

COMMENTARY: The mount as sarah extends from Yemen to the Arabian peninsula, from its south west corner to the east turning along the southern coast to a long distance. The area this mountain range covers is called Hardramawt nearly all of it is barren and made up of desolate mountains. They are not very high and are uncultivable because of poor rain. However, some of their valleys are relatively hospitable, one such is the valley Hadramawt.

Sayyiduna wa'il ibn Hajr رضى الله عنه was a prince of the decent royal family of this area. His father was the monarch of the place. When he learnt of the Prophet's صلى الله عليه وسلم call to

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[1] Abu Dawud # 3069.

[2] Abu Dawud # 3072, Musnad Ahmad 2-156.

[3] Tirmidhi # 1386, Abu Dawud # 3058, Darimi # 2609, Musnad Ahmad 6-399.

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Islam, he took a deputation of his people to meet him. As he departed from Hadramawt, the Prophet صلى الله عليه وسلم informed the Sahabah (Prophet's Companions) رضى الله عنهم before his arrival: (وهو بقية ابناء الملوك) (and he is the surviving son of the kings). When he came and met the prophet صلى الله عليه وسلم, he received him warmly and made him sit near him on his mat. Then he made him ruler of Hadramawt, bestowing on him some of its lands.

(٣٠٠٠) وَعَنْ اَبْيَضَ بْنِ حَمَّالٍ الْمَأْرَبِيِّ اَنَّهٗ وَفَدَ اِلٰى رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَاسْتَقْطَعَهُ الْمِلْحَ الَّذِيْ بِمَارِبَ فَاَقْطَعَهٗ اِيَّاهُ فَلَمَّا وَلّٰى قَالَ رَجُلٌ يَارَسُوْلَ اللّٰهِ اِنَّمَا اَقْطَعْتَ لَهُ الْمَاءَ الْعِدَّ قَالَ فَرَجَعَهٗ مِنْهُ قَالَ وَسَاَلَهٗ مَاذَا يُحْمٰى مِنَ الْاَرَاكِ قَالَ مَالَمْ تَنَلْهُ اَخْفَافُ الْاِبِلِ۔ (رواه الترمذى وابن ماجة والدارمى)

3000. Sayyiduna Abyad ibn Hammal al-Marabi narrated that he came to Allah's Messenger صلى الله عليه وسلم and requested him to allot to him the (mine of) salt in Ma'rib. So, he gave it to him. But, as he turned to go, a man pointed out, "O Messenger صلى الله عليه وسلم of Allah, you have given him the ceaseless (ready) water (meaning, salt that is absolutely ready)." (This man was Aqra ibn Habis Tamimi.) رضى الله عنه So, he took it back from him. He then requested him about the land that had arak (thorny) trees growing in it. He said, "The land where the camels do not reach."[1]

COMMENTARY: Marib is a city in Yemen, sixty miles to the east of Sana'a, four thousand feet above the sea level. It was the capital of Yemen up to the first century of the Gregorian calendar, under the Saba dynasty. It also was a busy trade centre. Abyad رضى الله عنه was called Ma'rabi because of his residence there.

Ceaseless or ready water means always ready and perpetual. It alludes to the salt in the mine that is always at h and. The Prophet صلى الله عليه وسلم gave it to Abyad رضى الله عنه under the impression that he would have to work over it but when Aqra رضى الله عنه pointed out that it was developed and no work was necessary to extract the salt, he reversed his decision because all people had a right over it, the mine as well as the salt.

It is evidence that the ruling government may assign a mine to any one if it is underground and undeveloped. The mines that are developed and productive may not be given to any individual. Like grass and water, all people will share their utility.

The hadith also establishes that a ruler may annul his decision if it transpires that it was not based on correct information.

The words 'where the camels do not reach' mean a land distant from pastures and buildings. Hence, it is not allowed to revive the barren land that is near houses because animals graze there and citizens use it for different purposes.

THERE BLESSINGS OF ALLAH FOR ALL

(٣٠٠١) وَعَنِ ابْنِ عَبَّاسٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَلْمُسْلِمُوْنَ شُرَكَاءُ فِيْ ثَلَاثٍ فِي الْمَاءِ وَالْكَلَاءِ وَالنَّارِ۔ (رواه ابوداؤد وابن ماجة)

3001. Sayyiduna Ibn Abbas رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "The Muslims are co-sharers in three things; water, herbage and fire."[2]

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[1] Tirmidhi # 1385, Ibn Majah # 2475, Darimi # 2608, Abu Dawud # 3064.

[2] Abu Dawud # 3477, Ibn Majah # 2472, Musnad Ahmad 5. 361.

COMMENTARY: Of the three blessings, water is found in the rivers, ponds, seas, wells, etc. It is not what anyone has in his vessels. This has been dealt with in the beginning of the chapter. Herbage is grown in the open.

If anyone possesses fire, he has no right to deny it to others or prevent him from burning a lantern or from sitting in its light. But, the wood that is being burnt is not allowed to anyone because that would cause the fire to decrease or to extinguish. Some people say that it refers to flint that is used to ignite a spark. NO one may be prevented to take it from a barren land (mawat).

THE FIRST TO TAKE POSSESSES IT, IF IT IS A PERMISSIBLE THING

(٣٠٠٢) وَعَنْ اَسْمَرَبْنِ مُضَرِّسٍ قَالَ اَتَيْتُ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَبَايَعْتُهُ فَقَالَ مَنْ سَبَقَ إِلٰى مَاءٍ لَمْ يَسْبِقْهُ إِلَيْهِ مُسْلِمٌ فَهُوَ لَهٗ۔ (رواه ابوداؤد)

3002. Sayyiduna Asmar Mudarris رضی اللہ عنہ recalled his coming to the Prophet صلی اللہ علیہ وسلم when he swore allegiance to him. He said to him (Asmar) رضی اللہ عنہ, "If anyone precedes (others) to water to which no Muslim has overtaken him, then it belongs to him."[1]

COMMENTARY: If any one takes water from a permissible source like river, etc. that portion becomes his property and what remains in the source is not his but continues to be permissible for all. In the same way other permissible things are treated.

EVIL OVERTAKES THE PEOPLE WHOSE WEAK ARE DENIED THEIR RIGHTS

(٣٠٠٣-٣٠٠٤) وَعَنْ طَاوُسٍ مُرْسَلًا اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ مَنْ اَحْيَا مَوَاتًا مِنَ الْاَرْضِ فَهُوَ لَهٗ وَعَادِيُّ الْاَرْضِ لِلّٰهِ وَلِرَسُوْلِهٖ ثُمَّ هِيَ لَكُمْ مِنِّيْ۔ رَوَاهُ الشَّافِعِيُّ وَرُوِيَ فِيْ شَرْحِ السُّنَّةِ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَقْطَعَ لِعَبْدِاللّٰهِ بْنِ مَسْعُوْدٍ الدُّوْرَ بِالْمَدِيْنَةِ وَهِيَ بَيْنَ ظَهْرَانِيْ عِمَارَةِ الْاَنْصَارِ مِنَ الْمَنَازِلِ وَالنَّخْلِ فَقَالَ بَنُوْ عَبْدِبْنِ زُهْرَةَ نَكِّبْ عَنَّا ابْنَ اُمِّ عَبْدٍ فَقَالَ لَهُمْ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَلِمَ ابْتَعَثَنِيَ اللّٰهُ إِذًا إِنَّ اللّٰهَ لَا يُقَدِّسُ اُمَّةً لَا يُؤْخَذُ لِلضَّعِيْفِ فِيْهِمْ حَقُّهٗ۔

3003. Sayyiduna Tawus رضی اللہ عنہ narrated in a mursal form that Allah's Messenger صلی اللہ علیہ وسلم said, "He who revives barren land, it belongs to him. Ancient land belongs to Allah and His Messenger. Then it is for you from me."[2]

3004. It is reported that Sharh us *sunnah (Prophet's* صلی اللہ علیہ وسلم *practice)* that the Prophet صلی اللہ علیہ وسلم allotted to Sayyiduna Abdullah ibn Mas'ud رضی اللہ عنہ some houses in Madinah between the dwellings and palm trees of the ansar. At that, the Banu Abd ibn Zuhrah pleaded. "Send away the son of Umm Abd from us!" (Ibn Mas'ud's) رضی اللہ عنہ mother was Umm Abd.) He said, "Then why has Allah sent me? Allah does not grant sanctity to a people who do not get the weak his rights."[3]

COMMENTARY: Ancient land is the barren land whose owner is unknown. The Arabic Word

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[1] Abu Dawud # 3071.

[2] Abu Dawud # 3071.

[3] Shafi in al-Umm 4-45 (kitab ul Jihad, chapter on Huma and Qita).

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for it (عادى) refer to (عاد) Aad, the people of Prophet Hud عليه السلام merely to depict its primeval or ancient nature because prophet Hud عليه السلام and his people are very early in history.

The Prophet صلى الله عليه وسلم said, "belongs to and His Messenger." It means 'all old. Ownerless barren lands belong to me. They are under m y authority. I use them as I deem best and give them to whom I like and allow them to develop them.' Allah's name is taken by way of introduction and His Greatness to demonstrate His Messenger's صلى الله عليه وسلم status, for, the Messenger's صلى الله عليه وسلم decision reflects Allah's decision This (last sentence) is what Qadi said.

Banu Abd ibn Zuhrah wanted Ibn Mas'ud رضى الله عنه to be sent away because they were opposed to his father, Mas'ud, during the jahiliyah (ignorance period). Besides, his mother, Umm Abd was among their servants. So, they demonstrated their apathy for Ibn Mas'ud رضى الله عنه.

The Prophet صلى الله عليه وسلم told them that one of the reasons for which he was sent was to help the weak people and remove the imaginary wall between men dividing them as high and low. He had to infuse common sense into the arrogant and confidence into the weak and needy.

He said that the people who do not care for their weak section are the worst of human beings whom Allah does not clear from sins and evil. When the strong suppress the weak and deny them their rights, their social life is smeared with evil and sin. They are not worthy and not righteous, and deprive themselves of Allah's mercy.

Therefore, the Prophet صلى الله عليه وسلم explained to Banu (children of) Abd ibn Zuhrah that they should not try to deny Abdullah ibn Mas'ud his rights. He could choose to live where he wished. And the Prophet صلى الله عليه وسلم said to them "I am his helper and am bound to support him."

RELEASING WATER TO FIELDS AND GARDENS

(٣٠٠٥) وَعَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ اَبِيْهِ عَنْ جَدِّهٖ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَضٰى فِي السَّيْلِ الْمَهْزُوْرِ اَنْ يُمْسَكَ حَتّٰى يَبْلُغَ كَعْبَيْنِ ثُمَّ يُرْسَلَ الْاَعْلٰى عَلَى الْاَسْفَلِ۔ (رواه ابوداؤد وابن ماجة)

3005. Sayyiduna Amr ibn Shu'ayb رحمه الله narrated that on the authority of his father (Shu'ayb) from his grandfather (Abdullah ibn Amr) رضى الله عنه that Allah's Messenger صلى الله عليه وسلم had decided about the stream al-Mahzur that its water should be withheld till it was ankle deep and then the upper waters should be released to flow to the lower.[1]

COMMENTARY: Al-Mahzur is a valley in Madinah situated in the land of Banu Qurayzah and irrigating their fields. The Prophet صلى الله عليه وسلم had instructed that the land near to the canal carrying water from this valley should be given preference and water should be released to it first. When this land was well watered the sign of which was that water stood ankle deep, the water should be released and allowed to go to the lower land.

The same procedure applies to every river flows naturally without anyone's effort in building it.

DO NOT TROUBLE OTHERS

(٣٠٠٦) وَعَنْ سَمُرَةَ بْنِ جُنْدُبٍ اَنَّهٗ كَانَتْ لَهٗ عَضُدٌ مِنْ نَخْلٍ فِيْ حَائِطِ رَجُلٍ مِنَ الْاَنْصَارِ وَمَعَ الرَّجُلِ اَهْلُهٗ فَكَانَ سَمُرَةُ يَدْخُلُ عَلَيْهِ فَيَتَاَذّٰى بِهٖ فَاَتَى النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَذَكَرَ ذٰلِكَ لَهٗ فَطَلَبَ اِلَيْهِ النَّبِيُّ صَلَّى

[1] Abu Dawud # 3639, Ibn Majah # 2482, Muwatta Maalik # 28 (al-Aqdiyah).

اللّٰهُ عَلَيْهِ وَسَلَّمَ لِيَبِيْعَهُ فَاَبٰى فَطَلَبَ اَنْ يُنَاقِلَهُ فَاَبٰى قَالَ فَهَبْهُ لَهُ وَلَكَ كَذَا اَمْرًا رَغَّبَهُ فِيْهِ فَاَبٰى فَقَالَ اَنْتَ مُضَارٌّ فَقَالَ لِلْاَنْصَارِيِّ اذْهَبْ فَاقْطَعْ نَخْلَهُ رَوَاهُ اَبُوْدَاوٗدَ۔

3006. Sayyiduna Samurah ibn Jundub رضی اللہ عنہ is reported to have had some palm-trees in the garden of a man of the ansar (purportedly Malik ibn Qays) رضی اللہ عنہ who had his family with him. Sayyiduna Samurah رضی اللہ عنہ used to enter it (to look after his trees). This caused inconvenience to the ansar. So, he met and told the Prophet صلی اللہ علیہ وسلم about it. He (called Samurah) رضی اللہ عنہ and asked him to sell it (meaning, the palm trees to the ansar), but he declined. So, he advised him to exchange them for something else, but he declined. Then, he instructed him to present them to ansar and have a certain thing for it but he declined. Then, he said, "You are a difficult man." And to the ansar, "Go, cut down his palm-trees!"

COMMENTARY: The Prophet صلی اللہ علیہ وسلم did not give a command to Sayyiduna Samurah of a *wajib (obligatory)* nature that he had no option but to obey. He merely suggested to him or recommended him to do one of those things. The last option was also an encouragement to earn reward. If it was otherwise, then Sayyiduna Samurah رضی اللہ عنہ would not have declined so easily. Rather, being an obedient sahabi, he would have agreed without hesitation.

The question arises why did the Prophet صلی اللہ علیہ وسلم instruct the ansar to chop down Samurah's رضی اللہ عنہ trees. The answer is that since he declined every offer, he seemed to be bent on causing distress to the ansar. There was only one way to give relieve to the ansar instruct him to cut down those trees.

وَذُكِرَ حَدِيْثُ جَابِرٍ مَنْ اَحْيٰى اَرْضًا فِيْ بَابِ الْغَصْبِ بِرِوَايَةِ سَعِيْدِ بْنِ زَيْدٍ وَسَنَذْكُرُ حَدِيْثَ اَبِيْ صِرْمَةَ مَنْ ضَارَّ اَضَرَّ اللّٰهُ بِهٖ فِيْ بَابِ مَا يُنْهٰى مِنَ التَّهَاجُرِ

And, the hadith of Jabir رضی اللہ عنہ about reviving barren land has been narrated already in the chapter on 'unjust & compulsory appropriation, hadith # 2944.

مَنْ ضَارَّ ضَرَّ اللّٰهُ بِهٖ الخ باب ماينهى من التّهاجر

And, we shall narrate the hadith of Abu Sirmah (# 5042) about one who hurts, Allah will cause him hurt...in the chapter on that which is forbidden about severing ties of kinship or staying apart. (The compiler of Masabih had reproduced were both these traditions.)

SECTION III اَلْفَصْلُ الثَّالِثُ

DO NOT REFUSE TO GIVE WATER, SALT & FIRE

(۳۰۰۷) عَنْ عَآئِشَةَ اَنَّهَا قَالَتْ يَارَسُوْلَ اللّٰهِ مَا الشَّيْئُ الَّذِيْ لَا يَحِلُّ مَنْعُهُ قَالَ الْمَاءُ وَالْمِلْحُ وَالنَّارُ قَالَتْ قُلْتُ يَارَسُوْلَ اللّٰهِ هٰذَا الْمَاءُ قَدْ عَرَفْنَاهُ فَمَا بَالُ الْمِلْحِ وَالنَّارِ قَالَ يَاحُمَيْرَاءُ مَنْ اَعْطٰى نَارًا فَكَاَنَّمَا تَصَدَّقَ بِجَمِيْعِ مَا اَنْضَجَتْ تِلْكَ النَّارُ وَمَنْ اَعْطٰى مِلْحًا فَكَاَنَّمَا تَصَدَّقَ بِجَمِيْعِ مَاطَيَّبَتْ تِلْكَ الْمِلْحُ وَمَنْ سَقٰى مُسْلِمًا شَرْبَةً مِنْ مَاءٍ حَيْثُ يُوْجَدُ الْمَاءُ فَكَاَنَّمَا اَعْتَقَ رَقَبَةً وَمَنْ سَقٰى مُسْلِمًا شَرْبَةً مِنْ مَاءٍ حَيْثُ لَا يُوْجَدُ الْمَاءُ فَكَاَنَّمَا اَحْيَاهَا۔

(رواه ابن ماجة)

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3007. Sayyidah Ayshah رضی اللہ عنہا narrated that she asked, 'O Messenger of Allah صلی اللہ علیہ وسلم, what thing is it that it is not lawful to deny?" He said, "Water, Salt and fire," She said, "O Messenger of Allah, this water we understand (that this blessing of Allah is essential and a necessity of life). But, why salt and fire? (It is difficult to comprehend.) He said, "O Humayra, he who gives fire is like one who gives a charity of everything that the fire cooks. And, he who gives salt is as though he gives charity of everything that the salt makes tasty. He who gives water to drink to a Muslim where water is available is as though he has emancipated a slave. And he who gives water to a Muslim to drink where water is scarce is as though he has given him life."

COMMENTARY: The Prophet صلی اللہ علیہ وسلم also described the need to give water though Sayyidah Ayshah رضی اللہ عنہا had said that she understood the need to give water to someone.[1]

CHAPTER - XVI

GIFTS بَابُ الْعَطَايَا

The word (عطایا) (ataya) is the plural of (عطا) (ata) meaning 'gift.' grant. It is to transfer ownership and right to use of something belonging to oneself to another person, or to give away something to another without any return.

In this chapter, all kinds of gift and grants will be mentioned. They are:

(وقف) (waqf) or endowment,

(هبہ) (hibah) grant, donation,

(عمیری) (umra) donation for life,

(رقبیٰ) (ruqba) donation with provision as to death of donar or donee.[2]

Mulla Ali Qari رحمہ اللہ has stated that ataya mean 'the grants and rewards of the chiefs, rulers, monarchs and heads of states."

Imam Ghazali رحمہ اللہ has written in Minhaj ul Aabideeen that the ulama (Scholars) have expressed different opinions on accepting the gifts of rulers and monarchs and the rewards of state. Some of them say that if the gifts and rewards are of such things of whose unlawfulness one is not certain then it is correct to accept them. Others say that unless one is certain that they are lawful, it is better not to accept them because in present times, most of the property and valuables with the kings and in state Treasuries are acquired through sources not recognized and approved by Shari'ah (divine law).

Some ulama (Scholars) say that it is lawful for both the rich and the poor to receive gifts from the rulers as long as it is not established definitely that their property is unlawfully acquired. Their evidence is that the prophet صلی اللہ علیہ وسلم had accepted the gift of Muqawqis king of Alexandria and had taken a loan from a Jew though the Qaran says about the Jews.

أَكَّالُونَ لِلسُّحْتِ

{devourers of the unlawful} (5:42)

Some others have said that if it is not known about some property that it is unlawful then

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[1] Ibn Majah # 2474.

[2] These definitions are from mujan lughat al Fuqaha, Idaratul Quran, Karachi.

the poor (destitute, needy) is allowed to take it but the rich (who can afford) is not permitted to take it.

In conclusion and as a summary the ruling may be understood that there is no harm if a poor person accepts anything from the rulers because if it is the ruler's personal property then undoubtedly it is correct to take it, and if it is from the spoils, Kharaj (homage revenue) (tribute or tax and land) or ushr (one tenth or title) then the poor person deserves to take it. The scholars too have a right to the revenue of the spoils, tribute or one-tenth of land tax. Sayyiduna Ali رضی اللہ عنہ said that if any one embraces Islam willingly and learns the Quran, then he has a right to take two hundred dirhams from the state Treasury every year. If he does not receive his right in this world then he will get its reward in the hereafter.

SECTION I اَلْفَصْلُ الْاَوَّلُ

UMAR'S LAND OF KHAYBAR GIVEN AS WAQF

(۳۰۰۸) عَنِ ابْنِ عُمَرَ اَنَّ عُمَرَ اَصَابَ اَرْضًا بِخَيْبَرَ فَاَتَى النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ يَا رَسُوْلَ اللّٰهِ اِنِّي اَصَبْتُ اَرْضًا بِخَيْبَرَ لَمْ اُصِبْ مَالًا قَطُّ اَنْفَسَ عِنْدِيْ مِنْهُ فَمَا تَا مُرُنِيْ بِهٖ قَالَ اِنْ شِئْتَ حَبَّسْتَ اَصْلَهَا وَتَصَدَّقْتَ بِهَا فَتَصَدَّقَ بِهَا عُمَرُ اَنَّهٗ لَا يُبَاعُ اَصْلُهَا وَلَا يُوْهَبُ وَلَا يُوْرَثُ وَتَصَدَّقَ بِهَا فِي الْفُقَرَاءِ وَفِي الْقُرْبٰى وَفِي الرِّقَابِ وَفِي سَبِيْلِ اللّٰهِ وَابْنِ السَّبِيْلِ وَالضَّيْفِ لَا جُنَاحَ عَلٰى مَنْ وَلِيَهَا اَنْ يَاْكُلَ مِنْهَا بِالْمَعْرُوْفِ اَوْ يُطْعِمَ غَيْرَ مُتَمَوِّلٍ قَالَ ابْنُ سِيْرِيْنَ غَيْرَ مُتَاَثِّلٍ مَالًا۔ (متفق علیہ)

3008. Sayyiduna Ibn Umar رضی اللہ عنہ narrated that (Sayyiduna) Umar رضی اللہ عنہ got some land in Khaybar (as his share of spoils). He went to the Prophet صلی اللہ علیہ وسلم and submitted. "O Messenger of Allah, I have received land in Khaybar that I think is more valuable then any other I have ever had." (And he expressed desire to use it in Allah's path.) "Command me how I may use it?" He said, "If you wish, make a waqf (endowment) of the property and give its produce as charity." So, Umar made a sadaqah (charity) of the land in Allah's path stipulating that the land itself should not be sold gifted or inherited. He gave its produce as sadaqah (charity) to be disbursed to the poor the relatives, the slaves to buy their freedom, in Allah's path (for the warriors, pilgrims), the travellers and the guest. The trustee of the land may eat from it and feed his family (who are not self supporting) only to the extent of his needs, there being no sin on him for that, provided he does not build up (from it) to become rich.

Ibn Sirin رحمہ اللہ explained that the trustee should not make the land a means to collect wealth for himself.[1]

COMMENTARY: This hadith is proof that waqf may be made. All Muslim agree that a Muslim is allowed to make waqf of his property like land or house, etc. for a pious purpose and a good objective to please Allah. A person who makes the waqf is bestowed with a huge reward.

This hadith is also an evidence that the property of which a waqf is made may neither be sold nor given in gift. It cannot be inherited too.

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[1] Bukhari # 2737, Muslim # 15-1632, Nasa'i # 3629, 3630, Ibn Majah # 2396, Musnad Ahmad 2-12.

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This hadith bears out the excellence of waqf which is a recurring charity The person who makes a waqf receives its reward perpetually.

Khaybar is a habitation about sixty miles to the north of Madinah. Dates are grown here. The Muslims had conquered it in the times of the Prophet صلى الله عليه وسلم. After that, its lands were distributed as spoils among the warriors and Sayyiduna Umar رضى الله عنه also got a share which he set aside as waqf in Allah's path.

Sharh us *sunnah (Prophet's* صلى الله عليه وسلم *practice)* says that this hadith confirms that it is allowed to the person making a waqf to receive from it a reasonable profit for his needs. He may use that on the necessities of life of himself and his family. He is the trustee of his waqf.

At one time, the Prophet صلى الله عليه وسلم had asked, "Is there anyone who will buy bi'r (the well named) roomah? (It had belonged to a Jew and the Prophet صلى الله عليه وسلم had asked for one who would buy it and make an endowment of it for the Muslim). "His bucket in the well will be like a Muslim's." (It meant that he could use the well like other Muslim could.) Sayyiduna Uthaman bought the well and made a waqf of it for the Muslims.

UMRA IS ALLOWED

(٣٠٠٩) وَعَنْ اَبِيْ هُرَيْرَةَ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ الْعُمْرٰى جَائِزَةٌ۔ (متفق عليه)

3009. Sayyiduna Abu Hurayrah رضى الله عنه **narrated that the Prophet** صلى الله عليه وسلم **said, "Umra is allowed."[1]**

(Umra is a life time donation, as distinct from umrah, the pilgrimage.)

COMMENTARY: Mutual dealings and exchange of gifts promote love for each other. One of the ways to give gifts is umra which is permissible according to this hadith. (the word is pronounced umra)

WHAT IS UMRA: It has been defined earlier. For example, someone gives to another his house for the life time of the recipient. This is allowed and as long as the person to whom the house is given lives, the house cannot be taken back. However, when he dies, may house be taken back or not?

The ulama (Scholars) differ on this question. There are three kinds of umraa:

(1) A person gives his house to another. Saying, "I have given you my house for your lifetime. After your death, it will go to your heir and children." All the ulama (Scholars) agree that this is a gift and it is no more the property of the donor. It becomes the recipient's property. After his death, his heirs become owners of the house. If he has no heirs then it goes to the state Treasury.

(2) The giver says only. "This is your house for your life time." Most ulama (Scholars) say that the same ruling applies as in the previous case. However, some ulama (Scholars) say that it will not go to the heirs but will revert to the donor who is the original owner.

(3) The giver says, "This house is your for your lifetime. After your death it will become my and my heir's property." However, the more correct thing is that the same ruling applies in this case as the first case. The Hanafis say that the condition 'it will revert to me and my heirs after my death' is void. However, the gift does not become void because of the faulty condition. Imam Shafi'I رحمه

[1] F khari # 2626, Muslim # 32-162, Abu Dawud # 2548, Nasa'i # 3785, Musnad Ahmad 2. 347.

اللہ agrees with this opinion, but Imam Ahmad رحمہ اللہ says that the void condition makes the gift void.

Imam Maalik رحمہ اللہ says that in all these cases, the basic purpose is to make the recipient owner of the benefit of the thing given.

UMRA BECOMES PROPERTY OF HEIR OF RECIPIENT

(٣٠١٠) وَعَنْ جَابِرٍ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اِنَّ الْعُمْرٰى مِيْرَاثٌ لِاَهْلِهَا۔ (رواه مسلم)

3010. Sayyiduna Jabir رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "Surely, umra becomes the inheritance of the heirs of its owner (who is the recipient of the gift)."[1]

COMMENTARY: The hadith confirms that if a house is given as umra then it will remain property of the one to whom it is given. On his death, it will become the property of his heirs. Thus, the contention of the majority of the ulama (Scholars) (as mentioned earlier) is upheld.

(٣٠١١) وَعَنْهُ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَيُّمَا رَجُلٍ اُعْمِرَ عُمْرٰى لَهٗ وَلِعَقِبِهٖ فَاِنَّهَا لِلَّذِيْ اُعْطِيَهَا لَا يَرْجِعُ اِلَى الَّذِيْ اَعْطَاهَا لِاَنَّهٗ اَعْطٰى عَطَاءً وَقَعَتْ فِيْهِ الْمَوَارِيْثُ۔ (متفق علیه)

3011. Sayyiduna Jabir رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "If any man is given a thing as umra for himself and for his heirs, then the umra belongs to him to whom it is given. It does not return to the donor, because he gave a gift in which inheritance follows."[2]

COMMENTARY: Of the three kinds of umra mentioned in the hadith of Sayyiduna Abu Hurayrah رضی اللہ عنہ (# 3009), this hadith refers to the very first kind. It has been explained there concerning the juristic difference of opinion/

HADITH THAT CONTRADICTS GENERAL OPINION

(٣٠١٢) وَعَنْهُ قَالَ اِنَّمَا الْعُمْرٰى الَّتِيْ اَجَازَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَنْ يَّقُوْلَ هِيَ لَكَ وَلِعَقِبِكَ فَاَمَّا اِذَا قَالَ هِيَ لَكَ مَا عِشْتَ فَاِنَّهَا تَرْجِعُ اِلٰى صَاحِبِهَا۔ (متفق علیه)

3012. Sayyiduna Jabir رضی اللہ عنہ narrated that the umra which Allah's Messenger صلی اللہ علیہ وسلم permitted is that the giver should say, "It belongs to you and to your heirs (after your death)." If he says, "It is yours as long as you live.' Then it will return to its (original owner (who gave it).[3]

COMMENTARY: This hadith seems to contradict the opinion of the majority of the ulama (Scholars) as mentioned in the commentary of the hadith of Abu Hurayrah رضی اللہ عنہ (# 3009). The ulama (Scholars) say that this hadith is not marfu which means that it communicates the saying of Sayyiduna Jabir رضی اللہ عنہ, not of the Prophet صلی اللہ علیہ وسلم So, it does not affect the majority opinion.

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[1] Muslim # 31-1625.

[2] Bukhari # 2625, Muslim # 20. 1625, Tirmidhi # 1358, Abu Dawud # 3553, Ibn Majah # 2380.

[3] Muslim # 23-1625, Abu Dawud # 3551, Musnad Ahmad 3-294.

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SECTION II اَلْفَصْلُ الثَّانِيْ

UMRA & RAQBA DISALLOWED

(٣٠١٣) عَنْ جَابِرٍ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لَا تُرْقِبُوْا وَلَا تُعْمِرُوْا فَمَنْ اُرْقِبَ شَيْئًا اَوْ اُعْمِرَ فَهِيَ لِوَرَثَتِهٖ۔ (رواه ابوداؤد)

3013. Sayyiduna Jabir رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "Do not give a gift as ruqba or as umra. If anyone is given anything as ruqba or as umra then it goes to his heirs."[1]

COMMENTARY: Like umra, ruqba is a kind of gift, defined earlier in the chapter. A man gives his house to another stipulating, "If I die before you the house will be your property. If you die before me, it will become my property again." Thus, one waits for the other to die.
Previously, we learnt that both these kinds are allowed. Now we are asked to abstain from them. So, either this hadith is abrogated as this prohibition might have been of an earlier date, Or, we are told that both umra and ruqba are not judicious yet if they are observed, then Shariah deems them correct.
While the Hanafis regard umrah as allowed, ruqba is not and imam Ahmad Abu Hanifah رحمہ اللہ Yusuf رحمہ اللہ regards it as allowed.
Some Hanafi scholars say that one should not give one's property as gift for a specified period of time with intention to take it back at the end of that time. The reason is that when anything is given as gift, it is no longer the giver's property whether he gives it explicitly as hibah (gifts) or as umra or ruqba.

BOTH UMRA AND RUQBA ARE ALLOWED

(٣٠١٤) وَعَنْهُ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ الْعُمْرٰى جَائِزَةٌ لِاَهْلِهَا وَالرُّقْبٰى جَائِزَةٌ لِاَهْلِهَا (رواه احمد والترمذی وابوداؤد)

3014. Sayyiduna Jabir رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "The umra is allowed (as a gift) to those who are given (a gift as) umra. And the ruqba is allowed to those who are given (a gift as) ruqba."[2]

SECTION III اَلْفَصْلُ الثَّالِثُ

IS UMRA DISALLOWED

(٣٠١٥) عَنْ جَابِرٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَمْسِكُوْا اَمْوَالَكُمْ عَلَيْكُمْ لَا تُفْسِدُوْهَا فَاِنَّهٗ مَنْ اَعْمَرَ عُمْرٰى فَهِيَ لِلَّذِيْ اُعْمِرَ حَيًّا وَمَيِّتًا وَلِعَقِبِهٖ۔ (رواه مسلم)

3015. Sayyiduna Jabir رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Retain your properties with yourself. Do no waste them, for he who gives anything as umra (to another) gives it to him for (all his) life and after his death, to his children."[3]

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[1] Abu Dawud # 3556, Nasa'i # 3731.
[2] Tirmidhi # 1358, Abu Dawud # 3558, Nasa'i # 2739, Ibn Majah # 2383, Musnad Ahmad 3-303.
[3] Muslim # 26-1625, Musnad Ahmad 3-312.

COMMENTARY: The validity of umra seems doubtful in the light of this hadith. However, if the explanation to hadith # 3013 is read, the doubt will be cleared.

CHAPTER - XVII

MORE ABOUT THE PREVIOUS بَابٌ

SECTION I اَلْفَصْلُ الْاَوَّلُ

DO NOT RETURN GIFT OF SWEET FLOWER

(٣٠١٦) عَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ عُرِضَ عَلَيْهِ رَيْحَانٌ فَلَا يَرُدُّهُ فَاِنَّهُ خَفِيْفُ الْمَحْمَلِ طَيِّبُ الرِّيْحِ۔ (رواه مسلم)

3016. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "He who is presented a fragrant flower must not return it for, it is light to carry (meaning, a small gift) and is sweet smelling."[1]

COMMENTARY: The same command not to return a gift applies to every gift that seems small and not a great favour but is great in benefit and promoting goodwill. The person who gives the gift should not feel hurt.

(٣٠١٧) وَعَنْ اَنَسٍ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ كَانَ لَا يَرُدُّ الطِّيْبَ۔ (رواه البخاری)

3017. Sayyiduna Anas رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم never returned (the gift of) perfume.[2]

TAKING BACK A GIFT

(٣٠١٨) وَعَنِ ابْنِ عَبَّاسٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَلْعَائِدُ فِيْ هِبَتِهٖ كَالْكَلْبِ يَعُوْدُ فِيْ قَيْئِهٖ لَيْسَ لَنَا مَثَلُ السَّوْءِ۔ (رواه البخاری)

3018. Sayyiduna Ibn Abas رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "He who asks for a return of his gift is like a dog who returns (to lick) its vomit. It is not for us to be compared to an evil thing."[3]

COMMENTARY: The hadith concludes with the words that our people are bestowed with great honour and lofty principles. So, it does not behave any one of us to do anything that is against the greatness of his people lest he be remembered as an evil example.

A person should not take back any gift he has presented to another. T his is moral side of the hadith.

As for its juristic angle, Imam Abu Hanifah رحمہ اللہ said that while it is allowed to take back what one has given to another as a gift, yet it is makruh (disapproved) to do so. In some cases, however, it is not even allowed. This will be explained against the hadith # 3020 (Section II).

The Hanafis say of this hadith that it speaks of 'dislike' to show that it is impolite. The three other imams read the hadith to say that is disallowed to take back a gift, but Imam Shafi'I

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[1] Muslim # 20. 2253, Tirmidhi # 2791(?), Abu Dawud # 4172, Nasa'i # 5259.

[2] Bukahri # 5928, Nasa'i # 5258.

[3] Bukhari # 2622, Muslim # 5-1622, Abu Dawud # 3538, Nasa'i # # 37601, Ibn Majah # 2385.

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رحمه الله say that a father may take back a gift he gives to his son.
According to one report, Imam Ahmad رحمه الله also has the same opinion. Some ahadith that follow lead to the same conclusion but their deduction by the Hanafis is also mentioned there.

DO NOT DIFFERENTIATE BETWEEN CHILDREN

(٣٠١٩) وَعَنِ النُّعْمَانِ بْنِ بَشِيْرٍ اَنَّ اَبَاهُ اَتٰى بِهٖ اِلٰى رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ اِنِّيْ نَحَلْتُ ابْنِيْ هٰذَا غُلَامًا فَقَالَ اَكُلَّ وَلَدِكَ نَحَلْتَ مِثْلَهٗ قَالَ لَا قَالَ فَارْجِعْهُ وَفِيْ رِوَايَةٍ اَنَّهٗ قَالَ اَيَسُرُّكَ اَنْ يَكُوْنُوْا اِلَيْكَ فِي الْبِرِّ سَوَاءً قَالَ بَلٰى قَالَ فَلَا اِذًا وَفِيْ رِوَايَةٍ اَنَّهٗ قَالَ اَعْطَانِيْ اَبِيْ عَطِيَّةً فَقَالَتْ عَمْرَةُ بِنْتُ رَوَاحَةَ لَا اَرْضٰى حَتّٰى تُشْهِدَ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَاَتٰى رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ اِنِّيْ اَعْطَيْتُ ابْنِيْ مِنْ عَمْرَةَ بِنْتِ رَوَاحَةَ عَطِيَّةً فَاَمَرَتْنِيْ اَنْ اُشْهِدَكَ يَارَسُوْلَ اللّٰهِ قَالَ اَعْطَيْتَ سَائِرَ وَلَدِكَ مِثْلَ هٰذَا؟ قَالَ لَا قَالَ فَاتَّقُوا اللّٰهَ وَاعْدِلُوْا بَيْنَ اَوْلَادِكُمْ قَالَ فَرَجَعَ فَرَدَّ عَطِيَّتَهٗ وَفِيْ رِوَايَةٍ اَنَّهٗ قَالَ لَا اَشْهَدُ عَلٰى جَوْرٍ۔ (متفق عليه)

3019. Sayyiduna Nu'man ibn Bashir رضى الله عنه said that his father took him to Allah's Messenger صلى الله عليه وسلم and submitted, "I have given to this my son a slave." He asked, "Have you given all your children like this?" He submitted, "No." So, he commanded, "Take him back."
According to another version: he asked him, "will it not please you that all of them be kind to you in the same manner?" He said, "Of course!" So, he commanded, "Then do it not."
According to another version: Nu'man رضى الله عنه said that his father gave him a gift, but (his mother) Amrah bint رضى الله عنه Rawahah protested, "I shall not agree till you request Allah's Messenger to witness this (gift)." So he came to Allah's Messenger صلى الله عليه وسلم and submitted, "I have given my son from Amrah daughter of Rawadhah a gift but she has asked me to request you to witness (this presentation), O Messenger of Allah." He asked, "Have you given all your children the same thing?" He said, "No" So, he warned, "Fear Allah, Be just to all your children." Nu'man رضى الله عنه said that he came back and took back his gift.
According to another version: He (the Prophet) صلى الله عليه وسلم said, "I shall not be a witness to an unjust act."[1]

COMMENTARY: It is very unreasonable to treat the children unfairly. So, it is *mustahab (desirable)* to not present something to only one child at the exclusion of other sons and daughters. Rather, it should be given to all children equally.
The Prophet صلى الله عليه وسلم command to Sayyiduna Nu'man رضى الله عنه to return the slave was based on the preferred course. So, Imam Abu Hanifah رضى الله عنه. Imam Shafi'I رحمه الله and Imam Maalik رحمه الله say that if any man presents a gift to some, not all, of his children then though the gift is correct yet it is with distaste.

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[1] Bukhari # 2587, Muslim # 9. 1623, Tirmidhi # 1372, Nasa'i # 3672, Ibn Majah # 2375, Muwatta Maalik # 39 (Akram), Musnad Ahmad 4-269.

However, Imam Ahmad رحمه الله, Thawri رحمه الله and Ishaq رحمه الله and others hold that it is forbidden. They cite the saying of the Prophet صلى الله عليه وسلم (لَا أَشْهَدُ عَلَى جَوْرٍ) (I shall not be witness to an unjust act). But, Imam Abu Hanifah رحمه الله deduces from these words of the Prophet صلى الله عليه وسلم, as also in another version.

فَأَشْهِدْ عَلَى هٰذَا غَيْرِي

(He said to Bashir:) رضى الله عنه "Get some other than me for a witness."

They maintain that if this gift (of a slave to Bashir) رضى الله عنه was forbidden or void then he would not have instructed him to get another witness, The Prophet's صلى الله عليه وسلم words show that in any case Bashir's gift was correct and allowed, but disliked so he did not consider himself as a witness.

SECTION II اَلْفَصْلُ الثَّانِي

NOT PROPER TO TAKE BACK A GIFT

(٣٠٢٠) عَنْ عَبْدِاللّٰهِ بْنِ عَمْرٍو قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا يَرْجِعُ اَحَدٌ فِيْ هِبَتِهٖ اِلَّا الْوَالِدُ مِنْ وَلَدِهٖ۔ (رواه النسائي وابن ماجة)

3020. Sayyiduna Abdullah ibn Amr رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "No one may take back his gift. But a father (may take it back) from his son."[1]

COMMENTARY: This hadith is on which Imam Shafi'I رحمه الله based his ruling.

Imam Abu Hanifah's رحمه الله contention is that just as a father can take the property of his son for his own use. So too he may take back his (other) gifts, for his personal use.

WHEN IT IS DISALLOWED TO TAKE BACK A GIFT: As stated earlier, Imam Abu Hanifah رحمه الله regards it permissible to take back a gift but calls it makruh (disapproved). Those ahadith that disallow it, he interprets them as makruh (disapproved). However, there are seven cases when he too rules that taking back a gift is disallowed. Some books of fiqh (Islamic jurisprudence) say that the seven cases are in (دمع خزقعه) each letter of which stands for one case (د،م،ع،خ،ز،ق،ه) (daal, meem, 'ain, Khah, za, qaf, ha)

The first letter daal (د) means additions. If something is added to or mixed with, a gift then returning it is not proper. An open plot on which he builds a house or plants trees. The donor cannot ask for a return of the donated land.

The second letter meem (م) stands for death of one of the two. Thus, if a person gives something to another and dies thereafter, his heirs have no right to ask the surviving recipient to return to them that which their forebear had given to him. Or, if the recipient died, the giver cannot ask his heir for the return of the gift.

The third 'ain (ع) refers to an exchange of gifts. The giver cannot ask the recipient for the return his gift (against which he had given something).

The fourth letter is Kha (خ). It is that the recepient of the gift sells it or hands it over to another. The giver cannot demand its return.

The fifth letter is za (ز). If one of the spouses gives a gift to the other, then the giver cannot ask for a return of it.

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[1] Nasa'i # 3689, Ibn Majah # 2378, Musnad Ahmad 2-182.

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The sixth letter qaaf (ق) signifies relationship of the kind of mahram, like father, son, mother, grandfather, siblings, gifts by one of them to another are unreturnable.
The seventh letter ha (ه) refers to the ruin of the thing gifted. The giver cannot ask the recipient for a return of the gift if it has perished.

UNCIVIL TO DEMAND RETURN OF A GIFT

(٣٠٢١) وَعَنِ ابْنِ عُمَرَ وَ ابْنِ عَبَّاسٍ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لَا يَحِلُّ لِلرَّجُلِ اَنْ يُعْطِيَ عَطِيَّةً ثُمَّ يَرْجِعُ فِيْهَا اِلَّا الْوَالِدُ فِيْمَا يُعْطِيْ وَلَدَهٗ وَمَثَلُ الَّذِيْ يُعْطِي الْعَطِيَّةَ ثُمَّ يَرْجِعُ فِيْهَا كَمَثَلِ الْكَلْبِ اَكَلَ حَتّٰى اِذَا شَبِعَ قَاءَ ثُمَّ عَادَ فِيْ قَيْئِهٖ۔ (رواه ابوداؤد والترمذی والنسائی وابن ماجة وصححه الترمذی)

3021. Sayyiduna Ibn Umar رضی اللہ عنہ and Sayyiduna Ibn Abbas رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "It is not lawful for anyone to present a gift to another and then take it back. But, a father to his son. The example of one who gives a gift and then takes it back is that of a dog that eats and when it is satiated vomits. Then it returns to its vomit."[1]

GIFT FOR GIFT

(٣٠٢٢) وَعَنْ اَبِيْ هُرَيْرَةَ اَنَّ اَعْرَابِيًّا اَهْدٰى لِرَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ بَكْرَةً فَعَوَّضَهٗ مِنْهَا سِتَّ بَكَرَاتٍ فَتَسَخَّطَ فَبَلَغَ ذٰلِكَ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَحَمِدَ اللّٰهَ وَاَثْنٰى عَلَيْهِ ثُمَّ قَالَ اِنَّ فُلَانًا اَهْدٰى اِلَيَّ نَاقَةً فَعَوَّضْتُهٗ مِنْهَا سِتَّ بَكَرَاتٍ فَظَلَّ سَاخِطًا لَقَدْ هَمَمْتُ اَنْ لَا اَقْبَلَ هَدِيَّةً اِلَّا مِنْ قُرَشِيٍّ اَوْ اَنْصَارِيٍّ اَوْ ثَقَفِيٍّ اَوْ دَوْسِيٍّ۔ (رواه الترمذی وابوداؤد والنسائی)

3022. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that a villager presented to Allah's Messenger صلی اللہ علیہ وسلم a young she camel. He reciprocated by giving him six young she camels. But, the man was displeased. This was bought to the prophet's صلی اللہ علیہ وسلم knowledge. So, he praised and glorified Allah and said, "So and so presented me a she camel and I give him six young she-camels as a reciprocal gesture, but he was not pleased. I resolved. Therefore, that I shall not accept a gift except from a Quraysh Ansar, a Thaqafi or a Dawsi."[2]

COMMENTARY: When you give someone a gift, it is contrary to your spirit of sincerity to except a return gift. But, if any one reciprocates your gesture, you should regard it highly. The sahabah never had a semblance of wish that when they presented something to the Prophet صلی اللہ علیہ وسلم he would give them a return gift, but he was very generous and always reciprocated their gesture willingly.
The villager in this hadith showed extreme greed. His attitude reflected that he had brought the gift only to get a greater return. The Prophet صلی اللہ علیہ وسلم was displeased with his attitude and decided not to accept a gift from anyone but the four people he named.
The Quraysh belonged to the tribe of Quraysh. The Ansar were the ansar of Madinah.

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[1] Tirmidhi # 2138, Abu Dawud # 3539, Nasa'i # 3690, Ibn Majah # 2377, Musnad Ahmad 1-237.
[2] Tirmidhi # 3971, Abu Dawud # 3537, Nasa'i # 3759.

Thaqafi and Dawsi were two tribes. He named them as exceptions because they were very courageous and generous.

(٣٠٢٣) وَعَنْ جَابِرٍ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ مَنْ أُعْطِيَ عَطَاءً فَوَجَدَ فَلْيَجْزِ بِهٖ وَمَنْ لَمْ يَجِدْ فَلْيُثْنِ فَإِنَّ مَنْ أَثْنٰى فَقَدْ شَكَرَ وَمَنْ كَتَمَ فَقَدْ كَفَرَ وَمَنْ تَحَلّٰى بِمَا لَمْ يُعْطَ كَانَ كَلَابِسِ ثَوْبَيْ زُوْرٍ۔ (رواه الترمذی وابوداؤد)

2023. Sayyiduna Jabir رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "He who is presented something and is capable, must reciprocate it. But, if he cannot, then he should praise (the giver of gift), for, he who extols has indeed expressed gratitude. But, he who 'conceals has indeed been ungrateful. He who adorns himself with what he is not given puts on two garments of falsehood."[1]

COMMENTARY: To praise anyone is tantamount to show gratitude to him. Gratitude is to have love in the heart, to praise with the tongue and to serve with hands and feet.

The hadith concludes with the message that if anyone describes himself with a merit of religion or the world which he does not possess then he is as though wearing a pair of garments of falsehood. It, means that he presents himself as a scholar and a righteous man which he is not.

PRAYER FOR THE GOOD DOER

(٣٠٢٤) وَعَنْ أُسَامَةَ بْنِ زَيْدٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ صُنِعَ إِلَيْهِ مَعْرُوْفٌ فَقَالَ لِفَاعِلِهٖ جَزَاكَ اللّٰهُ خَيْرًا فَقَدْ أَبْلَغَ فِي الثَّنَاءِ۔ (رواه الترمذی)

3024. Sayyiduna Usamah ibn Zayd رضی اللہ عنہ narrated that, "If a favour is shown to anyone and he says to the kindly person (جزاک اللہ خیرا) (jazak Allah Khayra may Allah reward you heavily) then he has showered perfect praise for him."[2]

COMMENTARY: By saying those words, he confesses that he is unable to return the favour and thank the benevolent person perfectly. So, he prays to Allah to reward him in this world and the next.

STEADY ON STRAIGHT PATH: The glorious shaykh Abdul Wahhab Muttaqi رحمہ اللہ asserted that a sufi must not come out of straight path whether the creatures gives him or give him not. He must not let his feet stagger from the true path. If a sinning, worthless person gives him something then he must not praise him as though he was a righteous person. Rather, he must pray for him, 'May Allah grant you a good reward.'

If he suffers harm or grief at the hands of a righteous God fearing man, then he must not throw him out from the fold of the righteous simply because of that suffering at his hands. And, he must not deride him. Rather, he must pray for him (غفر اللہ لہ ولنا) (may Allah forgive him and forgive us).

This is how the people on the steady straight path conduct themselves and act.

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[1] Tirmidhi # 2041, Abu Dawud # 4813.

[2] Tirmidhi # 2042.

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HE WHO IS UNGRATEFUL TO MEN IS UNGRATEFUL TO ALLAH

(٣٠٢٥) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ لَمْ يَشْكُرِ النَّاسَ لَمْ يَشْكُرِ اللّٰهَ۔ (رواه احمد والترمذى)

3025. Sayyiduna Abu Hurayrah رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "He who is not grateful to the people will not be grateful to Allah."[1]

COMMENTARY: Allah is thanked by obeying Him and men who are the means of delivering Allah's blessing should be thanked. If anyone lags behind in this then he has not thanked Allah.

If any one fails to t hank his benefactor he is ungrateful for the blessings and does not thank Allah.

(٣٠٢٦) وَعَنْ اَنَسٍ قَالَ لَمَّا قَدِمَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ الْمَدِيْنَةَ اَتَاهُ الْمُهَاجِرُوْنَ فَقَالُوْا يَا رَسُوْلَ اللّٰهِ مَارَأَيْنَا قَوْمًا اَبْذَلَ مِنْ كَثِيْرٍ وَلَا اَحْسَنَ مُوَاسَاةً مِنْ قَلِيْلٍ مِنْ قَوْمٍ نَزَلْنَا بَيْنَ اَظْهُرِهِمْ لَقَدْ كَفَوْنَا الْمُؤْنَةَ وَاَشْرَكُوْنَا فِي الْمَهْنَا حَتّٰى لَقَدْ خِفْنَا اَنْ يَذْهَبُوْا بِالْاَجْرِ كُلِّهٖ فَقَالَ لَا مَادَعَوْتُمُ اللّٰهَ لَهُمْ وَ اَثْنَيْتُمْ عَلَيْهِمْ۔ رَوَاهُ التِّرْمِذِيُّ وَصَحَّحَهٗ۔

3026. Sayyiduna Anas رضى الله عنه narrated that when Allah's Messenger صلى الله عليه وسلم arrived in Madinah, the muhajirs (emigrants) came to him and submitted. "O Messenger of Allah, these people to whom we have come are more generous is spending when they have wealth, and kindly and helpful when they have little than any we have come across. They keep us away from hard working but associate us in their comfort, so we fear that they will take away all the reward." He said, "No! Not until you pray to Allah for them and continue to praise them."[2]

COMMENTARY: When the emigrants from Makkah came to Madinah, its people - called ansar or helpers - not only welcomed them but helped them in every possible way. They even shared their gardens and fields, palm-trees and other belonging with them. They did not make the emigrants work but shared the product of their labour with them willingly.

The emigrants wondered if their hijrah (emigration) and worship would earn them no reward which might go to the ansar. The Prophet صلى الله عليه وسلم comforted them that they would not lose their reward as long as they prayed for the ansar.

EXCHANGE OF GIFTS REMOVES GRUDGES

(٣٠٢٧) وَعَنْ عَائِشَةَ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ تَهَادَوْا فَاِنَّ الْهَدِيَّةَ تُذْهِبُ الضَّغَائِنَ۔ (رواه الترمذى)

3027. Sayyidah Ayshah رضى الله عنها narrated that the Prophet صلى الله عليه وسلم said, "Give presents to each other, for, a gift removes ill will."[3]

EVEN A SMALL GIFT

(٣٠٢٨) وَعَنْ اَبِيْ هُرَيْرَةَ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ تَهَادَوْا فَاِنَّ الْهَدِيَّةَ تُذْهِبُ وَحَرَ الصَّدْرِ وَلَا

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[1] Tirmidhi # 1961, Musnad Ahmad # 2-258, Abu Dawud # 4811.

[2] Tirmidhi # 2495, Musnad Ahmad # 3938.

[3] Tirmidhi # 2137 (narrated Abu Hurahrah) رضى الله عنه

تَحْقِرَنَّ جَارَةٌ لِجَارَتِهَا وَلَوْ شِقَّ فِرْسَنِ شَاةٍ۔ (رواه الترمذی)

3028. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "Give presents to each other, for, a gift removes ill will from the heart. And, let not a woman look down upon the gift of her neighbour of a piece of a sheep's trotter."[1]

COMMENTARY: It is both ways, applying to a woman who receives a part of a sheep's trotter and to a woman who sends it to her neighbour. Neither in sending nor in receiving may a woman think little of the gift. The receiving woman must receive it with a cheerful face.

(۳۰۲۹) وَعَنِ ابْنِ عُمَرَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ ثَلَاثٌ لَا تُرَدُّ الْوَسَائِدُ وَالدُّهْنُ وَاللَّبَنُ

رَوَاهُ التِّرْمِذِيُّ وَقَالَ هٰذَا حَدِيْثٌ غَرِيْبٌ قِيْلَ اَرَادَ بِالدُّهْنِ الطِّيْبَ۔

3029. Sayyiduna Ibn Umar رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Three things are not refused (to be accepted): a pillow or cushion, (scented) oil and milk."[2]

COMMENTARY: The second thing is (الدهن) (ad-duhn) which really is oil. The Arabs used to apply oil generally.

DO NOT REJECT SCENTED FLOWER

(۳۰۳۰) وَعَنْ اَبِيْ عُثْمَانَ النَّهْدِيِّ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِذَا اُعْطِيَ اَحَدُكُمُ الرَّيْحَانَ

فَلَا يَرُدَّهُ فَاِنَّهُ خَرَجَ مِنَ الْجَنَّةِ۔ رَوَاهُ التِّرْمِذِيُّ مُرْسَلًا۔

3030. Sayyiduna Abu Uthman An-Nahdi narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "If anyone of you is given rayhan, he must not reject it, for, it is from paradise."[3] (Rayhan: is scented flower)

COMMENTARY: Flower is from paradise in the sense that its origin (or root) is from paradise.

SECTION III اَلْفَصْلُ الثَّالِثُ

NOT PROPER TO PREFER ANY CHILD OVER OTHER

(۳۰۳۱) عَنْ جَابِرٍ قَالَ قَالَتِ امْرَاَةُ بَشِيْرٍ اَنْحَلَ ابْنِيْ غُلَامَكَ وَاَشْهِدْ لِيْ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَاَتٰى

رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ اِنَّ ابْنَةَ فُلَانٍ سَاَلَتْنِيْ اَنْ اَنْحَلَ ابْنَهَا غُلَامِيْ وَقَالَتْ اَشْهِدْ لِيْ

رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ اَلَهٗ اِخْوَةٌ قَالَ نَعَمْ قَالَ اَفَكُلَّهُمْ اَعْطَيْتَهُمْ مِثْلَ مَا اَعْطَيْتَهٗ قَالَ لَا قَالَ

فَلَيْسَ يَصْلُحُ هٰذَا وَاِنِّيْ لَا اَشْهَدُ اِلَّا عَلٰى حَقٍّ۔ (رواه مسلم)

3031. Sayyiduna Jabir رضی اللہ عنہ narrated that Sayyiduna Bashir's رضی اللہ عنہ wife said to him, "Give my son (Nu'man) your slave and request Allah's Messenger صلی اللہ علیہ وسلم to witness it for my sake." So, he came to Allah's Messenger صلی اللہ علیہ وسلم and submitted. "The daughter of so-and-so (meaning, Amrah bint Rawahah) asks me to give her son

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[1] Tirmidhi # 2137, Musnad Ahmad 2-264 (Bukhari # 2566 Muslim # 1030).

[2] Tirmidhi # 2799.

[3] Tirmidhi # 2800

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my slave and stipulates that I should get Allah's Messenger as witness for her." He asked, "Has he brother?" He submitted, "Yes!" He asked, "Have you given every one of them the like of what you give him (now)?" He said, "No!" He said, "Then, this is not correct. And, I will not be a witness except for what is correct."[1]

COMMENTARY: See commentary on hadith # 3012. [2]

WHEN FRESH FRUIT WAS PRESENTED TO THE PROPHET صلى الله عليه وسلم

(٣٠٣٢) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ رَأَيْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِذَا اُتِيَ بِبَا كُوْرَةِ الْفَاكِهَةِ وَضَعَهَا عَلٰى عَيْنَيْهِ وَعَلٰى شَفَتَيْهِ وَقَالَ اللّٰهُمَّ كَمَا اَرَيْتَنَا اَوَّلَهٗ فَاَرِنَا اٰخِرَهٗ ثُمَّ يُعْطِيْهَا مَنْ يَكُوْنُ عِنْدَهٗ مِنَ الصِّبْيَانِ۔

رَوَاهُ الْبَيْهَقِيُّ فِي الدَّعْوَاتِ الْكَبِيْرِ۔

3032. Sayyiduna Abu Hurayrah رضى الله عنه narrated that when a first fruit was brought to Allah's Messenger صلى الله عليه وسلم, he saw him put it on his eyes and lips. Then he prayed:

اَللّٰهُمَّ كَمَا اَرَيْتَنَا اَوَّلَهٗ فَاَرِنَا اٰخِرَهٗ

(O Allah, just as you have shown us the first of it, show us the last of it). Then he gave it to one of the boys who was present with him.[3]

COMMENTARY: "The last of it" could be a prayer for a long life. Or it could refer to the hereafter to mean, 'O Allah, let us have the blessing in the hereafter.' That indeed is the real blessing.[4]

CHAPTER - XVIII

AL-LUQATAH TROVES (OR FOUND PROPERTY) بَابُ اللُّقْطَةِ

The word (لقطة) is read luqitah, and luqtah. The scholars of hadith know it best as luqatah. Luqatah is that which is found somewhere (say, on a road) and its owner is not known. In this regard, the command of Shari'ah (divine law) is that if anything is found lying somewhere, it is *mustahab (desirable)* to pick it up, provided one is confident of oneself that one would make an announcement of the find and hand it over to its owner when traced. If one is not sure of oneself then it must be left where it lies. Again, if one apprehends that if it is left there, then it might waste or perish then it is *wajib (obligatory)* to pick it up. If one who detects it but does not pick it up and it wastes away then he will have committed a sin. This is the general principle of luqatah. We now present some of its rulings in detail.
Luqatah is a trust with the person who picks it up provided he calls someone to witness it, saying, "I have picked it up to preserve it or to hand it over to its owner." In this case, no ransom will be *wajib (obligatory)* on him if it perishes. But, if he does not call anyone to bear

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[1] Muslim # 19-1624, Musnad Ahmad 3-326.

[2] See also 'Bringing up Children in Islam (p 127) Dar ul Isha'at, Karachi (up bring of children in Islam p 172 Darul Tasnif Jamiatal Uloom of Islamiyah Karachi)

[3] Bayhaqi in Ad-Dawat al Kabir

[4] See also bringing up children in Islam (P 251 and 382) Darul Isha'at, Karachi Also, upbringing of Children in Islam.

witness and the luqatah perishes then it will be *wajib (obligatory)* on him to make amends for it provided the owner denies that he had picked it up to hand it over to him.

The announcement of the find must be made where the luqatah was picked up and where people are found in large numbers generally, "who owns this things?" This announcement must be made till the person who picks it up is convinced that its owner will not demand it any more. However, the sahibayn (the two disciples) Imam Abu Yusuf رحمه الله and Imam Muhammad رحمه الله hold that the announcement should be made for one year. If anything is perishable then it should be announced only till the time it is likely to perish.

If the owner is traced during t he times of announcement then that thing must be handed over to him. After that, the thing must be given away as charity. If the owner appears after that and upholds the charity then he will deserve reward for it from Allah. Or, he may ask the person who had picked it up to redeem for that. Or, he may get it back from the person to whom the charity was handed over, but if that thing is no more with him then he may get a recompense from him as is the procedure with an animal found as luqatah.

Luqatah is allowed in animals too. If anyone finds a lost animal, then he may catch it, announce it and deliver it to its owner. Whatever is spent during the period of announcement would be counted as a favour. The owner will not be asked to pay for it if the expenses were made without the permission of the ruler. However, if the man who caught the animal stipulated that he would claim the expenses, and spent on it with the permission of the ruler, then it will be like a debt whose repayment will be *wajib (obligatory)* on the owner, who will repay it when he gets his animal. The man who has the luqatah has the right to detain the animal till its owner pays him all that he had spent on it.

The ruler and the judge are instructed that if the thing found as luqatah is such that benefit may be derived from it, like a runaway slave then he may be made to work. What he earns may be used to pay for his expenses. If it is something from which benefit cannot be derived, like an animal, then the judge may give permission to bear its expenses and to get them from the owner provided that is good for the owner. If the judge deems that it will cause loss to the owner instead of being good for him then he may get the thing sold and retain its price to be handed over to the owner when he appears.

If a person has a luqatah and someone claims it as his property describing the thing correctly, then it is allowed to hand it over to the claimant and it is not necessary to have witnesses. However, if he cannot described it then the luqatah must not be handed over to him without witnesses to it.

If the person who finds the luqatah is poor then when the time expires for the announcement, he may use it himself. If he is rich then he may give it away as charity. In this case, he is permitted to give it in charity to his antecedents, that is parents, and to his descendants, that is, children, and to his wife, provided they are poor and needy.

It is *mustahab (desirable)*, for one who can, to nab a runaway slave. Similarly, if a slave has lost his way then it is *mustahab (desirable)* to keep him with oneself.

If anyone catches a runaway slave and takes him to his master at a distance of more than three days' journey, then he is eligible to get from the slave's master forty dirhams as his wages, even if the slave is worth less then forty dirhams. However, he who brings him must have called someone to witness that he nabs the slave to take him to his master.

If anyone brings a distance lesser than three days then he deserves wages in that proportion, for example, if the distance is half of that then he will get twenty dirhams.

If the slave escapes from this person too who had nabbed him then he will not be

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responsible to pay damages if he had called someone to witnesses his effort. If he had not any witnesses then not only will he receive wages (or fare) for the journey, but also damages will be *wajib (obligatory)* on him to pay.

PICKING UP AN ABANDONED CHILD

Laqit (or, an abandoned child) if found anywhere may be picked up, it being *mustahab (desirable)* to do so. If there is likelihood of its death then it is *wajib (obligatory)* to pick it up. If it is not established that the child is a slave then it will be presumed that he is free. The sustenance and blood wit of a laqit is the responsibility of the state treasury. Any thing that he leaves behind will go to the State Treasury. No one has a right to take away the laqit from the person who has picked it up. If anyone claims that the child belongs to him then his claim will be deemed to be reliable if he makes the claim on oath, and the child's parentage will be established thereby. If two people claim the child to be theirs, then the more rightful to take him will be the one who discloses any identification mark on the child's body and if his disclosure is confirmed.

If a slave claims parentage to the child then his claim will be deemed to be correct, but that child will continue to be a Muslim if he is found in the habitation of the Muslims or in their neighbourhood. If the child is found among the dhimmis or their house of worship, then he will be said to be dhimmi.

If some property is tied to the laqit or he wears jewellery, or any other thing, then, after the judgement of a judge, it must be spent on the laqit alone, though some ulama (Scholars) say that it may be done even without a judge's judgement.

The more correct opinion is that it is allowed to one who has picked up the laqit to send him to a professional to acquire some professional skill, but it is not allowed to him to marry him to someone, to use his wealth and property, or to make him work.

RULINGS ABOUT LUQATAH

(1) Suppose a man takes off his shoes and places them aside somewhere. Another man comes and does the same thing. Then the first man comes back from where he had gone and put on the shoes of the second man by mistake and departs. Now, what should the second man do when he comes to find his shoes replaced? The agreed ruling is that he is not allowed to put on shoes of the first man if they are like his own or better than his. If these shoes are worse than his own (Second man's) then he is allowed to use them.

(2) A man may find scattered on the ground one of two kinds of things:

(a) Of immaterial and inconsequential value: Anyone who picks it up may use it knowing that its owner will never ask for it though has the right to demand it. But, shaykh ul Islam رحمه الله says that its ownership transfers to him.

(b) Something invaluable like gold and silver: He who picks them up must preserve them and announce the find till he hands them over to their owner.

(3) If anyone find a loaf of bread or something else as much as a loaf of bread, or less then that, then, even when he is well-off, he is allowed to eat it.

(4) If wheat or corn is ground in a mill and residue particles of that which were previously subjected to grinding get mixed with it then there is no harm in it. This happens generally. IF a straw from a broom belonging to someone else is used to pick teeth, there is to harm in it too.

(5) The dung of the animals of guests in an inn do not belong to the inn-keeper when the

guests depart from there with their animals. They become property of one who picks them up first of all.

SECTION I اَلْفَصْلُ الْاَوَّلُ

WHEN ONE FINDS DROPPED THINGS

(٣٠٣٣) عَنْ زَيْدِ بْنِ خَالِدٍ قَالَ جَاءَ رَجُلٌ اِلٰى رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَسَأَلَهُ عَنِ الُّلقَطَةِ فَقَالَ اِعْرِفْ عِفَاصَهَا وَوِكَاءَ هَا ثُمَّ عَرِّفْهَا سَنَةً فَاِنْ جَاء صَاحِبُهَا وَاِلَّا فَشَأْنُكَ بِهَا قَالَ فَضَالَّةُ الْغَنَمِ قَالَ هِيَ لَكَ اَوْلِاَخِيْكَ اَوْلِلذِّئْبِ قَالَ فَضَالَّةُ الْاِبِلِ قَالَ مَالَكَ وَلَهَا مَعَهَا سِقَاءُهَا وَحِذَائُهَا تَرِدُ الْمَاءَ وَتَاكُلُ الشَّجَرَ حَتّٰى يَلْقَاهَا رَبُّهَا مُتَّفَقٌ عَلَيْهِ وَفِيْ رِوَايَةٍ لِمُسْلِمٍ فَقَالَ عَرِّفْهَا سَنَةً ثُمَّ اَعْرِفْ وِكَائَهَا وَعِفَاصَهَا ثُمَّ اسْتَنْفِقْ بِهَا فَاِنْ جَاءَ رَبُّهَا فَاَدِّهَا اِلَيْهِ۔

3033. Sayyiduna Zayd ibn Khalid رضی اللہ عنہ narrated that a man came to Allah's Messenger صلی اللہ علیہ وسلم and asked him about luqatah. Bear in mind its nature (contained in a cloth or a leather bag) and its cork (or that with which is it fastened). Make an announcement for a year. If its owner appears, hand it over to him, otherwise it is your wish how you use it." The man asked about lost sheep (if anyone catches them). He said, "It belongs to you. Your brother or the wolf." The man then asked about lost camel He posed. "How is it your concern? They have their water (in their bellies) and their feet with them and can go to their feet with them and can go to the water and can eat trees till their master locates them."
According to another version in Muslim:
(When the man asked about luqatah,) the prophet صلی اللہ علیہ وسلم said, "Announce about it for one year, bear in mind its fastening and that in which it is placed. Use it for yourself. If its owner comes, hand it over to him (if you have it intact otherwise its value).[1]

COMMENTARY: Ibn Maalik رحمہ اللہ said that the Prophet صلی اللہ علیہ وسلم instructed anyone who picks up the luqatah to bear in mind that nature of it because when any one claims it he would know whether he describes it correctly or not. Imam Maalik رحمہ اللہ and Imam Ahmad رحمہ اللہ Say that in that case it is *wajib (obligatory)* to hand over the luqatah to the claimant without having any witness. Imam Shafi'I رحمہ اللہ and the hanafis say that if any one describe, the nature and fastening, weight and number of the luqat ah and the man who has picked it up is satisfied about the claimant 's truthfulness, then it is allowed to hand it over to him. But the claimant cannot compel him to hand it over to him without any witnesses. The wisdom in having to know well the nature and fastening is also that he should be able to pick it out from his own goods.

The announcement of the find should be made where it is found and also in all public places. Imam Shafi'I رحمہ اللہ, Imam Maalik رحمہ اللہ, Imam Ahmad رحمہ اللہ and Imam Muhammad رحمہ اللہ say that the announcement should be made for one year. But, Imam Abu Hanifah رحمہ اللہ and Imam Yusuf رحمہ اللہ, say that no time period is fixed. They say that the hadith says one

[1] Bukahri # 2429, Muslim # 1-1722, Tirmidhi # 1377, Abu Dawud # 1704, Ibn Majah # 2504, Muwatta Maalik # 46 (Aqdiyah), Musnad Ahmad 4. 116

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year to suggest the waiting without making it binding. Hidayah quotes Imam Abu Hanifah رحمه الله as saying that if the value of luqatah is less than ten dirhams, it will be announced for a few days. If it is worth ten dirhams then it should be made known for one month and if it is two hundred dirhams then it will be announced for one year.

Some ulama (Scholars) say that even this is not a fixed limit. It depends on the judgement of the picker till he is convinced that no claimant is likely to show up. According to one version in Muslim, the period of one year is not mentioned.

If luqatah is something perishable than the announcement should be made till it begins to not.

If it is something very insignificant and of negligible value then no announcement is necessary. However, the owner has the right to demand his thing.

If the owner of the luqatah comes after the announcement then it must be given to him if he has witnesses with him then it is *wajib (obligatory)* on the person who had picked it up to hand it over. If he has no witnesses then it is not *wajib (obligatory)* but permissible. If the owner does not turn up after the announcement then the picker may keep it for his sown use whether he is rich or poor. This is as most sahabah (Prophet's Companions) رضی الله عنهم say and Imam Shafi'I رحمه الله says. Some of the sahabah (Prophet's Companions) رضی الله عنهم say that if he is rich, he must give it to some poor person as a charity. This is to what Ibn Abbas رضی الله عنه Sufyan Thawri رحمه الله, Ibn Mubarak رحمه الله and the Hanafis subscribe. If the owner turns after the charity is given, then he may let the charity stay or get a redemption from the picker of luqatah or the poor man to whom the charity was given, if that thing is no more there. Whichever of the two pays the damages will not demand anything from the other. If the luqatah is intact as it was then the owner will have to take it.

It is stated in Nihayah that it is better to keep the luqat ah for oneself after the announcement though it is allowed to make a charity of it. If you catch a goat as luqatah and the owner comes after the announcement, he will take it otherwise you will use it. So if he takes it, he is your brother or if you do not catch it, then someone else will take it as your brother. It is allowed to benefit from it, otherwise the wolf would devour it. The same command applies to every animal that its owner cannot take care of or he is not there and it cannot be safe from the wolf.

The camel's belly is like a water skin that conserves water. The camel can go without drinking water for days together.

The camel's feet are strong. It can go up to its food and protect itself from wild animals.

The ulama (Scholars) say that this example of the camel applies to every such animal that protects itself even in the absence of its master from wolf, etc. like horses and donkeys. Imam shafi'I رحمه الله and Imam Maalik رحمه الله deduce from this hadith that the camel, cow, etc, cannot be caught as luqatah in the desert. It is not allowed, but they may be caught in villages and cities. The Hanafis say that it is *mustahab (desirable)* to catch all animals everywhere and to announce the find in order to protect the property of the people both in the desolate places and habitations.

The Hanafis say about this hadith that the command not to catch the camel was valid during those times when most people were honest and good doers and the deceivers were therefore, prevented from touching them. The same cannot be said these days.

LUQATAH MAY NOT BE KEPT WITHOUT ANNOUNCEMENT

(٣٠٣٤) وَعَنْهُ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ اٰوٰى ضَالَّةً فَهُوَ ضَالٌّ مَالَمْ يُعَرِّفْهَا۔ (رواه مسلم)

3034. Sayyiduna Zayd ib Khalid رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "If anyone (picks up and) retains a stray thing (belonging to another) is misled unless he makes the find known."[1]

LUQATAH OF THE HIL (LAWFUL) & OF THE HARAM (SACRED TERRITORY)

(۳۰۳۵) وَعَنْ عَبْدِالرَّحْمٰنِ بْنِ عُثْمَانَ التَّيْمِيِّ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ نَهٰى عَنْ لُقَطَةِ الْحَاجِّ۔

(رواہ مسلم)

3035. Sayyiduna Abdur Rahman ibn Uthman al-Taymi رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم forbade anything that the pilgrims might drop.[2]

COMMENTARY: The luqatah in the sacred territory must be preserved till the owner appears whenever that is and the announcement must be made. Imam Shafi'I رحمہ اللہ abides by this dictate. But, Imam Abu Hanifah رحمہ اللہ maintain that the same ruling applies to the luqatah of the haram (sacred territory) and of the hil (territory outside the haram). See the chapter on Haram Makkah.

(Note: According to another copy of the Urdu translation: Anything found in the Haram must be left where it is till its owner comes and take his ting. This is what Imam Shafi'I رحمہ اللہ abides by. The Hanafi view is as stated in the foregoing lines.)

SECTION II اَلْفَصْلُ الثَّانِيْ

LUQATAH OF UNINHABITED PLACE AND BURIED TREASURE

(۳۰۳۶) عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ اَبِيْهِ عَنْ جَدِّهٖ عَنْ رَّسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَنَّهٗ سُئِلَ عَنِ الثَّمَرِ الْمُعَلَّقِ فَقَالَ مَنْ اَصَابَ مِنْهُ مِنْ ذِيْ حَاجَةٍ غَيْرَ مُتَّخِذٍ خُبْنَةً فَلَا شَيْءَ عَلَيْهِ وَمَنْ خَرَجَ بِشَيْءٍ مِنْهُ فَعَلَيْهِ غَرَامَةُ مِثْلَيْهِ وَالْعُقُوْبَةُ وَمَنْ سَرَقَ مِنْهُ شَيْئًا بَعْدَ اَنْ يُّؤْوِيَهُ الْجَرِيْنُ فَبَلَغَ ثَمَنَ الْمِجَنِّ فَعَلَيْهِ الْقَطْعُ وَذَكَرَ فِيْ ضَالَّةِ الْاِبِلِ وَالْغَنَمِ كَمَا ذَكَرَ غَيْرُهٗ قَالَ وَسُئِلَ عَنِ اللُّقَطَةِ فَقَالَ مَا كَانَ مِنْهَا فِي الطَّرِيْقِ الْمِيْتَاءِ وَالْقَرْيَةِ الْجَامِعَةِ فَعَرِّفْهَا سَنَةً فَاِنْ جَاءَ صَاحِبُهَا فَادْفَعْهَا اِلَيْهِ وَاِنْ لَّمْ يَاْتِ فَهُوَ لَكَ وَمَا كَانَ فِي الْخَرَابِ الْعَادِيِّ فَفِيْهِ وَفِي الرِّكَازِ الْخُمُسُ۔ رَوَاهُ النَّسَائِيُّ وَرَوٰى اَبُوْدَاوٗدَ عَنْهُ مِنْ قَوْلِهٖ وَسُئِلَ عَنِ اللُّقَطَةِ اِلٰى اٰخِرِهٖ۔

3036. Sayyiduna Amr ibn Shu'ayb رحمہ اللہ narrated on the authority of his father from his grandfather (Abdullah ibn Amr) رضی اللہ عنہ that someone asked Allah's Messenger صلی اللہ علیہ وسلم about fruit hanging (from trees). He said, "If a needy person takes some thing without carrying away any in his garment, then he is not to be blamed. But, if anyone goes out with some of it, then he is to be fined twice its value and to be punished. If anyone steals after they are placed where date s are dried and their value comes to the prices of a shield, then his hands should be amputated." He mentioned about camels and sheep that are found (as luqatah) as the other narrators have mentioned. He also narrated that he was asked about luqatah. He said, if it is

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[1] Muslim # 12-1725, Musnad Ahmad 4-117.

[2] Muslim # (1-1724, Abu Dawud # 1719, Musnad Ahmad 3-499.

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on a road commonly used in a large town, make the announcement for one year. If its owner appears, give it to him. If he does not, then it belongs to you. If it is an old (deserted) waste land, or if it is a hidden treasure of the jahiliyah (ignorance period), then it calls for one fifth payment." The version in Abu Dawud is from the Prophet's صلى الله عليه وسلم words: "And he was asked about luqatah"....till the end.[1]

COMMENTARY: The needy may be any poor man who is in dine need or not in dine need and bad shape. He may pluck fruit from the tree only as much as necessary. If he carries any outside the according to Ibn Maalik رحمه الله though he will not be a sinner, yet he has to pay for those fruit as *wajib (obligatory)*. Or, this command was imposed in early Islam but it stands abrogated now.

As for the words that he will have to pay twice its price, Ibn Maalik رحمه الله says that this is only a warning, for, it is only the actual price that he will have to pay. Imam Ahmad رحمه الله also holds the same opinion. Some ulama (Scholars) says: that this command was operative in early Islam and is now abrogated.

As for punishment, it refers to the persons fate. His hand will not be cut but he will be awarded some punishment. In those days, gar dens were not protected and enclosed. If any one stole from the piles of fruit of provision to the value of one seer then sin punishment according to Shari'ah (divine law) was amputation of hand, which, at that time amounted to three or four dirhams, or more. The Hanafis say ten dirhams and the Shafi is say four dirham call for amputation of the hand. Shamni رحمه الله has said that a seer (of the fruit) was valued at ten dirhams in those times.

The luqatah found on a frequented path near a habitation must be made known, it being *wajib (obligatory)* to do so. It is because there is every likelihood that it would belong to a Muslim. As for the for luqatah that lies in an ancient unfrequented place where there is no Muslim residence around, the command is that one-fifth should be paid in Allah's path as charity. The rest may be used by the picker himself whether the luqatah is gold, silver or any kind of jewellery or any other thing.

The same command applies to buried treasures in an ancient land.

REPLACEMENT IF LUQATAH HAS BEEN USED

(٣٠٣٧) وَعَنْ اَبِيْ سَعِيْدِنِ الْخُدْرِيِّ اَنَّ عَلِيَّ بْنَ اَبِيْ طَالِبٍ وَجَدَ دِيْنَارًا فَاَتٰى بِهٖ فَاطِمَةَ فَسَأَلَ عَنْهُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ هٰذَا رِزْقٌ اللّٰهِ فَاَكَلَ مِنْهُ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَاَكَلَ عَلِيٌّ وَفَاطِمَةُ فَلَمَّا كَانَ بَعْدَ ذٰلِكَ اَتَتِ امْرَأَةٌ تَنْشُدُ الدِّيْنَارَ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَا عَلِيُّ اَدِّ الدِّيْنَارَ۔ (رواه ابوداؤد)

3037. Sayyiduna Abu Sa'eed al KHudri رضى الله عنه narrated that Sayyiduna Ali رضى الله عنه found one dinar (as luqatah, abandoned property). He bought it to Sayyidah fatimah رضى الله عنه. He then asked Allah's Messenger صلى الله عليه وسلم about it and he said, "This is a provision from Allah's" So, Allah's Messenger صلى الله عليه وسلم consumed it and Sayyiduna Ali رضى الله عنه and Sayyidah Fatimah رضى الله عنه also ate from it (what they had bought with it). After that, a woman came looking for the dinar. So, Allah's

[1] Tirmidhi # 1293, Abu Dawud # 1710, Nasa'i # 1958, Ibn Majah # 2596, Musnad Ahmad 2280.

Messenger صلى الله عليه وسلم said, "O Ali, pay the dinar (to her)."[1]

COMMENTARY: We cannot say from the hadith that Sayyiduna Ali رضى الله عنه had used the money without making an announcement about it. There is every possibility that he had done that before spending the dinar.

The Prophet صلى الله عليه وسلم had the dinar paid to the woman because she might have described the coin. Or, he might have learnt of her from other sources.

DO NOT PICK UP WITH EVIL INTENT

(٣٠٣٨) وَعَنِ الْجَارُوْدِ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ ضَالَّةُ الْمُسْلِمِ حَرَقُ النَّارِ۔ (رواه الدارمى)

3038. Sayyiduna Al-Jarud رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "The lost property of the Muslim is a flame of fire."[2]

COMMENTARY: If anyone picks up a lost property with an evil intention then that will take him to hell.

HAVE A WITNESS

(٣٠٣٩) وَعَنْ عِيَاضِ بْنِ حِمَارٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ وَجَدَ لُقْطَةً فَالْيُشْهِدْ ذَاعَدْلٍ اَوْذَوِىْ عَدْلٍ وَلَا يَكْتُمْ وَلَا يُغَيِّبْ فَاِنْ وَجَدَ صَاحِبَهَا فَلْيَرُدَّهَا عَلَيْهِ وَاِلَّا فَهُوَ مَالُ اللّٰهِ يُؤْتِيْهِ مَنْ يَّشَاءُ۔

(رواه احمد وابوداؤد والدارمى)

3039. Sayyiduna Iyad ibn Himar رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "If anyone finds a stray thing somewhere, then he must have one just man or two just men as his witness. He must make announcement of it and not conceal it nor consign it elsewhere. When he finds it owner, he should return it to him, otherwise it is Allah's property. He gives it to whom He pleases."[3]

COMMENTARY: The finder of the luqatah must get someone to witness it so that no one may accuse him of theft or pilferage. In this way, he himself will not be instigated to keep the find for his own use. Moreover, if he dies suddenly, his heirs will not include that property as his legacy.

Some ulama (Scholars) say that this command is *mustahab (desirable)* to obey others say that it is *wajib (obligatory)* in nature. This hadith and the foregoing assert that if the owner is not located, it luqatah is Allah's property. This means that it is lawful for the person who picks it up when the owner turns up he will be reimbursed with a replacement.

WHEN IT IS NOT NECESSARY TO MAKE KNOWN

(٣٠٤٠) وَعَنْ جَابِرٍ قَالَ رَخَّصَ لَنَا رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فِى الْعَصَا وَالسَّوْطِ وَالْحَبْلِ وَاَشْبَاهِهٖ يَلْتَقِطُهُ الرَّجُلُ يَنْتَفِعُ بِهٖ۔ (رواه ابوداؤد)

3040. Sayyiduna Jabir رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم had given permission that a man might pick up (and put to his use) a stick a whip, a rope and

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[1] Abu Dawud # 1714.

[2] Darimi # 2601, Tirmidhi # 1801, Musnad Ahmad 5-80.

[3] Abu Dawud # 1709, Musnad Ahmad 4. 161 Darimi, Ibn Majah # 2505

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such other things that he picks up to use them himself.[1]

COMMENTARY: If he who picks up the luqatah (droped thing) is not well off, he may put to his own use such things. as are mentioned in this hadith.

The ulama (Scholars) define the things of little value as worth less then dirhams, but some of them say that there is worth one dinar or less then that as in the hadith (# 3038) about Sayyiduna Ali رضی اللہ عنہ

وَذُكِرَ حَدِيثُ الْمِقْدَامِ بْنِ مَعْدِيْ كَرِبَ اَلَا لَا يَحِلُّ فِيْ بَابِ الْاِعْتِصَامِ

And the hadith of Sayyiduna al-Miqdam ibn Ma'dikarib رضی اللہ عنہ is narrated in the Chapter V (# 163)

CHAPTER - XIX

AL-FARA'ID (SHARES OF INHERITANCE) بَابُ الْفَرَائِضِ

The word fara'id is the plural of faridah which is derived from *fard (compulsory)* (meaning, obligatory).

Fara'id are the shares of inheritance as determined by the Quran or hadith. This chapter enumerates the heirs of a person who dies, namely his or her relatives who will be become their heirs, and in what ratio the legacy will be distributed among them.

Some important basic things and some principles and necessary rulings are here brought together.

SEQUENCE OF HEIRS

The ulama (Scholars) say that four rights are attached to the legacy of a dead person.

(1) The body should be shrouded and buried, meaning that it should be given a bath and enshrouded, funeral *salah (prayer)* should be offered over it, and it should be taken to the graveyard and buried in a grave. The expenses should be borne from the legacy without being thrifty or extravagant.

(2) Then if there is a debt people or other outstanding then they should be paid.

Thereafter

(3) If the dead person had left behind a will then one-third of the residue should be used for it. Then after that:

(4) All the remaining wealth and property should be disbursed among the heirs in the following order: The dhawil furud should be dispensed with first of all by giving them their due share. After that whatever remains will go to the asabat nasabi of the dead person because whatever remains after paying the dhawil furud goes to the asabat nasabi being their right.

If the dead person has no dhawil furud then all the remainder will go to the asabat nasabi. If there are no asabat nasabi then whatever remains after giving to the dhawil furud will be given to one who had set him free if the dead had been a slave and had been freed. If the one who had set him free is not alive then it will be given to the male asabat of the person who had set him free. If there is none of them then the remaining portion of the legacy will also go to the dhawil furud but not to the spouses because they have no share in the second

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[1] Abu Dawud # 1717.

time distribution.

However, if there is none of these surviving - not dhawil furud, not asabat nasabi not sabbi, then the inheritance will go to the dhawil arham. If even they are not there, then to mawla-at mawalat. If they too are not there, then all the legacy will go to the person whose relationship the dead person had mentioned, for instance, he may have said of Zayd, "He is my father's son" though this cannot be proved in any other way what ever. In spite of that he will be deserving of the legacy of the dead person. If there is no such person too then the legacy will go to the person whom the dead person had named as the beneficiary of all his property are wealth. If there is no such person too, then all the property and wealth will go to the state Treasury. Finally. If there is no such thing to then it will be spent on the heads of the state Treasury, like madrasahs (religious schools), mosques, or the poor people, the needy, etc.

ABOUT DHAWIL FURUD

They are twelve in number:

(1) Father, (2) Grandfathers including great grandfathers, great, great grandfather and so an (antecedent). (3) Akhyafi brother (that is, having different fathers but a common mother). (4) Wife. (5) Husband. (6) Mother. (7) Grandmothers (either paternal or maternal), including great grandmothers, great great grandmothers, and so on (antecedents) (8) Daughter (9) Grand daughter. (10) Real sister. (11) Step sister. (12) Akhyafi sister.

SHARES OF DHAWIL FURUD

The father of the dead person get one-sixth portion when the dead person's son, grandson or great grandson are alive. It these are not but the dead person's daughter, granddaughter or great grand daughter are alive, then the dead person's father gets one-sixth portion and will also be regarded an asbah. However, if the dead is survived by none of these descendants of his father, then the father will only be an asbah.

In short, in the first case, the father is entitled to only the prescribed (*fard (compulsory)*) share. In the second case, he is not only entitled to the *fard (compulsory)* but also is an asabah. In the third case, he is only an asabah.

If the dead person's father is not alive, then his grandfather will be like his father in all three cases. If both his father and grandfather are alive then the grandfather stands deprived, getting no inheritance at all.

They akhyafi brother and the akhyafi sister will get one sixth share of the legacy if there is one of them. If they are two or more then all of them get one-third share to be divided equally between males and females. If the dead person's father or grandfather is alive or his son or son's children are there then the akhyafi brothers and sisters will be deprived.

If a man's wife dies without being survived by a son or a daughter and by children of her son, then her husband will get half of her legacy. But, if her son or daughter or son's children are there then he will get one fourth of the share.

When a woman's husband dies leaving behind no children and no children of his sons, then she will get one fourth of the share but if any of them are alive then she will get one-eighth of the share. If the husband had only one wife then she will get all that is mentioned here. If he had two, three or four wives, then all of them together will get these shares which they will divide among themselves.

The dead person's mother will inherit from him or her one-sixth of the legacy provided the dead person's:

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- son or daughter, or
- son's son, or
- his children, or
- one sister, or
- two brothers and two sisters, or more of them (whether real of step or akhyafi) are alive.

If none of them is alive, the mother will get one-third of the total legacy.
If the father or a spouse is alive with the mother, then after the share is given to them, the mother will get one-third of the residue.
If instead of father the paternal grandfather is alive, then the mother will get one third of the total legacy because, in this case, the grandfather does not take the father's place.
The paternal and maternal grandmothers get one-sixth share whether there be one or many. If there is only the paternal grandmother she gets all the one-sixth. If there also is the maternal grandmother, they both get the one-sixth which they shall divide, and so if there are two paternal and two maternal grandmothers, they will divide among themselves the one-sixth, provided they are all of the same rank (meaning, they are grandmothers and none of them is a great grandmother). If they are of different rank then the distant relative will remain deprived (meaning that the great grandmother will not get anything). In the same way, in the presence of the mother, the grandmothers will get nothing. Besides, in the presence of the grandfather, the father's grandmothers get nothing but the wife of the grandfather, meaning father's mother is not deprived.
The daughter of the dead person is never deprived of inheritance. If her brother, meaning the son of the dead, is present then she is asabah, otherwise she is dhawil furud. There are two or three possibilities for a daughter deserving an inheritance.

(1) There is only one daughter and she has no real or step brother. In this case, she gets half of the legacy. (If there is no other heir than she gets the remaining half too.)

(2) If there are two or more daughters and they have no real or step brother, they get two thirds of the legacy. They shall divide that equally among them.

(3) If there is a son too with the dead man's daughters, then the daughter has no inheritance. Rather, she becomes an asabah. This means that every daughter will get half of what a son gets no matter how many daughters there are. Thus, if a dead person has many daughters, and many sons, the distribution of the legacy will be:
two shares for every son and one share for every daughter.

In the absence of a daughter, a son and son's son of a dead person who has only one granddaughter (son's daughter), this grand daughter will get half of the legacy If he has two or more (such) grand daughters, they will be given two-thirds of the legacy. They will distribute that among themselves equally.
If the dead person has no son no son's son and no son's grandson but only one daughter, the granddaughter (from his son) will get one-sixth share even if there are more of them. (They will share)
If the dead person has two or more daughters, the granddaughter will be deprived completely.
If, however, there is, besides the grand daughter, a grandson too even down the line (great grandson) or a real or step-brother of this granddaughter or paternal cousin, then even if the dead person had many daughters or only one, the granddaughter will become an

asabah. This means that atter dhawil furud have been given their shares, the residue will be distributed between the grandson and granddaughter in the ration of zil.
It must be remembered that if the dead person's son is alive then this granddaughter will get nothing at all.
If the dead person is survived by no children and grandchildren (from his son), then his grand daughter will take place of all of them. If the daughter is alive then her children will be deprived If the granddaughter (from son) is there, then the children of the granddaughter will be deprived.
In the presence of the dead person's children or his son's children, the akhyafi brothers and sisters will get nothing.
If the dead person's father or paternal grandfather is alive, the akhyafi brothers and sisters will stand deprived.
In the absence of the dead person's sons, daughters, their children and their grandchildren but the presence of only one real sister, she will take the place of his daughter. If she is alone she will get half of the legacy but if they are two or more, they will get two thirds of the entire legacy which they will disburse amongst themselves. The some ruling applies to a stepsister in the foregoing case if there is no real sister.
If the dead person's daughter or granddaughter (from his son) is there up to the lowest descendant even if they are many or just one then the real sister and in her absence the stepsister will became an asabah.
If there is a real brother, then a real sister will become as asabah with him.
If there is no real brother but there is a stop brother then a real sister will become a dhawil furud.
There is one real brother and some step brothers and sisters. In this case the top brothers and sisters will get nothing.
In the presence of one real sister, the step sister – one of more than one – will get one sixth share.
If there are more than one real sisters then the step sister will remain deprived. But, if there is a step brother too, then she will not be deprived and even if there be one or more real sisters, the step sister will become an asabah with the step brother. This means that after the dhawil fara'id have been given their shares, the remaining legacy will be theirs because of their being asabah.
If the dead person's real sister or daughter or granddaughter (from son) down the line to the lowest become asabah then the step siblings will get nothing.
EXPLANATORY NOTE : In the presence of the dead person's son and grandson (from son) to the lowest line, all the real and step siblings will be deprived. Also, in the presence of the dead person's father or paternal grandfather, the siblings, real or step will be deprived.

ABOUT ASABAT

Whatever remains after disbursing the shares of the legacy of the dead person to the dhawil furud will be distributed among the asabat. In another words, dhawil furud are the heirs of the first degree and asabat are heirs of the second degree.
1. There are four kinds of asabat Son, his son and his son down the line
2. Father, his brother (paternal uncle), paternal grandfather and paternal great grandfather.
3. Real and step brothers and their sons down the line.
4. Uncle (paternal), father's paternal uncle, paternal grandfather's paternal uncle and son of these (paternal) uncles and their sons and theirs down the line.

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THE SEQUENCE OF THESE FOUR

The sequence of these four kinds is: The foremost are sons followed by grandsons to the lowest degree.

Next are father and grandfather up to the highest level (of ancestors).

Then follow the brother, sister and nephew to the lowest level.

On their heels are the paternal uncle and his children to the lowest level.

Thus, if an asabh is there from the first kind, then all the remaining three kinds will be deprived. If there is none from the first kind but one from the second kind then the next two kinds will be deprived. If there is none from the first and the second but there is one from the third then there will be none from the fourth.

The other thing is that in each of these four kinds, the close asabah will get preference over the distant one when the closer one is there is distance will be deprived. For example if both son and grandson are, there both being from the first kind, the son will be preferred over the grandson, because he is the closer. He will get the legacy of the dead person while the distant relative (the grandson) will be deprived.

In the same way, the real asabah will be preferred over the step relation,

The grandsons of the dead person (or his paternal uncles) will be preferred to his paternal uncles, and to his father's paternal uncles. The grandsons of the paternal uncles of the father of the dead person are preferred to paternal uncles of the dead person.

ABOUT DHAWIL ARHAM

The first degree of the heirs of the dead person is dhawil furud. The second is asabat when both these degrees are not found in the heirs then the legacy will go to the dhawil arham. This is the third degree of heirs of the dead. Like asabah, Dhawil arham also has four kinds. They are:

1. Daughterof the dead person, her daughter deep down the line.

2. False grandfather (called (جد فاسد) jadd fasid meaning from the mother's side, that is the maternal grandfather), false grandmother (jadeh fasidah) both paternal and maternal, or father of maternal grandmother, mother of false maternal grandmother, mother of the father of grandmother (paternal/maternal). All of them are dhawil arham while the real grand father (paternal) and real (paternal/maternal) grandmother are dhawil furud and these go up the line like the great grandfather and great grandmother, etc. there being no woman between them and no jadd fasid between them.

3. Children of real sisters, step sister, akhyafi sister and akhyafi brother. Daughter of real brother and step brothers.

4. Aunts - real, step or akhyafi, uncles (paternal and maternal) all akhyafi.

These are the four kinds of dhawil arham. The same sequence is observed as for asabah.

If those heirs of the first kind are there or their children (no matter how low in line of descent) then the remaining three are deprived. So with the second, if their heirs of this kind are there (in the absence of the first kind) then the next two are deprived. Again (when the first and second are lacking and) if the heirs of the third kind are there then those of the fourth are deprived. If all the first three are lacking then the heirs of the fourth will be considered.

Like the asabah, in every kind the closer dhu rahm is preferred to the distant.

THAT WHICH PREVENTS INHERITANCE BEING RECEIVED

Allah has prescribed the share of inheritance to the heirs of the dead person because of

their singular relationship with him or her. Thus, if this relationship is disturbed in some way and they separate and detest one other then that heir loses his right to inherit from the dead relative. There are four things that deprive one of the right to inheritance. They are:

(1) Slavery. Neither can a free man be an heir of a slave nor can a slave be an heir of a free man. The reason is a slave is not recognized by Shari'ah (divine law) to be an owner of anything and he owns nothing.

(2) Murder, if an adult heir kills his legator then he is disqualified from receiving an inheritance. However, this is killing that makes qisas (retaliation) or kaffarah (expiation) *wajib (obligatory)* on the killer. There are five kinds of killing. (They will be discussed at the relevant place, insha Allah) Four of them are such as make *wajib (obligatory)* qisas or kaffarah or diyat (retaliation or expiation or blood wit). According to the Hanafis, the heir is disqualified in all these four kinds if he kills the legator (willfully and) unjustly. But, he is not disqualified if he does not kill him unjustly like in self-defence or at the command of the ruler or judge as part of a punishment. In these letter cases, the heir is not deprived of inheritance.

One of the five kinds of killing (قتل بالسبب) (killing by tasbib or sabab). In this kind neither retaliation nor expiation becomes *wajib (obligatory)*. Rather, it is essential to pay the diyat or bloodwit. The killer or murderer is not deprived of inheritance in this kind of killing. An example of it is that someone places a stone in the land of another person without his permission or digs a well not asking for permission and a visitor stumbles on the stone or falls in the well and dies. On account of this, diyat is *wajib (obligatory)* on this person who had placed the stone or dug the well.

Also, the Hanafis maintain that if a minor or an insane person kills his legator, then he is not disqualified from getting his inheritance. The reason is that Shari'ah (divine law) does not prescribe punishment on most of the doings of a minor and an insane.

(3) Different religion. The difference of religion practiced also deprives one from inheritance. Thus if the heir is a Muslim but the legator is a non-Muslim or vice-versa, the Muslim will not inherit from a non Muslim neither will a Muslim's legacy go to a non Muslim.

(4) Different residences. This implies residences in different countries and native lands. If the heir and the legator reside in different native lands, it deprives the heir of inheritance. Suppose, one of them resides in Dar ul Islam (a Islamic country) and another in dar ul harb (enemy territory). This disqualifies them from inheriting from one another. But this command applies to the non Muslim. If a Msulim heir and a Muslim legator reside in different countries, they have the right to inherit from another.[1]

TERMINOLOGY

(1)(ذوی الفروض) DHAWIL FUR'UD

They are the shaers. The heirs whose shares are determined by the Qur'an and *sunnah (Prophet's صلی اللہ علیہ وسلم practice)* or, by general consensus. They number twelve, four men and eight woman.

There are:

[1] We reproduce here under the terminology from Tirmidhi VI pp 844f

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Men: (1) Father (2) Grand Father (3) Uterine brothers (half brothers by the same mother) and (4) Husband

Woman: (1) Daughter (Grand Daughter (Son's daughter) (3) Full (real) Sister (4) Half Sisters by same Father (5) Uterine Sister (half sisters by same mother) (6) Wife (7) Mother and (8) True Grandfather.

(2)(عصبات) (ASA'BAT)

They are the residuaries. They are relatives besides Dhawil Furud who are males and are also connected to the deceased through males. Their share is not determined. Anything remaining after giving to Dhawil Furud will go to them. They are mentional in the table by sequence. A nearer asbah (residuary) excludes the remote one, though he may get a share by virtue of his inclusion in Dhawil Furud.

(3)(ذوی الارحام) (DHAWIL AHRAM)

They are relatives apart from dhawil furud and asabat.

(4)(عینی) (AYNI) BROTHER OR SISTERS

They are real brothers and sisters.

(5)(علاقی) (ALAQI) BROTHERS OR SISTERS

They are have a common father but separate mothers.

(6)(اخیافی) (AKHYAFI) BROTHERS OR SISTERS

They are uterine siblings, having the same mother but not the same father.

(7)REAL (OR TRUE) GRANDFATHER

There is no female interruption in the relationship with the deceased. Thus, for example, he is father's or father's father's father.

(8)UNREAL GRANDFATHER

A female relative connect him to the deceased, for example, mother's father (material grandfather), or father's mother's father.

(9)REAL (OR TRUE) GRANDMOTHER

Her relationship with the deceased does not involve the unreal grandfather, like father's mother (Paternal grandmother), mother's mother, paternal grandmother's mother and paternal grandfather's mother. There can be only one real grandmother from the mother's side while more are possible from the father's side.

(10)UNREAL GRANDMOTHER

She is related to the deceased through the unneal grandfather, like mother's father's mother, mother's father's mother's mother's mother's mother's father's mother.

(11)(ترکة) (TARKAH)

It is a legacy, a bequest, an inheritance. It includes all livestock cash and liquid, and property that the deceased leaves behind on death.

(12)(عول) (AUL)

The total of the share of dhawil Furud exceed the payable, for example:

1/2	for	husband	3
1/2	for	Sister	3
1/2	for	mother	1

(Six) The total becomes 7 which is in excess of the payable

(13)(رد) (RADD):

The total of the share of dhawil furud falls short of the payable, for example

1/8	Wife	3
1/2	daughter	12
1/6	mother	4

(Twenty-four) this 19 while the payable is twenty four and it falls short of twenty four.

(14)(مناسخه) **(MUNASAKHAH) ABOLISHMENT**

Before legacy is distributed, an heir may die. His share will then go to his heirs.

(15)(اولاد) **(AWLAD)**

They are sons, daughter, children of sons and children of the sons of sons.

THE CHART EXPLAINED

The first column has the serial number and relationship with the deceased. The second mentions the serial number of relatives deprived of relatives deprived of inheritance because of the relative mentioned in column one who received the share mentioned in column three. Thus for example, the son deprives serial # 6 to 8 etc.

CHART OF SHARE OF INHERITANCE OF VARIOUS RELATIVES

S No. Relationship with deceased and number of them with	Serial number of those deprived because of column one	Share of inheritance
1. Husband, one	----	1/2 if childless, else ¼
2. Wife, one or more	----	1/2 if childless, else 1/8
3. Son, one or more	6 to 8, 14 to 13	Asbah
4. Daughter two or more	7, 8, 22, 23	2/3 provided there is not (S.No.3)
5. Daughter, one	22,23	2/3 provided there is not (S.No.3)
6. Son's son, one or more	14 to 30	Asbah
7. Son's daughter two or more	22, 23	2/3 provided there is no daughter, else 1/6
8. Son's daughter, one	22, 23	2/3 provided there is no daughter, else 1/6
9. Father	11, 12, 14 to 30	Asbah +1/6 provided there is not S.No.3 to 6, else 1/6
10. Mother	12, 13	If she has children, or a brother a brother and sister 1/6. If she mother, father 1/3, if nothing of this then 1/3 of all legacy.
11. Paternal grandfather	14 to 30	Asbah+ 1/6 provided S.No. 3 or 6 is not there, else only 1/6.
12. Paternal grandmother one or more	-----	
13. Maternal grandmother one.	-----	1/6 equal in all of them.
14. Real brother, 2 or more	18 to 21,	Asbah

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15. Real brother, one.	24 to 30	Asbah
16. Real sister, 2 or more	18 to 21, 24, 30	Asbah with S.No.4 & 5 or 7 & 8, if 5 & 8 are not then 2/3
17. Real sister, one	20, 21	Asbah with S.No.4, 5 or 7, 8 if 5 & 8 not there 1/2
	-----	
18. Half brother on father's side two or more		
19. Half brother on father's side, one.	24 to 30	Asbah.
20. Half sister from father side, two or more	24 to 30	Asbah
		Asbah with S.No.4, 5 or 7, 8 if 5, 8, 17 not there then 2/3, with 17 1/6 if there
21. Half sister from father's side, one.		Asbah with S.No.45 or 7,8 if 5,8,17 not there then 1/6
22. Uterine brothers & sisters, 2 or more		1/3equally among all brother & sister.
23. Uterine brother sister	-----	1/6.
24. Son of real brother one or more	-----	Asbah.
25. Son of half brother from father's side	25 - 30	Asbah.
26. Real paternal uncle, one or more	26 - 30	Asbah.
27. Father's half brother from father's side, one or more	27 - 30	Asbah.
28. Son of real paternal uncle, one more	28 - 30	Asbah.
29. Son of father's half brother from father's one or more	29 - 30	Asbah.
30. Dhawil Arham		
	30	Detail follow this chart.

Dhawil Arham. If there is none of the dhawil furud or asbat, except one of the spouses, then, after giving him or her the share, the remainder will be given to dhawil arham. They are of four kind:

1. **DESCENDANTS:** Children of daughters and of son's daughter, and so lower down.

2. **ASCENDANTS:**Line false grandfather and false grandmother, and so going up.

3. **FATHER'S DESCENDANTS:** Like daughters of real and consanguine brother children of uterine brothers and of all sisters.

4. **DESCENDANTS OF GRANDFATHERS:** Like daughters of real uncles and consanguine uncles, uterine uncles aunt, maternal uncles, mother's sister and their children.

Those of them that are alone will be entitled to all wealth. If there are a few then the nearer

ones are preferred to the remote. The full or real is preferred over the step relative who is preferred to the uterine, whether male or female. If they are equal in that then the Qura'n's edict is followed:

لِلذَّكَرِ مِثْلُ حَظِّ الْأُنْثَيَيْنِ

For the male is the share equivalent of that of two females. (4:11)

If relations are different then the father's relatives get two-thirds and mother's relatives get one-third. (FA)

SECTION I اَلْفَصْلُ الْاَوَّلُ

HEIRS HAVE RIGHT OF INHERITANCE TO LEGACY OF DEAD

(٣٠٤١) عَنْ اَبِيْ هُرَيْرَةَ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اَنَا اَوْلٰى بِالْمُؤْمِنِيْنَ مِنْ اَنْفُسِهِمْ فَمَنْ مَاتَ وَعَلَيْهِ دَيْنٌ وَلَمْ يَتْرُكْ وَفَاءً فَعَلَيَّ قَضَاؤُهُ وَمَنْ تَرَكَ مَالًا فَلِوَرَثَتِهٖ وَفِيْ رِوَايَةٍ مَنْ تَرَكَ دَيْنًا اَوْ ضِيَاعًا فَلْيَاْتِنِيْ فَاَنَا مَوْلَاهُ وَفِيْ رِوَايَةٍ مَنْ تَرَكَ مَالًا فَلِوَرَثَتِهٖ وَمَنْ تَرَكَ كَلًّا فَاِلَيْنَا۔ (متفق علیه)

3041. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated hat the Prophet صلی اللہ علیہ وسلم said, "I am nearer to the believers than they are to themselves. So, he who dies leaving an unpaid debt but not leaving the means to repay it, his debt is payable by me. And, he who leaves behind property (enough to pay his debts and execute his will leaving a balance thereafter), it belongs to his heirs."

According to a version: "He who leaves a debt or children without maintenance, let it come to me. I am his guardian."

According to a version: "He who leaves property behalf him, it belongs to him heirs. And he who leaves children without maintenance they are on us."[1]

COMMENTARY: In the early days, the Prophet صلی اللہ علیہ وسلم did not offer the funeral *salah (prayer)* of anyone who died leaving an unpaid debt but asked his sahabah (Prophet's Companions) رضی اللہ عنہم to offer it themselves. Later, as Muslims prospered, he paid all such debts. (see hadith # 2913) This reflects the Prophet's صلی اللہ علیہ وسلم love and kindness for all Muslims.

DHAWIL FURUD FIRST PREFERENCE

(٣٠٤٢) وَعَنِ ابْنِ عَبَّاسٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَلْحِقُوا الْفَرَائِضَ بِاَهْلِهَا فَمَا بَقِيَ فَهُوَ لِاَوْلٰى رَجُلٍ ذَكَرٍ۔ (متفق علیه)

3042. Sayyiduna Ibn Abbas رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Give the shares of inheritance (as prescribed in the Quran and hadith) to those who are entitled to (inheritance) shares. What remains (after that) is for the (asabah) nearest male heir."[2]

COMMENTARY: In other words, the shares of inheritance should be given first to

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[1] Bukhari # 2399, Muslim # 15-1619, Abu Dawud # 2955, Nasa'i # 1963, Ibn Majah # 2415, Musnad Ahmad 2-456.

[2] Bukhari # 6732, Muslim # 2-1615, Darimi # 2987, Tirmidhi # 2098, Abu Dawud # 2898.

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dhawil furud. The Quran has determined their shares. When their specified shares are given, the asabah should be given their shares. Preference in this is for the nearest relative of the dead person.

The closing words 'male heir' mean that the eunuch is excluded.

practice) explains that some heirs are obstacles to صلى الله عليه وسلم Sharh us *sunnah (Prophet's*

حجب نقصان حجب حرمان others. This can be in two ways:

Hajab nuqsan and hajab Harman.

The definition of both together is that some heirs are a cause of getting shares of others reduced. For example if the dead person had no children, his mother would have received one-third share of the legacy, but if he has children then she gets only one-sixth share. This is hajab nuqsan (obstacle that decreases, or part exclusion from inheritance).

Some heirs eliminate other heirs (who are relatives). For example, if the person has a son then the dead person's brother gets nothing. This is hajab Harman (obstacle that prevents, or total absolute exclusion).

DIFFERENCE OF RELIGION

(٣٠٤٣) وَعَنْ أُسَامَةَ بْنِ زَيْدٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا يَرِثُ الْمُسْلِمُ الْكَافِرَ وَلَا الْكَافِرُ الْمُسْلِمَ۔ (متفق عليه)

3043. Sayyiduna Usamah ibn Zayd رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "A Muslim does not inherit from an infidel nor does an infidel from a Muslim."[1]

COMMENTARY: Allamah Nawawi رحمه الله said that the scholars agree that a disbeliever cannot inherit from a Muslim relative legator. As for a Muslim heir inheriting from an infidel relative, most scholars assert that he will not inherit from the disbeliever but some of the sahabah (Prophet's Companions) رضى الله عنهم and tabi'un رحمه الله said that a Muslim can inherit from a disbelieving relative. Imam Maalik رحمه الله said the same thing.

Again, it is agreed that an apostate cannot inherit from a Muslim but the question whether a Muslim may inherit from an apostate is disputed. Imam Maalik رحمه الله, Imam Shafi's رحمه الله, Sayyiduna Rabi'ah رحمه الله and Ibn abu Laylah رحمه الله and others say that a Muslim cannot inherit from an apostate. Imam Abu Hanifah رحمه الله says that whatever the apostate earned after he apostated will go to the state Treasury and what he had earned when he was a Muslim will go to the Muslim heirs.

THE MAWLA INHERITS FROM A SLAVE

(٣٠٤٤) وَعَنْ أَنَسٍ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ مَوْلَى الْقَوْمِ مِنْ أَنْفُسِهِمْ۔ (رواه البخارى)

3044. Sayyiduna Anas رضى الله عنه narrated that the Prophet صلى الله عليه وسلم said, "The mawla of a people belongs to them."[2]

COMMENTARY: The word mawla means the one who sets a slave free.' The hadith means the this person who sets the slave free inherits the freedman's property when he dies. But,

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[1] Bukhari # 6764, Muslim # 1-1614, Tirmidhi # 2114, Ibn Majah # 2729, Muwatta # 10 (Faraid) Musnad Ahmad 5-209.

[2] Bukhari # 6761.

this freedman cannot be heir of the ex-master who gave him freedom.
However, some authorities say that mawla means 'the slave who was set free.' The freedman. Hence, the hadith means that the same command or ruling applies to the freedman as applies to the people or tribe who have set him free. For instance, if the Banu Hashim (who are Sayyid) set him free then the same commands will apply to him as apply to the Sayyid. Thus, the sayyid are precluded from receiving zakah (Annual due charity) and their freedman is also precluded from it, that being haram for them.

NEPHEW RECEIVES INHERITANCE FROM MATERNAL UNCLE

(٣٠٤٥) وَعَنْ اَنَسٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ ابْنُ اُخْتِ الْقَوْمِ مِنْهُمْ۔ (متفق عليه)

3045. Sayyiduna Anas رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "The son of a sister of a people belongs to them."

COMMENTARY: A nephew inherits from his maternal uncle and belongs to the category of dhawil arham. Imam Abu Hanifah رحمہ اللہ and Imam Ahmad رضی اللہ عنہ hold that dhawil arham are h eirs of the dead person. This is when the dhawil'furud and asabat are not present. This has been discussed in the introduction to this chapter.

وَذُكِرَ حَدِيْثُ عَائِشَةَ اِنَّمَا الْوَلَاءُ فِيْ بَابٍ قَبْلَ بَابِ السَّلَمِ وَسَنَذْكُرُ حَدِيْثَ الْبَرَاءِ الْخَالَةُ بِمَنْزِلَةِ الْاُمِّ فِيْ بَابِ بُلُوْغِ الصَّغِيْرِ وَحَضَانَتِهٖ اِنْ شَاءَ اللّٰهُ تَعَالٰى

The hadith of Sayyiduna Ayshah رضی اللہ عنہا about the right of inheritance belonging to ... is narrated earlier (hadith # 2877)
The hadith of Sayyiduna Bara about the maternal aunt being like the mother follow later (# 3377).

SECTION II اَلْفَصْلُ الثَّانِيْ

MUSLIM & NON MUSLIM INHERITING ONE ANOTHER

(٣٠٤٦، ٣٠٤٧) عَنْ عَبْدِاللّٰهِ بْنِ عَمْرٍو قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا يَتَوَارَثُ اَهْلُ الْمِلَّتَيْنِ شَتّٰى رَوَاهُ اَبُوْدَاوٗدَ وَابْنُ مَاجَةَ وَرَوَاهُ التِّرْمِذِيُّ عَنْ جَابِرٍ۔

3046. Sayyiduna Abdullah ibn Amr رضی اللہ عنہ narrated that Allah's Mcssenger صلی اللہ علیہ وسلم said, "Adherents of two different religions do not inherit from one another."[1]
3047. Sayyiduna Jabir رضی اللہ عنہ narrated that same hadith.[2]

MURDERER DOES NOT INHERIT

(٣٠٤٨) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَلْقَاتِلُ لَا يَرِثُ۔ (رواه الترمذی وابن ماجة)

3048. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "The murderer does not inherit."[3]

COMMENTARY: This means that one who kills his legator unjustly cannot inherit from him. This has been discussed earlier in the chapter.

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[1] Abu Dawud # 291, Ibn Majah # 2371, Musnad Ahmad 2-195.
[2] Tirmidhi # 2115.
[3] Tirmidhi # 2116, Ibn Majah # 27[illegible]

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GRANDMOTHER GETS ONE-SIXTH

(٣٠٤٩) وَعَنْ بُرَيْدَةَ أَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ جَعَلَ لِلْجَدَّةِ السُّدُسَ إِذَا لَمْ تَكُنْ دُوْنَهَا أُمٌّ۔ (رواه ابوداؤد)

3049. Sayyiduna Buraydah رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم specified one sixth share (of inheritance) for a grandmother as long as no mother excludes her (by inheriting before her).[1]

COMMENTARY: If the dead person's mother is alive then the grandmother of this person will get no inheritance. If she is not alive then the grandmother, whether paternal or maternal, will get one-sixth share.

NEW BORN SURVIVING CHILD IN AS HEIR

(٣٠٥٠) وَعَنْ جَابِرٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ إِذَا اسْتَهَلَّ الصَّبِيُّ صُلِّيَ عَلَيْهِ وَوُرِّثَ۔

(رواه ابن ماجة والدارمی)

3050. Sayyiduna Jabir رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "If an infant emits a sound (at birth before dying), funeral *salah (prayer)* is offered over him and he qualifies as an heir."[2]

COMMENTARY: Emits a sound means 'shows signs of life by breathing, sneezing or moving. If the child dies after that,, then a funeral *salah (prayer)* will be offered over it and it is entitled to be called an heir and get a share of inheritance.

In the light of this hadith, if a person dies and his child is yet in its mother's womb, then its share if inheritance will be kept aside. When the child is born alive, its share of inheritance will be entrusted to its guardians and it will be deemed to be on heir. But, if it is still-born then it will not be an heir and the inheritance will be distributed to other heirs.

PART OF THE PEOPLE

(٣٠٥١) وَعَنْ كَثِيْرِ بْنِ عَبْدِ اللّٰهِ عَنْ أَبِيْهِ عَنْ جَدِّهٖ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَوْلَى الْقَوْمِ مِنْهُمْ وَحَلِيْفُ الْقَوْمِ مِنْهُمْ وَابْنُ أُخْتِ الْقَوْمِ مِنْهُمْ۔ (رواه الدارمی)

3051. Sayyiduna Kathir ibn Abdullah رحمہ اللہ reported from his father (Sayyiduna Abdullah) رحمہ اللہ from his (Kathi'r's) grandfather (Sayyiduna Amr ibn Awf Muzani) رضی اللہ عنہ that Allah's Messenger صلی اللہ علیہ وسلم said, "The mawla of a people belongs to them. The ally of a people is one of from them. And, the son of a sister of a people belongs to them."[3]

COMMENTARY: The portion about the mawla has been explained in the commentary on the hadith # 3051. As for the ally, the Arabs used to form a pact, two men with one another. It was an alliance to co-operate in difficulties, sorrow, death, ease, etc. throughout life their blood was common and their agreements were binding on one another. 'Their enemies were common. If one of them was fined, the other was bound to share the burden with him. They also shared inheritance of one another but when the

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[1] Abu Dawud # 2895, Daraqutni # 74 (Fara'id)

[2] Ibn Majah # 2750, Darimi # 3126.

[3] Darami # 2527.

Quran defined the share of inheritances, this custom was done away with. Also, this part of the hadith was annulled.

As for sister's son being one of the people, see hadith # 3045, and the commentary on it.

MATERNAL UNCLE IS DHURAHM HEIR OF HIS NEPHEW

(٣٠٥٢) وَعَنِ الْمِقْدَامِ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَنَا اَوْلٰى بِكُلِّ مُؤْمِنٍ مِنْ نَفْسِهٖ فَمَنْ تَرَكَ دَيْنًا اَوْ ضَيْعَةً فَاِلَيْنَا وَمَنْ تَرَكَ مَالًا فَلِوَرَثَتِهٖ وَاَنَا مَوْلٰى مَنْ لَا مَوْلٰى لَهٗ اَرِثُ مَالَهٗ وَاَفُكُّ عَانَهٗ وَالْخَالُ وَارِثُ مَنْ لَا وَارِثَ لَهٗ يَرِثُ مَالَهٗ وَيَفُكُّ عَانَهٗ وَفِيْ رِوَايَةٍ وَاَنَا وَارِثُ مَنْ لَا وَارِثَ لَهٗ اَعْقِلُ عَنْهُ وَاَرِثُهٗ وَالْخَالُ وَارِثُ مَنْ لَا وَارِثَ لَهٗ يَعْقِلُ عَنْهُ وَيَرِثُهٗ۔ (رواه ابوداؤد)

3052. Sayyiduna Miqdam رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "I am nearer to every believer (wishing him well) than he himself is. Hence, if anyone dies leaving a debt or an unsupported family, then I am responsible (to pay his debt and support his family). If anyone leaves property, that belongs to his heirs. I am guardian of him who has no guardian as his heir who relieves him of his liabilities (like paying off penalties or blood money that he is liable to pay).

A maternal uncle is heir of him who has none. He inherits his property and liberates him from his liabilities.

According to a version: "I am heir of him who has none. I pay for him bloodwit (due on him) and I inherit from him. A maternal uncle is heir of him who has none. He pays bloodwit for him and inherits from him."[1]

WOMEN INHERITS FROM THREE MEN

(٣٠٥٣) وَعَنْ وَاثِلَةَ بْنِ الْاَسْقَعِ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ تَحُوْزُ الْمَرْاَةُ ثَلَاثَ مَوَارِيْثَ عَتِيْقَهَا وَلَقِيْطَهَا وَوَلَدَهَا الَّذِيْ لَاعَنَتْ عَنْهُ۔ (رواه الترمذی وابوداؤد)

3053. Sayyiduna Wathilah ibn Al-Asqa رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "A woman can have legacy from three sources. (1) The slave whom she sets free, (2) the child she foundles (and rears up), (3) her own child about whom she has invoked a curse on herself (in lian) assuring her husband that he was a legitimate child."[2]

COMMENTARY: the slave whom the woman had set free may have died leaving no asabah relative. Thus, in such cases a man becomes on heir of his freedman and a woman also becomes his heir.

As for the second source, the ulama (Scholars) say that this command that a woman is heir of the child she foundles is abrogated. However, Ishaq ibn Rahu رحمہ اللہ abides by this hadith.

Qadi رحمہ اللہ said that the hadith means that whatever this child leaves will go to the state Treasury. The woman who had picket up the child has more right that this money be spent on her from the state Treasury.

As for the third source, li'an (invoking a curse on oneself) is that when a man accuses his wife that the child she has begotten does not belong to her, they curse one another. This

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[1] Abu Dawud # 2900, Ibn Majah # 2738.

[2] Tirmidhi # 2122, Abu Dawud # 2908, Ibn Majah # 2742, Musnad Ahmad 3-490.

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will be discussed, In-sha-Allah, in the chapter on al-li'an (اللعان). The child for whom lian was observed is not attributed its father and the child and father cannot be one another's heir because patronage is not established. However, since the child's paternage is duly establish with its mother, the two of them will be heirs of one another.

The same command applies to walad us zina (child born through adultery or out of wedlock).

CHILD BORN OUT OF WEDLOCK

(٣٠٥٤) وَعَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ اَبِيهِ عَنْ جَدِّهٖ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اَيُّمَا رَجُلٍ عَاهَرَ بِحُرَّةٍ اَوْ اَمَةٍ فَالْوَلَدُ وَلَدُ زِنًا لَا يَرِثُ وَلَا يُوْرَثُ۔ (رواه الترمذى)

3054. Sayyiduna Amr ibn Shu'ayb رحمه الله narrated on the authority of his father (Shu'ayb) رحمه الله that his (father's) grandfather said that the Prophet صلى الله عليه وسلم said, "If a man commits adultery with a free woman or a female slave (and a child is conceived), then their child is walad uz zina (illegitimate child) who will neither be anyone's heir nor have an heir (meaning, will neither inherit nor will any one inherit from him)"[1]

COMMENTARY: The reason is that relationship is not established with the man who commits fornication, or with the man's relatives. However, the child's relationship is clear with its mother, so they will inherit from one another.

LEGACY OF A FREEDMAN

(٣٠٥٥) وَعَنْ عَآئِشَةَ اَنَّ مَوْلًى لِرَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَاتَ وَتَرَكَ شَيْئًا وَلَمْ يَدَعْ حَمِيْمًا وَلَا وَلَدًا فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَعْطُوْا مِيْرَاثَهٗ رَجُلًا مِنْ اَهْلِ قَرْيَتِهٖ۔ (رواه ابوداؤد والترمذى)

3055. Sayyidah Ayshsh رضى الله عنه narrated that a freedman of Allah's Messenger صلى الله عليه وسلم died, leaving some property. He left behind no relative and no child (to inherit him). So, Allah's Messenger صلى الله عليه وسلم said, "Hand over what he has left to a man of his village."[2]

COMMENTARY: When a person dies, leaving on heir, the 'inheritance goes the state treasury whose funds are payable to the poor and needy. So the prophet صلى الله عليه وسلم diverted the freedman's legacy to the needy and deserving of the village.

PROPHETS ARE HEIRS TO NONE

It has been stated previously that if a freedman has no asabah relative then the right of wala belongs to one who has set him free. In other words, after he dies, he who had emancipated him owns his legacy (if he has no heir). According to this procedure when the Prophet's صلى الله عليه وسلم freedman died, his legacy ought to have gone to the Prophet صلى الله عليه وسلم. However, Prophets صلى الله عليه وسلم never inherit from anyone nor are inherited by other. So, the Prophet صلى الله عليه وسلم did not take the inheritance of the freedman. He gave it where the state Treasury's property is spent.

The reason for this is that the Prophet عليه السلام not only preach abstinence but also practice

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[1] Tirmidhi # 2120, Ibn Majah # 2745.

[2] Tirmidhi # 2112, Ibn Majah # 2733, Abu Dawud # 2902.

what they preach. Hence, they had no interest in the legacy of other people and they did not grieve at leaving this world without their property. Moreover, they never had any worthwhile property with them in this world. Thus, Allah commanded that whatever (little they left behind was no one's property, nor would they receive anyone's legacy. The prophet صلى الله عليه وسلم said:

إِنَّا مَعَاشِرُ الْأَنْبِيَاءِ لَا نُوْرِثُ مَا تَرَكْنَا صَدَقَةٌ

"We the company of prophet are not inherited, what we leave is sadaqah (charity)."

IN ABSENCE OF HEIR LEGACY GOES TO BAYT UL MAAL(TREASURY)

(٣٠٥٦) وَعَنْ بُرَيْدَةَ قَالَ مَاتَ رَجُلٌ مِنْ خُزَاعَةَ فَأُتِيَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ بِمِيْرَاثِهٖ فَقَالَ اِلْتَمِسُوْا لَهٗ وَارِثًا اَوْ ذَا رَحِمٍ فَلَمْ يَجِدُوْا لَهٗ وَارِثًا وَلَا ذَا رَحِمٍ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَعْطُوْهُ الْكُبْرَ مِنْ خُزَاعَةَ رَوَاهُ اَبُوْدَاوٗدَ وَفِيْ رِوَايَةٍ لَهٗ قَالَ اُنْظُرُوْا اَكْبَرَ رَجُلٍ مِنْ خُزَاعَةَ۔

3056. Sayyiduna Burayrah رضى الله عنه narrated that a man of the Khuza'ah died and his legacy was brought to the Prophet صلى الله عليه وسلم. He said, "Look for an heir of his (from among the dhawil furud and, if none, from among the asabah) otherwise a dhu rahm." But, they could find neither an heir (from dhawil farud and asabah) nor a dhu rahm. So, Allah's Messenger صلى الله عليه وسلم said, "Hand it over to an elder (old man of the tribe) of Khuza'ah.

According to another version, he said, 'Look for an old man of the Khuza'ah.

COMMENTARY: The same explanation applies to this ahadith as to the previous. In the absence of on heir, the legacy goes to the state Treasury. An old man of the same tribe is most deserving of the funds of the state Treasury.

REPAYMENT OF DEBT TAKES PRECEDENCE

(٣٠٥٧) وَعَنْ عَلِيٍّ قَالَ اِنَّكُمْ تَقْرَؤُنَ هٰذِهِ الْآيَةَ مِنْ بَعْدِ وَصِيَّةٍ تُوْصُوْنَ بِهَا اَوْ دَيْنٍ وَاِنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَضٰى بِالدَّيْنِ قَبْلَ الْوَصِيَّةِ وَاِنَّ اَعْيَانَ بَنِي الْاُمِّ يَتَوَارَثُوْنَ دُوْنَ بَنِي الْعَلَّاتِ الرَّجُلُ يَرِثُ اَخَاهُ لِاَبِيْهِ وَاُمِّهٖ دُوْنَ اَخِيْهِ لِاَبِيْهِ۔ رواه الترمذى وابن ماجه وفى رواية الدارمى: قال "اِلْاِخْوَةُ مِنَ الْاُمِّ يَتَوَارَثُوْنَ دُوْنَ بَنِي الْعَلَّاتِ ..... اِلٰى اٰخِرِهٖ۔"

3057. Sayyiduna Ali رضى الله عنه said, "You people recite this verse:

مِنْ بَعْدِ وَصِيَّةٍ تُوْصُوْنَ بِهَا اَوْ دَيْنٍ

{after (having paid) he bequest that may have been bequeathed, or a debt...} (4:12) But, Allal.'s Messenger صلى الله عليه وسلم ruled that a debt should be discharged before the legacy is executed. And, (he ruled) that (real) brothers from the same mother inherit from each other but not brother from the same father by different mothers. One inherits from his brother having the same father and mother, but not his brother having the same father and a different mother."

According to a version in Darami, he said, "The brothers from the same mother inherit

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from each other, but not brothers from the same father and different mothers."[1]

COMMENTARY: Sayyiduna Ali رضی اللہ عنہ explained to the people that they should nor misread the verse (4:12). Though it mentions will before debt, vet the debt has to be paid before executing the will of the dead person and before distributing the inheritance. The objective of the said verse is to impress that the dead person's will must not be disregarded. Rather, it ought to be executed faithfully.

BACKGROUND OF THE VERSE OF INHERITANCE

(٣٠٥٨) وَعَنْ جَابِرٍ قَالَ جَاءَتْ امْرَأَةُ سَعْدِ بْنِ الرَّبِيْعِ بِابْنَتَيْهَا مِنْ سَعْدِ ابْنِ الرَّبِيْعِ إِلَى رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَتْ يَا رَسُوْلَ اللّٰهِ هَاتَانِ ابْنَتَا سَعْدِ بْنِ الرَّبِيْعِ قُتِلَ أَبُوْهُمَا مَعَكَ يَوْمَ أُحُدٍ شَهِيْدًا وَإِنَّ عَمَّهُمَا أَخَذَ مَالَهُمَا وَلَمْ يَدَعْ لَهُمَا مَالًا وَلَا تُنْكَحَانِ إِلَّا وَلَهُمَا مَالٌ قَالَ يَقْضِي اللّٰهُ فِيْ ذٰلِكَ فَنَزَلَتْ آيَةُ الْمِيْرَاثِ فَبَعَثَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ إِلَى عَمِّهِمَا فَقَالَ أَعْطِ لِابْنَتَيْ سَعْدٍ الثُّلُثَيْنِ وَأَعْطِ أُمَّهُمَا الثُّمُنَ وَمَا بَقِيَ فَهُوَ لَكَ رَوَاهُ التِّرْمِذِيُّ وَأَبُوْدَاوٗدَ وَابْنُ مَاجَةَ وَقَالَ التِّرْمِذِيُّ هٰذَا حَدِيْثٌ غَرِيْبٌ۔

3058. Sayyiduna Jabir رضی اللہ عنہ narrated that the wife of Sayyiduna Sa'd ibn Rabi brought her two daughter of Sa'd to Allah's Messenger صلی اللہ علیہ وسلم She said, "O Messenger of Allah, these are two daughters of Sa'd ibn Rabi. Their father had fought by your side on the day of Uhud and was martyred. Their paternal uncle took away their wealth and left nothing for them and they cannot be married unless they have some wealth." He said, "Allah will decide about this issue," and the verse of inheritance (4:11) was revealed. So, Allah's Messenger صلی اللہ علیہ وسلم sent for their paternal uncle and instructed him to give to the two daughters of Sa'd رضی اللہ عنہ two thirds and to their mother one eight and what remained was for him.[2]

COMMENTARY: In pre-Islamic days that which a dead person left behind went complete to an adult man capable of engaging in battle. Women, children and the weak got nothing at all. They were helpless and desperate against the strong adult men whether paternal uncles or brothers.

The prophet صلی اللہ علیہ وسلم was sent as a merciful to mankind, and as in every other field he removed the misery of the weak in this field of inheritance too, The first case was that of Sayyiduna Aws ibn Thabit Ansari رضی اللہ عنہ. When he died, he left behind his wife, Umm Kamhah (ام کمحہ) and three daughters (or two daughters and an infant son. He had made two men guardians and executors of his will. They followed the custom of the pre Islamic times and gave away the entire property of Sayyiduna Aws رضی اللہ عنہ to his paternal cousin (or to his two real brothers). His wife complained to the Prophet صلی اللہ علیہ وسلم, the guardian and solace of the poor, that she and her children were deprived of all the wealth of her husband which was handed over to Khalid ibn Urfutah (or Khalid and urfutah). "What will happen to us?" The Prophet صلی اللہ علیہ وسلم was very pained at this but he could not do any thing promptly because he was not a dictator and not a partner in Allah's domain. He consoled the wife of Awf رضی اللہ

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[1] Tirmidhi # 2129, Ibn Majah # 2739, Darimi # 2984, Musnad Ahmad 1-144.

[2] Tirmidhi # 2099, Abu Dawud # 2891, Ibn Majah # 2720, Musnad Ahmad 3. 352.

عنه and requested her to go home and wait Allah's Command. He waited for the revelation from the Judge of the judges. Soon this verse was revealed:

لِلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ

مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ نَصِيبًا مَّفْرُوضًا۔ (النساء ۴: ۷)

{For men is a share of what their parents and near relatives leave, and for women is a share of what their parents and the near relatives leave, whether it be small or large – a share determined} (4:7)

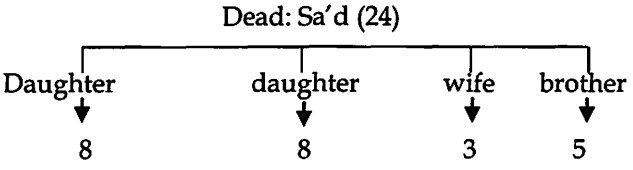
Thus ended the injustice matted out to woman and girls in distributing the shares of inheritances. No longer were man the sole inheritors.

However, she shares were not determined till then. So, the Prophet صلى الله عليه وسلم sent message to the executors of Aws رضى الله عنه will that they should preserve his wealth and spend nothing from it till the shares were determined. After a little time Sa'd ibn Rabi Ansari died a martyr in the Battle of Uhud in 3 AH as in the forging hadith. The prophet صلى الله عليه وسلم advised his wife too to await Allah's command. After a few day the verse of inheritance was revealed:

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنْثَيَيْنِ الخ۔ (آخری رکوع تلث، النساء ۴: ۱۱)

{Allah enjoins you concerning your children for the male is she share equivalent of that of two females...} (4:11 complete subject).

The Prophet صلى الله عليه وسلم sent message to Sa'd's brother in accordance with it apportioning the shares.



SHARES OF DAUGHTERS, SON'S DAUGHTER, SISTER

(۳۰۵۹) وَعَنْ هُزَيْلِ بْنِ شَرَحْبِيلٍ قَالَ سُئِلَ أَبُوْمُوْسٰى عَنْ ابْنَةٍ وَبِنْتِ ابْنٍ وَأُخْتٍ فَقَالَ لِلْبِنْتِ النِّصْفُ وَلِلْأُخْتِ النِّصْفُ وَأْتِ ابْنَ مَسْعُودٍ فَسَيُتَابِعُنِيْ فَسُئِلَ ابْنُ مَسْعُوْدٍ وَأُخْبِرَ بِقَوْلِ أَبِيْ مُوْسٰى فَقَالَ لَقَدْ ضَلَلْتُ إِذًا وَمَا أَنَا مِنَ الْمُهْتَدِيْنَ أَقْضِيْ فِيْهَا بِمَا قَضَى النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لِلْبِنْتِ النِّصْفُ وَلِابْنَةِ الْإِبْنِ السُّدُسُ تَكْمِلَةَ الثُّلُثَيْنِ وَمَا بَقِيَ فَلِلْأُخْتِ فَأَتَيْنَا أَبَا مُوْسٰى فَأَخْبَرْنَاهُ بِقَوْلِ ابْنِ مَسْعُوْدٍ فَقَالَ لَا تَسْأَلُوْنِيْ مَادَامَ هٰذَا الْحِبْرُ فِيْكُمْ۔ (رواه البخاری)

3059. Sayyiduna Huzayl ibn Shurahbil رحمه الله reported that Sayyiduna Abu Musa رحمه الله was asked about (the inheritance of) a daughter, son's daughter and a sister. He said, "The daughter will get half and the sister half (but the granddaughter will get nothing). So to Ibn Mas'ud and you will see that he concurs with me." So, Ibn Mas'ud رضى الله عنه was asked and informed of the opinion of Abu Musa رضى الله عنه. He

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said, "In that case, I would have gone astray and would not be among those who are guided. Rather, I shall decide in this case as (Allah's) Prophet صلى الله عليه وسلم had done. The daughter will get half, the son's daughter one-sixth which adds up to two-thirds, and the rest the sister will get.' (The narrator said:) "We went to Abu Musa رضى الله عنه and reported him of the words of Ibn Mas'ud رضى الله عنه. He exclaimed, 'Ask me not as long as this scholar is among you.[1]

COMMENTARY: What Sayyiduna Abdullah ibn Mas'ud رضى الله عنه said was that the legacy of the dead person be divided in six portions in such a way that the daughter gets three shares, granddaughter (from son) one share and sister two shares.

PATERNAL GRANDFATHER'S SHARE

(٣٠٦٠) وَعَنْ عِمْرَانَ بْنِ حُصَيْنٍ قَالَ جَاءَ رَجُلٌ إِلَى رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ إِنَّ ابْنِي مَاتَ فَمَالِيْ مِنْ مِيْرَاثِهٖ قَالَ لَكَ السُّدُسُ فَلَمَّا وَلّٰى دَعَاهُ قَالَ لَكَ سُدُسٌ اٰخَرُ فَلَمَّا وَلّٰى دَعَاهُ قَالَ إِنَّ السُّدُسَ الْاٰخَرَ طُعْمَةٌ لَكَ۔ رَوَاهُ اَحْمَدُ وَالتِّرْمِذِيُّ وَاَبُوْدَاوٗدَ وَقَالَ التِّرْمِذِيُّ هٰذَا حَدِيْثٌ حَسَنٌ صَحِيْحٌ۔

3060. Sayyiduna Imran ibn Husayn رضى الله عنه narrated that a man came to Allah's Messenger صلى الله عليه وسلم and submitted, "My son's son has died. What do I get as inheritance?" He said, "For you is one-sixth." AS he prepared to depart, he called him and said, 'You get an additional one-sixth too." And, as he turned to go, he called him again and said, "The second one-sixth is your provision (and nor mafrudah or prescribed)."[2]

COMMENTARY: The first one-sixth was because the grandfather was a dhawil furud while the second portion was an account of his being an asabah. In this way, he got one third of the legacy.

The Prophet صلى الله عليه وسلم did not give him all one third together lest he suppose that a grandfather gets from his son's son as a dhawil furud one third.

As for the ruing, suppose that a man died leaving two daughters and a paternal grandfather. The two daughters qualify for two thirds of the legacy. Of the remaining, the grandfather qualifies for half of one third or one six of the legacy as a dhawil furud and he will also get the remainder (one sixth of the legacy) being an asabah too. It is like this:

Dead person's legacy
- 6 -
daughter, daughter
(4) grandfather
bil furud & asabah
(2)

GRANDMOTHER'S SHARE

(٣٠٦١) وَعَنْ قَبِيْصَةَ بْنِ ذُوَيْبٍ قَالَ جَاءَتِ الْجَدَّةُ إِلَى اَبِيْ بَكْرٍ تَسْأَلُهٗ مِيْرَاثَهَا فَقَالَ لَهَا مَا لَكِ فِيْ كِتَابِ اللّٰهِ شَيْءٌ وَمَا لَكِ فِيْ سُنَّةِ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ شَيْءٌ فَارْجِعِيْ حَتّٰى اَسْأَلَ النَّاسَ فَسَأَلَ فَقَالَ الْمُغِيْرَةُ

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[1] Bukhari # 6736, Tirmidhi # 2100, Ibn Majah # 2721, Darimi # 2890, Musnad Ahmad 7-389.

[2] Tirmidhi # 2106, Abu Dawud # 2896.

بْنُ شُعْبَةَ حَضَرْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَعْطَاهَا السُّدُسَ فَقَالَ اَبُوْ بَكْرٍ هَلْ مَعَكَ غَيْرُكَ فَقَالَ مُحَمَّدُ بْنُ مَسْلَمَةَ مِثْلَ مَاقَالَ الْمُغِيْرَةُ فَاَنْفَذَهُ لَهَا اَبُوْ بَكْرٍ ثُمَّ جَاءَتِ الْجَدَّةُ الْاُخْرٰى اِلٰى عُمَرَ تَسْاَلُهُ مِيْرَاثَهَا فَقَالَ هُوَ ذٰلِكَ السُّدُسُ فَاِنِ اجْتَمَعْتُمَا فَهُوَ بَيْنَكُمَا وَاَيَّتُكُمَا خَلَتْ بِهٖ فَهُوَ لَهَا۔ (رواه مالك واحمد والترمذى وابوداؤد والدارمى وابن ماجة)

3061. Sayyiduna Qabisah ibn Dhu'ayn رضی اللہ عنہ narrated that a grandmother came to Sayyiduna Abu Bakr رضی اللہ عنہ and pleaded for her share of legacy. He said that nothing was specified for her in Allah's Book or in the *sunnah (Prophet's* صلی اللہ علیہ وسلم *practice)* of His Messenger رضی اللہ عنہ but advised her to go home and let him consult the people (meaning, the scholars among the sahabah) رضی اللہ عنہ. So, he made enquires and Sayyiduna Mughirah ibn Shu'bah رضی اللہ عنہ said, "I was with Allah's Messenger صلی اللہ علیہ وسلم when he gave a grandmother one sixth (share)." Abu Bakr رضی اللہ عنہ asked him if anyone else had been with him (at that time) and Sayyiduna Muhammad ibn Masalamah رضی اللہ عنہ confirmed what Mughirah had said. So, Abu Bakr رضی اللہ عنہ gave her that (one sixty) portion.

Another grandmother came to Sayyiduna Umar رضی اللہ عنہ pleading for her inheritance. He said, "It is that (same) one-sixth. If there are two of you, it is between both of you survives (the other), she gets all (of it)."[1]

COMMENTARY: The grandmother could be maternal or paternal. The one who had come to Sayyiduna Abu Bakr رضی اللہ عنہ was a maternal grandmother while she who came to Sayyiduna Umar رضی اللہ عنہ was a paternal one. This is explicit in another version.

Sayyiduna Abu Bakr رضی اللہ عنہ had presumed that there was only one grandmother. But, when Sayyiduna Umar رضی اللہ عنہ learnt that there also was a paternal grandmother, he instructed that they divide the share between themselves, one-sixth for both together.

GRANDMOTHER'S SHARE WHEN SON IS ALIVE

(٣٠٦٢) وَعَنِ ابْنِ مَسْعُوْدٍ قَالَ فِي الْجَدَّةِ مَعَ ابْنِهَا اَنَّهَا اَوَّلُ جَدَّةٍ اَطْعَمَهَا رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ سُدُسًا مَعَ ابْنِهَا وَابْنُهَا حَيٌّ رَوَاهُ التِّرْمِذِيُّ وَالدَّارِمِيُّ وَالتِّرْمِذِيُّ ضَعَّفَهٗ۔

3062. Sayyiduna Ibn Ma'sud رضی اللہ عنہ narrated that about a grandmother who had her son that she was the first grandmother whom Allah's Messenger صلی اللہ علیہ وسلم gave one-sixth (share) while she had a son who was alive.[2]

COMMENTARY: Someone died leaving his paternal grandmother and father. The prophet صلی اللہ علیہ وسلم had one-sixth of the legacy given to her though her son – the dead person's father – was alive. The ulama (Scholars) rule that if the dead man's dad is living, then the grandmother gets noting from the legacy. She is deprived of her grandson's inheritance when his father is alive.

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[1] Tirmidhi # 2107, Abu Dawud # 2894, Ibn Majah # 2723, Darimi # 2939, Muwatta Maalik # 4 (Fara'id), Musnad Ahmad 4-225.

[2] Tirmidhi # 2109, Darimi # 2932.

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The ulama (Scholars) do not abide by this hadith because it is da'if and not eligible as evidence. Only sahih ahadith serve as sources of deduction.
Or, we may say that this was an exceptional case. The Prophet صلى الله عليه وسلم had something given to her as a favour and kindness not as an inheritance.

BLOOD MONEY IS FOR HEIRS OF THE SLAIN

(٣٠٦٣) وَعَنِ الضَّحَّاكِ بْنِ سُفْيَانَ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ كَتَبَ اِلَيْهِ اَنْ وَرِّثِ امْرَأَةَ اَشْيَمَ الضِّبَابِيِّ مِنْ دِيَةِ زَوْجِهَا۔ رَوَاهُ التِّرْمِذِيُّ وَاَبُوْدَاوٗدَ وَقَالَ التِّرْمِذِيُّ هٰذَا حَدِيْثٌ حَسَنٌ صَحِيْحٌ۔

3063. Sayyiduna Ad-Dahhak ibn Sufyan رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم wrote to him instructing him to let the wife of Ashyam Dadabi have her share of bloodwit (which was paid for her husband.[1]

COMMENTARY: Ashyam Dadabi was killed by mistake, unintentionally. So the man responsible was bound to pay blood wit. The prophet صلى الله عليه وسلم instructed Dahhak رضى الله عنه to let his wife have her share of inheritance from that blood wit.
According to sharh us *sunnah (Prophet's* صلى الله عليه وسلم *practice)*, this hadith is evidence that it is *wajib (obligatory)* to pay bloodwit for the slain person and the receipts there from revert to the heirs as other property of the slain person. Most ulama (Scholars) agree with it.
It is reported that the *amir ul mu'minin* (commander of the faith) umar ibn Khattab رضى الله عنه used to deny women from a share in the boodwit of their slain husbands. So, Dahhak رضى الله عنه presented to him this hadith to prove that a wife is eligible to receive the share of inheritance from bloodwit paid against the killing of her husband.[2]

(٣٠٦٤) وَعَنْ تَمِيْمٍ الدَّارِيِّ قَالَ سَاَلْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَا السُّنَّةُ فِي الرَّجُلِ مِنْ اَهْلِ الشِّرْكِ يُسْلِمُ عَلٰى يَدَى رَجُلٍ مِنَ الْمُسْلِمِيْنَ فَقَالَ هُوَ اَوْلَى النَّاسِ بِمَحْيَاهُ وَمَمَاتِهٖ۔ (رواه الترمذى وابن ماجة والدارمى)

3064. Sayyiduna Tamim Dari رضى الله عنه reported that he asked Allah's Messenger صلى الله عليه وسلم "what is the *sunnah (Prophet's* صلى الله عليه وسلم *practice)* about a man of the polytheists who embraces Islam at the hands of a Muslim?" He said, "He is the nearest to him in life and death (having the greatest right to him as his mawla)."[3]

COMMENTARY: Sayyiduna Tamim Dari رضى الله عنه was a glorious and great sahabi. He had been a Christian who embraced Islam in 9 AH. Thereafter, his life was an example of fear of Allah and devoted worship to such on extent that he was distinguished for vigil in the night. In one raka'ah of *salah (prayer)* in the night, he recited the entire Quran and sometimes he kept repeating just and verse till it was morning. By a coincidence, he missed the tahajjud *(supererogatory prayer)* one night, so he punished himself by refraining from

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[1] Tirmidhi # 2117, Abu Dawud # 2927, Ibn Majah # 2642, Muwatta Maalik # (Uqul). Musnad Ahmad 3. 452.

[2] See hadith of Sayyiduna Sa'eed ibn Musayyib (# 2117, Tirmidhi). Dahhak رضى الله عنه convinced Umar رضى الله عنه hat it is payable.

[3] Bukhari (Book of Inheritance chapter 22) heading Tirmidhi # 2119, Abu Dawud # 2918, Ibn Majah # 2752, Darimi # 3022, Musnad Ahmad 4. 103.

sleep for one year continuously.
Sayyiduna Tamim Dari رضی اللہ عنہ is also distinguished as the first person to light a lamp in a mosque.
If anyone embraces Islam at the hands of another then the Muslim becomes the mawla of the neo-Muslim. In early Islam, the mawla (and new Muslim) were heirs of one another. Later, this command was withdrawn.
Some authorities interpret the concluding words to mean that he who prompts anyone to become a Muslim has the duty imposed on him most of all else to help the neo Muslim in his life time and on his death lead his funeral *salah (prayer)*.

EMANCIPATED SLAVE & HE WHO SETS HIM FREE

(٣٠٦٥) وَعَنِ ابْنِ عَبَّاسٍ اَنَّ رَجُلًا مَاتَ وَلَمْ يَدَعْ وَارِثًا اِلَّا غُلَامًا كَانَ اَعْتَقَهُ فَقَالَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ هَلْ لَهُ اَحَدٌ؟ قَالُوْا لَا اِلَّا غُلَامٌ لَهُ كَانَ اَعْتَقَهُ فَجَعَلَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مِيْرَاثَهُ لَهُ۔ (رواه ابوداؤد والترمذی وابن ماجة)

3065. Sayyiduna Ibn Abbas رضی اللہ عنہ narrated that a man died leaving no heir except a slave whom he had set free. The prophet صلی اللہ علیہ وسلم asked, "Has he any heir?" They said, 'No, save one slave whom he had emancipated." So the Prophet صلی اللہ علیہ وسلم got the legacy of the man given to the f reedman.[1]

COMMENTARY: The prophet صلی اللہ علیہ وسلم had the legacy of the man who set him free given to the freedman as a gesture of goodwill otherwise he is not an heir of the one who freed him according to Shariah. It is like the hadith # 3055 of Sayyidah Ayshah رضی اللہ عنہا where it has been explained why the Prophet صلی اللہ علیہ وسلم did so.
Shurayh رحمہ اللہ and Tawus رضی اللہ عنہ deduce from the apparent meaning of this hadith that just as the master who sets free his slave can be an heir of his freedman. So, too the freedman may become the heir of him who emancipates him.

WHO INHERITS WALA

(٣٠٦٦) وَعَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ اَبِيْهِ عَنْ جَدِّهٖ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ يَرِثُ الْوَلَاءَ مَنْ يَرِثُ الْمَالَ۔ رَوَاهُ التِّرْمِذِيُّ وَقَالَ هٰذَا حَدِيْثٌ اِسْنَادُهٗ لَيْسَ بِالْقَوِيِّ۔

3066. Sayyiduna Amr ibn Shu'ayb رحمہ اللہ narrated from his father from his grandfather that the prophet صلی اللہ علیہ وسلم said, "He inherits wala who inherits the property."[2]

COMMENTARY: The property of the freedman is called wala. Thus, if Zayd's father dies and afterwards his father's freedman dies then zayd will inherit his property. Just as he is heir to his father's property, he also is heir to his father's wala. However, this ruling applies only to asabah meaning the asabah heir like a son. So, the daughter of one who sets free cannot be heir to her father's wala because, though she inherits her father's property, she is not asabah. Only men are asabah binafsihi. A woman can inherit the property of a freed slave (male or female) whom she herself has set free or whom her freed slave may have freed.

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[1] Tirmidhi # 2113, Abu Dawud # 2905, Ibn Majah # 2714, Musnad Ahmad 1-221.
[2] Tirmidhi # 2121.

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SECTION III اَلْفَصْلُ الثَّالِثُ

LEGACY DISBURSED BEFORE ISLAM IS RETAINED

(٣٠٦٧) عَنْ عَبْدِاللّٰهِ ابْنِ عُمَرَ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ مَا كَانَ مِنْ مِيْرَاثٍ قُسِمَ فِى الْجَاهِلِيَّةِ فَهُوَ عَلٰى قِسْمَةِ الْجَاهِلِيَّةِ وَمَا كَانَ مِنْ مِيْرَاثٍ اَدْرَكَهُ الْاِسْلَامُ فَهُوَ عَلٰى قِسْمَةِ الْاِسْلَامِ۔ (رواه ابن ماجة)

3067. Sayyiduna Abdullah ibn Umar رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "The inheritance that was distributed during the jahiliyah (ignorance period) (days of ignorance) will be retained according to the distributed of those days. And the legacy of Islam will be in conformity with the division approved by Islam."[1]

COMMENTARY: Whatever inheritance was divided in pre-Islamic period would not be disturbed after Islam whether it was unjust to some or favourable to others. But, any distribution after Islam would follow its commands.

UMAR'S رضی اللہ عنہ SURPRISE AT THE EXCLUSION OF PATERNAL AUNTS

(٣٠٦٨) وَعَنْ مُحَمَّدِ بْنِ اَبِىْ بَكْرِ بْنِ حَزْمٍ اَنَّهٗ سَمِعَ اَبَاهُ كَثِيْرًا يَقُوْلُ كَانَ عُمَرُ بْنُ الْخَطَّابِ يَقُوْلُ عَجَبًا لِلْعَمَّةِ تُوْرِثُ وَلَا تَرِثُ۔ (رواه مالك)

3068. Sayyiduna Muhammad ibn Abu Bakr ibn Hazm reported that he heard his father say many times that Sayyiduna Umar ibn Khattab رضی اللہ عنہ would say, "How surprising that one may inherit from a paternal aunt but she does not inherit!"[2]

COMMENTARY: Umar رضی اللہ عنہ expressed surprise only because a man's intelligence cannot grasp the reasoning for it, otherwise from the point of view of submission or knowledge that only Allah knows the wisdom behind it there is nothing to be surprised about.

A paternal aunt cannot inherit from her nephew, for instance, but he can inherit from her, some ulama (Scholars) hold that a dhawil arham is not an heir of the dead person. On the other hand according to some ulama (Scholars) who place her as a dhawil arham, she can inherit from her nephew because they go by the details in the science of fara'id which may be consulted.

NECESSARY TO ACQUIRE KNOWLEDGE OF FARA'ID (LAW OF INHERITANCE)

(٣٠٦٩) وَعَنْ عُمَرَ قَالَ تَعَلَّمُوا الْفَرَائِضَ وَزَادَ ابْنُ مَسْعُوْدٍ وَالطَّلَاقَ وَالْحَجَّ قَالَا فَاِنَّهٗ مِنْ دِيْنِكُمْ۔ (رواه الدارمى)

3069. Sayyiduna Umar رضی اللہ عنہ said that one must learn the rules of inheritance. Sayyiduna Ibn Mas'ud رضی اللہ عنہ also added (that the rules) "of divorce and of the pilgrimage" (must also be learnt). Both of them said, "Because this is part of your religion."[3]

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[1] Ibn Majah # 2749.

[2] Muwatta Maalik # (Fara'id).

[3] Darimi # 2851.

CHAPTER - XX

(AL-*WASAYA*) WILLS بَابُ الْوَصَايَا

Wasaya is the plural of wasiyah in the same way as Khataya is plural of Khatiyah. Wasiyah is that a person instruct his heirs during his lifetime to do certain things for him after his death like a will: to build a mosque or any such thing, or to pay someone some money, or to atone for his lapses in discharging obligatory duties like *salah (prayer)* or zakah (Annual due charity). Sometimes, wasiyah stand for advice, counsel, recommendation.

According to the ulama (Scholars) zawahir it is *wajib (obligatory)* to make a wasiyah. (they are the ulama (Scholars) who abide by the zahir or apparent meaning of the Quran and hadith.) However, according to all the other ulama (Scholars) it was *wajib (obligatory)* to make a wasiyah or will initially which means that a person had to specify shares at will for his parents, relatives, etc, from his property. When the verse of inheritance was revealed and Allah Himself defined the shares, this command was abrogated. Hence, it is not proper now for anyone to make a will for an heir, but a will may still be drawn for one-third of one's property if one desires). In this way, a person may leave instructions to spend in Allah's path on his behalf to atone for his shortcoming during his life, Or, he may leave something for a distant relative, friend or servant, from the one third.

The ulama (Scholars) say that if anyone has to repay a debt or return someone's trust then it is binding on him to leave instructions for repayment of debt or return of the trust. He should write down a will duly attested by witnesses.

SECTION I الْفَصْلُ الْأَوَّلُ

COMMAND TO DRAW A WILL

(٣٠٧٠) عَنِ ابْنِ عُمَرَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَا حَقُّ امْرِءٍ مُسْلِمٍ لَهُ شَيْءٌ يُوْصِي فِيْهِ يَبِيْتُ لَيْلَتَيْنِ إِلَّا وَوَصِيَّتُهُ مَكْتُوْبَةٌ عِنْدَهُ۔ (متفق عليه)

3070. Sayyiduna Ibn Umar رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "It does not behave a Muslim, who possesses something for which he ought to make a bequest, to let two nights go by without drawing a will for it."[1]

COMMENTARY: If a person has to discharge a duty or a right or a trust of some people then he must write down a will within two nights, meaning in the shortest possible time.' Life is unpredictable and if a person dies without discharging his obligations then he will carry the punishment with him to the next world.

A will should be drawn for such things in the shortest possible time and fuly witnessed by two people.

WILL MAY BE DRAWN FOR ONE-THIRD PROPERTY

(٣٠٧١) وَعَنْ سَعْدِ بْنِ أَبِيْ وَقَّاصٍ قَالَ مَرِضْتُ عَامَ الْفَتْحِ مَرَضًا أَشْفَيْتُ عَلَى الْمَوْتِ فَأَتَانِيْ رَسُوْلُ اللّٰهِ صَلَّى

[1] Bukhari # 2738, Muslim # 1-1627, Tirmidhi # 2125, Abu Dawud # 2862, Nasa'i # 3612, Ibn Majah # 2702, Darimi # 3175, Muwatta M[illegible]

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اللّٰهُ عَلَيْهِ وَسَلَّمَ يَعُوْدُنِيْ فَقُلْتُ يَا رَسُوْلَ اللّٰهِ إِنَّ لِيْ مَالًا كَثِيْرًا وَلَيْسَ يَرِثُنِيْ إِلَّا ابْنَتِيْ أَفَأُوْصِيْ بِمَالِيْ كُلِّهِ قَالَ لَا قُلْتُ فَثُلُثَيْ مَالِيْ قَالَ لَا قُلْتُ فَالشَّطْرُ قَالَ لَا قُلْتُ فَالثُّلُثُ قَالَ الثُّلُثُ وَالثُّلُثُ كَثِيْرٌ إِنَّكَ أَنْ تَذَرَ وَرَثَتَكَ أَغْنِيَاءَ خَيْرٌ مِنْ أَنْ تَذَرَهُمْ عَالَةً يَتَكَفَّفُوْنَ النَّاسَ وَإِنَّكَ لَنْ تُنْفِقَ نَفَقَةً تَبْتَغِيْ بِهَا وَجْهَ اللّٰهِ إِلَّا أُجِرْتَ بِهَا حَتّٰى اللُّقْمَةَ تَرْفَعُهَا إِلٰى فِيْ امْرَأَتِكَ۔ (متفق عليه)

3071. Sayyiduna Sa'd ibn Abu Waqqas رضی اللہ عنہ narrated that he fell ill in the year of the conquest (of Makkah) with an illness that took him near death. Allah's Messenger صلی اللہ علیہ وسلم visited him and he submitted, "O Messenger of Allah, I have abundant wealth and my daughter is my only heir, may I make a will of all my wealth?" He said, "No," so he asked, "Two thirds of my wealth?" He said, "No" Then he asked, "Half?" He said, "No!" He asked, "Then one third?" He said, "One third but one third is much. If you leave your heirs rich, it is better than your leaving them poor and begging from people. You will not spend anything seeking thereby Allah's pleasure but you will earn a reward for it, even a morsel that you raise up to the mouth of your wife."

COMMENTARY: Sayyiduna Sa'd رضی اللہ عنہ did not have an heir from dhawil furud. Or, he meant that he had no heir about whom he was not apprehensive that he would squendar his wealth, except a daughter. It has been deduced that he had many asabah heirs.

This hadith is evidence that it is allowed to collect wealth. Also, the heirs must be treated fairly with justice.

The ulama (Scholars) say unanimously that if there are successors of a dead person then his will cannot be executed beyond one-third of his legacy. If the heirs give their willing consent then not only more than one-third but all the legacy may be given away in accordance with his will provided, of course, all the heirs are sane adults and present there. Even if there is no heir of anyone then most ulama (Scholars) maintain that only one-third is allowed for a will, not more. However, Imam Abu Hanifah رحمہ اللہ and his followers regard it is permissible in this case to make a will for more than one-third of the total wealth. Imam Ahmad and Ishaq رحمہ اللہ hold the same opinion.

This hadith calls for kind treatment to relatives and love and compassion be shown to the heirs. It teaches us other things too.

(1) It is better to spend one's wealth on one's own relatives than to give it to others.

(2) If Allah's pleasure is in mind then spending on one's family earns a reward.

(3) If Allah's pleasure is aimed at then even something that is permissible is regarded as obedience and worship. For instance, one's wife is a source of physical and worldly pleasure and if, by way of enjoyment, a man puts a morsel of food in her mouth, it has nothing to do with obedience and worship or affairs of the hereafter, yet the Prophet صلی اللہ علیہ وسلم said that if it is done to please Allah, it fetches reward. Hence in other conditions, more and better reward will be received.

SECTION II اَلْفَصْلُ الثَّانِيْ

(٣٠٧٢) عَنْ سَعْدِ بْنِ اَبِيْ وَقَّاصٍ قَالَ عَادَنِيْ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَاَنَا مَرِيْضٌ فَقَالَ اَوْصَيْتَ قُلْتُ نَعَمْ قَالَ بِكَمْ قُلْتُ بِمَالِيْ كُلِّهٖ فِيْ سَبِيْلِ اللّٰهِ قَالَ فَمَا تَرَكْتَ لِوَلَدِكَ قُلْتُ هُمْ اَغْنِيَاءُ بِخَيْرٍ فَقَالَ اَوْصِ بِالْعُشْرِ فَمَازِلْتُ اُنَاقِصُهٗ حَتّٰى قَالَ اَوْصِيْ بِالثُّلُثِ وَالثُّلُثُ كَثِيْرٌ۔ (رواه الترمذى)

3072. Sayyiduna Sa'd ibn Abu Waqqas رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم visited him when he was ill. He asked him whether he had drawn a will. He said, "Yes." He asked, "For how much?" He said, "For all my wealth to be given away in Allah's path." He asked, "How much have you left for your children." He said, "They are rich and well-off." He said, "Draw the will for only one-tenth," and Sa'd did not ceased to say that it was to little till he said, "Make a will for one third though one third is too much."[1]

WILL FAVOURING HEIR IS NOT PROPER

(٣٠٧٣-٣٠٧٤) وَعَنْ اَبِيْ اُمَامَةَ قَالَ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ فِيْ خُطْبَتِهٖ عَامَ حَجَّةِ الْوَدَاعِ اِنَّ اللّٰهَ قَدْ اَعْطٰى كُلَّ ذِيْ حَقٍّ حَقَّهٗ فَلَا وَصِيَّةَ لِوَارِثٍ۔ رواه ابوداؤد وابن ماجة وزاد الترمذى ''اَلْوَلَدُ لِلْفِرَاشِ وَلِلْعَاهِرِ حَجَرٌ وَحِسَابُهُمْ عَلَى اللّٰهِ'' وَيَرْوِىْ عَنِ ابْنِ عَبَّاسٍ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لَا وَصِيَّةَ لِوَارِثٍ اِلَّا اَنْ يَّشَاءَ الْوَرَثَةُ مُنْقَطِعٌ هٰذَا لَفْظُ الْمَصَابِيْحِ وَفِيْ رِوَايَةِ الدَّارِ الْقُطْنِيْ قَالَ لَا تَجُوْزُ وَصِيَّةٌ لِوَارِثٍ اِلَّا اَنْ يَّشَاءَ الْوَرَثَةُ۔

3073. Sayyiduna Abu Umamah رضی اللہ عنہ narrated that he heard Allah's Messenger صلی اللہ علیہ وسلم say in his sermon in the year of the Farewell Pilgrimage, "Allah has assigned every owner of rights, his right. There is no will for an heir" (Abu Dawud, Ibn Majah. But, Tirmidhi added:)
"The child belongs to the (owner of the) bed. For the adulterer are stones and his reckoning is with Allah."
3074. Sayyiduna Ibn Abbas رضی اللہ عنہ narrated in a munqata form that the Prophet صلی اللہ علیہ وسلم said, "There is no will for an heir unless the (other) heirs wish so."[2]
(These are the words of 'al Masabih. The version of Daraqutni is that he said:)
"No will is allowed for an heir except when the (other) heirs consent."[3]

COMMENTARY: Allah has given right to every owner of rights. This means that Allah has specified shares to the heirs. So if the dead person leaves a will favouring an heirs, it will be disregarded by Shari'ah (divine law). However, if all the heirs are sane and adult and they abide by the dead person's will be give one of them more than the specified share then that

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[1] Tirmidhi # 977, Nasa'i # 3631, However, Tirmidhi has Sa'd ibn Maalik رضی اللہ عنہ because he was called so too.

[2] Tirmidhi # 2127, Abu Dawud # 2870, Ibn Majah # 2713, Nasa'i # 3671, Musnad Ahmad 5-267.

[3] Daraqutni # 89.

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is acceptable as stated previously.
Before the verse of inheritance was revealed, it was *wajib (obligatory)* to draw a will in favour of the relatives. When that verse came down specifying shares for all heirs, the command to draw a will for the heirs was abrogated.
The word (فراش) firash applies to woman but here it implies (صاحب فراش) (husband of the woman). The child will not be attributed to the adulterer but to the owner of the bed be he husband of the woman or her master if she is a slave, or the man who had mistakenly sexual intercourse with the woman. (see hadith # 3362 too)
The words 'for the adulterer are stones' mean that he is deprived. He gets nothing. He will get no inheritance from the illicit child. Or it means that he would be stoned to death (if he was married).
His fate is in Allah's hand. In this world he is punished but in the hereafter Allah may punish him or forgive him. Even if he escapes worldly punishment, Allah might punish him or pardon him.

DO NOT WILL FOR ANOTHER AT THE COST OF YOUR HEIR

(٣٠٧٥) وَعَنْ اَبِيْ هُرَيْرَةَ عَنْ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اِنَّ الرَّجُلَ لَيَعْمَلُ وَالْمَرْأَةَ بِطَاعَةِ اللّٰهِ سِتِّيْنَ سَنَةً ثُمَّ يَحْضُرُهُمَا الْمَوْتُ فَيُضَارَّانِ فِي الْوَصِيَّةِ فَتَجِبُ لَهُمَا النَّارُ ثُمَّ قَرَأَ اَبُوْهُرَيْرَةَ مِنْ بَعْدِ وَصِيَّةٍ يُّوْصٰى بِهَا اَوْدَيْنٍ غَيْرَ مُضَارٍّ اِلٰى قَوْلِهٖ تَعَالٰى وَذٰلِكَ الْفَوْزُ الْعَظِيْمُ۔ (رواه احمد والترمذی وابوداؤد وابن ماجة)

3075. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Indeed, a man and a woman perform deeds in obedience to Allah for sixty years. Then death looms over them and they err in making a will causing loss (to heirs) so the fire becomes necessary for them." Sayyiduna Abu Hurayrah رضی اللہ عنہ then recited:

وَصِيَّةٍ يُّوصٰى بِهَا اَوْ دَيْنٍ غَيْرَ مُضَارٍّ ..... وَذٰلِكَ الْفَوْزُ الْعَظِيْمُ

{...after (paying) bequest he may have bequeathed or debt.... And that is a mighty triumph.}[1] (4:11-13)

COMMENTARY: This hadith emphasizes the right of fellowmen. Some people spend their lives in worship and devotion but do not cease to hurt fellow men and they earn the wrath of Allah. The Prophet صلی اللہ علیہ وسلم gave the example of those who unjust with their heirs. Apart from causing wrong to fellowmen, it is a disobedience to Allah's command.
The verses recited by Sayyiduna Abu Hurayrah رضی اللہ عنہ also disallow the testator to draw a will for more than one-third of his wealth, thereby depriving the heirs.

SECTION III اَلْفَصْلُ الثَّالِثُ

TIDINGS FOR ONE WHO DRAWS A CORRECT WILL

(٣٠٧٦) عَنْ جَابِرٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ مَاتَ عَلٰى وَصِيَّةٍ مَاتَ عَلٰى سَبِيْلٍ وَسُنَّةٍ وَمَاتَ عَلٰى تُقًى وَشَهَادَةٍ وَمَاتَ مَغْفُوْرًا لَهٗ۔ (رواه ابن ماجة)

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[1] Tirmidhi # 2124, Abu Dawud # 2867.

3076. Sayyiduna Jabir رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "He who dies leaving a will dies on a path (the straight path) and a *sunnah (Prophet's* صلی اللہ علیہ وسلم *practice)* (that is approved), and he dies on piety and a martyr's death, and he dies forgiven."[1]

(The translation in Ibn Majah is 'testifying the truth' instead of 'a martyr's death.')

INFIDEL'S GET NO REWARD FOR GOOD DEEDS

(۳۰۷۷) وَعَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ اَبِيْهِ عَنْ جَدِّهٖ اَنَّ الْعَاصَ بْنَ وَائِلٍ اَوْصٰى اَنْ يُّعْتَقَ عَنْهُ مِائَةُ رَقَبَةٍ فَاَعْتَقَ ابْنُهٗ هِشَامٌ خَمْسِيْنَ رَقَبَةً فَاَرَادَ ابْنُهٗ عَمْرٌو اَنْ يُّعْتِقَ عَنْهُ الْخَمْسِيْنَ الْبَاقِيَةَ فَقَالَ حَتّٰى اَسْأَلَ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَاَتَى النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ يَا رَسُوْلَ اللّٰهِ اِنَّ اَبِيْ اَوْصٰى اَنْ يُّعْتَقَ عَنْهُ مِائَةُ رَقَبَةٍ وَاِنَّ هِشَامًا اَعْتَقَ عَنْهُ خَمْسِيْنَ وَبَقِيَتْ عَلَيْهِ خَمْسُوْنَ رَقَبَةً اَفَاُعْتِقُ عَنْهُ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِنَّهٗ لَوْ كَانَ مُسْلِمًا فَاَعْتَقْتُمْ عَنْهُ اَوْ تَصَدَّقْتُمْ عَنْهُ اَوْ حَجَجْتُمْ عَنْهُ بَلَغَهٗ ذٰلِكَ۔ (رواہ ابوداؤد)

3077. Sayyiduna Amr ibn Shu'ayb رحمہ اللہ narrated from his father (Shu'ayb) رحمہ اللہ who from his grandfather (Abdullah) رضی اللہ عنہ that Aas ibn Wail had willed that one hundred slaves should be set free on his behalf. His son Hisham رضی اللہ عنہ set fifty slaves free. And, his (other) son Amr رضی اللہ عنہ intended to set free the remaining fifty for him only after he had asked Allah's Messenger صلی اللہ علیہ وسلم (about it). So he came to the Prophet صلی اللہ علیہ وسلم and asked, "O Messenger of Allah, my father left a will (instructing us) that one hundred slaves should be set free on his behalf. Hisham has set fifty free at his behest and fifty remain. Shall I set them free on his behalf?" Allah's Messenger صلی اللہ علیہ وسلم said, "If he was a Muslim and you had set slaves free for him, or given sadaqah (charity) for him, or performed the Hajj (pilgrimage) in his place that (reward) would have reached him."[2]

COMMENTARY: Aas ibn Wa'il did not embrace Islam though he was alive when the Prophet صلی اللہ علیہ وسلم invited people to Islam. He died a disbeliever. He had two sons, Hisham رضی اللہ عنہ and Amr رضی اللہ عنہ both of who had received guidance. They were among the Prophet's صلی اللہ علیہ وسلم sahabah (Prophet's Companions) رضی اللہ عنہم.

The Prophet صلی اللہ علیہ وسلم said to Amr رضی اللہ عنہ that if his father were a Muslim, reward could have been consigned to him. If any good deed was done at his behest that will be of no avail and will deliver him from punishment.

WARNING TO THOSE WHO USURP RIGHT OF THE HEIRS

(۳۰۷۸) وَعَنْ اَنَسٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ قَطَعَ مِيْرَاثَ وَارِثِهٖ قَطَعَ اللّٰهُ مِيْرَاثَهٗ مِنَ الْجَنَّةِ يَوْمَ الْقِيَامَةِ۔ رَوَاهُ ابْنُ مَاجَةَ۔

3078. Sayyiduna Anas رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "He who cuts off the inheritance of his heirs, Allah will cut off his inheritance of

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[1] Ibn Majah # 2702, Abu Dawud #

[2] Abu Dawud # 2883.

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paradise on the day of resurrection."[1]

(٣٠٧٩) وَرَوَاهُ الْبَيْهَقِيُّ فِي شُعَبِ الْإِيمَانِ عَنْ أَبِي هُرَيْرَةَ۔

3079. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated the same hadith.[2]

COMMENTARY: Allah has promised in the Quran that He would make the believers heirs to paradise.

يَرِثُونَ الْفِرْدَوْسَ

{(They) shall inherit paradise.} (23:11)

The Prophet's words mean that such a man will not be admitted to paradise in the beginning.

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[1] Ibn Majah # 2703.

[2] Bayhaqi in Shu'ab ul Eeman.

بسم الله الرحمٰن الرحيم

BOOK - XIII

NIKAH (WEDLOCK) كِتَابُ النِّكَاح

MARRIAGE

WHAT IS *NIKAH (WEDLOCK)*: *Nikah (wedlock)* means to meet and get together. It is applied to the contract of marriage and to copulation which also is coming together. However, authorities differ on which is the true meaning and which the metaphorical.
The jurists say that *nikah (wedlock)* is the particular agreement between a man and a wife. It creates a matrimonial relationship between the two.

IMPORTANCE OF *NIKAH (WEDLOCK)*

***NIKAH (WEDLOCK)* & BELIEF:** *Nikah (wedlock)* or marriage is not merely a social union between two people, a need of an individual a natural longing or only a personal affair. Rather, it is a basic pillar of the sustenance of human society and, from point of view of Shariah, it possesses a special significance which can be gauged from the fact that every ؑ (divine law) from the time of Sayyiduna Aadam عليه السلام down to the ؑ (divine law) of prophet Muhammad صلى الله عليه وسلم has recognized *nikah (wedlock)*. The ulama (Scholars) say that there is no other worship that is practiced continuously to date from the times of Sayyiduna Aadam عليه السلام and will continue in paradise too other than *nikah (wedlock)* and belief. They are the only ones. So, in every ؑ (divine law), the marriage of man and woman is legal under a distinctive agreement. This marriage of the two is not legal without the agreement or pact in any Shariah or religion. Of course, the form of the agreement varies and its conditions and rules differ (from religion to religion). This chapter discusses the conditions and commands imposed by Islam as also the rules and regulations concerning this subject.

ADVANTAGES & DISADVANTAGES OF MARRIAGE

VIRTUES: The singular and general advantage of marriage is the survival and continuance of the human race and raising of the offspring. There also are other advantages and they are:

(1) Marriage checks sexual excitement which if unchecked leads a person to ruin. This appetite transgresses all barriers of religion and manners and violates all norms of nobility and human values but when lawful means are available to it through marriage it obeys and respects all barriers of conduct.

(2) The married couple set together their house in peace and comfort. They depend on, and support, one another through vicissitudes of life.

(3) The family expands through marriage and a person finds himself strong and self-supporting.

(4) Marriage causes a person to work hard and it removes lethargy and carelessness. This is helpful in the worldly life as well as in religion and worship.

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(5) Pious children are born through marriage. They are the most previous asset in life. A person finds solace through them in this world and earns success in the next world.

AAFAT: However, there are some things that cause hardship and difficulty to some people because of marriage. They are termed aafat of marriage and are six in number.

(1) Inability to seek the lawful earnings because of additional expense and new kinds of worries. The urge to seek the lawful is not as strong as during single life.

(2) Greater involvement in unlawful affairs. The family life enhances needs and raises standard of living on one's mind and to keep it up prohibited things are sought without hesitation.

(3) Negligence in giving rights of women. Islam has allowed great rights to women. They include kindness and love for wife, but very few people observe them and they do not allow wives the high rank Islam has given them. Rather, they regard wives as subordinates. So, women's rights are violated. Not only is it a social evil, it also is a grave sin and causes loss both in the hereafter and in this life.

(4) Men do not tolerate any kind of bed temper in women. This is because they consider themselves as superior to them. They lose patience on the slightest expression of displeasure by wives.

(5) Disunited house when a wife is very bad tempered and nagging. This causes immense discord and life is very disturbed for husbands.

(6) Rights of Allah are flouted because of additional responsibility to wife and children. Very few men maintain their religious life while looking after their wives and children. They give up performance of many pious deeds.

Keeping the advantages and disadvantages (or aafat) before oneself, that should be preferred which helps further a religious life. If one fears a nagging wife, and must realize that unbridled sexual appetite will plunge one into sin. So it is better to bear the nagging wife, and to marry, otherwise it would cause great religious loss.

THE COMMANDS TO MARRY

(1) According to the Hanafis, it becomes *fard (compulsory)* to marry when sexual excitement is so strong that one is liable to commit fornication. A man is able to pay the dower and to provide sustenance to his wife and he is confident that he would not be unjust and cruel to his wife, but will be kind to her.

(2) It is *wajib (obligatory)* to marry when the sexual excitement and urge is within limits and not likely to lead to illicit sex and the man is able to pay the dower and to maintain his wife. Also, he is not likely to be cruel to his wife. If anyone has the sexual urge but is unable to pay the dower and to maintain his wife then if he does not marry, that would not be sinful. On the other hand, if one who is able to pay the dower and maintain his wife does not marry then it is a sin.

(3) When the urge is moderate, it is *sunnah muwakkadah (emphasized practice of Holy Prophet* صلی اللہ علیہ وسلم) to marry. This means that the sexual urge is suppressible but the man has the potency to cohabit with his wife and is able to pay the dower and to maintain his wife. In this situation, it is a sin not to marry but to marry with intention to keep oneself away from fornication and to have a large progeny earns a large reward.

(4) It is makruh (disapproved) to marry when one is likely to be unjust or cruel to one's wife.
(5) It is forbidden to marry a woman when a man is certain that he would be cruel to his wife.

GIST: We know, therefore, that ؛ (divine law) has made allowance for different temperaments and situations. It is sometimes *fard (compulsory)*, to marry, sometimes *wajib (obligatory)*, sometimes *sunnah muwakkadah (emphasized practice of Holy Prophet* صلى الله عليه وسلم*)* and sometimes makruh (disapproved). At other times it is forbidden. Hence, a person must act according to the situation best suited to him.

THE MUSTAHBAT OF *NIKAH (WEDLOCK)*

When a man or woman intends to marry, before making the proposal, they should find out the background, habits and surroundings of one another. If they do not do that and later find out something disagreeable in their partner that would create much unpleasantness in their married life.

CRITERIA: It is *mustahab (desirable)* that the wife should be of a lower age, standing pedigree and richness than her husband. But she should excel herself over him in manners, good habits, beauty and piety. It is masnun for man to first see the woman he wishes to marry provided he is confident of his proposal being accepted.

MAKE KNOWN: It is *mustahab (desirable)* to announce the marriage to the people. The wedding should be conducted in public in the presence of relatives and friends from both sides as also some ulama (Scholars).

THE QADI & THE WITNESSES: The *nikah (wedlock)* should be conducted by a pious and righteous man. The witnesses too should be just, pious and God fearing.

PROPOSAL & ACCEPTANCE

Marriage takes place through proposal and acceptance. Both these words should be used in the past tense (to imply that the marriage has taken place). The woman should say, "I have given myself in marriage to your." Or her guardian should say to the man, "I have married the woman whose name is....to you." The man should answer, 'I have accepted." Or, one of the words of the proposal and acceptance should be in the past tense, like the woman offers, "Marry me," or her guardian says to the man, "Marry that woman whose name is...," and the man consents, "I have married her." Or, it may be the other way about. The man may say, "I have married you." The woman responds, "I consent." If the man asks the woman, "Have you presented yourself tome in marriage?" or, "Have you accepted me?" and the woman says only 'yes, have given" or "Yes, have given" or "Yes, have accepted" without using the word 'I" the marriage will be valid nevertheless. However, it is not enough to say before the witnesses, 'We are wife and husband," because marriage is not contracted in this way.

Apart from using the past tense in proposal and acceptance, it is also necessary to use the words *nikah (wedlock)* (marriage) and tazweej (marrying). Thus one may say, "I have concluded *nikah (wedlock)* with you, or "I have made tazweej with you." Or, a synonym be used that gives the meaning of marriage clearly, like a man saying. "I have made you my wife," or "I have become your husband," or "you have become mine." He may not specifically use the words *nikah (wedlock)* and tazweej or their synonyms but use a figurative expression. This too is allowed provided it suggests someone's perfect ownership in fact and in reality, like, gift, sadaqah (charity), ownership, sale or purchase, the wife saying, for instance, "I have presented to you my marriage," or "I have given you

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my being as a sadaqah (charity)," or "I have made you owner of my being," or "I have bought you for so much money." The man should say in answer, "I have accepted." However, for it to be correct is the condition that the speaker should have meant *nikah (wedlock)* by his speech, and the context, too, suggests it, but if there is no such suggestion in the text, the person accepting may have confirmed it and the witnesses may have understood the meaning that the speech refers to marriage whether through a suggestion in the text or by being told.

MUST HEAR ONE ANOTHER: The bride and bridegroom must each hear the other making the proposal and accepting it. This may be directly from one another, or through their attorney, or through their guardian.

WITNESSES: It is a condition that two men must witness the proposal and consent for the marriage to be valid. The witnesses may be two men or one man and two women. They must be free men or women, because the testimony of a female slave or a male slave is not accepted. Also, they must be sane and Muslims. The testimony of Muslims is acceptable even whether they are pious or sinners or they have been awarded the prescribed punishment (or hadd) of qadhaf (for slander, eighty stripes). It is not a condition that the witness should not be blind and not related to the spouses. Thus, the testimony of the blind and of the relatives of the spouse will be accepted, even their sons or sons of either of them. It is imperative that the witness must both together hear the proposal and consent and now by them that the marriage is being contracted, though they may not understand the meaning of the words (if they are in an alien language). If the witnesses do not both of them hear the proposal and consent at the same time, but at different times then the marriage is not validly conducted.

MINOR GIRL: If a man says to another, "Marry my minor daughter to so and so," and he conducted her marriage to that man in the presence of her father and another man, then the marriage is valid. But, if her father is not there, then the marriage will not be valid without the presence of two men or one man and two women.

SECTION I اَلْفَصْلُ الْاَوَّلُ

YOUNG PEOPLE SHOULD MARRY

(٣٠٨٠) عَنْ عَبْدِاللّٰهِ بْنِ مَسْعُوْدٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَا مَعْشَرَ الشَّبَابِ مَنِ اسْتَطَاعَ مِنْكُمُ الْبَائَةَ فَلْيَتَزَوَّجْ فَإِنَّهٗ اَغَضُّ لِلْبَصَرِ وَاَحْصَنُ لِلْفَرْجِ وَمَنْ لَمْ يَسْتَطِعْ فَعَلَيْهِ بِالصَّوْمِ فَإِنَّهٗ لَهٗ وِجَاءٌ۔

(متفق علیہ)

3080. Sayyiduna Abdullah ibn Mas'ud رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "O group of young people!' Those of you who can bear the burden (or a family) should marry for it keep the eyes down (from ogling at women) and preserves one from immorality. And those (of you) who cannot let him fast for it dries up his lust."[1]

COMMENTARY: The prophet صلی اللہ علیہ وسلم mentioned two great advantages of marriage -

[1] Bukhari # 5066, Muslim # 1-1400, Abu Dawud # 2046, Tirmidhi # 1083, Nasa'i # 2242, Ibn Majah # 1845, Darimi # 2165, Musnad Ahmad 1-432.

abstaining from staring at strange women and from illicit sex.

LIMIT OF YOUNG AGE: When a person attains adulthood, he is among young men. But, how long does this youth last? Imam Shafi'I رحمه الله says that it ends at the age of thirty, but Imam Abu Hanifah رحمه الله puts it at forty.

LIFE OF CELIBACY DISALLOWED

(٣٠٨١) وَعَنْ سَعْدِ بْنِ اَبِيْ وَقَّاصٍ قَالَ رَدَّرَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَلٰى عُثْمَانَ بْنِ مَظْعُوْنٍ التَّبَتُّلَ وَلَوْ اَذِنَ لَهُ لَاخْتَصَيْنَا۔ (متفق عليه)

3081. Sayyiduna Sa'd ibn Abu Waqqas رضی الله عنه narrated, "Allah's Messenger صلی الله علیه وسلم denied Uthman ibn maz'un permission to observe (a life of) celibacy. If he had permitted him, we would have had ourselves castrated."[1]

COMMENTARY: The Arabic word used in the hadith is (التبتل) (at-tabattul). It means to abstain from women and refrain from marrying. The Nasara (followers of Sayyiduna Easa عليه السلام, the Prophet) consider celibate life a good and preferable thing to observe. The ultimate aim of religion, according to them, is a man's keeping away from women and remaining unmarried. Some other religions too regard it as piety to stay away from marriage and pleasures of life. But Islam does not agree. Rather, it says that marriage is a necessary part of man's life. Islam says that to abstain completely from the pleasures of life and to endure self-imposed restrictions on oneself are not forms of worship. Rather, this kind of life is rahbaniyah (monkery, monasticism) which has no place in this religion of innate nature. Of course, Imam Shafi'I رحمه الله does say that it is better to lead an unmarried life, but this opinion of Imam Shafi'I رحمه الله does not contradict the elementary goal of Islam because it concerns mainly a superior mode which, moreover, is not concerned with marrying or not marrying but only .with marrying or not marrying but only with (تخلی العبارة) (observing solitude for worship).

SHAFI'I VIEWPOINT: In other words, Imam Shafi'I means to say that to occupy in worship is better than occupation in marriage. Mulla Ali Qari رحمه الله has reproduced in 'Mirqat' the arguments of Imam Shafi'I رحمه الله and also of Imam Abu Hanifah رحمه الله to prove that tahil (married life) is better then tajarrud (unmarried life).

PROPHET'S صلی الله علیه وسلم DISALLOWANCE: Anyway when Sayyiduna Uthman ibn Maz'un رضی الله عنه sought permission of the Prophet صلی الله علیه وسلم to lead a celibate life, he did not permit him because Islam calls for increase in numbers through marriage so that a greater number of worshippers of Allah spread on earth, and they wage jihad against disbelief and falsehood.

SA'DS AIM: The narrator of the hadith Sayyiduna Sa'd ibn Abu Waqqas رضی الله عنه disclosed that if the prophet صلی الله علیه وسلم had given permission to Sayyiduna Uthman ibn Maz'un رضی الله عنه then the sahabah (Prophet's Companions) رضی الله عنهم would have had themselves castrated. Then, they would have had no desire for women and would not have fallen into sin.

Teebi رحمه الله said that Sa'd رضی الله عنه meant that if the Prophet had given Uthman رضی الله عنه the nod they too would have led a life of celibacy. The words he used were to emphasise tha t

[1] Bukhari # 5073, Muslim # 6-1402, Tirmidhi # 1085, Nasa'i # 3209, Ibn Majah # 1848, Musnad Ahmad 1-175, Darimi # 2167.

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they would have gone to that extent in leading a life celibacy as though they had been castrated. He did not mean that they would have done that is reality. It is not permitted to have oneself castrated.

FORBIDDEN TO HAVE ONESELF CASTRATED: Allamah (The learned Scholar) Nawawi رحمه الله said that Sayyiduna Sa'd رضی الله عنه had not know that it is forbidden to a man, young or old, to have himself castrated.

ABOUT ANIMALS: We must know about animals that it is forbidden to castrate every animal that is not eaten. As for the animals that are eaten, it is allowed to castrated the young animals but forbidden to do it to old animals This is what Allamah (The learned Scholar) Nawawi Shafi'i رحمه الله has written but the books of figh Hanafi, Mukhtar and Hidayah write that it is permitted to castrate animals without specifying their age.

PREFER A RELIGIOUS WINDED WOMAN AS WIFE

(٣٠٨٢) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ تُنْكَحُ الْمَرْاَةُ لِاَرْبَعٍ لِمَالِهَا وَلِحَسَبِهَا وَلِجَمَالِهَا وَلِدِيْنِهَا فَاظْفَرْ بِذَاتِ الدِّيْنِ تَرِبَتْ يَدَاكَ۔ (متفق علیه)

3082. Sayyiduna Abu Hurayrah رضی الله عنه narrated that Allah's Messenger صلی الله علیه وسلم said, "A woman is married bearing four things in mind (about her): her property, her ancestry, her beauty or her religion. So, make the choice of one who is religious. May your hands be daubed with dust!"[1]

COMMENTARY: A woman chosen for her ancestry means that not only is she herself noble and dignified but her family or tribe is also very honourable. This, indeed, is a natural tendency is man to have a woman of high rank and nobility so that his children belong to a high ranking family and ancestors.

The hadith calls on every religious man to opt for a woman who is pious. This ensures good both in this world and the next.

The words 'may your hands be daubed with dust' seem to degrade someone but it is an expression encouraging the addressee to action.

PIOUS WOMAN IS THE BEST ASSET IN THE WORLD

(٣٠٨٣) وَعَنْ عَبْدِاللّٰهِ بْنِ عَمْرٍو وقَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ الدُّنْيَا كُلُّهَا مَتَاعٌ وَخَيْرُ مَتَاعِ الدُّنْيَا الْمَرْاَةُ الصَّالِحَةُ۔ (رواه مسلم)

3083. Sayyiduna Abdullah ibn Amr رضی الله عنه narrated that Allah's Messenger صلی الله علیه وسلم said, 'The world, all of it, is to be benefitted from for a while. And, the best of the beneficial thing in the world is a righteous woman." (The word is (مَتَاع) mata' which means 'a thing of enjoyment.')[2]

COMMENTARY: Mata' is something from which benefit is derived for sometime before it perishes. So, benefit may be derived from the world for some time. The benefit is short lived. A pious righteous woman is the best of the worldly things from which benefit may be derived because a pious woman is very helpful in doing deeds for the hereafter.

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[1] Bukhari # 5090, Muslim # 53-1466, Abu DAwud # 2047, Nasa'i # 3230, Ibn Majah # 1858, Musnad Ahmad 2-428, Darimi # 2170.

[2] Muslim # 64. 1467, Nasa'i # 3232, Musnad Ahmad 2-268.

VIRTUE OF PIOUS WOMEN OF THE QURAYSH

(٣٠٨٤) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ خَيْرُ نِسَاءٍ رَكِبْنَ الْاِبِلَ صَالِحُ نِسَاءِ قُرَيْشٍ اَحْنَاهُ عَلٰى وَلَدٍ فِيْ صِغَرِهٖ وَاَرْعَاهُ عَلٰى زَوْجٍ فِيْ ذَاتِ يَدِهٖ۔ (متفق عليه)

3084. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "The best of women who ride on camels are the pious women of the Quraysh. They are very kind and loving to the small children and are very mindful to their husband's possessions (in their hands)."[1]

COMMENTARY: The women of the Arabs used to ride the camels. So the hadith means that the best of woman of the Arabs are those of the Quraysh.

WORST OF TRIALS IS WOMEN

(٣٠٨٥) وَعَنْ اُسَامَةَ بْنِ زَيْدٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَا تَرَكْتُ بَعْدِيْ فِتْنَةً اَضَرَّ عَلَى الرِّجَالِ مِنَ النِّسَاءِ۔ (متفق عليه)

3085. Sayyiduna Usamah ibn zayd رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "I do not leave behind me a trial more harmful to men then (the trial through) women."[2]

COMMENTARY: The Prophet صلی اللہ علیہ وسلم described women's trial most harmful to men because:

(i) Men are generally inclined to women, and
(ii) Men generally are more careful of woman's wishes.

The result is that men succumb to forbidden things to please women. Men fight each other for the sake of women.

The demands of women push men to worldly pursuits. Clearly, nothing is more harmful than being involved in the world. The Prophet صلی اللہ علیہ وسلم Lad said about it:

حُبُّ الدُّنْيَا رَاْسُ كُلِّ خَطِيْئَةٍ

(Love of the world is the root of all evils).

The Prophet's صلی اللہ علیہ وسلم words 'behind me' show that the trial through women was not as accentuated in his time as after him. Piety was supreme then and evil was suppressed. After the Prophet's صلی اللہ علیہ وسلم death evil became stronger gradually and soon suppressed piety.

BEWARE OF TRIAL THROUGH WOMEN

(٣٠٨٦) وَعَنْ اَبِيْ سَعِيْدِنِ الْخُدْرِيِّ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِنَّ الدُّنْيَا حُلْوَةٌ خَضِرَةٌ وَاِنَّ اللّٰهَ مُسْتَخْلِفُكُمْ فِيْهَا فَيَنْظُرُ كَيْفَ تَعْمَلُوْنَ فَاتَّقُوا الدُّنْيَا وَاتَّقُوا النِّسَاءَ فَاِنَّ اَوَّلَ فِتْنَةِ بَنِيْ اِسْرَائِيْلَ كَانَتْ فِي النِّسَاءِ۔ (رواه مسلم)

3086. Sayyiduna Abu Sa'eed al-Khudri رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "The world is sweet and green. Allah has made you khalifah (caliph)

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[1] Bukhari # 5082, Muslim # 202-2527, Musnad Ahmad 2. 2690.

[2] Bukhari # 5096, Muslim # 97-2740/1, Tirmidhi # 2789, Ibn Majah # 3998, Musnad Ahmad 5-200.

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(vicegerent) in it. He watches (you) how you act. So (fear and) preserve yourselves from the world and preserve yourselves from women, for, the first trial of Banu Israil was through women."[1]

COMMENTARY: The world appeals to a man as a sweet thing does and delight the eyes as greenery does.

The world belongs to Allah. He is its Master and Ruler. He has made you His vicegerent on earth. You are His attorney in the earth to work on it. He watches you all the time how you work as His vicergrent and how you discharge you duties.

The relative words in the hadith could also mean that Allah has made you deputy of those people who have departed from this world before you (as their heirs). Whatever they had belongs to you and He sees now how you conduct yourselves and take a lesson from their lives.

The next words are that you should guard yourselves from the intrigues of the world. You must not let yourselves be trapped in its net because it is not everlasting. When you are resurrected for the eternal world you will be called to reckon and to serve punishment.

So, too, guard yourselves against the deceit of women. The pious woman is a blessing of Allah but an evil woman is a trial for all. So let not the conspiracies of evil women or the demands of your wives plunge you in the unlawful and forbidden things and so into ruin and destruction.

WOMEN WAS THE FIRST TRIAL CF THE CHILDREN OF ISRA'IL LEADING THEM TO DESTRUCTION

There was a man by the name al Bal'am ibn Ba'ur in the time of prophet Musa عليه السلام. He was one whose prayers were answered very often. Because he know the great name of Allah (ism a'zam). At one juncture. Prophet Musa عليه السلام advanced with a large army to fight the jabbarun and encamped at a place of Banu Kir'an in Shaam (Syria). The tribe of Bal'am came to him and request him, "Musa has come here with a huge army to kill us and drive us out of this place. So, do curse him so that he goes away from here." Bal'am said, "You do not know what I know. How may I curse a Prophet of Allah and his followers. If I do that, I will be ruined in both the worlds." But, they persisted and pleaded with him unceasingly to curse prophet Musa عليه السلام. Finally Bal'am conceded, 'I shall seek Allah's guidance in this regard and wait for his command. Then I shall decide."

Bal'am never did anything without making istikharah (which is to seek Allah's guidance). So, when he did that, he dreamt that he should never pray against the Prophet and the believers with him. So, Bal'am informed his tribe that he was not prepared to oblige them. But, they did not give in. They brought to him precious gifts, pleaded with him and wept bitterly and, in the end, managed to compel him. He was trapped. He mounted his donkey and set out to the mount Jistan to curse Prophet Musa عليه السلام whose army was pitched near to it.

His donkey stumbled many times on the way but he beat it to resume the journey. This things prolonged and Bal'am too was exhausted picking up the donkey every time it fell down.

Then Allah enable the donkey to speak. It said, "O Bal'am, silly man! Do you not see where you are going? You push me forward but the angels drive me back!" Bal'am heard the donkey but instead of paying heed, he alighted from it and leaving it there walked ahead on foot. He climbed the mountain and began to curse. However, whenever he intended to name Prophet Musa عليه السلام and his tribe, his tongue uttered the name of his own tribe

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[1] Muslim # 99-2742, Tirmidhi # 2198, Ibn Majah # 4000, Musnad Ahmad 3-22.

instead of Banu Isra'il

His people protested and he convinced them that he called the name of Banu Isra'il but his tongue took their name. In spite of that Bal'am did not desist. He tried to curse till he faced punishment and his tongue emerged to rest on his chest. Then he was nonplussed and lamented that he was ruined in both the worlds, yet he persisted, "We must now think of some way to eliminate the Banu 'Isra'il." Then he suggested to his people. "Adorn your women superbly. Let them carry some things in their hands and pretend to sell them. They should go to the army of Banu Isra'il as saleswomen. Advse them to lure the Banu Isra'il and submit to anyone who invites them. Even if one of them commit fornication, then you will gain success.

They did that, when the women went to the Banu Isra'il, one of them captivated one of their chiefs zamzam ibn Shalum. He took her by her hands to prophet Musa عليه السلام and asked, "Do you say that she is forbidden to me?" He said, "Yes!" But, zamzam said, "I shall not obey you concerning her" and he took her concerning her" and he took her to his tent here he committed the evil deed.

That did it! Allah wrath descended on them. In no time, seventy thousand of their men died. Fahas the grandson of Prophet Harun عليه السلام and a giant of a man who was also the guard of Prophet Musa عليه السلام took his weapon and rushed to the tent of zamzam and, in the twinkling of an eye, he consigned both zamzam and his mistress to death, saying, "Allah has destroyed us because of this man!"

As soon as they were killed, the punishment was withdrawn from them.[1]

THREE THINGS ARE INAUSPICIOUS

(٣٠٨٧) وَعَنِ ابْنِ عُمَرَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ الشُّؤْمُ فِي الْمَرْأَةِ وَالدَّارِ وَالْفَرَسِ۔ مُتَّفَقٌ عَلَيْهِ وَفِيْ رِوَايَةٍ الشُّؤْمُ فِيْ ثَلَاثَةٍ فِي الْمَرْأَةِ وَالْمَسْكَنِ وَالدَّابَّةِ۔

3087. Sayyiduna Ibn Umar رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "There is ill omen in a woman, a house and a horse."

According to another version: 'Ill omen is attached to three things: a woman a residence and an animal."[2]

COMMENTARY: The Arabic word (الشؤم) (ash-Sha-um) is the opposite of yaman and it means withdrawal of blessing or inauspiciousness. Let us now see what it implies.

The ominous nature of the house could mean its smallness and had neighbourhood. It is uncomfortable and the neighbours are evil.

The woman is unfavourable when she is paid a high dower, is ill-tempered, bad mannered and barren. She cannot give comfort but causes difficulties.

When a horse is said to have ill omen attached to it, it is naughty, slow paced and not used for jihad. It is not an asset for its owner.

Some ulama (Scholars) say that the hadith means that if there was ever an ill omen in anything then it would be in these three things. In other words, to attach ill omen to any thing is meaningless. It is only a superstition and there is no truth about it. If there really

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[1] See 'Stories of the Prophets' Ibn Kathir. Pg 244, Darul Isha'at Karachi.

[2] Bukhari # 5093, Muslim # 115-2225, Abu Dawud # 3922, Tirmidhi # 2833, Nasa'i # 3571, Musnad Ahmad # 4544.

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was an ill omen in anything, it would be found in these three things because they can qualify for it. This saying of the Prophet صلى الله عليه وسلم is like his words, "If any thing was outside the shphere of destiny that would be an evil eye." In other words, everything in this universe follows the set procedure of fate predetermined yet if anything could escape that predestination, it would be the evil eye.

Hence, just as these words of the Prophet صلى الله عليه وسلم do no mean that the evil eye is not governed by fate, so too the hadith mentioned here does not mean to say that ill omen is attached to these three things.

Some other ulama (Scholars) say that if a person has a house in which he does not like to reside, or a wife with whom he finds it disagreeable a have a sexual relationship, or a horse that he does not like, then he must part from the thing that is incompatible.

Thus this hadith does not disagree with the hadith that disallows attaching an ill omen to something. It does not say that there is an ill omen in anything.

PREFER A VIRGIN FOR A WIFE

(٣٠٨٨) وَعَنْ جَابِرٍ قَالَ كُنَّا مَعَ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فِيْ غَزْوَةٍ فَلَمَّا قَفَلْنَا كُنَّا قَرِيْبًا مِنَ الْمَدِيْنَةِ قُلْتُ يَا رَسُوْلَ اللّٰهِ إِنِّيْ حَدِيْثُ عَهْدٍ بِعُرْسٍ قَالَ تَزَوَّجْتَ قُلْتُ نَعَمْ قَالَ اَبِكْرٌ اَمْ ثَيِّبٌ قُلْتُ بَلْ ثَيِّبٌ قَالَ فَهَلَّا بِكْرًا تُلَاعِبُهَا وَتُلَاعِبُكَ فَلَمَّا قَدِمْنَا ذَهَبْنَا لِنَدْخُلَ فَقَالَ اَمْهِلُوْا حَتّٰى نَدْخُلَ لَيْلًا اى عِشَاء لِكَيْ تَمْتَشِطَ الشَّعِثَةُ وَتَسْتَحِدُّ الْمُغِيْبَةُ۔ (متفق عليه)

3088. Sayyiduna Jabir رضى الله عنه narrated that they were with the prophet on an expedition and when they returned and were near Madinah, he said, "O Messenger of Allah, I have married recently" (hoping to be allowed to go ahead of the others to his wife). He asked, "So you have married?" He said, Yes!" He asked, "A virgin or a window?" He said, "Rather, a widow." He asked, "why did you not marry a virgin? You could have enjoyed her and she would have enjoyed you." When they were at Maidnah and everyone intended to go to his home, he said, "Wait. We shall enter by night, meaning in the evening, to allow the woman with disheveled hair to comb it and the woman whose husband was away (with us participating in jihad) may shave her pubes."[1]

COMMENTARY: When a man marries a virgin, they have more love for one another and are more friendly, The widow, on the other hand, remembers her first husband and if she does not adapt to living standard of the second, her outlook depicts it. So she is not as much friendly as a virgin is.

On returning from a journey, do not make haste to return home. Allow your wife time to prepare herself. In this way you will not find her in a disagreeable condition.

Other ahadith disallow travellers from returning home at night. But, this applies when advance information is not given home about one's arrival. If the family is told beforehand of the arrival then there is no harm.

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[1] Bukhari # 5247, Muslim # 57-1466, Abu Dawud # 2048, Nasa'i # 3226, Ibn Majah # 1860, Darimi # 2216.

SECTION II اَلْفَصْلُ الثَّانِيْ

THERE WHOM ALLAH HELPS ALWAYS

(٣٠٨٩) عَنْ اَبِيْ هُرَيْرَةَ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ ثَلَاثَةٌ حَقٌّ عَلَى اللّٰهِ عَوْنُهُمْ اَلْمُكَاتَبُ الَّذِيْ يُرِيْدُ الْاَدَاءَ وَالنَّاكِحُ الَّذِيْ يُرِيْدُ الْعَفَافَ وَالْمُجَاهِدُ فِيْ سَبِيْلِ اللّٰهِ۔ (رواه الترمذی والنسائی وابن ماجة)

3089. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Three there are who have a right to get Allah's help (as per His promise). They are:

(i) The mukatab who resolves to pay to his master to buy his freedom.
(ii) He who married to preserve his chastity.
(iii) The warrior in Allah's path."[1]

COMMENTARY: Mukatab is the slave whose master offers to set him free if he pays him a certain sum of money. The sum of money that the master asks for his release is called badal kitabah.

INSTRUCTIONS FOR GUARDIAN OF WOMAN

(٣٠٩٠) وَعَنْهُ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِذَا خَطَبَ اِلَيْكُمْ مَّنْ تَرْضَوْنَ دِيْنَهٗ وَخُلُقَهٗ فَزَوِّجُوْهُ اِنْ لَّا تَفْعَلُوْهُ تَكُنْ فِتْنَةٌ فِي الْاَرْضِ وَفَسَادٌ عَرِيْضٌ۔ (رواه الترمذی)

3090. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "When a man proposes marriage and you are pleased with his religion and character, marry (your daughter) to him, If you fail to do that then there would be mischief on earth and much corruption."[2]

COMMENTARY: This is an important instruction to the parents, or guardians of women. They should accept proposal marriage for their ward from a religious and well-mannered man and marry their girl to him. If they reject him waiting for a rich worldly man's proposal then the wait will be long. Most women will remain single and most men will continue to live a bachelor's life. Most religious families are inclined to do it. This gives rise to temptation and spreads evil. The elders will be blamed for the situation.

Teebi رضی اللہ عنہ said that this hadith is evidence for Imam Maalik's رحمہ اللہ contention that equality of the spouses is based only on religious standing. The two may suffice one another only through religion. The other ulama (Scholars), however, say that four qualities should be considered to become sufficient for (or partners of) one another. They are:

(i) religion,
(ii) freedom,
(iii) descent, and
(iv) profession.

Thus, a Muslim women should not be given in marriage to a disbeliever, to a man of unknown ancestors and (if she is the daughter of a merchant or a man of good profession, she should not be married) to a man of an unlawful profession or a makruh (disapproved) occupation.

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[1] Tirmidhi # 1661, Nasa'i # 3218 (or 3220) , Ibn Majah # 2518, Musnad Ahmad # 9637.

[2] Tirmidhi # 1086, Ibn Majah # 1967.

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However, if a woman's guardian and the woman herself and pleased with the proposal of an unequal man, then the marriage will be correct.

MARRY WOMAN WHO ARE LOVING.

(٣٠٩١) وَعَنْ مَعْقِلِ بْنِ يَسَارٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ تَزَوَّجُوا الْوَدُوْدَ الْوَلُوْدَ فَإِنِّيْ مُكَاثِرٌ بِكُمُ الْأُمَمَ۔ (رواه ابوداؤد و النسائی)

3091. Sayyiduna Ma'qil ibn Yasar رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Marry women who love (their husbands) and are very fecund because I shall surpass the umahs by your numbers."[1]

COMMENTARY: The aim is to have large numbers of the ummah of Muhammad صلی اللہ علیہ وسلم. To achieve that a woman must possess both the qualities mentioned in the hadith.

A woman can be known to be prolific and loving by looking at her family background. If her family is large, she is liable to be fecund because that is a trend in her family.

This hadith says that it is *mustahab (desirable)* to marry women who are loving and inclined to give birth to many children. The prophet صلی اللہ علیہ وسلم will take pride in large numbers of his ummah.

The hadith could also mean that a man should keep regular sexual relationship with those of his wives who are prolific.

BETTER TO MARRY A VIRGIN

(٣٠٩٢) وَعَنْ عَبْدِالرَّحْمٰنِ بْنِ سَالِمِ بْنِ عُتْبَةَ بْنِ عُوَيْمِ بْنِ سَاعِدَةَ الْأَنْصَارِيِّ عَنْ اَبِيْهِ عَنْ جَدِّهٖ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَلَيْكُمْ بِالْاَبْكَارِ فَإِنَّهُنَّ اَعْذَبُ اَفْوَاهًا وَ اَنْتَقُ اَرْحَامًا وَاَرْضٰى بِالْيَسِيْرِ۔ رَوَاهُ ابْنُ مَاجَةَ مُرْسَلًا۔

3092. Sayyiduna Abdur Rahman ibn Saalim ibn Utbah ibn Uwaym ibn Sa'idah Al-Ansari رحمہ اللہ narrated that his father that his grandfather (Utbah) رحمہ اللہ reported the saying of Allah's Messenger صلی اللہ علیہ وسلم that they should marry virgins for they have mouths (than others and possess sweet voices and good speech and they are not indecent speakers). They possess fertile wombs and are more pleased with little.[2]

COMMENTARY: The virgin is more prolific but this is as per apparent cause and effect conditions. It is meaningless without Allah's command. (See also the commentary to hadith # 3088)

The virgin is also content with little.

SECTION III اَلْفَصْلُ الثَّالِثُ

PECULIARITY OF MARRIAGE

(٣٠٩٣) عَنِ ابْنِ عَبَّاسٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَمْ تَرَ لِلْمُتَحَابَّيْنِ مِثْلَ النِّكَاحِ۔

3093. Sayyiduna Ibn Abbas رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "You will not have seen anything like marriage that increases love

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[1] Abu Dawud # 2050, Nasa'i # 3227.

[2] Ibn Majah # 1861

between two lovers."[1]

COMMENTARY: Husband and wife who were unrelated and were strangers begin to love one another after marriage as no two people may be expected to love one another.

MARRYING WOMEN WHO ARE FREE

(٣٠٩٤) وَعَنْ اَنَسٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ اَرَادَ اَنْ يَلْقَى اللّٰهَ طَاهِرًا مُطَهَّرًا فَلْيَتَزَوَّجِ الْحَرَائِرَ۔

3094. Sayyiduna Anas رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "He who resolves to meet Allah while he is pure and purified (of the evil of fornication) must marry free women."[2]

COMMENTARY: The free woman are more pure then female slaves. They teach their children manners such are female slave cannot teach.

QUALITY OF A PIOUS WIFE

(٣٠٩٥) وَعَنْ اَبِيْ اُمَامَةَ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَنَّهٗ يَقُوْلُ مَا اسْتَفَادَ الْمُؤْمِنُ بَعْدَ تَقْوَى اللّٰهِ خَيْرًا لَهٗ مِنْ زَوْجَةٍ صَالِحَةٍ اِنْ اَمَرَهَا اَطَاعَتْهُ وَاِنْ نَظَرَ اِلَيْهَا سَرَّتْهُ وَاِنْ اَقْسَمَ عَلَيْهَا اَبَرَّتْهُ وَاِنْ غَابَ عَنْهَا نَصَحَتْهُ فِيْ نَفْسِهَا وَمَالِهٖ رَوَى ابْنُ مَاجَةَ الْاَحَادِيْثَ الثَّلَاثَةَ۔

3095. Sayyiduna Abu Umamah رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said often, "The believer earns for himself nothing better, after fear of Allah, than a righteous wife. If he commands her, she obeys him. If he looks at her, she delights him (with her beauty, purify and cheerful countenance). If he adjures her, she makes it true. And, if he is absent from her, she is sincere to him concerning her person (not being unfaithful to him, and concerning) his property (not being careless and treacherous)."[3]

COMMENTARY: Taqwa (piety) (fear of Allah) is to obey Allah's commands and to abstain from what He has disallowed.

The wife obeys her husband what is not sinful and in that which complies with ء (divine law) and she does not displease Allah. It is a command of ء (divine law) that one should not obey the command of the creatures that calls for disobedience of the creator.

This woman prefers her husband's wishes to her own. She does not what he likes and abstains from that which he does not like.

MARRIAGE IS HALF OF RELIGION

(٣٠٩٦) وَعَنْ اَنَسٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِذَا تَزَوَّجَ الْعَبْدُ فَقَدِ اسْتَكْمَلَ نِصْفَ الدِّيْنِ فَلْيَتَّقِ اللّٰهَ فِي النِّصْفِ الْبَاقِيْ۔

3096. Sayyiduna Anas رحمہ اللہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "When

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[1] Ibn Majah # 1847.

[2] Ibn Majah # 1862.

[3] Ibn Majah # 1875.

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a person married, he (or she) has perfected half of the religion. Now, let him (or her) fear regarding the other half."[1]

COMMENTARY: Two things there are in a human body that the generally responsible for corrupting religion. These two are the private parts and the belly.

The hadith says that when one marries, he preserves himself from the mischief of his private parts. He must then concentrate on delivering himself from the mischief of the belly by fearing Allah for which he must earn lawful sustenance to feed his own self and his family. In the way, he shall perfect the entire religion.

THE MARRIED LIFE THAT IS AUSPICIOUS

(٣٠٩٧) وَعَنْ عَائِشَةَ قَالَتْ قَالَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِنَّ اَعْظَمَ النِّكَاحِ بَرَكَةً اَيْسَرُهٗ مُؤْنَةً۔ رَوَاهُمَا الْبَيْهَقِيُّ فِيْ شُعَبِ الْاِيْمَانِ۔

3097. Sayyidah Ayshsh رضی۔ narrated that the Prophet صلی اللہ علیہ وسلم said, "The marriage that has the greatest blessing is the one that calls for the easiest effort."[2]

COMMENTARY: The least effort is when the dower is small and the wife is not demanding but is content with what she gets.

CHAPTER - II

LOOKING AT THE WOMAN TO WHOM A PROPOSAL FOR MARRIAGE IS SENT & THE LIMBS THAT MUST BE KEPT COVERED

بَابُ النَّظْرِ اِلَى الْمَخْطُوْبَةِ وَبَيَانُ الْعَوْرَاتِ

The Arabic words in the heading are al-makhtubah and al-awrat. The former means 'the woman to whom the marriage proposal is sent.' The latter means 'the limbs that one is commanded to conceal (or cover).'

LOOKING AT THE MAKHTUBAH

According to Imam Abu Hanifah رحمہ اللہ, Imam Shafi'I رحمہ اللہ, Imam Ahmad رحمہ اللہ and most of the ulama (Scholars), it is permitted to man to see the woman whom he sends proposal for marriage even if she does not give permission for it. Imam Maalik رحمہ اللہ holds that a man is permitted to see her only if he has her permission for that. It is disallowed to see her without her consent, and according to a report, Imam Maalik رحمہ اللہ holds that it is absolutely disallowed to see her.

The juristic ruling in this connection is that, instead of looking at the woman a man proposes to marry, he should ask an experienced woman to get him the necessary information after looking at the woman he proposes to marry.

SECTION I اَلْفَصْلُ الْاَوَّلُ

MUSTAHAB (DESIRABLE) TO SEE WOMAN BEFORE PROPOSING

(٣٠٩٨) عَنْ اَبِيْ هُرَيْرَةَ قَالَ جَاءَ رَجُلٌ اِلَى النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ اِنِّيْ تَزَوَّجْتُ امْرَاَةً مِنَ الْاَنْصَارِ

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[1] Bayhaqi in Shu'ab ul Eeman # 5486.

[2] Bayhaqi in Shu'ah ul Eeman # 6566.

قَالَ فَانْظُرْ إِلَيْهَا فَإِنَّ فِي أَعْيُنِ الْأَنْصَارِ شَيْئًا۔ (رواه مسلم)

3098. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that a man came to the Prophet صلی اللہ علیہ وسلم and said, "I intend to marry a woman of the ansar." He said, "So, look at her, for, there is something in the eyes of (some of the) ansars."[1]

COMMENTARY: The Prophet صلی اللہ علیہ وسلم advised the man to look at the woman before marrying her because there was some wrong in the eyes of some of the ansars, so that later on it might not cause him dislike. Allamah (The learned Scholar) Nawawi رحمہ اللہ said something like it.

It is allowed to disclose a defect to someone else with a good intention.

It would be understood that only the face and hands of the woman may be seen but only if it would not create a sexual excitement because both these limbs are not part of satr (private parts). (Satr is the portion of a person's body that must be covered in the presence of another.)

WIFE MUST NOT DESCRIBE ANOTHER WOMAN TO HER HUSBAND

(٣٠٩٩) وَعَنِ ابْنِ مَسْعُوْدٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا تُبَاشِرُ الْمَرْأَةُ الْمَرْأَةَ فَتَنْعَتَهَا لِزَوْجِهَا كَأَنَّهُ يَنْظُرُ إِلَيْهَا۔ (متفق عليه)

3099. Sayyiduna Ibn Mas'ud رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "No woman must touch her (naked) body to the (naked) body of another woman. And (she must) not describe her to her husband (because describing her to him is) as though he were looking at her."[2]

COMMENTARY: It is very shameful for a woman to undress before another naked woman and for both of them to embrace one another. Again it is disgraceful for her to give a rundown of the other's nudity to her husband. This could excite him and might lead to mischief.

GUIDELINES FOR MEN & WOMEN

(٣١٠٠) وَعَنْ أَبِي سَعِيْدٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا يَنْظُرُ الرَّجُلُ إِلَى عَوْرَةِ الرَّجُلِ وَلَا الْمَرْأَةُ إِلَى عَوْرَةِ الْمَرْأَةِ وَلَا يُفْضِي الرَّجُلُ إِلَى الرَّجُلِ فِي ثَوْبٍ وَاحِدٍ وَلَا تُفْضِي الْمَرْأَةُ إِلَى الْمَرْأَةِ فِي ثَوْبٍ وَاحِدٍ۔ (رواه مسلم)

3100. Sayyiduna Abu Sa'eed رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "No man must look at the awrah of another man and no woman at the awrah of another woman. And no man must cover himself with another man in a single garment and no woman must cover herself with another woman in a single garment."[3]

COMMENTARY: The parts of the body of men and women that ء (divine law) has disallowed to be seen or touched by one another are called satr (private parts) or awrah.

The satr (private parts) for men is from the waist to the knee (or navel to knee). For women

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[1] Muslim # 74-1424, Musnad Ahmad 2-299.

[2] Bukhari # 5240, 5241, Tirmidhi # 2801, Abu Dawud # 2150, Musnad Ahmad 1-387.

[3] Muslim # 74-338, Tirmidhi # 2802, Ibn Majah # 661, Musnad Ahmad 3063.

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it is from neck to feet (or entire body except face and hands).These parts ought to be covered and concealed from the sight of others. The juristic directions are outlined here.
A man's satr (private parts) is between his navel and below his knees. It is not allowed to any other man or woman to look at it unnecessarily. His wife or female slave may, however, see that portion. As for the rest of his body, both man and women may see it. However, if a woman is likely to be excited sexually then she is not allowed to see any portion of his body at all.
In the same way, a woman's body from her navel down to her knees is satr (private parts) for another woman. She may not see it unnecessarily. A woman's satr (private parts) for a man is her whole body which means that it is not allowed to a man to see any part of a stranger woman's body. But, according to one version, a woman's face, both hands and both feet are not part of her satr (private parts) which means that an outsider man may see these limbs of a woman who is a stranger to him, provided he is immune from sexual excitement. If he is liable to be excited sexually then he is not permitted to look at even these limbs.

WHEN NECESSARY: At times when it becomes necessary, a man may look at a woman whether he is immune from sexual excitement or not. Examples are of a witness when he gives testimony, or a ruler at the time of giving a judgement, they may look at these limbs.

TOUCHING: It is not allowed to an unknown man to touch these limbs of a woman, face, hands and feet even if he is not likely to be excited sexually. This applies when the woman is young but if she is very old or the man is very old so that a desire is out of question and the woman too is safe then it is allowed to touch these limbs.

WIFE'S BODY: A man is allowed to see the entire body of his wife and his female slave with whom he is allowed to have sexual intercourse.

FOR THE MAHRAM: The woman's satr (private parts) for her mahram is her back, stomach, and navel down to knees so, the mahram is not allowed to look at these limbs of the woman whose mahram he is, even if he is not likely to be sexually excited. A mahram may see her head, shins upper arms and chest because these parts of her body are not satr (private parts) for him, provided, of course, he is safe from sexual excitement.
The satr (private parts) of a female slave of another person is like the satr (private parts) of a woman whose mahram he is, meaning her back, stomach and from navel down to below knees. For a man, the same command applies for these limbs of a female slave of someone else as for these parts of the woman whose mahram he is as far as seeing and touching them is concerned.
It is forbidden to look at a handsome man with an evil desire or to touch him.
It is allowed to touch and to look at a woman while intending to propose marriage with her, or a female slave at the time of buying her in spite of likelihood of lustful desire.
As slave is like a stronger for his master's wife. She must use the veil in his presence as she does before other men. The same applies in the presence of eunuchs and emasculate men.
The jurists say that it is forbidden to look at stranger women both for sexual pleasure or otherwise.
It is forbidden and makruh (disapproved) for two men or two women to be together nude in one garment even if it is out of habit without any evil idea. In any case, it is shameful.

DISALLOWED TO BE ALONE WITH STRANGER WOMAN

(٣١٠١) وَعَنْ جَابِرٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَلَا لَا يَبِيْتَنَّ رَجُلٌ عِنْدَ امْرَأَةٍ ثَيِّبٍ اِلَّا اَنْ يَّكُوْنَ نَاكِحًا اَوْ ذَا مَحْرَمٍ۔ (رواه مسلم)

3101. Sayyiduna Jabir رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "No man must spend a night with a married woman unless he is married to her or is her mahram."[1]

COMMENTARY: Here, 'to spend a night with her' is to meet her in solitude or be alone with her, by night or by day at any place.

The words thayyib is a woman who is no longer a virgin. But, here it means a 'young woman.' Married or unmarried.

Mahram is one with whom it is disallowed to marry at all times. He can be a son, brother, son-in-law, etc. It may be because of fosterage or otherwise.

(٣١٠٢) وَعَنْ عُقْبَةَ بْنِ عَامِرٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِيَّاكُمْ وَالدُّخُوْلَ عَلَى النِّسَاءِ فَقَالَ رَجُلٌ يَا رَسُوْلَ اللّٰهِ اَرَاَيْتَ الْحَمْوَ قَالَ الْحَمْوُ الْمَوْتُ۔ (متفق علیہ)

3102. Sayyiduna Uqba ibn Aamir رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Beware of visiting women (who are not mahram)." A man asked, "O Messenger of Allah, what do you say of hamu?" He said, "The hamu are death."[2]

COMMENTARY: Hamu are the near relatives of the husband, like his brother. The father and son of the husband are not among the hamu.

Just as death ruins a person's life, so the hamu ruin a woman's life by visiting her in solitude, both her religion and her manners.

These words are parts of Arabic idiom: hamu are death, lion is death, the king is fire. These are idiomatic expressions implying 'play with death.'

PHYSICIAN MAY EXAMINE WOMAN

(٣١٠٣) وَعَنْ جَابِرٍ اَنَّ اُمَّ سَلَمَةَ اسْتَاْذَنَتْ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فِي الْحِجَامَةِ فَاَمَرَ اَبَا طَيْبَةَ اَنْ يَحْجُمَهَا قَالَ حَسِبْتُ اَنَّهُ كَانَ اَخَاهَا مِنَ الرَّضَاعَةِ اَوْ غُلَامًا لَمْ يَحْتَلِمْ۔ (رواه مسلم)

3103. Sayyiduna Jabir رضی اللہ عنہ narrated that Sayyidah Umm Salamah رضی اللہ عنہا (the mother of the believers) sought permission of Allah's Messenger صلی اللہ علیہ وسلم to be cupped. He instructed Sayyiduna Abu Taybah رضی اللہ عنہ to cup her. Jabir رضی اللہ عنہ said, "I presume that he was her foster-brother, or (he was) a young boy who had not attained the age of puberty."[3]

COMMENTARY: The presumption of Sayyiduna Jabir رضی اللہ عنہ implies that Sayyidah Umm Salamah رضی اللہ عنہا did not need to be cupped because, if it was necessary, a stranger could have done the cupping and opened the veins.

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[1] Muslim # 19. 2171.

[2] Bukhari # 5232, Muslim # 20. 2172, Tirmidhi # 1174, Musnad Ahmad 4. 149, Da'imi # 2647.

[3] Muslim # 72-2206.

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We knows, therefore, that a physician may examine a woman's entire body to treat her.

ABOUT A SUDDEN GLANCE AT A WOMAN

(٣١٠٤) وَعَنْ جَرِيْرِ بْنِ عَبْدِاللّٰهِ قَالَ سَأَلْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَنْ نَظَرِ الْفُجَاءَةِ فَأَمَرَنِيْ أَنْ أَصْرِفَ بَصَرِيْ۔ (رواه مسلم)

3104. Sayyiduna Jarir ibn Abdullah رضی اللہ عنہ narrated, "I asked Allah's Messenger صلی اللہ علیہ وسلم about a sudden (unintentional) glance (on a woman stranger, not a mahram). He instructed me that I should turn away my sight (immediately)."[1]

COMMENTARY: This means that if a man happens to look at a woman unintentionally then he must not continue to ogle at her. The first sight is not deliberate, so is forgiven, but it is *wajib (obligatory)* to turn away the glance. If anyone continues to look at her, then that is a sin. The same thing is known from the Quran:

قُلْ لِّلْمُؤْمِنِيْنَ يَغُضُّوْا مِنْ أَبْصَارِهِمْ۔ (النور ٢٤: ٣٠)

{Say to the believing men that they should lower their gaze.} (24: 30)

Of course, when it is necessary, like for marriage, etc, it is permitted to keep looking after the first gaze. If a woman has to have an injury or other problem examined then she might show to the physician only that portion. She must keep the rest of the body covered.[2]

WHEN TEMPTED GO TO WIFE

(٣١٠٥) وَعَنْ جَابِرٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ إِنَّ الْمَرْأَةَ تُقْبِلُ فِيْ صُوْرَةِ شَيْطَانٍ وَتُدْبِرُ فِيْ صُوْرَةِ شَيْطَانٍ إِذَا أَحَدُكُمْ أَعْجَبَتْهُ الْمَرْأَةُ فَوَقَعَتْ فِيْ قَلْبِهٖ فَلْيَعْمِدْ إِلَى امْرَأَتِهٖ فَلْيُوَاقِعْهَا فَإِنَّ ذٰلِكَ يَرُدُّ مَا فِيْ نَفْسِهٖ۔ (رواه مسلم)

3105. Sayyiduna Jabir رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, 'A woman comes in the form of a devil and returns in the form of a devil. When any of you is attract ed by a (stranger) woman and she makes a home in his heart, he should head (straight) to his wife and have a sexual intercourse with her. That will put an end to the excitement in his heart (meaning the sexual urge)."[3]

COMMENTARY: The woman comes in the form of a devil. This is actually a comparison because she brings indecent thoughts to the mind and evil temptations to lead astray. These are what the devil does.

Hence, to look at a woman whose mahram a man is not is a means of mischief and evil. The ulama (Scholars) deduce from it that a woman should not emerge from her house unnecessarily. If she is compelled to come out, then she must not adorn herself.

As for man, he must not look at another woman, not even towards her garments.

This hadith is evidence that a man may call his wife for sexual intercourse even during the day time though she may be busy with her household chores which it may not be possible for to suspend. If she does not respond then man becomes rest less in mind and body and falls sick.

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[1] Muslim # 45-2159, Tirmidhi # 2785, Abu Dawud # 2148, Musnad Ahmad 4. 358.

[2] See Tirmidhi # 2786 about persisting after first gaze. Darul Isha'at Karachi.

[3] Muslim # 9-1403, Musnad Ahmad 3-341.

SECTION II اَلْفَصْلُ الثَّانِيْ

MUSTAHAB (DESIRABLE) TO LOOK AT THE WOMAN BEFORE PROPOSING

(٣١٠٦) عَنْ جَابِرٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ إِذَا خَطَبَ اَحَدُكُمُ الْمَرْاَةَ فَإِنِ اسْتَطَاعَ اَنْ يَنْظُرَ إِلٰى مَا يَدْعُوْهُ إِلٰى نِكَاحِهَا فَلْيَفْعَلْ۔ (رواه ابوداؤد)

3106. Sayyiduna Jabir رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "When any of you proposes marriage to a woman and is able to look at (her hands and face) that which attract him to marry her, he must do so."[1]

COMMENTARY: It has been stated earlier too (hadith # 3088) that it is *mustahab (desirable)* to look at the woman one wishes to marry because if he likes that woman, he will marry her and be protected from immodesty. This indeed, is the true objective of marriage.

It must be understood that a previous advice that a woman should not be married because of her beauty does not imply that looks should be ignored altogether. Rather, the meaning was that beauty should not be preferred to religion.

(٣١٠٧) وَعَنِ الْمُغِيْرَةِ بْنِ شُعْبَةَ قَالَ خَطَبْتُ امْرَاَةً فَقَالَ لِيْ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ هَلْ نَظَرْتَ إِلَيْهَا قُلْتُ لَا قَالَ فَانْظُرْ إِلَيْهَا فَإِنَّهُ اَحْرٰى اَنْ يُّؤْدَمَ بَيْنَكُمَا۔ (رواه احمد والترمذی والنسائی وابن ماجة والدارمی)

3107. Sayyiduna Al-Mughirah ibn Shu'bah رضی اللہ عنہ narrated that when he proposed marriage to a woman, Allah's Messenger صلی اللہ علیہ وسلم asked him, "Have you looked at her?" He submitted that he had not, so he instructed, "Look at her for that is very good and will grow love between both of you."[2]

COMMENTARY: It means: if you marry the woman you proposed to marry after looking at her, the two of you will love one another very much. Generally, there are no regrets if anyone marries a woman after looking at her. The man does not have to feel bad or perturbed about his choice.

ON UNINTENTIONAL GLANCE AT A WOMAN, GO TO YOUR WIFE FOR SOLACE

(٣١٠٨) وَعَنِ ابْنِ مَسْعُوْدٍ قَالَ رَاٰى رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ امْرَاَةً فَاَعْجَبَتْهُ فَاَتٰى سَوْدَةَ وَهِيَ تَصْنَعُ طِيْبًا وَعِنْدَهَا نِسَاء فَاَخْلَيْنَهُ فَقَضٰى حَاجَتَهُ ثُمَّ قَالَ اَيُّمَا رَجُلٍ رَاٰى امْرَاَةً تُعْجِبُهُ فَلْيَقُمْ إِلٰى اَهْلِهِ فَإِنَّ مَعَهَا مِثْلَ الَّذِيْ مَعَهَا۔ (رواه الدارمی)

3108. Sayyiduna Ibn Mas'ud narrated that Allah's Messenger صلی اللہ علیہ وسلم saw a woman who he found attractive. So, he came to Sayyidah Sawdah رضی اللہ عنہ who was preparing perfume and there were some women with her. They left him (alone with her) and he had his need satisfied (with her). Then, he said, 'Whichever man sees a woman who looks good to him must come to his wife, for she has the like of what she (the other) has."[3]

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[1] Abu Dawud # 2082

[2] Tirmidhi # 1089, Nasa'i # 3235, Ibn Majah # 1865, Darimi # 2172, Musnad Ahmad 4-246.

[3] Darimi # 2215.

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COMMENTARY: The grace of the Prophet صلى الله عليه وسلم fell on the woman involuntarily. She charmed him and that was human nature.

WOMEN SHOULD REMAIN CONCEALED

(٣١٠٩) وَعَنْهُ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ الْمَرْأَةُ عَوْرَةٌ فَإِذَا خَرَجَتْ اِسْتَشْرَفَهَا الشَّيْطَانُ۔ (رواه الترمذى)

3109. Sayyiduna Ibn Mas'ud رضى الله عنه narrated that the Prophet said, "The woman should remain in veil, for, when she emerges (out of it) the devil makes her look good (in the eyes of men)."[1]

COMMENTARY: The literal meaning of the initial words is that a woman is satr (private parts) (that which must be covered or concealed). Just as it is bad to uncover the satr (private parts) in the presence of other people, so too it is bad for a woman to come out before people.

SECOND GLANCE IS DISALLOWED

(٣١١٠) وَعَنْ بُرَيْدَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لِعَلِيٍّ يَا عَلِيُّ لَا تُتْبِعِ النَّظْرَةَ فَإِنَّ لَكَ الْأُوْلٰى وَلَيْسَتْ لَكَ الْآخِرَةُ۔ (رواه احمد و الترمذى وابوداؤد)

3110. Sayyiduna Baraydah رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said to Sayyiduna Ali رضى الله عنه, "O Ali, do not let a gaze follow the first gaze, for, the first is forgiven (if it was not deliberate), but the second is not allowed to you."[2]

FEMALE SLAVE IS FORBIDDEN AFTER HER MARRIAGE TO ANOTHER

(٣١١١) وَعَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ اَبِيْهِ عَنْ جَدِّهٖ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ إِذَا زَوَّجَ اَحَدُكُمْ عَبْدَهٗ اَمَتَهٗ فَلَا يَنْظُرَنَّ إِلٰى عَوْرَتِهَا وَفِيْ رِوَايَةٍ فَلَا يَنْظُرَنَّ إِلٰى مَادُوْنَ السُّرَّةِ وَفَوْقَ الرُّكْبَةِ۔ (رواه ابوداؤد)

3111. Sayyiduna Amr ibn Shu'ayb رضى الله عنه reported from his father that his grandfather narrated that the Prophet صلى الله عليه وسلم said, "When any of you marries his slave to his female slave, he must not look at her awrah" (parts of body that need to be concealed, because she becomes forbidden to her master after her marriage). According to another version "He must not look at (the portion of her body) that is between below the navel and above the knees."[3]

COMMENTARY: This command is when a master marries off his female slave to his own slave. This means that it will apply were forcefully when she is married to someone else's slave and she will be absolutely forbidden to her master.

Imam Abu hanifah رحمه الله contends that after her marriage, the female slave becomes like another person's slave girl for her master. The command concerning the female slave of another person has been mentioned in the hadith of Sayyiduna Abu Sa'eed (# 3100).

Imam Shafi'I رحمه الله contends that after her marriage, the satr (private parts) of the female slave is like the satr (private parts) of a man.

The arguments of both of them may be seen in the books of fiqh (Islamic jurisprudence).

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[1] Tirmidhi # 1176.

[2] Tirmidhi # 2786, Abu Dawud # 2149, Darimi # 2709, Musnad Ahmad 5-353.

[3] Abu Dawud # 4113, Musnad Ahmad 2-187.

THIGH IS PART OF SATR (PRIVATE PARTS)

(٣١١٢) وَعَنْ جَرْهَدٍ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اَمَاعَلِمْتَ اَنَّ الْفَخِذَ عَوْرَةٌ۔

(رواه الترمذی وابوداؤد)

3112. Sayyiduna Jarhad رضی اللہ عنہ said that the prophet صلی اللہ علیہ وسلم asked, "Do you not know tht things are awrah?"[1]

COMMENTARY: It is mentioned in the book Asad ul ghabah that once the Prophet صلی اللہ علیہ وسلم saw jarhad رضی اللہ عنہ in the mosque. His thigh was uncovered. So, he told him that he should cover it. This hadith rejects the contention of these ulama (Scholars) who say that ulama (Scholars) who say that the thigh is not part of the satr (private parts). Indeed, Imam Maalik رحمہ اللہ and Imam Ahmad رحمہ اللہ are known to have held this view, according to a report.

(٣١١٣) وَعَنْ عَلِيٍّ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لَهٗ يَا عَلِيُّ لَا تُبْرِزْ فَخِذَكَ وَلَا تَنْظُرْ اِلٰى فَخِذِ حَيٍّ وَلَا مَيِّتٍ۔ (رواه ابوداؤد و ابن ماجة)

3113. Sayyiduna Ali رضی اللہ عنہ said that Allah's Messenger صلی اللہ علیہ وسلم said to him, "O Ali, do not uncover you thigh (in the presence of other people) and do not look at the thigh of anyone alive or dead."[2]

COMMENTARY: It is clear from this hadith that the command for the satr (private parts) is the same for the living and the dead.

(٣١١٤) وَعَنْ مُحَمَّدِ بْنِ جَحْشٍ قَالَ مَرَّ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَلٰى مَعْمَرٍ وَفَخِذَاهُ مَكْشُوْفَتَانِ فَقَالَ يَا مَعْمَرُ غَطِّ فَخِذَيْكَ فَاِنَّ الْفَخِذَيْنِ عَوْرَةٌ۔ (رواه فی شرح السنة)

3114. Sayyiduna Muhammad ibn Jahsh رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم passed by Sayyiduna Ma'mar رضی اللہ عنہ whose things were uncovered. So, he called, "O Ma'mar, cover your thighs for, the thighs are awrah."[3]
(Awrah and satr (private parts) have been defined previously. See against hadith # 3100).

SATR BE OBSERVED IN PRIVACY TOO

(٣١١٥) وَعَنِ ابْنِ عُمَرَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِيَّاكُمْ وَالتَّعَرِّيَ فَاِنَّ مَعَكُمْ مَنْ لَايُفَارِقُكُمْ اِلَّا عِنْدَ الْغَائِطِ وَحِيْنَ يَفْضِي الرَّجُلُ اِلٰى اَهْلِهٖ فَاسْتَحْيُوْهُمْ وَاَكْرِمُوْهُمْ۔ (رواه الترمذی)

3115. Sayyiduan Ibn Umar رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said. "Do not be naked (even when alone) because there are with you they who never separate from you (meaning) , the angels who record your deeds) , except when you are in the toilet and while a man has sexual intercourse with his wife. So be decent before them and honour them."[4]

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[1] Bukhari heading of chapter 12, Book of *salah* (# 8) , Tirmidhi # 2804 to 2806, Abu Dawud # 4014, Musnad Ahmad 3-478.

[2] Abu Dawud # 3140, Ibn Majah # 1460, Musnad Ahmad 3-501.

[3] Musnad Ahmad 5-290, Sharh us *sunnah (Prophet's صلی اللہ علیہ وسلم practice).*

[4] Tirmidhi # 2809.

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COMMENTARY: In other words, one must keep one's satr (private parts) covered at all times whatever one does. Always do good deeds and refrain from evil and indecent deeds so that shameful conduct is not observed in the presence of the angels and they are not shown any kind of dishonour.

Ibn Maalik رحمه‌الله said that it is not proper to uncover one's satr (private parts) unnecessarily.

WOMEN LOOKING AT MAN

(٣١١٦) وَعَنْ اُمِّ سَلَمَةَ اَنَّهَا كَانَتْ عِنْدَ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَ مَيْمُوْنَةَ اِذْ اَقْبَلَ ابْنُ اُمِّ مَكْتُوْمٍ فَدَخَلَ عَلَيْهِ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ احْتَجِبَا مِنْهُ فَقُلْتُ يَا رَسُوْلَ اللّٰهِ اَلَيْسَ هُوَ اَعْمٰى لَا يُبْصِرُنَا فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَفَعَمْيَا وَانِ اَنْتُمَا اَلَسْتُمَا تُبْصِرَانِهِ۔ (رواه احمد والترمذی وابوداؤد)

3116. Sayyidah Umm Salamah رضی الله عنه narrated that alongwith Sayyidah Maymunah رضی‌الله‌عنه she was with Allah's Messenger صلی‌الله‌علیه‌وسلم when Sayyiduan Ibn Umm Makhtum came to visit him. So, Allah's Messenger صلی‌الله‌علیه‌وسلم said (to them). "Observe the veil!" She exclaimed, "O Messenger of Allah, is he not blind and unable to see us?" He asked, "Are you (both) blind and cannot see him?"[1]

COMMENTARY: According to this hadith, like men, women too are forbidden to look at stranger man. However, the ulama (Scholars) say that this saying of the Prophet صلی‌الله‌علیه‌وسلم is of the nature, of righteousness. Or, the Prophet صلی‌الله‌علیه‌وسلم meant that a woman should not look at a man exclusively, like in a company where two of them speak to one another and she looks at him intently.

The correct ruling is that a woman may look at a man but is not allowed to look between his navel and knees. This is according to the saying of Sayyidah Ayshah رضی الله عنها , "When the Ethiopians demonstrated their skill with the spear, I was looking at them." This happened in 9 AH when she was sixteen years old and the command of the veil had been imposed.

This shows that it is allowed to a woman to see men, but not their satr (private parts). However, it must be understood that this permission is subject to her being safe from sexual desire. If she is not safe then she may not look at a man at all.

KEEP SATR (PRIVATE PARTS) COVERED AT ALL TIMES

(٣١١٧) وَعَنْ بَهْزِ بْنِ حَكِيْمٍ عَنْ اَبِيْهِ عَنْ جَدِّهٖ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ احْفَظْ عَوْرَتَكَ اِلَّا مِنْ زَوْجَتِكَ اَوْمَا مَلَكَتْ يَمِيْنُكَ قُلْتُ يَا رَسُوْلَ اللّٰهِ اَفَرَاَيْتَ اِذَا كَانَ الرَّجُلُ خَالِيًا قَالَ فَاللّٰهُ اَحَقُّ اَنْ يُسْتَحْيٰى مِنْهُ۔ (رواه الترمذی وابوداؤد وابن ماجة)

3117. Sayyiduna Bahz ibn Hakim رحمه‌الله reported from his father (Ḥakim) رحمه‌الله that his grandfather (Mu'awiyah ibn Haydah) رضی‌الله‌عنه narrated that Allah's Messenger صلی‌الله‌علیه وسلم said. "cover your satr (private parts) except from your wife or your female slave." So he asked, "O Messenger of Allah, what do you say when a man is alone by himself." He said, "Allah has more right that you observe modesty before him."[2]

COMMENTARY: It is *wajib (obligatory)* even when one is alone to keep one's satr (private

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[1] Tirmidhi # 2787, Abu Dawud # 4112, Musnad Ahmad 6-296.

[2] Tirmidhi # 2778 & 2803, Abu Dawud # 4017, Ibn Majah # 1920, Musnad Ahmad 5-3.

parts) covered unless it becomes necessary to uncover it.
The exceptions mentioned in the hadith mean that ownership and marriage permit man and woman (the pair) to look at one another's satr (private parts).
(See also hadith # 3115)

DO NOT BE ALONE WITH NON MAHRAM WOMAN

(٣١١٨) وَعَنْ عُمَرَ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لَا يَخْلُوَنَّ رَجُلٌ بِامْرَأَةٍ إِلَّا كَانَ ثَالِثُهُمَا الشَّيْطَانُ۔ (رواه الترمذی)

3118. Sayyiduna Umar رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "When a man remains alone with a stranger woman then the third among them is the devil."[1]

COMMENTARY: When a man and a woman who are not mahram are alone, the devil tempts them.

(٣١١٩) وَعَنْ جَابِرٍ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لَا تَلِجُوْا عَلَى الْمُغِيْبَاتِ فَإِنَّ الشَّيْطَانَ يَجْرِيْ مِنْ اَحَدِكُمْ مَجْرَى الدَّمِ قُلْنَا وَمِنْكَ يَا رَسُوْلَ اللّٰهِ قَالَ وَمِنِّيْ وَلٰكِنَّ اللّٰهَ اَعَانَنِيْ عَلَيْهِ فَاَسْلَمُ۔ (رواه الترمذی)

3119. Sayyiduna Jabir رضی اللہ عنہ narrated that the prophet صلی اللہ علیہ وسلم said, "Do not pay visit to woman whose husbands are not at home, for the devil circulates in each of you as blood circulates." Some asked, "And in you too?" He said, "Also in me. But, Allah helps me over him. So I am safe."[2]

COMMENTARY: As it is staying alone with a non mahram woman is disallowed but this hadith mentions specifically one whose husband is not at home.
Shaykh Abdul Haq Dahlawi رحمہ اللہ says about where blood circulates, meaning vein. Mulla Ali Qari رحمہ اللہ says that the devil circulate s in you and is not visible just as blood is not visible and the devil overcomes you. The sense either way is the same.
The final words are in the present tense or continuous present tense but in some versions the past tense is used to imply. "The devil has become Muslim (in my favour, meaning obedient and subjugated).

SLAVE IS AS A STRANGER TO HIS MASTER'S WIFE

(٣١٢٠) وَعَنْ اَنَسٍ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَتٰى فَاطِمَةَ بِعَبْدٍ قَدْ وَهَبَهُ لَهَا وَعَلٰى فَاطِمَةَ ثَوْبٌ إِذَا قَنَّعَتْ بِهٖ رَاْسَهَا لَمْ يَبْلُغْ رِجْلَيْهَا وَإِذَا غَطَّتْ بِهٖ رِجْلَيْهَا لَمْ يَبْلُغْ رَاْسَهَا فَلَمَّا رَاٰى رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَا تَلْقٰى قَالَ إِنَّهٗ لَيْسَ عَلَيْكِ بَاْسٌ اِنَّمَا هُوَ اَبُوْكِ وَغُلَامُكِ۔ (رواه ابوداؤد)

3120. Sayyiduna Anas رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم came to Sayyidah Fatimah رضی اللہ عنہا with a slave whom he had presented to her. Sayyidah Fatima رضی اللہ عنہا was clothed in a garment such that when it was put on her head did not reach her feet. And when she put it over her feet, it did not reach her head. When Allah's Messenger صلی اللہ علیہ وسلم saw this, he said, "Do not worry (so much) , for, here is only

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[1] Tirmidhi # 1174, supplement, Musnad Ahmad 1-26.
[2] Tirmidhi # 1175, Musnad Ahmad 3-309.

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your father and your salve."[1]

COMMENTARY: Imam Shafi'I رحمه الله cites this hadith to say that a slave is mahram of the woman whose slave he is Imam Abu Hanifah رضی الله عنه said that the slave is a non-mahram of the woman. He says that imam Shafi'I رضی الله عنه view is not established by this hadith because the slave wit h Sayyidah Fatimah may have been a minor.

SECTION III اَلْفَصْلُ الثَّالِثُ

EFFEMINATE NOT ALLOWED AMONG WOMEN

(٣١٢١) عَنْ اُمِّ سَلَمَةَ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ كَانَ عِنْدَهَا وَفِي الْبَيْتِ مُخَنَّثٌ فَقَالَ لِعَبْدِاللّٰهِ ابْنِ اَبِي اُمَيَّةَ اَخِي اُمِّ سَلَمَةَ يَا عَبْدَاللّٰهِ اِنْ فَتَحَ اللّٰهُ لَكُمْ غَدًا الطَّائِفَ فَاِنِّي اَدُلُّكَ عَلَى ابْنَةِ غَيْلَانَ فَاِنَّهَا تُقْبِلُ بِاَرْبَعٍ وَتُدْبِرُ بِثَمَانٍ فَقَالَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا يَدْخُلَنَّ هٰؤُلَاءِ عَلَيْكُمْ۔ (متفق علیه)

3121. Sayyidah Umm Salamah رضی الله عنه narrated that once while the Prophet صلی الله علیه وسلم was with her, there was in the house an effeminate. This one boasted to Sayyiduna Abdullah ibn Abu Umayyah. رضی الله عنه the brother of Sayyidah Umm Salamah رضی الله عنه, "If Allah gives you victory over Ta'if tomorrow, O Abdullah, I shall point out to you the daughter of Ghaylan who comes with four and goes with eight." The Prophet صلی الله علیه وسلم said (on hearing him), "Let them not visit you anymore)."[2]

COMMENTARY: The effeminate is a man who behaves like a woman Sometimes the resembles is natural which is no sin because it is beyond the man's control sometimes it is faked and the pretender lives and moves about as if a woman. This is bad and very sinful. Those who fake it deserve to be cursed. According to a hadith. "May the curse of Allah be on woman who adopt resemblance to man. And, may the curse of Allah be on men who adopt resemblance to woman."

The effeminate mentioned in this hadith was Haya'at or Mati He used to visit the houses of the Prophet's صلی الله علیه وسلم wives رضی الله عنها because they presumed that he was naturally deprived of manly qualities and had no sexual urge. They look him to be among the (غیر اولی الاربه) {having no sexual urge} (24: 31). The Quran says that it is not *wajib (obligatory)* to observe veil before them.

However, the prophet صلی الله علیه وسلم Heard him. He realized that the pretender was inclined to sexual affairs and he was not among the (24"31) (غیر اولی الاربه) but was one of (اولی الاربه) (having sexual urge). So he forbade him to visit the houses of the mother of the believers صلی الله علیه وسلم.

The jurists deduce from this command that not only are the effeminate disallowed to visit homes and meet women but also the castrated and eunuchs are disallowed. The same command applies to the veil before them being *wajib (obligatory)* as is *wajib (obligatory)* before certain men.

The daughter of Ghaylan was Badiyah. The words allude to her corpulence. So many folds

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[1] Abu Dawud # 4106.

[2] Bukhari # 4324, Muslim # 32. 2180, Abu Dawud # 4929, Ibn Majah # 1902, 1614, Musnad Ahmad 6-290.

are imagined on fat people. The point is that the Arabs generally prefer fat and bulky women. So, the effeminate used those words to refer to Ghaylan's daughter.

NUDITY IS DISALLOWED

(٣١٢٢) وَعَنِ الْمِسْوَرِ بْنِ مَخْرَمَةَ قَالَ حَمَلْتُ حَجَرًا ثَقِيلًا فَبَيْنَا اَنَا اَمْشِيْ سَقَطَ عَنِّيْ ثَوْبِيْ فَلَمْ اَسْتَطِعْ اَخْذَهُ فَرَاٰنِيْ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ لِيْ خُذْ عَلَيْكَ ثَوْبَكَ وَلَا تَمْشُوْا عُرَاةً۔ (رواه مسلم)

3122. Sayyiduna Miswar ibn Makhramah narrated that he carried a large stone and as he was walking with it, his garment dropped down from him and he was unable to retrieve it. Allah's Messenger صلى الله عليه وسلم saw him and said to him, "Take your garment (and wear it)." Then he added (a general command) , "None of you must walk naked."[1]

THE LIMIT OF MODESTY

(٣١٢٣) وَعَنْ عَآئِشَةَ قَالَتْ مَانَظَرْتُ اَوْ مَا رَأَيْتُ فَرْجَ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَطُّ۔ (رواه ابن ماجة)

3123. Sayyiduna Ayshah رضى الله عنها said, "I did not ever look at – or, I did not ever see –the satr (private parts) of Allah's Messenger صلى الله عليه وسلم."[2]

COMMENTARY: The 'or' is the narrator's. He was not sure which of the two sentences Sayyidah Ayshah رضى الله عنها had said.

According to another of her traditions, she said. "Neither did the prophet صلى الله عليه وسلم ever saw my satr (private parts) nor did I ever see his satr (private parts)."

We must know what while it is allowed to husband and wife to see one another's satr (private parts) the Prophet صلى الله عليه وسلم and Sayyidah Ayshah رضى الله عنها demonstrated the limit of modesty any couple may be expected to achieve.

A SUDDEN GLANCE MUST BE CHECKED

(٣١٢٤) وَعَنْ اَبِيْ اُمَامَةَ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ مَا مِنْ مُسْلِمٍ يَنْظُرُ اِلٰى مَحَاسِنِ امْرَأَةٍ اَوَّلَ مَرَّةٍ ثُمَّ يَغُضُّ بَصَرَهُ اِلَّا اَحْدَثَ اللّٰهُ لَهُ عِبَادَةً يَجِدُ حَلَاوَتَهَا۔ (رواه احمد)

3124. Sayyiduna Abu Umamah رضى الله عنه narrated that the Prophet صلى الله عليه وسلم said. "If a Muslim happens to look at the beauty of a woman the first time (without intention) and (immediately) puts down his gaze, then Allah will create a form of worship for him in which he shall find delight."[3]

COMMENTARY: This man chose to obey his Lord and refrain from looking at a beautiful woman. He ignored the desire of his soul to please Allah.

So, Allah will create for him a worship and he will find peace at heart. This will be a recompense for the abstinence he practiced for Allah's sake.

WARNING TO ONE WHO LOOKS DELIBERATELY AT THE FORBIDDEN

(٣١٢٥) وَعَنِ الْحَسَنِ مُرْسَلًا قَالَ بَلَغَنِيْ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لَعَنَ اللّٰهُ النَّاظِرَ

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[1] Muslim # 78-341, Abu Dawud # 4016.

[2] Ibn Majah # 1922, Musnad Ahmad 6-63.

[3] Musnad Ahmad 5-264.

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وَالْمَنْظُوْرُ إِلَيْهِ رَوَاهُ الْبَيْهَقِيُّ فِيْ شُعَبِ الْإِيْمَانِ۔

3125. Sayyiduna Hasan (Busri) رحمه الله narrated in a mursal form that Allah's Messenger صلى الله عليه وسلم said, "May Allah curse the one who looks (without valid reason and compulsion) and the one who is looked at.[1]

COMMENTARY: Curse is called on the person who looks deliberately at what he is forbidden to look at, like a non mahram woman, someone's satr (private parts) etc.
Course is also called upon the person who deliberately lets himself or herself be seen. This does not include anyone who does not make oneself be seen by intention (like a non mahram man sees a woman who is unaware of it).

CHAPTER - III

THE WALI (OR GUARDIAN) IN *NIKAH* (MARRIAGE) & GETTING THE WOMAN'S CONSENT

بَابُ الْوَلِيِّ فِي النِّكَاحِ وَاسْتِئْذَانِ الْمَرْأَةِ

In the literal sense wali is a guardian who oversees some task. Here, however, wali means the man who acts as a guardian and responsible man for a woman's marriage in the sense that he has authority to marry her.
The ahadith in this chapter will disclose that it is necessary to have the wali's permission and the woman's consent in her marriage.
The people who may act as wali are the woman's relatives who are asabah binafishi.Preference is given to those heirs among them who are closest (or the first in line) , or the sequence of asabat will be the same as in inheritance. If there is none of the asabah, then the mother will become wali, followed by the grandmother. (The Qaniyah gives a sequence with grandmother preceding mother.) Next is daughter, grand daughter (from son) followed by grand daughter (from daughter) , and daughter of son's son. If there is none of them, then the maternal grandfather, real sister, step sister, mother's children (male or female) and their children in this sequence. If there is none of them then the dhawil arham beginning with father's sisters, maternal uncles, mother's sisters, daughter of paternal uncles followed by their children in the same sequence.
If there is none of them, then the right to guardianship goes to mawla al-mawalat (مولى الموالات) - who have been defined in the chapter on fara'id inheritance).
If they are not there, then the ruling king will act as wali if he is a Muslim. Next will be any of his deputies like the qadi (judge) if he is authorized by the king, followed by his deputies provided the qadi has the consent and authority to appoint deputes but if he does not have it then none of his deputies can act wali.
The wilayah or guardianship is available only to a freeman, sensible, adult Muslim. If any one lacks these qualities then he cannot act as a wali of any Muslim. Also, no Muslim may act as a guardian in marriage of a disbeliever, unless there is an exceptional situation, like a Muslim being the master of an infidel female slave, or he is a king or a king's deputy. In such cases, a Muslim may act as wali of a disbeliever.

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[1] Bayhaqi in Shabul Eeman # 7788

SECTION I اَلْفَصْلُ الْاَوَّلُ

FIRST GET WOMEN'S CONSENT

(٣١٢٦) عَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا تُنْكَحُ الْاَيِّمُ حَتّٰى تُسْتَأْمَرَ وَلَا تُنْكَحُ الْبِكْرُ حَتّٰى تُسْتَاْذَنَ قَالُوْا يَا رَسُوْلَ اللّٰهِ وَكَيْفَ اِذْنُهَا قَالَ اَنْ تَسْكُتَ۔ (متفق علیه)

3126. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "A woman who has no husband must not be married without getting her directions and a virgin must not be married without getting her permission." They asked, "O Messenger of Allah, how may her permission be get?" He said. "It is that she keep silent."[1]

COMMENTARY: The Arabic word is ayyim for the woman without a husband. She may be a spinster, a divorced or a widow. In this hadith, she is a divorce or a widow.

The different procedures in obtaining their consent is because the older woman will not be very shy. She will make a request herself to be married to someone or give an obvious indication. The virgin will be shy and hesitant but when she is asked she does offer an answer though generally not an audible reply but a silence.

The jurists interpret this hadith by classifying the woman in four kinds:

(i) The thayyib balighah who is an adult widow. All the ulama (Scholars) agree that it is imperative to get her permission before marrying her, provided she is sane. If she is insane then she will be married with the permission of her wali (guardian).

(ii) The minor virgin (bakirah saghirah). The ulama (Scholars) unanimously say that her permission is not necessary. Her wali may get her married without obtaining her permission.

(iii) The thayyib saghirah or the minor widow. The Hanafi scholars maintain that she may be married without her permission, but the Shafi'is say that her marriage without her permission is disallowed.

(iv) The adult virgin (*bakirah balighah*). The Hanafis say that her marriage is not allowed without her permission but he Shafi'is say that her marriage is valid even without her consent.

This interpretation shows that the Hanafis restrict guardianship to the minors. In other words, a guardian is within his rights to get a woman married without obtaining her permission when she is a minor whether a virgin or a widow. It also shows that the Shafi'is restrict guardianship to virginity. This means that a guardian may have a woman married without asking her permission when she is a virgin (previously unmarried) whether she is a minor or an adult.

The Hanafis base this hadith for an adult, widow or virgin. The Prophet's صلی اللہ علیہ وسلم words that a virgin may not be given in marriage without her consent are a clear rejection of the contention of the Shafi'is.

(٣١٢٧) وَعَنِ ابْنِ عَبَّاسٍ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اَلْاَيِّمُ اَحَقُّ بِنَفْسِهَا مِنْ وَلِيِّهَا وَالْبِكْرُ تُسْتَاْذَنُ فِيْ نَفْسِهَا وَاِذْنُهَا صُمَاتُهَا وَفِيْ رِوَايَةٍ قَالَ الثَّيِّبُ اَحَقُّ بِنَفْسِهَا مِنْ وَلِيِّهَا وَالْبِكْرُ تُسْتَاْمَرُ وَاِذْنُهَا

[1] Bukhari # 6968, Muslim # 64-1419, Tirmidhi # 1109, Abu Dawud # 2092, Nasa'i # 5611, Ibn Majah # 1871, Musnad Ahmad 2-250, Darimi # 2186.

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سُكُوْتُهَا۔ وَفِيْ رِوَايَةٍ قَالَ الثَّيِّبُ اَحَقُّ بِنَفْسِهَا مِنْ وَلِيِّهَا وَالْبِكْرُ يَسْتَأْذِنُهَا اَبُوْهَا فِيْ نَفْسِهَا وَاِذْنُهَا صُمَاتُهَا۔

(رواه مسلم)

3127. Sayyiduna Ibn Abbas رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "The ayyim (meaning a widow or a divorcee, adult and sane) has more right about (marriage of) herself than her guardian. A virgin (who is an adult) must be asked for permission about herself. Her permission is her silence."
According to another version, he said, "The Thayyib (meaning, a widow) has greater right about herself than her guardian. A virgin must be asked for her opinion (concerning her marriage). Her permission is her silence.
According to another version, he said, "The thayyib has more right about herself than her guardian. As for a virgin, her father must ask her permission about herself and her permission is her silence."[1]

COMMENTARY: The widow is absolutely free or authorized concerning her marriage. She is at liberty to grant permission or not and her marriage can be valid only when she gives her oral permission. On the other hand, it is not necessary for a virgin to speak out her permission and she may do it even by observing silence. The rest of the comments are identical to the previous commentary.

WIDOW MAY REPUDIATE HER MARRIAGE IT CONSENT WAS NOT OBTAINED

(٣١٢٨) وَعَنْ خَنْسَاءَ بِنْتِ خِذَامٍ اَنَّ اَبَاهَا زَوَّجَهَا وَهِيَ ثَيِّبٌ فَكَرِهَتْ ذٰلِكَ فَاَتَتْ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَرَدَّ نِكَاحَهَا رَوَاهُ الْبُخَارِيُّ وَفِيْ رِوَايَةٍ ابْنِ مَاجَةَ نِكَاحَ اَبِيْهَا۔

3128. Sayyidah Khansa' bint Khidham رضی اللہ عنہ narrated that her father married her (without obtaining her permission, to someone). She was a widow (and an adult) , and she disliked that (action of her father). So, she came to Allah's Messenger صلی اللہ علیہ وسلم (with her complaint). He annulled her marriage.
The version in Ibn Majah also has; 'the marriage (in which she was given) by her father."[2]

SAYYIDAH AYSHAH'S رضی اللہ عنہا AGE WHEN MARRIED TO PROPHET صلی اللہ علیہ وسلم

(٣١٢٩) وَعَنْ عَائِشَةَ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ تَزَوَّجَهَا وَهِيَ بِنْتُ سَبْعِ سِنِيْنَ وَزُفَّتْ اِلَيْهِ وَهِيَ بِنْتُ تِسْعِ سِنِيْنَ وَلُعَبُهَا مَعَهَا وَمَاتَ عَنْهَا وَهِيَ بِنْتُ ثَمَانِيْ عَشْرَةَ۔ (رواه مسلم)

3129. Sayyidah Ayshah رضی اللہ عنہا narrated that the Prophet صلی اللہ علیہ وسلم married her when she was seven years old. And she was led to his house when she was nine years old, her toys being brought with her. He died (separating) from her when she was eighteen years old.

COMMENTARY: This hadith speaks of the early life of Sayyidah Ayshah رضی اللہ عنہا she had the Prophet 's صلی اللہ علیہ وسلم company and was his wife for nine years.

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[1] Muslim # 66-1421, Tirmidhi # 1110, Abu Dawud # 2098, Nasa'i # 3265, Ibn Majah # 1870, Darimi # 2190, Muwatta Maalik 4 (*Nikah (wedlock)*). Musnad Ahmad 1-219.

[2] Bukhari # 5138, Abu Dawud # 2101, Nasa'i # 3268, Ibn Majah # 1873, Darimi # 2192, Musnad Ahmad 6-328.

When she was brought, she was nine years old, the age of childhood. That is why she had her toys with her, the dolls that children generally play with.
According to a hadith, the Prophet صلى الله عليه وسلم did not express disapproval on seeing the dolls. This means that it is not disallowed to make dolls and children are permitted to play with them. The ulama (Scholars) say that in this way girls learn to raise children, improve the affairs at home and train as administrators of the house.
However, there is one possibility. This thing took place at the time of hijrah (emigration) till then the command prohibiting pictures was not enforced probably. The ulama (Scholars) also say that the dolls of Sayyidah Ayshah رضى الله عنها did not have faces on them as in pictures that are forbidden. Rather, they were pieces of cloth and rags tied together.
(Ibn Kathir says that she was six or seven when she married the Prophet صلى الله عليه وسلم. See The life of Prophet Muhammad صلى الله عليه وسلم p 217, Darul Isha'at, Karachi)

SECTION II اَلْفَصْلُ الثَّانِيْ

MARRIAGE OF MINOR GIRL WITH GUARDIAN'S NOD

(٣١٣٠) عَنْ اَبِي مُوْسٰى عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لَا نِكَاحَ اِلَّا بِوَلِيٍّ۔ (رواه احمد.والترمذى وابوداؤد وابن ماجة والدارمى)

3130. Sayyiduna Abu Musa رضى الله عنه narrated that the Prophet صلى الله عليه وسلم said, "Marriage does not take place without (the permission of) the guardian."[1]

COMMENTARY: The Hanafis say that this hadith concerns a minor girl and an insane girl. Imam Shafi'I رحمه الله and Imam Ahmad رحمه الله go by the literal meaning of this hadith and say that marriage can only be valid with a guardian's consent, not with woman's contracting whether the bride herself or the agent.
Imam Nawawi رحمه الله said that most ulama (Scholars) deny the validity while Imam Abu Hanifah رحمه الله denies its perfection (when applying it to a minor and insane girl).

(٣١٣١) وَعَنْ عَآئِشَةَ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اَيُّمَا اِمْرَأَةٍ نَكَحَتْ نَفْسَهَا بِغَيْرِ اِذْنِ وَلِيِّهَا فَنِكَاحُهَا بَاطِلٌ فَنِكَاحُهَا بَاطِلٌ فَنِكَاحُهَا بَاطِلٌ فَاِنْ دَخَلَ بِهَا فَلَهَا الْمَهْرُ بِمَا اسْتَحَلَّ مِنْ فَرْجِهَا فَاِنِ اشْتَجَرُوْا فَالسُّلْطَانُ وَلِيُّ مَنْ لَا وَلِيَّ لَهٗ۔ (رواه احمد والترمذى وابوداؤد وابن ماجة والدارمى)

3131. Sayyidah Ayshah رضى الله عنها narrated that Allah's Messenger صلى الله عليه وسلم said, "Any woman who marries herself without the consent of her wali, her marriage is void. Her marriage is void. Her marriage is void. If sexual intercourse takes place, then for her is the dower because of the intercourse. If there is a dispute (between the guardian), then the king is the guardian of one who has no guardian."[2]

COMMENTARY: The Prophet صلى الله عليه وسلم repeated the words 'her marriage is void' three times. so, he emphasized that marriage should be conducted only with the guardian's permission. That is the basic requirement. So, this hadith and others of the same purport are contradictory to the hadith of Sayyiduna Ibn Abbas رضى الله عنه (# 3127) "The Ayyim has

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[1] Abu Dawud # 2085, Tirmidhi # 1101, Ibn Majah # 1881, Darimi # 3183, Musnad Ahmad 4-394.
[2] Tirmidhi # 1104, Abu Dawud # 2083, Ibn Majah # 1879, Darimi # 2184, Musnad Ahmad 6. 166.

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more right about herself..."

The Hanafi explain this hadith by saying that it refers to the woman who marries one who is not her equal without the guardian's permission, or a minor girl, or a female slave, or a mukatabah marries without her guardian's permission. In such cases the marriage is void. Moreover, this hadith and the preceding one are not of the standard whereby they could be used as argument against any contention. The scholars question their soundness.

The concluding portion of the hadith means that if the guardians of a woman disagree among themselves and quarrel then their decisions are quashed. In this case the right of guardianship rests with the king. If there is a guardian then the king has no right of guardianship.

NOTE: We now present an explanation of this subject and the relative ruling from the English translation of Tirmidhi (V 1 pp463/4) published by Darul Isha'at Karachi.

The ulama (Scholars) abide by this hadith and rule that a marriage performed without guardian's consent is unsound. This is confirmed by Sa'eed ibn Musayyib, Hasan Busri Shurayh. Ibrahim Nakha'I Umar ibn Abdul Aziz and other and also Sufyan Thawri, Awza'I, Maalik Abdullah ibn Mubarak, Shafi' Ahmad and Ishaq.

RULING: The disagreement (of marriage without guardian's consent) is well known. Thus, the contention of the Shafi'I is that a marriage is simply not contracted by woman directly (on their own authority). They rely on the two foregoing hadith of Sayyidina Abu Musa رضی الله عنه and Sayyidah Ayshah رضی الله عنها. On the other-hand, the Hanafis hold that marriage is validly contracted by woman's direct execution though it is dependant on a guardian who may raise an objection or grant his approval.

The Hanafis say of these ahadith that both the ahadith are not worthy of drawing conclusion from, because it is reported from Sayyidah Ayshah رضی الله عنها that, in the absence of her brother Abdur Rahman ibn Abu Bakr رضی الله عنه she conducted the marriage of his daughter. When he returned, he expressed his disapproval for it but did not declare that the marriage was void. The event is co-related in that the Shafi'I draw on a hadith which is also by Sayyidah Ayshah رضی الله عنها and the conduct is contrary.

So there are only two aspects to it:

(1) Either Sayyidah Ayshah رضی الله عنها did not herself consider her hadith as sahih, so did not hesitate to act against it, in which case her judgement - we seek refuge in Allah from such thought - is doubtful and her hadith is not worth citing as evidence, but, of course, this is preposterous;

(2) Or, she does abide by her hadith, but the sense she implies is not what the Shafis understand, because she did marry off her niece in the absence of her guardian, Abdur Rahman ibn Abu Bakr رضی الله عنه. Thus, the hadith of Sayyidah Ayshah رضی الله عنها covers the female slaves, not free woman. This is the interpretation the Hanafis give to Sayyidah Ayshah's رضی الله عنه hadith.

As for the hadith of Abu Musa رضی الله عنه, it is not a worthy piece of evidence, because there is a contradiction in its reporting and connection. Imam Tirmizi رحمه الله has himself confirmed this. Hence, the correct position is that this hadith is mursal, as Imam Tahawi also confirms while Allamah (The learned Scholar) Hajr Asqalani said that it is not correct to deduce from it.

Following this brief discourse, we now present some of the arguments of the Hanafi School:

1. It is reported in the sihah that when the prophet صلی الله علیه وسلم sent proposal for marriage to

Sayyidah Umm Salamah رضی اللہ عنہ , she submitted, "O Messenger of Allah! I have no guardian present". He said, "A widow has more right over herself than her guardian". Hence the hadith is evidence that a marriage, without a guardian, is allowed.

2. The text of the Qur'an also are evidence of the Hanafi contention. At many places, the conclusion of marriage is bracketed with woman without placing the condition of consent of the guardian. For instance;

وَإِذَا طَلَّقْتُمُو النِّسَآءَ فَبَلَغْنَ اَجَلَهُنَّ ..... بِالْمَعْرُوْفِ۔(البقرۃ:۲۳۲)

And when you have divorced (your) woman, and they have completed their (waiting) term then you should not prevent them from marrying their husbands when they have agreed among themselves. (2: 232)

This verse places on the woman authority to conduct marriage without condition of guardian's consent. Thus, it is evidence that marriage may be contracted with a woman's words.

3. The Hanafis deduce through qiyas that just as a man who can utilize her property may properly marry by word of expression, s also a woman who can utilize her property at will may conclude marriage by her word. Hence, just as she had right over her property, she also has right over her person.

In short, it is clear from the foregoing brief discussion of the Shafi'i point of view in the light of the ahadith and the text of the Quran and qiyas that the Hanafi contentin is strong and correct. (FA)

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MARRIAGE WITHOUT WITNESSES IS NOT PROPER

(۳۱۳۲) وَعَنِ ابْنِ عَبَّاسٍ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ الْبَغَايَا اللَّاتِيْ يُنْكِحْنَ اَنْفُسَهُنَّ بِغَيْرِ بَيِّنَةٍ وَالْاَصَحُّ اَنَّهٗ مَوْقُوْفٌ عَلَى ابْنِ عَبَّاسٍ۔ (رواہ الترمذی)

3132. Sayyiduna Ibn Abbas رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "Those women commit adultery who marry themselves without (there being) witnesses (to their marriage)."

The correct is that this hadith is mawquf at Sayyiduna Ibn Abbas رضی اللہ عنہ (This is not a saying of the Prophet صلی اللہ علیہ وسلم but of Ibn Abbas رضی اللہ عنہ [1]

COMMENTARY: There must be two men who witness the marriage being conducted. The ulama (Scholars) are unanimous about it, and the sahabah (Prophet's Companions) رضی اللہ عنہم and tabi'un رحمہ اللہ observed it.

WOMAN'S SILENCE ON BEING ASKED IS HER CONSENT

(۳۱۳۳-۳۱۳٤) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَلْيَتِيْمَةُ تُسْتَأْمَرُ فِيْ نَفْسِهَا فَاِنْ صَمَتَتْ فَهُوَ اِذْنُهَا وَاِنْ اَبَتْ فَلَا جَوَازَ عَلَيْهَا۔ رَوَاهُ التِّرْمِذِيُّ وَاَبُوْدَاوٗدَ وَالنَّسَائِيُّ وَرَوَاهُ الدَّارِمِيُّ عَنْ اَبِيْ مُوْسٰى۔

3133. Sayyiduna Abu Hurahrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "An adult virgin woman must be asked about herself (for permission for her

[1] Tirmidhi # 1105.

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marriage). If she observes silence, that is her consent but if she refuses then she cannot be compelled."[1]

3134. Sayyiduna Abu Musa رضی اللہ عنہ also narrated this hadith.[2]

COMMENTARY: Marriage is a very important turning point in a person's life. If the wishes of the couple are by passed by parents or guardian, then even a slight slackness or carelessness on their part could play hell with the lives of the couple. Hence, ء (divine law) has given right to every adult Muslim man and woman to declare his wishes, like and dislikes at this juncture.

The parents and guardians of woman have been instructed very strongly that they should not let their choice and wishes dominate over the woman's decision. They should let her have an opportunity to think over and they must base their decision on her wishes and consent.

It is also made easy for her: if she is shy and ashamed to speak out then her silence is taken as an approval. However, this is only before her guardian. If any one else asks her for her consent, then she will have to give an oral reply necessarily.

SLAVE'S MARRIAGE ONLY WITH MASTER'S PERMISSION

(٣١٣٥) وَعَنْ جَابِرٍ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اَيُّمَا عَبْدٍ تَزَوَّجَ بِغَيْرِ اِذْنِ سَيِّدِهٖ فَهُوَ عَاهِرٌ۔ (رواه الترمذی وابوداؤد والدارمی)

3135. Sayyiduna Jabir رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "If a slave marries without obtaining permission of his master then he is a fornicator."[3]

COMMENTARY: If a slave marries by passing his master's permission then when he has sexual intercourse with his wife that will amount to fornication and will be a forbidden act. Imam Shafi'I رحمہ اللہ and Imam Ahmad رحمہ اللہ abide by the hadith and hold that even if the master gives his permission after the slave's marriage, that contract will not be correct. But, Imam Abu Hanifah رحمہ اللہ says that the slave's marriage without his master's permission is proper but its enforcement depends on his master's permission. When the master permits him, it becomes sound or correct. It is like the command for the *nikah (wedlock)* of fuduli. (He will have to marry all over again and till then it would not be proper to enforce it.)

SECTION III اَلْفَصْلُ الثَّالِثُ

ADULT WOMAN IS AUTHORIZED TO MARRY AT WILL

(٣١٣٦) عَنِ ابْنِ عَبَّاسٍ قَالَ اِنَّ جَارِيَةً بِكْرًا اَتَتْ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَذَكَرَتْ اَنَّ اَبَاهَا زَوَّجَهَا وَهِيَ كَارِهَةٌ فَخَيَّرَهَا النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ۔ (رواه ابوداؤد)

3136. Sayyiduna Ibn Abbas رضی اللہ عنہ narrated that (once) an unmarried (adult) girl came to Allah's Messenger صلی اللہ علیہ وسلم and complained that her father had married her against her will, so, the prophet صلی اللہ علیہ وسلم gave her choice (to retain that marriage or to revoke it).[4]

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[1] Tirmidhi # 1111, Abu Dawud # 2093, Nasa'i # 3270, Musnad Ahmad 2-259,

[2] Darimi # 2185.

[3] Tirmidhi E 113, Abu Dawud # 2078, Ibn Majah # 1959, Darimi # 2233, Musnad Ahmad 3-377.

[4] Abu Dawud # 2096, Ibn Majah # 1875.

COMMENTARY: The guardian whether a father, grandfather, or any other relative has no right to compel a woman to marry on his choice even if she is a virgin.
Imam Sha'fi's رحمه الله says, however, that this applies only to a woman who is not virgin whether adult or not. The guardian cannot compel her. But, he says, if a woman is a virgin then the guardian has authority to marry her, even if she is an adult woman.

MUSTAHAB (DESIRABLE) FOR WALI TO MARRY OFF ADULT WOMAN

(٣١٣٧) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا تُزَوِّجِ الْمَرْأَةُ الْمَرْأَةَ وَلَا تُزَوِّجُ الْمَرْأَةُ نَفْسَهَا فَاِنَّ الزَّانِيَةَ هِيَ الَّتِيْ تُزَوِّجُ نَفْسَهَا۔ (رواه ابن ماجة)

3137. Sayyiduna Abu Hurahrah رضی الله عنه narrated that Allah's Messenger صلی الله علیه وسلم said, "No woman should give another woman in marriage nor give herself in marriage, for she who marries by herself is an adulteress."[1]

COMMENTARY: The Hanafis say the woman who is not a guardian is disallowed to marry off another woman, or this prohibition in nahi tanzihi. An adult woman is permitted to marry without her guardian's permission or appoint anyone as her guardian, but it is *mustahab (desirable)* for her to entrust her guardian to get her married. As stated earlier, if there is no guardian for any one then the qadi: is her guardian.
Hence, the gist of this hadith is that it is better for a woman to let her guardian give her in marriage if he is there and no other woman may give her in marriage (instead of the guardian). If her guardian is not presents then the Qadi will give her in marriage.
The hanafis say about a woman not being allowed to give herself in marriage that it applies to a woman who marries without there being witnesses to one who is not her equal.
Imam Shafi'I رحمه الله takes it to mean that no woman should marry without her guardian's permission.
According to the Hanafis, therefore, if a woman has sexual intercourse with her husband whom she has married in the absence of witnesses and who is not her equal then that is adultery.
According to the Shafi'is, if a woman marries someone without her guardian's consent then every time she and her husband have sexual intercourse that will be adultery. Imam Shafi'I رحمه الله holds that just as a woman cannot give another woman in marriage, so too she has no authority to marry anyone by herself.

A FATHER'S DUTY

(٣١٣٨) وَعَنْ اَبِيْ سَعِيْدٍ وَابْنِ عَبَّاسٍ قَالَا قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ وُلِدَ لَهُ وَلَدٌ فَلْيُحْسِنِ اسْمَهُ وَاَدَبَهُ فَاِذَا بَلَغَ فَلْيُزَوِّجْهُ فَاِنْ بَلَغَ وَلَمْ يُزَوِّجْهُ فَاَصَابَ اِثْمًا فَاِنَّمَا اِثْمُهُ عَلٰى اَبِيْهِ۔

3138. Sayyiduna Abu Sa'eed رضی الله عنه and Sayyiduna Ibn Abbas رضی الله عنه both narrated that Allah's Messenger صلی الله علیه وسلم said, "When a son is born to anyone, he should give him a good name and a good training (with commands of ع (divine law) and manners). And, when he attains puberty, he should marry him. If he does not marry him when he attains puberty and he commits a sin, then the sin is blamed on his father."[2]

COMMENTARY: The base of a good society are the youth who get the elementary training

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[1] Ibn Majah # 1882.

[2] Bahyaqi # 8666 (Sha'b ul Eeman).

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of good deeds and character from their elders. If this elementary training is lacking then a terrible spate of evils spreads all over because the youth are the ones who will take over. Today, this is the main reason for the waywardness and shameless conduct in society. Our youth are totally deprived of guidance from their elders.

The hadith draws the attention of parents to their important duty. They should teach their child with religious education and train him along the lofty principles and paths of life. Get him to practice good and act righteously.

The next dutyof parents when their child is grown is to marry him. In this way, they will keep him away from falling into sin. If he perpetrates sin, then the father is held responsible. The same command applies for caring for slaves, male or female, as for one's own child.

ARRANGE MARRIAGE OF DAUGHTER AS SHE ATTAINS PUBERTY

(٣١٣٩) وَعَنْ عُمَرَ بْنِ الْخَطَّابِ وَأَنَسِ بْنِ مَالِكٍ عَنْ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ فِي التَّوْرَاةِ مَكْتُوْبٌ مَنْ بَلَغَتِ ابْنَتُهُ اثْنَتَى عَشْرَةَ سَنَةً وَلَمْ يُزَوِّجْهَا فَأَصَابَتْ إِثْمًا فَإِثْمُ ذٰلِكَ عَلَيْهِ۔ رَوَاهُمَا الْبَيْهَقِيُّ فِيْ شُعَبِ الْإِيْمَانِ۔

3139. Sayyiduna Umar ibn Khattab رضی اللہ عنہ and Sayyiduna Anas ibn Maalik رضی اللہ عنہ, both, narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "It is written in the Torah: If anyone's daughter becomes twelve years old and he does not give her in marriage and she falls into sin then that sin is against him."[1]

CHAPTER - IV

LETTING A MARRIAGE BE KNOWN THE *KHUTBAH* (SERMON) & THE CONDITION

بَابُ إِعْلَانِ النِّكَاحِ وَالْخُطْبَةِ وَالشَّرْطِ

It is *mustahab (desirable)* to make the *nikah (wedlock)* or marriage known. Thus, we are told. "Announce the marriage even if you have to make it by beating the duff."

The ulama (Scholars) have different opinions about beating the duff. Some of them declare that it is forbidden or absolutely makruh (disapproved) to beat the duff. Some others say that it is permitted to do so. The more correct thing is that it is allowed to beat the duff on the day of eed, arrival of a respected traveller or guest and on the occasion of a marriage. Apart from these times, it is forbidden to beat the duff (Duff (دف) is tambourine, hand drum. Daff and diff have different meanings.)

KHUTBAH: This word is both Khutbah and khitbah. The latter is to sent a proposal or ask a woman's hand in marriage while the former khutbah is the marriage sermon. The caption can mean either of the two words but the more correct is khutbah or the sermon that is delivered for the marriage.

The Hanafis say that is masnun to recite the khutbah while contracting he marriage. The Shafi'is also say so but hold that it is also masnun while concluding any contract, like buying and selling, etc.

BID'AH (INNOVATION) & CUSTOMS DURING MARRIAGE

These are the conditions that are mentioned in the marriage (agreement) whether corrupt

[1] Bahyaqi # 8669 (Shab ul Eeman).

or genuine.

It is unfortunate that such a pure thing as marriage to has corrupted with innovative practices and customs of non Muslims. It has come to such an extent that customs contrary to ؛ (divine law) have been introduced to the wedding of Muslims that the original character has been overshadowed. They are so many that it is difficult to point them out. Nevertheless, we do enumerate a few customs and innovative practices in the hope that they would he shunned. They are:

- The use of forbidden music and musical instruments.
- Dancing, singing and Qawwali.
- Garlanding the groom in a particular way, called sahra bandhna.
- Puppet show and such others.
- Decorating the home extravagantly.
- Luxurious wastage like covering wells with cloth.
- Riding horses.
- Leading the bridegroom in a procession throughout the city unnecessarily.
- Bridegroom's visiting shrines, and making offerings before resuming the procession.
- Playing drums with the groom's procession and singing songs by male and female singers.
- Blowing fire crackers and wasting money in this way.
- Woman bringing sweetmeat before the procession of the bridegroom.

These are evil thing that are forbidden include:

- Displaying what should be concealed.
- Having the bridegroom sit on a silken seat.
- To measure the groom's turban with a string and to give the string to a sorcerer that he might charm for the couple who might grow love for one another.
- Using gold and silver utensils.
- To shower extreme praise on the bridegroom and his party in the procession and to flatter them beyond limits speaking lies in doing that.

Other things that are forbidden are:

- The bridegroom being made to wear silk, saffron coloured dress. (These things are forbidden to men even otherwise.)
- Remove the bridegroom's turban and put it on the bride's head.
- The bridegroom circling round the bride seven times.
- Woman who are not mahram meeting the bridegroom, touching him and pulling his ears and nose and having absence talk with him.
- Bridegroom having his thumb washed in milk by the bride.
- Women feeding the bridegroom sugar.
- Woman pouring milk in the mouth of the bridegroom.
- Placing lump of sugar on the bride's body and requiring the groom to pick it up with his mouth.
- When bride and bridegroom are alone, women surrounding them.

These things are bid'ah and forbidden. They have nothing to do with ؛ (divine law) or *sunnah (Prophet's صلى الله عليه وسلم practice).*

It is necessary to shun them.

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SECTION I اَلْفَصْلُ الْاَوَّلُ

DUFF IS PERMITTED AT MARRIAGES

(٣١٤٠) عَنِ الرُّبَيِّعِ بِنْتِ مُعَوِّذِ بْنِ عَفْرَاءَ قَالَتْ جَاءَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَدَخَلَ حِيْنَ بُنِيَ عَلَيَّ فَجَلَسَ عَلٰى فِرَاشِيْ كَمَجْلِسِكَ مِنِّيْ فَجَعَلَتْ جُوَيْرِيَاتٌ لَنَا يَضْرِبْنَ بِالدُّفِّ وَيَنْدُبْنَ مَنْ قُتِلَ مِنْ اٰبَائِيْ يَوْمَ بَدْرٍ اِذْ قَالَتْ اِحْدَاهُنَّ وَفِيْنَا نَبِيٌّ يَعْلَمُ مَا فِيْ غَدٍ فَقَالَ دَعِيْ هٰذِهٖ وَقُوْلِيْ بِالَّذِيْ كُنْتِ تَقُوْلِيْنَ۔ (رواه البخارى)

3140. Sayyidah Rubayye'i bint Mu'awwidh ibn Afra رضی اللہ عنہ narrated that "When (after my marriage) I was brought to my husband's house, the Prophet صلی اللہ علیہ وسلم came and entered. He sat on my bedding just as you have sat down on my bedding (now). (She said this to Khalid ibn Dhakwan the sub-narrator of this hadith). Some girls of our family (who were present with us) began to beat the duff extolling those of my ancestors who were martyred on the day of Badr (praising to the sky their bravery). Among them one girl said,

اِحْدَاهُنَّ وَفِيْنَا نَبِيٌّ يَعْلَمُ مَا فِيْ غَدٍ

(And among us is the Prophet who knows what will transpire tomorrow).
He (interrupted her and) said, 'Leave this, but (continue to) say what you had been saying.'[1]

COMMENTARY: Afra was the mother of Sayyiduna Mu'awwidh. رضی اللہ عنہ He was a great, high-ranking sahabi who had raised the banner of truth on the day of Badr and gained martyrdom during this. He is that distinguished personality of Islam who, alongwith his brother Sayyiduna Mu'adh رضی اللہ عنہ, had killed the accursed Abu Jahl in the battle of Badr.

The girls were the little girls who were still in their childhood days. They had not attained puberty.

Akmal ud din رحمہ اللہ said that it is clear from this hadith that at the time the bride is brought to her husband's home, it is allowed to beat the duff to make it known. Some ulama (Scholars) say that it is allowed also on some other happy occasions. However, the duff should be without bells because a duff that jingles is makruh (disapproved) in the sight of all ulama (Scholars).

The Prophet صلی اللہ علیہ وسلم stopped the little girls from attributing to him knowledge of the unseen because only Allah is the knower of the unseen. One else knows that. This is the basic tenet of faith. Of course, Allah does disclose to His Messengers some of the things of the unknown.

The hadith says that poetry that does not violate ء (divine law) and basic tenets of faith and does not contain falsehood and indecency is allowed. It may be recited and heard.

(٣١٤١) وَعَنْ عَائِشَةَ قَالَتْ زُفَّتِ امْرَأَةٌ اِلٰى رَجُلٍ مِنَ الْاَنْصَارِ فَقَالَ نَبِيُّ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَا كَانَ مَعَكُمْ لَهْوٌ فَاِنَّ الْاَنْصَارَ يُعْجِبُهُمُ اللَّهْوُ۔ (رواه البخارى)

3141. Sayyidah Ayshah رضی اللہ عنہا narrated that a bride was brought to the house of an ansar (after their marriage). So Allah's Prophet صلی اللہ علیہ وسلم asked him, "Do you not have

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[1] Bukhari # 5147, Ibn Majah # 1897.

any entertainment?" (Shariah has allowed some of it) "The ansar like these things."[1]

MUSTAHAB (DESIRABLE) TO MARRY IN SHAWWAL

(٣١٤٢) وَعَنْهَا قَالَتْ تَزَوَّجَنِيْ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فِيْ شَوَّالٍ وَبَنٰى فِيْ شَوَّالٍ فَاَيُّ نِسَاءِ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ كَانَ اَحْظٰى عِنْدَهٗ مِنِّيْ۔ (رواه مسلم)

3142. Sayyidah Ayshah رضی اللہ عنہا narrated that Allah's Messenger صلی اللہ علیہ وسلم married her in (the month of) Shawwal. She was brought to his house (three years later) in Shawwal. (She asked) "So (tell me,) which of his wives was more fortunate than I was with him?"[2]

COMMENTARY: Some ignorant people consider it inauspicious to marry in Shawwal. It is absolutely wrong. Rather, it is *mustahab (desirable)* to marry in this month and to bring the bride the groom's home. The Arabs of the jahiliyah (ignorance period) also placed ill-omen with shawwal. It was to reject this nation that Sayyidah Ayshah رضی اللہ عنہا indicated that if it was really inauspicious to marry in this month, shawwal, then was it not so for her? She not only married in Shawwal but was also brought to her husband's house in the same month, Shawwal, three years later. In fact, she was most fortunate of all the wives of the Prophet صلی اللہ علیہ وسلم and beloved by him of his wives رضی اللہ عنہ.

EMPHASIS ON PAYING THE DOWER

(٣١٤٣) وَعَنْ عُقْبَةَ بْنِ عَامِرٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَلشُّرُوْطُ اَنْ تُوْفُوْا بِهٖ مَا اسْتَحْلَلْتُمْ بِهِ الْفُرُوْجَ۔ (متفق علیه)

3143. Sayyiduna Uqbah ibn Aamir رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Of the conditions that you honour, the most necessary is that whereby you have made sexual intercourse lawful."[3]

COMMENTARY: The most necessary or most important condition is the wife's dower or all her rights that a husband is bound to give her.

These are called conditions because a man brings his wife home on condition that he will pay her all her rights.

DO NOT PROPOSE MARRIAGE TO ANOTHER'S FIANCÉ

(٣١٤٤) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا يَخْطُبُ الرَّجُلُ عَلٰى خِطْبَةِ اَخِيْهِ حَتّٰى يُنْكِحَ اَوْ يَتْرُكَ۔ (متفق علیه)

3144. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "No man must sent a woman a proposal for marriage when his (Muslim) brother has made a proposal to her to marry until he marries or abandons it."[4]

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[1] Bukhari # 5162.

[2] Muslim # 73. 1423, Tirmidhi # 1095, Ibn Majah # 1990, Darimi # 2211, Musnad Ahmad 6. 54.

[3] Bukhari # 5151, Muslim # 63. 1418, Tirmidhi # 1130, Abu Dawud # 2139, Nasai'i # 3281, Ibn Majah # 1954, Musnad Ahmad 6-54.

[4] Bukhari # 5144, Muslim # 52-1413, Tirmidhi # 2175, Abu Dawud # 2080, Nasai'i # 3241, Ibn Majah # 1867, Muwatta Darimi.

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COMMENTARY: This applies when the first proposal is nearly accepted in that both have expressed willingness and the dower has been agreed upon.
If, in spite of this prohibition, a second man proposes marriage to the same woman and marries her without the permission of the first man then he will have committed a sin though the marriage would be correct.

WOMAN MUST NOT HAVE ANOTHER WOMAN DIVORCED

(٣١٤٥) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا تَسْأَلِ الْمَرْأَةُ طَلَاقَ اُخْتِهَا لِتَسْتَفْرِغَ صَحْفَتَهَا وَلِتَنْكِحْ فَاِنَّ لَهَا مَا قُدِّرَ لَهَا۔ (متفق علیه)

3145. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "No woman must demand that her (Muslim) sister should be divorced that she may fill from her vessel (meaning, take away what is hers) and marry her husband herself because she will have only what is decreed for her."[1]

COMMENTARY: This could be one of two things. A married man wished to take a second wife who stipulates that he must first divorce his wife before marrying her. Or, a man has two wives and one of them demands that the other should be divorced.
The prophet صلی اللہ علیہ وسلم disallowed woman to make such a demand because every person get what is decreed for him or her and there is no use wishing another's downfall.
In the second case, the translation would be: 'and have her husband to herself...' or 'the co-wife may marry someone else.'

SHIGHAR IS DISALLOWED

(٣١٤٦) وَعَنِ ابْنِ عُمَرَ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ نَهٰى عَنِ الشِّغَارِ وَالشِّغَارُ اَنْ تُزَوِّجَ الرَّجُلُ ابْنَتَهٗ عَلٰى اَنْ يُزَوِّجَهُ الْاٰخِرُ بِنْتَهٗ وَلَيْسَ بَيْنَهُمَا صَدَاقٌ۔ مُتَّفَقٌ عَلَيْهِ وَفِيْ رِوَايَةٍ لِمُسْلِمٍ قَالَ لَا شِغَارَ فِي الْاِسْلَامِ۔

3146. Sayyiduna ibn Umar رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم forbade shighar. And, shighar is that a man gives his daughter in marriage (to another man) stipulating that the other marry his daughter to him, there being no (payment of) dower between them.
According to another version: He (Allah's Messenger) صلی اللہ علیہ وسلم said, "There is no shighar in Islam."[2]

COMMENTARY: In pre-Islamic days, two men would exchange one another's daughters (or sisters) and avoid paying the dower. Islam proscribes this kind of (exchange) marriage.
Imam Shafi'I رحمہ اللہ abidesby the hadith and denounces this kind of marriage.
Imam Abu Hanifah رحمہ اللہ says that while the marriage will be valid yet it will be binding to pay the mahr mithl (Proper dower). Moreover, such kind of marriage must be avoided.

MUT'AH IS FORBIDDEN

(٣١٤٧) وَعَنْ عَلِيٍّ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ نَهٰى عَنْ مُتْعَةِ النِّسَاءِ يَوْمَ خَيْبَرَ وَ عَنْ اَكْلِ لُحُوْمِ

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[1] Bukhari # 2140, Muslim # 38-1408, 1413, Tirmidhi # 1194, Abu Dawud # 3438, Nasai'i # 3236, Ibn Majah # 1867, Musnad Ahmad 2-311.

[2] Bukhari # 5112, Muslim # 57-1415, Abu Dawud # 2074, Nasai'i # 4447, Ibn Majah # 1883, Darimi # 2180, Muwatta Maalik # 24 (*Nikah (wedlock)*) Musnad Ahmad 2-19.

الْحُمُرِ الْإِنْسِيَّةِ۔ (متفق علیه)

3147. Sayyiduna Ali رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم forbade mut'ah (temporary marriage) of women. He did this at the battle of Khaybar. He also forbade the eating of the flesh of domestic asses.[1]

COMMENTARY: Mut'ah is a marriage for a specified period of time for a specified sum of money. It was permitted in early Islam but forbidden later on.

The ulama (Scholars) say that mut'ah was made lawful twice and forbidden twice. The first time was before the Battle of Khaybar during an expedition when the sahabah (Prophet's Companions) رضی اللہ عنہم were uncomfortable because of a celibate life to the extent that some of them requested the Prophet صلی اللہ علیہ وسلم to be allowed to have themselves castrated. On that, he told them that they could observe mut'ah but withdrew this permission again on the day of the conquest of Makkah in 8 AH declaring it unlawful for ever. This is established by sahih ahadith.

The tradition of Sayyiduna Ibn Umar رضی اللہ عنہ has that just as a person who is restless because of hunger is allowed to eat carrion so, too, in early Islam, those who were uneasy because of being deprived of sexual satisfaction, were allowed to observe mut'ah. Later (when it was forbidden for ever) the sahabah (Prophet's Companions) رضی اللہ عنہم decided that every marriage of mut'ah was void.

Since then it is a unanimous judgement that mut'ah is forbidden. The sahabah (Prophet's Companions) رضی اللہ عنہم , the tabi'un رحمہ اللہ the jurists, the scholars of hadith – all of them have ruled unanimously that it is forbidden. Only Sayyiduna Ibn Abbas رضی اللہ عنہ initially disagreed and said that it was allowed during times when a man could not carry in without a married life, but when Sayyiduna Ali رضی اللہ عنہ warned him seriously and made him realize that mut'ah was forbidden absolutely, did he relent and revoke his previous rulings. The books of figh mention the revoking of his ruling as also the ahadith do.

However, of these books the Hidayah is one of the best books of fiqh (Islamic jurisprudence) and highly reliable. Its compiler is of the topmost caliber among the group of jurists because of his deed, excellences and juristic insight, but, it is a fact that he has committed a gigantic academic lapse by attributing to Imam Maalik the lawfulness of mut'ah. We cannot say how he did it because Imam Maalik رحمہ اللہ used to assert that mut'ah is forbidden, in the same way as all followers of Islam say.

Accordingly, not only ibn Hammam رحمہ اللہ has pointed out this mistake calling it wrong to attribute to Imam Maalik رحمہ اللہ the lawfulness of mut'ah but also nearly all the great books of fiqh (Islamic jurisprudence) compiled after Hidayah have found it necessary to disclose this error.

THE CONTENTION OF THE SHI'AH ABOUT MUT'AH

Having discussed the unlawfulness of mut'ah to temporary marriage, what remains to say is that the Shiah still continue to contend that mut'ah is lawful. We cannot understand the reason for their insistence. Whet is most astonishing is that their books transmit their sahih ahadith about mut'ah being forbidden but their practice is at variance. Not only do they

[1] Bukhari # 515, Muslim # 29, 30-1460, 1407, Tirmidhi # 1124, Nasai'i # 2262, 3366, Ibn Majah # 1961, Muwatta Darimi.

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insist that mut'ah is lawful but they also mention its virtues. Moreover, they allege that Sayyiduna Umar رضی اللہ عنہ had forbidden mut'ah initially, but, this absolutely wrong, for, Umar رضی اللہ عنہ had no authority to forbid it. All he did was to propagate the command as he propagated other commands of Islam with great emphasis. His final command was that if he found anyone practicing mut'ah, he would award him the punishment of adultery. As a result, those who had not known about mut'ah being forbidden became aware of its unlawfulness. So, he only published the prophet's command so, we can only say that the Shi'ah level a false allegation against Umar رضی اللہ عنہ.

(٣١٤٨) وَعَنْ سَلَمَةَ بْنِ الْأَكْوَعِ قَالَ رَخَّصَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَامَ اَوْطَاسٍ فِي الْمُتْعَةِ ثَلَاثًا ثُمَّ نَهٰى عَنْهَا۔ (رواه مسلم)

3148. Sayyiduna salamah ibn Akwa رضی اللہ عنہ said during the year of Awtas Allah's Messenger صلی اللہ علیہ وسلم allowed mut'ah for three nights. Then he forbade it (for always).[1]

COMMENTARY: Awtas is a valley on the road to Ta'if from Makkah. The branch tribes of the Hawazin reside around it Another name for it is Wadi Hunayn. In 8 AH in Ramadan, Makkah was conquered and Islam caused all the false ideologies in Arabia to how down before it. This caused the tribes of Hawazin and Thaqif great consternation and they combined their tremendous forces to put down the Islamic domination once and for all.

Hence in Shawwal 8 AH, the Battle of Hunayn was fought against them by the Muslims under the leadership of the Prophet صلی اللہ علیہ وسلم. This battle is also called Battle of Awtas and the Battle of Hawazin.

Allah enabled the Islamic forces to emerge victorious causing truth to triumph. The Muslims got a tremendous booty. There were twenty four thousand camels, forty thousand goats and silver worth about rupees forty thousand. The Prophet صلی اللہ علیہ وسلم distributed all that booty among the Muslims at that very place, Awtas.

Returning to the main subject, the second time that mut'ah was allowed and prohibited was in this battle of Awtas. Since this battle followed close on heels, the conquest of Makkah, the permission and prohibition of mut'ah is remembered with the conquest of Makkah. Thus the words in the commentary of the proceeding hadith, 'the day of the conquest of Makkah' mean 'the year of the conquest of Makkah.

Hence, the complete history is that mut'ah was forbidden and allowed the second time in the year of the conquest of Makkah in 8 AH at the Battle of Awtas.

SECTION II اَلْفَصْلُ الثَّانِيْ

THE SERMON OF *NIKAH (WEDLOCK)*

(٣١٤٩) عَنْ عَبْدِاللّٰهِ بْنِ مَسْعُوْدٍ قَالَ عَلَّمَنَا رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَلتَّشَهُّدَ فِي الصَّلَاةِ وَالتَّشَهُّدَ فِي الْحَاجَةِ قَالَ التَّشَهُّدَ فِي الصَّلٰوةِ اَلتَّحِيَّاتُ لِلّٰهِ وَالصَّلَوَاتُ وَالطَّيِّبَاتُ اَلسَّلَامُ عَلَيْكَ اَيُّهَا النَّبِيُّ وَرَحْمَةُ اللّٰهِ وَبَرَكَاتُهٗ اَلسَّلَامُ عَلَيْنَا وَعَلٰى عِبَادِ اللّٰهِ الصَّالِحِيْنَ اَشْهَدُ اَنْ لَّا اِلٰهَ اِلَّا اللّٰهُ وَاَشْهَدُ اَنَّ مُحَمَّدًا عَبْدُهٗ وَرَسُوْلُهٗ وَالتَّشَهُّدُ فِي الْحَاجَةِ اَنِ الْحَمْدُ لِلّٰهِ نَسْتَعِيْنُهٗ وَنَسْتَغْفِرُهٗ وَنَعُوْذُ بِاللّٰهِ مِنْ شُرُوْرِ اَنْفُسِنَا مَنْ يَّهْدِهِ اللّٰهُ فَلَا

[1] Muslim # 180-1405, Musnad Ahmad 4-55.

مُضِلَّ لَهُ وَمَنْ يُّضْلِلْهُ فَلَا هَادِيَ لَهُ وَاَشْهَدُ اَنْ لَّا اِلٰهَ اِلَّا اللّٰهُ وَاَشْهَدُ اَنَّ مُحَمَّدًا عَبْدُهُ وَرَسُوْلُهُ وَيَقْرَأُ ثَلَاثَ اٰيَاتٍ يَا اَيُّهَا الَّذِيْنَ اٰمَنُوا اتَّقُوا اللّٰهَ حَقَّ تُقَاتِهٖ وَلَا تَمُوْتُنَّ اِلَّا وَاَنْتُمْ مُسْلِمُوْنَ يَآ اَيُّهَا الَّذِيْنَ اٰمَنُوا اتَّقُوا اللّٰهَ الَّذِيْ تَسَاءَلُوْنَ بِهٖ وَالْاَرْحَامَ اِنَّ اللّٰهَ كَانَ عَلَيْكُمْ رَقِيْبًا يَاَيُّهَا الَّذِيْنَ اٰمَنُوا اتَّقُوا اللّٰهَ وَقُوْلُوْا قَوْلًا سَدِيْدًا يُّصْلِحْ لَكُمْ اَعْمَالَكُمْ وَيَغْفِرْ لَكُمْ ذُنُوْبَكُمْ وَمَنْ يُّطِعِ اللّٰهَ وَرَسُوْلَهٗ فَقَدْ فَازَ فَوْزًا عَظِيْمًا رَوَاهُ اَحْمَدُ وَالتِّرْمِذِيُّ وَاَبُوْدَاوٗدَ وَالنَّسَائِيُّ وَابْنُ مَاجَةَ وَالدَّارِمِيُّ وَفِيْ جَامِعِ التِّرْمِذِيِّ فَسَّرَ الْاٰيَاتِ الثَّلَاثَ سُفْيَانُ الثَّوْرِيُّ وَزَادَ ابْنُ مَاجَةَ بَعْدَ قَوْلِهٖ اَنِ الْحَمْدُ لِلّٰهِ نَحْمَدُهٗ وَبَعْدَ قَوْلِهٖ مِنْ شُرُوْرِ اَنْفُسِنَا وَمِنْ سَيِّئَاتِ اَعْمَالِنَا وَالدَّارِمِيُّ بَعْدَ قَوْلِهٖ عَظِيْمًا ثُمَّ يَتَكَلَّمُ بِحَاجَتِهٖ وَرَوٰى فِيْ شَرْحِ السُّنَّةِ عَنِ ابْنِ مَسْعُوْدٍ فِيْ خُطْبَةِ الْحَاجَةِ مِنَ النِّكَاحِ وَغَيْرِهٖ۔

3149. Sayyiduna Abdullah ibn Mas'ud رضی اللہ عنہ narrated: Allah's Messenger صلی اللہ علیہ وسلم taught us the tashahhud for the *salah (prayer)* and the tashahhud for some need. The tashahhud recited in *salah (prayer)* is:

اَلتَّحِيَّاتُ لِلّٰهِ وَالصَّلَوَاتُ وَالطَّيِّبَاتُ اَلسَّلَامُ عَلَيْكَ اَيُّهَا النَّبِيُّ وَرَحْمَةُ اللّٰهِ وَبَرَكَاتُهٗ اَلسَّلَامُ عَلَيْنَا وَعَلٰى عِبَادِ اللّٰهِ الصَّالِحِيْنَ اَشْهَدُ اَنْ لَّا اِلٰهَ اِلَّا اللّٰهُ وَاَشْهَدُ اَنَّ مُحَمَّدًا عَبْدُهٗ وَرَسُوْلُهٗ۔

(All adorations of the tongue are for Allah, as also those of the body and wealth or good things. Peace be on you, O Prophet, and Allah's mercy and His blessings. Peace on us and on all righteous slaves of Allah. I bear witness that there is no God but Allah and I bear witness that Muhammad is His servant and His Messenger.)
And the tashahud for a need is:

اِنَّ الْحَمْدَ لِلّٰهِ نَسْتَعِيْنُهٗ وَنَسْتَغْفِرُهٗ وَنَعُوْذُ بِاللّٰهِ مِنْ شُرُوْرِ اَنْفُسِنَا مَنْ يَّهْدِهِ اللّٰهُ فَلَا مُضِلَّ لَهُ وَمَنْ يُّضْلِلْهُ فَلَا هَادِيَ لَهُ وَاَشْهَدُ اَنْ لَّا اِلٰهَ اِلَّا اللّٰهُ وَاَشْهَدُ اَنَّ مُحَمَّدًا عَبْدُهٗ وَرَسُوْلُهٗ۔

(All praise belongs to Allah. We ask Him for help and seek His forgiveness. And we seek refuge in Allah from the evils of our own selves. He whom Allah guides, none can send astray, and he whom he leaves to stray, there is no guide for him. I testify that there is no God but Allah and I testify the Muhammad is His servant and His Messengr,)
And, one should recite three verses (of the Quran):

يَآ اَيُّهَا الَّذِيْنَ اٰمَنُوا اتَّقُوا اللّٰهَ حَقَّ تُقَاتِهٖ وَلَا تَمُوْتُنَّ اِلَّا وَاَنْتُمْ مُسْلِمُوْنَ۔

{O you who believe, fear Allah as He should be feared and die not save you be Muslim.}

يَآ اَيُّهَا الَّذِيْنَ اٰمَنُوا اتَّقُوا اللّٰهَ الَّذِيْ تَسَاءَلُوْنَ بِهٖ وَالْاَرْحَامَ اِنَّ اللّٰهَ كَانَ عَلَيْكُمْ رَقِيْبًا۔

{(O you who believe!) ...fear Allah by whom you demand (your rights) of each other and fear (breaking) kinship of wombs. Surely Allah is ever watchful over you.} (4: 1)

يَآ اَيُّهَا الَّذِيْنَ اٰمَنُوا اتَّقُوا اللّٰهَ وَقُوْلُوْا قَوْلًا سَدِيْدًا يُّصْلِحْ لَكُمْ اَعْمَالَكُمْ وَيَغْفِرْ لَكُمْ ذُنُوْبَكُمْ وَمَنْ يُّطِعِ

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اللّٰهَ وَرَسُوْلَهٗ فَقَدْ فَازَ فَوْزًا عَظِيْمًا۔

{O you who believe, fear Allah and speak words straight to the point. He will set right your deeds for you and will forgive your sins, and whosoever obey Allah and His Messenger, he indeed has gained a mighty triumph} (33: 70-71)

In the Jam'e of Tirmidhi, Sufyan Thawri رحمه الله gave a commentary on the three verses.

And, Ibn Majah added after 'All praise belongs to Allah's 'we praise Allah' (نمحده) and after 'from the evils of our own salves: (ومن سيئات اعمالنا) 'from our evil deed's.

And, Darimi added after 'mighty triumph (ثم يتكلم بحاجته) (then one must mention his needs).Sharh us *sunnah (Prophet's* صلى الله عليه وسلم *practice)* also mentions the words for a need the marriage or something else.[1]

COMMENTARY: Tashahhud is to declare testimony of faith. Zayn ul Arab has said that here tashahud means that in which is Allah's praise and both expressions for testimony. The need is marriage or such other thing. The tashahud recited at that time is the khutbah which is recited at a marriage, etc. We have stated earlier that Imam Sahfi'I رحمه الله said that the Khutbah is recited not only at marriages but it is masnun at the times of all agreements and contracts.

The second verse in the hadith (4: 1) begins in all the scripts of Mishkat with

يَآ اَيُّهَا الَّذِيْنَ اٰمَنُوْا

{O you who believe....}

but this verse is not in this way in the Quran. It is the first verse of surah an-Nisa and these words are part of it commencing with (واتقوا الله) upto (رقيبا). Hence, perhaps the script of the Quran with Sayyiduna Ibn Mas'ud رضى الله عنه had it in this way.

It can be understood from of al Hisn al Hasin that the Khutbah in Abu Da'wud has after (ورسوله) (and His Messenger) the words:

اَرْسَلَهٗ بِالْحَقِّ بَشِيْرًا وَّنَذِيْرًا بَيْنَ يَدَيِ السَّاعَةِ مَنْ يُّطِعِ اللّٰهَ وَرَسُوْلَهٗ فَقَدْ رَشَدَ وَمَنْ يَّعْصِهِمَا فَلَا يَضُرُّ اِلَّا نَفْسَهٗ وَلَا يَضُرُّ اللّٰهَ شَيْئًا۔

(Whom you sent with truth as a bearer of glad tidings and as a warner before the coming of the Hour. He who obeys Allah and His Messenger is indeed guided but he who disobeys them does not harm (anybody) but himself, and he does not hurt Allah in the least.)[2]

"And we beg of Allah to cause us to be among those who obey Him and obey His Messenger صلى الله عليه وسلم and follow what pleases Him and refrain from disobedience to Him for indeed we exist because of Him."

(Abu Dawud) as cited in AlHisn al-Haseem p 234 (Darul Isha'at Karachi)

(Hisn Haseen p 234)

Anyone who conducts the (marriage) contract must first recite this Khutbah. Then he must

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[1] Tirmidhi # 1107, Abu Dawud # 2118, Nasai'i # 3277, Ibn Majah # 1892, Darimi # 2202, Musnad Ahmad 1-392.

[2] After this, there is a prayer in al-Hisn al-Haseen (P 234, Darul Ish'at Karachi)

obtain 'the proposal and consent' in which he must be mindful of those things that are necessary and which are mentioned in the beginning of the Book of *Nikah (wedlock)* (Marriage).

MARRIAGE WITHOUT KHUTBAH LACKS BLESSING

(٣١٥٠) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ كُلُّ خُطْبَةٍ لَيْسَ فِيْهَا تَشَهُّدٌ فَهِيَ كَالْيَدِ الْجَذْمَاءِ۔ رَوَاهُ التِّرْمِذِيُّ وَقَالَ هٰذَا حَدِيْثٌ حَسَنٌ غَرِيْبٌ۔

3150. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Every Khutbah (sermon) that lacks the tashahhud (praise of Allah) is like the hand of a lepor (or a and or fingers cut off)."[1]

COMMENTARY: Just as a hand that is cut off is of no use. So too a marriage without a sermon is lacking is blessing so of no use.

Mulla Ali Qari has written the word as Khitbah and given its meaning as marriage. But, Shah Ishaq Dhalawi رحمہ اللہ, "We learnt it from our teachers as Khutbah." The same thing is said by Shaykh Abdul Haq Dhalawi. رحمہ اللہ

(٣١٥١) وَعَنْهُ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ كُلُّ اَمْرٍ ذِيْ بَالٍ لَا يُبْدَأُ فِيْهِ بِالْحَمْدِ لِلّٰهِ فَهُوَ اَقْطَعُ۔

(رواہ ابن ماجۃ)

3151. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Every affair of importance that is not begun with praise of Allah lack blessing."[2]

MUSTAHAB (DESIRABLE) TO MAKE MARRIAGE KNOWN

(٣١٥٢) وَعَنْ عَآئِشَةَ قَالَتْ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَعْلِنُوْا هٰذَا النِّكَاحَ وَاجْعَلُوْهُ فِي الْمَسَاجِدِ وَ اضْرِبُوْا عَلَيْهِ بِالدُّفُوْفِ۔ رَوَاهُ التِّرْمِذِيُّ وَقَالَ هٰذَا حَدِيْثٌ غَرِيْبٌ۔

3152. Sayyidah Ayshah رضی اللہ عنہا narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Publicise these marriages. Conduct them in mosques and beat the duff (tambourines) to announce them."[3]

COMMENTARY: If this means to have the witnesses over the marriage then this publicizing will be of the kind *wajib (obligatory)*. It is means to make an announcement then it will be *mustahab (desirable)* act to make the marriage known.

It is *mustahab (desirable)* to arrange the marriage in the mosque It is also *mustahab (desirable)* to have it done on Friday.

Much blessing is derived by observing the *nikah (wedlock)* in a mosque the *nikah (wedlock)* in a mosque and on Friday.

(٣١٥٣) وَعَنْ مُحَمَّدِ بْنِ حَاطِبٍ رِ الْجُمَحِيِّ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ فَصْلُ مَا بَيْنَ الْحَلَالِ وَالْحَرَامِ الصَّوْتُ وَالدُّفُّ فِي النِّكَاحِ۔ (رواہ احمد والترمذی و النسائی وابن ماجۃ)

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[1] Tirmidhi # 1108, Abu Dawud # 4841, Musnad Ahmad 2-343.

[2] Abu Dawud # 4840, Ibn Majah # 1894, Musnad Ahmad 2-359.

[3] Tirmidhi # 1091, Ibn Majah # 1895.

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3153. Sayyiduna Muhammad ibn Hajib Jumahi رحمه الله narrated that the prophet صلى الله عليه وسلم said, "The difference between the lawful and the unlawful lies in the voice and the duff (tambourine)."[1]

COMMENTARY: Voice means song or mentioning the marriage to people and making it known. The hadith does not mean to say that marriage is not valid without voice and duff because it is valid even before two witnesses. Rather, this hadith urges the people to perform the marriage among people and proclaim it. The limit of this proclamation is the neighbourhood. This may be accomplished by beating the duff or by voice (like reciting poetry or song). It does not mean at all that proclamation made all over the city or beyond that or to beat drums and play musical instruments.

PERMISSION TO SING SONGS

(٣١٥٤) وَعَنْ عَائِشَةَ قَالَتْ كَانَتْ عِنْدِيْ جَارِيَةٌ مِنَ الْأَنْصَارِ زَوَّجْتُهَا فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَا عَائِشَةُ أَلَا تُغَنِّيْنَ فَإِنَّ هٰذَا الْحَيَّ مِنَ الْأَنْصَارِ يُحِبُّوْنَ الْغِنَاءَ رَوَاهُ ابْنُ حِبَّانَ فِيْ صَحِيْحِهٖ۔

3154. Sayyidah Ayshah رضى الله عنها narrated that she had an Ansar girl whom she gave away in marriage (to someone). Allah's Messenger صلى الله عليه وسلم asked (her) , "O Ayshah, will you not have someone sing? Because this clan of the Ansars like to sing (at weddings)?"[2]

COMMENTARY: Another hadith (to follow # 3155) discloses that this girl belonged to a relative, or she may have been an orphan whom she had adopted. The original copy of Mishkat does not have the name of the transmitter. Later on some scholar wrote down in the margin "Ibn Hibban"

(٣١٥٥) وَعَنِ ابْنِ عَبَّاسٍ قَالَ أَنْكَحَتْ عَائِشَةُ ذَاتَ قَرَابَةٍ لَهَا مِنَ الْأَنْصَارِ فَجَاءَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ أَهْدَيْتُمُ الْفَتَاةَ قَالُوْا نَعَمْ قَالَ أَرْسَلْتُمْ مَعَهَا مَنْ تُغَنِّيْ قَالَتْ لَا فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ إِنَّ الْأَنْصَارَ قَوْمٌ فِيْهِمْ غَزَلٌ فَلَوْ بَعَثْتُمْ مَعَهَا مَنْ يَقُوْلُ أَتَيْنَاكُمْ أَتَيْنَاكُمْ فَحَيَّانَا وَحَيَّاكُمْ۔ (رواه ابن ماجة)

3155. Sayyiduna Ibn Abbas رضى الله عنه narrated that (the Mother of the believers) Sayyidah Ayshah رضى الله عنها gave away in marriage an Ansar girl (to someone). She was a relative of hers. When Allah's Messenger صلى الله عليه وسلم came (after the marriage) , he asked, 'have you sent the girl to her husband's house?" They said, Yes," He asked "Did you sent along with her someone who might sing?" She said, "No!" Allah's Messenger صلى الله عليه وسلم said, "Surely, the Ansar are people given to songs. Had you sent with her who would have said:

أَتَيْنَاكُمْ أَتَيْنَاكُمْ فَحَيَّانَا وَحَيَّاكُمْ

(We have come to you, we have come to you!
May Allah preserve us and may He preserve you!) "[3]

COMMENTARY: Reciting poetical verses of joy in marriages is an ancient tradition. The

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[1] Tirmidhi # 1090, Nasai'i # 3366, Ibn Majah # 1896, Musnad Ahmad 4. 259.

[2] Ibn Hibban in his sahih.

[3] Ibn Majah # 1900, Musnad Ahmad 4-259.

Ansar were no exception. This is why the Prophet صلى الله عليه وسلم said that if a singer was sent with the bride that would have delighted her inlaws. The Prophet صلى الله عليه وسلم recited only a line of the following verse:

اَتَيْنَاكُمْ اَتَيْنَاكُمْ فَحَيَّانَا وَحَيَّاكُمْ

وَلَوْلَا الْحِنْطَةُ السَّمْرَآءُ لَمْ تَسْمُنْ عَذَارَاكُمْ

(We have come to you, we have come to you!
May Allah preserve us and may
He preserve you!
Were there no red wheat,
Your virgins would not have been
Soft bodies).

Some verses have the second line thus:

وَلَوْلَا الْعَجْوَةُ السَّوْدَاءُ مَا كُنَّا بَوَاوَاكُمْ

(Had there been no black dates
We had not resided in
Your homes).

FIRST OF TWO MARRIAGES IS CORRECT

(٣١٥٦) وَعَنْ سَمُرَةَ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اَيُّمَا امْرَأَةٍ زَوَّجَهَا وَلِيَّانِ فَهِيَ لِلْاَوَّلِ مِنْهُمَا وَمَنْ بَاعَ بَيْعًا مِنْ رَجُلَيْنِ فَهُوَ لِلْاَوَّلِ مِنْهُمَا۔ (رواه الترمذی وابوداؤد والنسائی والدارمی)

3156. Sayyiduna Samurah رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "If two guardians have given away a woman in marriage, then she belongs to the first of the two. And, if anyone sells something to two men, then it goes to the first of them."[1]

COMMENTARY: If a woman has two guardians and both of them marry her to two different men one after the other, then the second guardian's giving her away in marriage will be invalid and she will be the wife of the man whom she had been married first However, this command is applicable when both guardians are of the same rank, meaning both are equally near in relation. If they are not of the same degree then the one who is nearer than the other in relation will be preferred and the woman will be the wife of the man he has chosen as her husband even if the other guardian and married her before this guardian to the man of his choice.

If both guardians of the woman, equal in rank in relation, marry her to two different men at the same time then it is the unanimous decision of the ulama (Scholars) that both marriages will be void.

SECTION III اَلْفَصْلُ الثَّالِثُ

MU'TAH WAS PERMITTED INITIALLY

(٣١٥٧) عَنِ ابْنِ مَسْعُوْدٍ قَالَ كُنَّا نَغْزُو مَعَ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَيْسَ مَعَنَا نِسَاءٌ فَقُلْنَا اَلَا نَخْتَصِيْ

[1] Tirmidhi # 1112, Abu Dawud # 2089, Nasa'i # 4696, Ibn Majah # 2344, Musnad Ahmad 5-8.

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فَنَهَانَا عَنْ ذٰلِكَ ثُمَّ رَخَّصَ لَنَا اَنْ نَسْتَمْتِعَ فَكَانَ اَحَدُنَا يَنْكِحُ الْمَرْاَةَ بِالثَّوْبِ اِلٰى اَجَلٍ ثُمَّ قَرَاَ عَبْدُاللّٰهِ يَآاَيُّهَا الَّذِيْنَ اٰمَنُوْا لَا تُحَرِّمُوْا طَيِّبَاتِ مَا اَحَلَّ اللّٰهُ لَكُمْ۔

3157. Sayyiduna Ibn Mas'ud رضی اللہ عنہ narrated that they were on an expedition along with Allah's Messenger صلی اللہ علیہ وسلم. They had no woman with them (neither their wives nor their female saves. This caused them to be desperate.) So they asked. "Shall we not have ourselves castrated?" But, he forbade them to do that. Then, he permitted them to observe mut'ah. So, some of them (contracted mut'ah and) every man married a woman against a garment for a specified period of time.
Then, Abdullah recited the verses:

يَا اَيُّهَا الَّذِيْنَ اٰمَنُوْا لَا تُحَرِّمُوْا طَيِّبَاتِ مَا اَحَلَّ اللّٰهُ لَكُمْ

{O you who believe, forbid not the wholesome things that Allah has made lawful for you}[1] (5: 87)

COMMENTARY: This hadith says that Muta'h allowed. This was so in early Islam but later it was prohibited as the next hadith shows, and traditions said earlier (# 3146, 3147, 3148).
Ibn Mas'ud رضی اللہ عنہ was, like Ibn Abbas رضی اللہ عنہ of the opinion that Muta was allowed. As for Ibn Abbas رضی اللہ عنہ he revoked his opinion and agreed that mutah is forbidden, but Ibn Mas'ud may or may not have revised his opinion.

(٣١٥٨) وَعَنِ ابْنِ عَبَّاسٍ قَالَ اِنَّمَا كَانَتِ الْمُتْعَةُ فِيْ اَوَّلِ الْاِسْلَامِ كَانَ الرَّجُلُ يَقْدَمُ الْبَلْدَةَ لَيْسَ لَهٗ بِهَا مَعْرِفَةٌ فَيَتَزَوَّجُ الْمَرْاَةَ بِقَدْرِ مَايُرٰى اَنَّهٗ يُقِيْمُ فَتَحْفَظُ لَهٗ مَتَاعَهٗ وَتُصْلِحُ لَهٗ شَيْئَهٗ حَتّٰى اِذَا نَزَلَتِ الْاٰيَةُ اِلَّا عَلٰى اَزْوَاجِهِمْ اَوْ مَامَلَكَتْ اَيْمَانُهُمْ قَالَ ابْنُ عَبَّاسٍ فَكُلُّ فَرْجٍ سِوَاهُمَا فَهُوَ حَرَامٌ۔ (رواه الترمذی)

3158. Sayyiduna Ibn Abbas رضی اللہ عنہ narrated that mut'ah was practiced only in early Islam. A man would come to a habitation where he had no one known to him. So, he would marry a woman for the period of his estimated stay there. She would care for his possessions and prepare his meals for him. Finally, when the verse was revealed:

اِلَّا عَلٰى اَزْوَاجِهِمْ اَوْ مَامَلَكَتْ اَيْمَانُهُمْ

{except in regard to their spouses or those whom their hands possess} (23: 6)
Ibn Abbas رضی اللہ عنہ said, "Sexual intercourse with everyone, except them both, became unlawful."[2]

COMMENTARY: The verse says that there is no blame on these people who do not have sexual intercourse with women other than their wives and whom their right hands possess. Ibn Abbas رضی اللہ عنہ showed by this verse that the woman with whom mut'ah is done is not one of these two.
Teebi رحمہ اللہ and Fakhruddin Qazi رحمہ اللہ also said something like this.
The opinion of the Shi'ah has been mentioned previously. It is contrary to the hadith of Sayyiduna Ali رضی اللہ عنہ (# 3143) and to that of Sayyiduna ibn Abbas رضی اللہ عنہ as in this hadith.

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[1] Bukhari # 5075, Muslim # 11-1404, Musnad Ahmad 1-432.
[2] Tirmidhi # 112.

SONGS PERMITTED DURING MARRIAGE

(٣١٥٩) وَعَنْ عَامِرِ بْنِ سَعْدٍ قَالَ دَخَلْتُ عَلٰى قَرَظَةَ بْنِ كَعْبٍ وَاَبِيْ مَسْعُوْدِ الْاَنْصَارِيِّ فِيْ عُرُسٍ وَاِذَا جَوَارٍ يُغَنِّيْنَ فَقُلْتُ اَيْ صَاحِبَيْ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَاَهْلَ بَدْرٍ يُفْعَلُ هٰذَا عِنْدَكُمْ فَقَالَا اِجْلِسْ اِنْ شِئْتَ فَاسْمَعْ مَعَنَا وَاِنْ شِئْتَ فَاذْهَبْ فَاِنَّهٗ قَدْ رُخِّصَ لَنَا فِي اللَّهْوِ عِنْدَ الْعُرُسِ۔ (رواه النسائی)

3159. Sayyiduna Aamir ibn Sa'd رحمه الله said that he went to a wedding where he found Sayyiduna Qarazah ib Ka'b رضی الله عنه and Abu Mas'ud Ansar رضی الله عنه. There girls were singing, so he asked them, "Is this done while both of you are here companions of Allah's Messenger صلی الله علیه وسلم and participants of Badr?" They said, "Sit down if you like to listen and join us. Or depart if you like. Indeed, we are permitted (to listen to) songs at a wedding."[1]

COMMENTARY: This sows that even in those days prohibition of songs was known. Some people were aware of the exception of days of festivity but some did nót know. Aamir ibn Sa'd رحمه الله was one of those who did not know that songs were allowed at weddings.

CHAPTER - V

THE FORBIDDEN WOMAN[2] بَابُ الْمُحَرَّمَاتِ

WOMAN WHO ARE FORBIDDEN TO MEN

`One of the conditions of marriage to be correct is that the woman should not be one of the mahram (forbidden women). This chapter is about women who are the mahram or those whom a man may never marry. Details about it may be seen in the books of fiqh (Islamic jurisprudence) of the Hanafis, the famous and reliable fatawa Alamgiri, for instance. It covers the subject very well and we shall reproduce from it here. (first of all).

ABOUT THE MAHRAMAT[3]

The woman who are among the mahram are of nine kinds. Or, we may say that a marriage may be forbidden for nine reasons. They are outlines here.

1. Relatives by lineage. They are: mother, daughter, sister, father's sister, mother's sister, nieces (brother's and sister's daughters). It is forbidden for ever to marry any of them, have sexual intercourse or do anything that leads to it or is connected with it.

Mother includes besides one's own mother, one's grandmother and so on up the tree.

Daughter includes one's own real daughters, grand daughters (from son as well as from daughter) so on down the pedigree line.

Sister includes real and step-sister both from father's side and from mother's side.

Nieces also embrace the three kinds, meaning children of real brothers and sisters, children of step brothers and sisters and children of half brothers and half sisters from mother's side even lower down in descent. All of them are muhramat (forbidden)

The paternal aunts are also of three kinds, meaning real paternal aunt, step aunt from father's father's side and Akhyafi (only from father's mother's side). So also paternal aunts,

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[1] Nasai'i # 3383.

[2] or mahram, for bidden to marry. The word prohibition is used to mean this too.

[3] plural of mahram.

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of father, of grandfather and of grandmother fall in the same category as one's own. They are all mahram. However, the issue of paternal aunt of one's own paternal aunt is complex. If a man's paternal aunt is the real sister of his father or step sister (from father's side) then her paternal aunt is forbidden to this man. But if his paternal aunt is his father step sister only from mother's side then her paternal aunt will not be forbidden to him.

The same applies to maternal aunt. All kinds of maternal aunts are forbidden: real and step (from father's or mother's) side. Father's and mother's maternal aunts are forbidden. Again, the issue of maternal aunt of one's maternal aunt is complex. Now, if Zayd's maternal aunt is the real sister or sister only from her mother's side then her maternal aunt is forbidden to zayd. If Zayd's maternal aunt is his mother's sister only from her father's side then she is not forbidden to zayd and they can marry.

2. Relatives from in-laws. There are four kinds of women who are forbidden inmarriage because of relationship of the in-laws. They are: the mother-in-law (who is the mother of one's wife) , the paternal and maternal grandmothers of one's wife and so their mothers, meaning grandmothers of one's wife's parents, wife's daughter and her daughter and so down the line, like daughters of wife's granddaughter, and so on. They are all forbidden if the man has had sexual intercourse with his wife and whether that daughter of his wife is maintained by him or not.

The Hanafi scholars in respect of prohibition[1] of a man's wife's daughters (from her previous marriage) to him, do not regard his solitude with his wife at par with their sexual intercourse. Her daughters will be forbidden to her husband only if it is proved that he has had a sexual intercourse with her after their marriage. If they have been alone together (allowing them full opportunity to copulate) but did have sexual intercourse them her daughters from previous marriage are not forbidden to him.

Daughter-in-law (meaning son's wife) ,wives of grandsons (whether son's sons or daughter's son) and so on down the line (wives of great grandson, etc) are forbidden to a man irrespective of whether their husbands have had sexual intercourse with them or not.

The wife of an adopted son is not forbidden. If a man's adopted son dies or divorces his wife, then he may marry her.

A man's step-mother, his step grand-mothers (paternal or maternal) and so on up the line are forbidden to him for ever. Neither may he marry them nor have sexual intercourse with them.

The prohibition to marry any of the in laws is established only when marriage with the concerned is confirmed. The prohibition is not established if the marriage is invalid. If a man commits adultery with a woman then her mother, her grandmothers (maternal and paternal) , her daughter and her grandmothers will all be forbidden to him. In the same way, his father, grandfather (both paternal and maternal), sons, grandsons will all be forbidden to the woman with whom he committed adultery.

If a man commits adultery with a woman as a result of which the wall between her vagina and rectum gives way causing them to come together, then her mother will not be forbidden to this man because he may not have penetrated her vagina (but her rectum). However, if she conceives a child and it is confirmed that this man is responsible for it, then her mother will be forbidden to him.

Just as the prohibition results from sexual intercourse so too it results from touching the woman (with desire), kissing her, looking at her private parts with lustful desires.

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[1] In the sense forbidden to marry - mahram.

According to the Hanafis, these things are alike when they are observed through marriage, ownership (meaning slave master relationship) or indecency (meaning adultery). Moreover, the Hanafi scholars say that in this case doubt or certainty are alike. And, man and woman embracing one another with lust is like kissing as for as the ruling is concerned. It is the same of the lock themselves together, body with body. Again, if they bite one another with teeth in a lustful impulse, the same ruling applies. In all these cases, prohibition is confirmed.

If any one looks at a man's sexual organ, or kisses it then the same prohibitions will apply to him as for sexual intercourse, but not on looking at any of the other of his organs, or touching them, unless the looking or touching is with a lustful desire in which case same prohibitions will be effective.

As for as a woman's vagina in concerned looking at its outward position does not attract the same rulings, but looking at its inside brings down the punishment of prohibitions. The ulama (Scholars) write that if a man looks at the vagina of a woman who is standing then the prohibitions of sexual intercourse do not apply to him because in that position the inside of the woman's vagina is not seen. That is only seen when she is reclining on her back. The prohibitions also apply when there is a fine clothing or any transparent thing covering it, and, it spite of that, the inside is visible to the man.

If a man who looking in a mirror and he saw reflected therein a woman's vagina and became excited and looks at it, then neither will the mother nor the daughter of this woman be forbidden to the woman because he has seen only a reflection and not the vagina a directly.

If a woman is sitting at the banks of a stream or river, or on a bridge and a man looks at her reflection in the water and then again looks at it in the water with a sensual desire and keeps looking at it, then too prohibitions will not apply. But, if she is in the water and he looks at her vagina accidentally and then looks at it with a sensual desire then the prohibition will apply (because this is direct looking).

- If anyone touches a woman with sensual desires, the prohibitions apply and it does not matter if he touches her deliberately or forgetfully or under compulsion (or own mistake) or in sleep.
- If a man intended to awake his wife to have sexual intercourse with her but by mistake he touched his daughter and on the assumption that she was his wife, he pinched her with a sensual desire. And she, too, being young was ripe for sexual desire, so the girl's mother, meaning his own wife, will become forbidden to him.
- If a man touches with lust a woman's hair on her head then prohibition applies to him. If he touches her hair that are hanging then nothing is forbidden to him. However, Natfa رحمه الله has declared a general prohibition for touching a woman's hair without going into the details (of where the heir lie).
- The same prohibition applies if a man touches a woman's nails with a sexual desire.

In this connexion, it must be understood that the prohibition on touching a woman with sensual desire becomes effective it there is no clothing between them. If the clothing is such that the man touching her does not feel the heat of her body then no prohibition applies even if the penis becomes erect. If a man touches a woman's seeks at her soles (underside), then prohibition becomes effective, But, if a leather covering over the socks prevents any kind of sensation then no prohibition applies.

- If a man kisses a woman while there is clothing between them, prohibition will become effective provided the man senses the coolness of the woman's teeth or lips.

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Prohibition becomes effective on touching. It is not necessary that the man should continue to touch for long. The ulama (Scholars) say that if a man driven by lust stretches his hand towards his wife but instead of his wife, his hand touches the nose of his daughter and with it his excitement multiplies, the girl's mother, meaning his own wife, will become forbidden for the man even if he had removed his hand instantly.

For a prohibition to be effective, the woman who is touched or kissed must be such for whom one may have a lustful desire. The jurists rule that the minimum age for whom a man can have a sexual urge is nine years. He does not feel sexual excitement for a younger girl. If a man has sexual intercourse with a minor girl who is not likely to cause sexual excitement in a man then prohibition will not arise. On the other hand, if a woman is so very old that she is beyond exciting a man, then too she becomes the means to prohibition because she had fallen under the purview of the ruling. She cannot come out of it because of old age. As for the minor, she had never attracted the prohibition.

Just as prohibition (or forbidden degrees) can take effect only if a woman is such that a man may have a sensual desire for her, so too for prohibition to be effective, man must be capable of attracting a sensual desire from a woman. Hence, if a four year old boy had sexual intercourse with his father's wife (his step mother), then prohibition will not be effective.

However, if the boy is one whose equals in age can have sexual intercourse then the same ruling will apply for him as applies to adults. The scholars describe this kind as one who is capable of having sexual intercourse, whose inclination to woman is apparent, and woman feel shy before him.

In the foregoing things about touching and looking, it is presupposed that the sexual urge (or the excitement) is there. A man will be subject to the forbidden degrees (of marriage, the topic of this subject) if he touches a woman, kisses her or looks at the inside of her vagina with a sensual desire. If when he does these things (touching and looking), he has no lustful inclination but it develops afterwards, then the forbidden degree do not apply to him. The sign of a lustful inclination in man is the erection of his penis, or, if it already was erect, increase in its rise and thickness. This ruling is observed by jurists. Hence, if a man goes to his daughter by mistake instead of going to his wife and his penis was already erect (before he goes to her) and the erection did not increase, then the girl's mother, meaning his own wife, will not be forbidden to him. This is the sign of a lustful inclination for a man who is young and potent (and able to have sex). If he is old then the sign of sensual desire in him is an urge and excitement in his heart if there was no excitement -beforehand. If the excitement in his heart was there, then an increase in the excitement is the sign for him.

The sign of a lustful desire in woman and the man who is castrated is the growth of a desire in his heart and a sexual pleasure on touching. etc., if these things were not already found in them. If these things had been there beforehand, then an increase in them.

It must be remember that the forbidden degrees apply when even one of the two - man or woman - possesses the lustful desire.

The forbidden degrees on touching kissing, etc. apply necessarily when there is no ejaculation. This is a condition. If ejaculation takes place then the forbidden degrees do not apply, because it is clear when this happens that touching, etc. did not lead to intercourse.

- If a man sees a woman's behind or commits an unnatural act at her behind then the forbidden degrees do not apply.
- Similarly, if a man perpetrates the acts of intercourse with another man then the forbidden degrees do not apply.

• If a man confesses to his wife that they are forbidden to one another (because of an illicit act on his part) , then he is to be believed. The two will be separated.

• If a man refers to a wrong that he had committed before they had married, like confessing to his wife that he had committed adultery with her mother, then his word is deemed reliable and the two will no longer be husband and wife. However, it will be *wajib (obligatory)* to give to the woman the dower in full (as had been specified at the time of their marriage). The contract will not be *wajib (obligatory)*. It is not necessary that the man repeat his confession. It is enough that he confesses just once. Hence, if he retracts from his confession and denies after the first confession, the judge will not regard their marriage as valid. Of course, if the man had truly made a false confession then the woman will remain his wife in Allah's sight though the judge will separate them.

• If a man says of a woman that she is his foster mother (meaning that he had suckled him) but later when he decides to marry her, he says, 'I had lied, She is not my foster mother," then in this case a lenient view is taken and it is allowed to him to marry that woman.

• If a man kisses a woman and says that he had not done it with a sensual desire, or he touches her or looks at her vagina and denies that he was driven by a sexual urge, then in the case of kissing, the forbidding degree will be applied to him till it is known for certain that he had not been prompted by a sensual derive. In the other two cases, the command forbidding him marriage will be applied only on finding out if he had done that because of a sensual urge.

The reason is that a kiss generally follows a sensual desire touching and looking do not necessarily ensue from a sensual desire. However, this is when the man had touched the woman at any part of her body other than her vagina. If he had touched her vagina and claims that he did not do it out of a sensual urge then he will not be believed. Also, when he touches her breast, he cannot say that he was not prompted by a sexual urge.

• Similarly, if he mounted a beast with her and claims that he did not mount because of a sexual urge then he would not be believed. But, if he climbed a woman's back to go over a river and says that he was not driven by a sexual urge then he would be believed.

• If a man boasts before people that he had touched a certain woman driven by sexual urge then the testimony of the people against him will be accepted and the forbidden degree will be applied to him.

• Similarly, if the witnesses say that certain man had touched a woman with carnal desire then their testimony will be accepted because this kind of an urge is easily detected. The same applies about any one testifying that the man had kissed a woman.

Qadi Ali Sa'di رحمه الله said that if an intoxicated man nabs his daughter, clings to her and kisses her, and decides to have sexual intercourse with her but she reminds him that she is his daughter so he lets her go, then too her mother (this man's wife) will be forbidden to him.

If a man is asked, "What did you to your mother-in-law?" and he says that he had a sexual intercourse with her then the prohibition of affinity will be effective on him. (It is hurmat masahirat or the forbidden degree) This, is spite of the fact that the person asking and this man were both jesting with one another. But, he will not be believed in law, that he was joking.

If a man says of his female slave that he has had a sexual intercourse with her then she is forbidden to his son. If the man says about someone else's female slave that he has had a sexual relationship with her then his son is allowed not to trust him and to buy the female slave and have sexual intercourse with her.

• If a son inherits a female slave from his father then he may have sexual intercourse with

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her unless he knows for certain that his father had copulated with her.

- A man married a woman on her assurance that she is a virgin. However, after marriage when he decide to have sexual intercourse with her, he learnt that she was not a virgin. On being asked, she named his father as the one who had committed adultery with her. Now, it is upto him to believe her in which case their marriage will be broken and she will have no right to the dower. But, if he decides not to believe her then their marriage will remain intact.
- If a woman alleges that her husband's son had touched her with evil design, so her marriage to her husband had ended, then she will not be believed but her husband's son's word will be trusted.
- A man kisses his father's wife with sensual desire forcefully or a father kisses his son's wife compulsorily with sensual desire but the husband asserts that no sensual desire was involved. So, the husband's word will prevail and she will remain her wife. But, supposing the husband agrees that sensual desire was the driving force then the couple will have to separate and it will be *wajib (obligatory)* on the husband to pay the dower. However, the husband will be in his rights to receive the amount from the man because of whom this situation arose, provided he had done this thing to create mischief. If he had no intention to create mischief then the husband had no right to receive anything at all.

Suppose that in the foregoing case, the father or the son had not kissed but copulated with the other's wife. In this case, the husband cannot claim from the culprit the amount of dower he paid to his wife. The reason is that the hadd or prescribed punishment is imposed on an adulterer in which case no pecuniary punishment may also be imposed.

A man marries another man's female slave. Before he can come to her, she kissed her husband's son in sexual excitement. So he made this known but her master denied it. In this case, the marriage breaks because the husband acknowledges her crime. He will have to pay her only half the dower payable to her because her master had believed him. The confession of the female slave will not be relied upon.

- If a woman quarrels (at home) and (in the heat) pulls the penis of her grandfather, and says that she did not do it in sexual excitement, then her word will be accepted.
- A marriage does not end completely because of prohibition of affinity or prohibition of fosterage. Rather it becomes corrupted. (As a result, it is forbidden to have sexual intercourse. So, the husband must divorce his wife. If he does not, then the judge must cause a separation). If the husband has sexual intercourse with his wife, the hadd or prescribed punishment will not be imposed, whether he did it in uncertainly or otherwise.
- If a man has illicit relationship with a woman or does any obnoxious deed that calls for prohibition of affinity and then makes a repentance, then he will remain the mahram of the woman's daughter because it is perpetually for bidden to him to marry the girl. This is evidence that prohibition is effective after adultery and from kissing, touching etc.
- If a man, Zayd, married a woman, Khalidah, and Zayd's son (but not Khalidah's) marries the daughter of Khalidah (from her previous marriage) or the mother of Khalidah, then there is nothing wrong in it.
- If a man has sexual intercourse with his wife (who was divorced by her first husband talaqah mughallazah) with a piece of cloth round his penis then it will depend on whether the cloth permits feeling of sensation. If so, the woman will become lawful for her first husband (to remarry). If heat did not pass through the piece of cloth then she will not be lawful for her first husband.

3. **FOSTER RELATIONSHIP:** Woman who are forbidden (in marriage) because of fosterage: the some relatives as are forbidden because of lineage and by marriage are also forbidden because of fosterage.

If a woman has suckled a child at its age of suckling then they are related as mother and child. Her husband is its foster father. Hence, all their relatives are forbidden to the child, the same as the forbidden to children of real parents.

The prohibition by reasons of fosterage occurs on simply suckling at the child's age of suckling whether it is little milk that is consumed or more. The simple fact of suckling and milk having been drunk into the belly and having reached there with certainty is ample evidence of fosterage.

The age of suckling is:

(i) According to Imam Abu Hanifah رحمه الله thirty month, and

(ii) According to his two disciples Imam Abu Yusuf رحمه الله and Imam Muhammad رحمه الله two years.

If a child first stops suckling during the age of suckling but suckles later within the age of suckling then this is counted as fosterage. But, suckling after the period of suckling is over does not occasion the (commands of) prohibition by suckling.

The ulama (Scholars) agree that the wages for suckling are valid for a period of two years. Thus if a man divorces his wife and she demands from him wages for more than two years for suckling his child t hen her demand will not be accepted. The child's father (her ex-husband) cannot be compelled to pay to his divorced wife wags for suckling his child beyond two years. But, she can demand and compel him to pay wages for suckling the child for two years.

Just as prohibition by fosterage applies to the relatives of the foster mother, so too it applies to the relatives of the foster father. A foster father is the husband of the foster mother. He is the one who enables her to suckle after she conceives his child.

Radi (رضيع) is the child suckled. He or she is forbidden to marry its foster parents, their predecessors (parents and so on up the line) and their progeny (children and so down the line) whether related or foster. The prohibition will extend to –

- Children of his[1] foster mother before she suckled him, and
- children born to her after she suckled him whether sired by his foster father or by any other man she marries after him,
- children she suckles apart from him belonging to other parents,
- children born to his foster father from another wife.

All of them will be his foster – sisters and brothers. Their children will be his nephews and nieces. The foster father's brother will be his paternal uncle and his sister his paternal aunt. The brother and sister of his foster mother will be his maternal uncle and maternal aunt.

The father and mother of his foster father will be his grandfather and grandmother respectively. And, the mother of his foster mother will his (maternal) grandmother.

There are prohibitions by reason of parents (or lineage) in fosterage. So too there are prohibitions by reason of marriage (among in laws) in fosterage. Accordingly.

- the wife of his foster father is forbidden to the radi' (or, the foster child who had been suckled),

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[1] Throughout 'his or her' may be understood.

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- the wife of the radi (meaning the foster child had been suckled) is forbidden to the foster father.
- Other relatives may be understood in the same manner, except two possibilities:

(i) In real relationship (by true parents) , marriage is forbidden with the sister of real son. But, in fosterage, marriage is permitted to the sister of the foster son.

WHY: The reason is that the sister of his real son will be his own daughter or his own step daughter. So the prohibition to marry her will be effective. However, both these things are not found in fosterage. So, the sister of a foster son is not forbidden. There fore, if any of these two things is not found in real or blood relationship too, then marriage will be proper (in that case too). For example, a female slave who belongs to two men gives birth to a child. Both of them claim parentage of the child till its parentage is ascribed to both man. Now, Each of them also has a daughter from their wives, so, it is allowed to either of them to marry the daughter of the other partner because neither of the new things is found here (she is neither his real daughter nor step daughter) , though whichever of the two marries the other's daughter is as though he marries the sister of his real son.

(ii) NO one is permitted to marry the mother of one's real brother, but it is allowed in fosterage.

WHY: In the case of blood relationship, they shall be either akhyafi brothers having a common mother or have a common father in which case the brother's mother will be his father's wife. In fosterage, however, this thing is missing, so it is allowed to marry the mother of the brother.

- The sister of one's foster brother is allowed to one in marriage. This is also permitted to blood relatives, for example:

Zayd has a step brother Bakr who has a akhyafi sister (meaning, they have a common mother but different fathers). It is allowed to zayd to marry his sister of Bakr who is Zayd's step brother.

- The mother of a foster brother is not among the forbidden degrees.
- The mothers of a foster paternal or maternal uncle, paternal or maternal aunt are also not among the forbidden women.
- It is allowed too to marry the mother of one's foster granddaughter (from son's side).
- It is allowed also to marry the paternal or maternal grandmother of one's foster son.
- Marriage is allowed too to the foster son's: paternal aunts, his sister's mother, his niece (brother daughter) , his paternal aunt's daughter.
- A woman is allowed to marry the father of her foster sister, the brother of her foster son the father of her foster grand son (from son's) and the grand father and maternal uncle of her foster son.

However, where blood relations are concerned, all of these relatives are among the forbidden degrees. It is not allowed to marry them.

- A man divorces his wife who has milk in her breasts. She marries another man after her period of waiting is over. He has sexual intercourse with her. The ulama (Scholars) say unanimously about it that when a child is born to her sired by t his second husband, the milk in her breasts will be attributed to him and it will have nothing to do with her first husband anymore. But, if she does not conceive a child from her second marriage then the milk in her breasts will be said to be there because of the sexual intercourse by her first husband, previously. In case she has conceived from the second husband, then, according

to Imam Abu Hanifah رحمه الله , till the child of the second husband is born, the milk in her breasts will be said to be because of the first husband's sexual intercourse.

- A couple do not have any children. After some time (suddenly) the woman had milk in her breasts (without conceiving a child). She suckled a child of someone else. The milk belong to her. Her husband has noting to do with it. In this case, there will occur no prohibition by reason of suckling between the radi (the child who is suckled) and any children this man may have from his other wives.
- A man had illicit relationship with a woman because of which she bore a child. Then she suckled someone's daughter. As a result, this adulterer and his father, grandfather and so on and his sons are not allowed to marry the girl who was suckled by the adulterers. The paternal and maternal uncles of the adulterer may marry her just as they may marry the girl born to the adulteress.
- A man had sexual intercourse with a woman by mistake (falling in doubt). She conceived a child. Then, she suckled someone's child. So, this child will be a foster child of the man who had copulated with the woman.

When a child's parentage is attributed to the man who had the intercourse, it is also a relation of fosterage that is established between them. When the child's parentage is not established with this man, a relationship of fosterage is established only with the foster mother.

- A man marries a woman and they have a child. She suckled it for some time but the milk dried up in her breasts only to grow again. She suckled another child (that milk). It is allowed to this child to marry the children of that man from his other wives.
- A virgin grows milk in her breast s and she suckles an infant girl. She becomes her foster mother. All commands of fosterage will apply to both of them. If a man marries this virgin but divorces her before having a sexual intercourse with her, then he will be permitted to marry the girl who was suckled (by the virgin). (The same command applies to wife's daughter.) But, if he divorces her after having a sexual intercourse, then it is disallowed to him to marry the girl.
- If a girl who is less than nine years old grows milk in her breasts and she suckles it to a boy, then this does not establish a prohibition by reason of fosterage between them, because this is occasioned only when milk grows in the breasts, at the age of nine or more.
- Similarly, if the breasts of a virgin secrete (or discharge) yellowish liquid, prohibition by reason of fosterage is not occasioned by suckling it.
- A woman draws a child's mouth to her nipples but it cannot be ascertained whether the child suckled any milk so, the prohibition by reason of fosterage will not be applied because of the doubtful circumstances. However, it is better to be on the safe side and apply the prohibition by reason of fosterage.
- A woman's breast discharge a thin, yellow coloured secretion. If it is swallowed by an infant while suckling then the prohibition by reason of fosterage will apply. It will be presumed that the infant suckled milk that had changed colour.
- If a man's breasts locate and he suckles a child, then t his does not occasion prohibition by reason of fosterage.
- For prohibition by fosterage to be established the command is identical for a living woman and a dead woman.
- If two children suckle milk of the same quad raped, that does not occasion prohibition by reason of fosterage.
- The command of fosterage is applied equally in Darul Islam (the Islamic territories) and

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Darul Harb (the territory of the enemies). Thus if a (disbelieving) woman suckles a (disbeliever's) child in the enemy territory and later she, her relatives and the child embrace Islam - or they had been adherents of Islam in the enemy territory - and emigrate to Dar ul Islam, then all command of fosterage will apply to them.

- Just as the prohibition by reason of fosterage takes effect on suckling milk from a woman's breasts, so too it occurs on putting milk in a child's month or squeezing it in its nostrils. But, it does not occur on immersing milk in the child's ears, in its penis rectum or through a wound in its brain or belly even if it reaches inside. Imam Muhammad رحمه الله, however said that the prohibition occurs if injected through an enema.
- If this milk is mixed in diet and cooked to prepare food, the characteristics of milk being altered thereby, then the prohibition is not effective on eating this food irrespective of whether milk is the dominant component or secondary.
- If the mixture containing milk is not cooked on fire, even then prohibition does not take effect, provided milk is not the dominant constituent of it. But, even if it is dominant, Imam Abu Hanifah رحمه الله holds that it does not occasion prohibition because once a flowing substance combines with a solidified ingredient, it loses the property of something drinkable and turns into a solid. So, the ulama (Scholars) say that if the other ingredient is not more than milk, and milk retains its flowing quality, then prohibition will be effective on drinking it.
- If a woman's milk gets mixed with a goat's (or any animals) milk and forms a major portion of the mixture, then prohibition becomes effective on drinking it.
- If a woman mixes bread in her milk and bread absorbs it, or she mixes her milk in parched barley, and feeds the mixture to a child, then if it tastes of milk then prohibition is occasioned. However, this depends on feeding the child morsel by morsel. If she feeds the mixture after pulverizing it draught by draught then (even if the taste does not linger) prohibition takes effect.
- If a woman's milk is mixed with water, medicine or an animal's milk, then the ruling depends on the major portion of the contents. If milk forms a dominant portion then prohibition is occasioned on drinking it. If any other content forms a major part then prohibition will not be effective.
- If a woman's milk gets into something thin and flu id or solid, then, again, the ruling depends on whether it forms a major content.

GHALIB: The word for dominant and major content is ghalib. It covers colour, odour and taste, and it means that all these three or one of them sh ould be sensed or distinguished.

- If milk as well as another constituent of the mixture are equally felt then prohibition takes effect because milk is not suppressed.
- If milk of two women mixes, Imam Abu Hanifah رحمه الله and Imam Abu Yusuf رحمه الله say that prohibition by reason of fosterage will apply to the woman whose milk is more. However, Imam Muhammad رحمه الله says that it will apply to both woman. One tradition ascribes this opinion to Imam Abu Hanifah رحمه الله too. Indeed, this opinion is more correct and nearer safe side.
- If milk of both the women is equal then the agreed opinion (of these three imams) is that prohibition by reason of fosterage will apply to both of them.
- If a woman uses her milk to prepare dilute curd, yoghurt, cheese, etc. and feeds the preparation to a child then it does not occasion a prohibition because this does not

imply suckling.

• A woman of a village suckled an infant girl. After some time, no one remembered who the woman was. Then, later a man of the same village married the girl. The marriage is lawful.

• Woman must not suckle any child unnecessarily. If they do, then they must remember it or write it down.

(It is common with woman that they put a child of another woman to their breast and suckle it. They do not remember it later and are not serious about it. In this way, the forbidden degrees of fosterage are neglected and violated. So it is necessary that they exercise caution in this regard.)

It does not matter whether milk is suckled before (child's marriage) or afterwards, the prohibition by reason of fosterage is occasioned. It makes no difference whatsoever when the child was suckled. Suppose a man marries an infant girl and after that his mother (real or foster) suckles this girl. Or his wife - or, his sister or daughter suckles her. This child is now forbidden to this man and it will be *wajib (obligatory)* for him to pay her half her dower which he shall demand from the woman who had suckled the child if she had done it to create mischief and annul the marriage. If she had intended no mischief then he will not demand any thing from her (for, she may have been sympathetic).

• A man marries two infant girls. Later a stranger woman suckles both of them together or one after the other, then both the girls will be forbidden to the man, their husband (because of fosterage). Thereafter, he may, if he wishes, marry one of them.

• If in the previous case, he marries (not (two) but) three infant girls and the woman suckles all three together, all three will be forbidden to him. Later, he may marry one of them, if he chooses.

• If she suckles the three girls one after the other, then the first two will be forbidden to him and the third will remain his wife.

• If she suckles two girls together and then, after that, the third, the same command will apply as the foregoing.

• If she suckles one of them first and afterwards the other two together, then all the three are forbidden to him. It is *wajib (obligatory)* on him to pay half the dower to each of them. He will demand this from the woman who had suckled the girls provided she had done that to create mischief.

• If there were four girls whom the man married and the woman suckles all of them one after the other or all together, all four are forbidden to him.

• If she suckles one and then the three together, the same command applies.

• If she suckles three at one time first and afterwards the fourth, then the fourth will not be forbidden to him.

• If a man marries a grown up woman and an infant girl, and the woman suckles the infant, both of them will be forbidden to the husband. If he has not had a sexual intercourse with the woman then she will get no dower. It will be *wajib (obligatory)*, however, to pay half her dower to the infant. He will get it from the elder woman provided she had done it to create trouble otherwise nothing will be demanded from her even if she was aware that the infant was her husband's wife.

• The proof of suckling is in one of two things:

(i) A woman admits that she had suckled so-and so.

(ii) Witness testify to the fact. This may be by two men or one man and two women.

The separation of the couple (because of prohibition by reason of fosterage) is enforced by

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the command of a judge. When two men who are just or one man and two woman testify that (a certain) husband and wife are related through fosterage, the judge may separate them on the basis of their testimony. If no sexual intercourse took place between them, then the woman will get no dower at all. If they have had a sexual intercourse then it will be *wajib (obligatory)* on the husband to pay her the lesser amount of the two: mahr with or mahr-e-muayyin (proper dower or specific dower). No maintenance will be *wajib (obligatory)* on him.

- If two just men, or one man and two woman, testify before a married woman, after the marriage is contracted, that there existed between her and her husband a relationship through fosterage, then she is not allowed to live with him because this testimony is correct and the judge would accept it if it were presented to him. If only one man gives this testimony of the woman and she see seems inclined to believe him then she must keep away from her husband. It is better but not *wajib (obligatory)*.
- A man marries a woman. But another woman comes afterwards and tells them, "I had suckled both of you." They have four options:

(i) If they believe the woman then their marriage is corrupted. The wife would get no dower at all if they did not have a sexual intercourse.

(ii) If they do not trust the women, then the marriage will remain intact. However, if the woman is just then, to be on the safe side, the husband must separate from his wife. If he divorces her then he must give her half of her dower. It is good for the woman that she takes nothing, provided they have not had sexual intercourse. If they did have a sexual intercourse already, then it is better for the man to pay her the full dower and maintenance allowance (for the duration of her iddah or waiting period). It will be better on the part of the woman to ask for the lesser of the two, mahr mithl or mahr mu'in and to retrain from taking the maintenance allowance. However, if the husband does not divorce his wife, then it is allowed to the woman to stay on with him.

- If the testimony is unreliable, say by two women, or one man and one woman, or two unjust men, or one unjust man and two woman, about fosterage, then the same command applies that it is better for the husband to divorce his wife.

(iii) If the husband trust that woman but his wife does not, then the marriage will be void. He will have to pay the dower.

(iv) If the wife believe that woman but her husband does not, then the marriage will remain intact but it is necessary for the wife to adjure her husband (that he really does not trust that woman). If he refuses to confirm on oath then they will be separated .

- A man marries a woman. Then he says about her that she is his foster sister or some other foster relative. Then he retracts, saying that he was confuses and he was confused and what he had said was wrong. So, a lenient view will be taken and they will not be separated, provided he sticks to his retraction (that whatever he had said was wrong). But, if he sticks to his first statement and asserts that he had spoken the truth, then both of them will be separated and if he denies after that then it will be of no use.
- If the woman confirms her husband's statement, then she will get no dower (if they did not have a sexual intercourse).
- If she denies his statement, then he will have to pay half her dower as *wajib (obligatory)* (if he had not had a sexual intercourse with her). If he did have a sexual intercourse with her and she belies his statement then it is *wajib (obligatory)* on him to pay her full dower and maintenance allowance.

• If a man decides to marry a woman but says before they marry that they were foster siblings or she was his foster mother, but retracts his statement afterwards on the plea that he was mistaken, then he is allowed to marry her.
• If he does not retract his statement but sticks to it then he is not allowed to marry her.
• If he marries her in spite of that, then they should be separated.
• If he denies having made a statement (to the effect that she was his foster sister or mother) but two witnesses bear out that he had made that statement, then they will be separated.
• If a woman say about a man that he is her foster father or foster brother, etc. but the man denies it and the woman also goes back on her previous confession then he is allowed to marry this woman.
• If in the foregoing case, the man marries her before she retracts her statement then their marriage will be correct.
• If a man say about a woman (who is his wife) that she is her blood or real relative, like real mother or real sister or real daughter and no one knows this woman's lineage and the man could likely be as he says (and she might be his mother etc.) this man will be asked again about it and if he says that He was mistaken or was confused then, being soft on him, the marriage will not be disturbed. If, on being asked again, he says that his first statement was correct, then both of t hem will be separated.
• If the man does not seem to be as he says (and their ages are so far apart that what he says cannot be possible) and the woman's age shows
That she cannot be his mother, or real sister, the relationship will not be proved and the two will not be separated.
• if t he man says that she is his real daughter and then does not deny it but persists on what he says though the people know the parentage of t he girl (that she is someone else's daughter) , so they will not be separated. The same applies when he claims that she is his mother but people know it to be otherwise.

4. **WOMAN TOGETHER:** They are woman who when they are with other woman qualify as muharamat (forbidden degrees).
There are of two kinds:

(i) Stranger (or unrelated) woman.
(ii) Dhawat ul Ahram (cognate relations).

(i) Having stranger woman together means to take more wives than are permitted by ؛ (divine law).
Shariah had permitted a free man to take four wives at a time. The slave had permission to marry two woman at a time.
Hence no freeman, has permission to have at one time more than four women as his wives. And, no slave has permission to have more than two wives at one time.
It is allowed to a freeman to have as many female slaves (without marrying them) as he likes at any one time. But, a slave is not allowed to have female slaves at all, even if his master permits him to have them.
A freeman is allowed to marry, at a time, four women. These four may be freewomen on female slaves or of both kids together.
• If a man marries five women, one after the other, the marriage of the first four is lawful while the fifth marriage is illegal. But, if he marries all five together with one contract then all the five are illegal.

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• The same ruling applies to the three marriages of a slave. (If he marries three women, one after another, the first two will be correct but not the third and if he marries all three with one contract then all three will be void.)

• If an enemy disbeliever had married five wives and all of them (the man and his wives) embrace Islam then it depends on how he had married them. If the five marriages followed one after the other then the first four are valid while the fifth is repudiated. But, if he had married all five by one contract together, then all of t hem will be separated from him, all five marriages being invalid.

• If a man marries one woman and later he marries four others together then only the first continues to be valid while the four are not proper.

• If a woman marries two men by one contract and one of them ready has four wives, then her marriage will be correct with the other (who does not have four wives).

• If, in the foregoing case, both men already have four wives – or none of them has four wives before hand – then neither or her marriage is correct.

(ii) Having together dhawil arham. It is to have two wives who are cognate and blood relatives of one another. It is forbidden to have two sisters as wives at one time. It is also forbidden to have two sisters as female slaves and cohabit with them. (If one has two sisters among one's slave then one must not have sexual intercourse with both of them. We will see more about it in the lines following.) These two may be real sisters. The command is alike.

CRITERION: The standard to decide this issue is that of the two related women, one may be supposed to be a man and then it must be seen whether their marriage would be correct as husband and wife. Their relationship may be real or foster. If their marriage would not be proper then it is not allowed to have both the women together as one's wives.

In the same way it is forbidden to have a woman and her real or foster aunt together in marriage. (This applies to both, paternal and maternal aunt.)

Other relatives of this kind are also covered by this prohibition. It is disallowed to have them together in marriage at the same time.

• It is allowed, however, to have as one's wife a woman as well as the daughter of her previous husband (from his other wife and not this woman's). The reason is clear from the criterion:

[If this woman were a man, it would have been permitted to 'him' to marry this girl.]

But, the converse is not allowed:

[If that girl were a man, it would be forbidden to marry 'his' father's wife.]

• A man is allowed to have a woman and her female slave together in marriage provided he had married the female slave first.

• If a man marries two sisters with a single contract then (the marriage is void and) both of them will be separated from their husband not consummated the marriage then they will get no dower.

• If he had cohabited with then before being separated then they will each get the lesser of mahr mithl and mahr mu'in (proper dower and specified dower)

• If a man marries two sisters at different times by separate contracts, then the second marriage would be invalid. The husband must separate from her and if he does not, then the judge must have them separated on learning of it. If this separation takes place before they could have sexual intercourse then none of the commands of separation will be enforced (like dower and iddah, etc). If, before they separated, he had sexual intercourse with her, then the lesser of mahr nihl and mahr mu'in would be paid and it would be *wajib (obligatory)* on her to observe the iddah. If a child is born to her then it be attributed to him.

Also, he will have to keep away from his (first) wife till her sister completes her iddah.

- If a man marries two sisters by separate contracts, meaning one after the other, but it cannot be determined which of the two he married first, then he will be commanded to disclose it. If he states (and name the first and second wives) then his statement will be followed (and the first wife will be retained and the second sister's marriage will be declared null and void). If he two cannot say then the judge will separate both of them from their husband. After that both of them will get half and dower provided their dowers are equal and were determined at the time of the contract, and their separation may have taken place without their having had sexual intercourse.

If their dowers are unequal, then each will get one-fourth of t he other's dower.

If their dowers were not determined at the time of the contract (of marriage) then, instead of half dower, each will get a pair of garments.

If their separation occurs after they had experienced a sexual intercourse, then each will get her full dower.

Abu Ja'far Hindwani رحمه الله said that the aforesaid ruling applies when each of them claims that her marriage preceded the other's and none of them has any witnesses. Both will be given half the dower. However, if both of them deny knowledge of whose marriage took place before the other's then a final decision about them would be held in abeyance till they agree on something and make peace. This will be done when they go to a judge and say, "Our dowry is *wajib (obligatory)* on our husband and there is no third claimant with us in our demand. So, we agree between us to receive half of the dower." The judge will then pass the judgment.

If each of them claims to have been married first and presents her witnesses then it is *wajib (obligatory)* on the husband to pay half of the dower between both of them. All the ulama (Scholars) are unanimous about it.

Moreover, these commands about two sisters in marriage together are applicable to all such women marrying whom together is forbidden.

- If this man from whom two sisters married to him were separated wishes to re-marry any one of them, then he may marry her provided he did not have sexual intercourse with her before separating.
- If their separation took place after they had a sexual intercourse then it is not allowed to him to marry her till both sisters have passes their waiting period (or iddah).
- If one is still passing her iddah and the other has passed it, then he can marry the sister who is in her iddah. He can marry the other only after her sister who is in iddah comes out of it.
- If before they separated, the man had a sexual intercourse with only one for the two sisters (his wives) , then he is allowed to marry the one with whom he had a sexual intercourse.
- If he wishes to marry the other with whom he did not have a sexual intercourse, then he is not allowed to marry her till the iddah of her sister with whom he had had a sexual intercourse is over.
- When the iddah of the sister with whom sexual intercourse was had is over then he may marry any of the two sisters he likes.
- In the same way as it is disallowed to marry two sisters at one time, so too it is not allowed to have sexual pleasure with two female slaves who are sisters (touching, embracing, having intercourse, etc,) In other words, if a man possesses two female slaves both sisters then he should not have sexual pleasure from both of them. Rather, he may

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have sexual intercourse and pleasure with any one of them only because it is forbidden to have it from the other after one of them is chosen for it. He can only enjoy the second sister when he has forbidden the first to himself.

• Similarly, if a man buys a female slave and has sexual intercourse with her and of towards he buys her sister, too then he can have sexual intercourse only with the first. He is forbidden have it with the second. He can enjoy her only after he forbids the first to himself.

The method of forbidding a female slave to oneself is:

- to marry her to someone,
- to remove her from one's ownership,
- to set her free,
- to give her to someone as a gift,
- to sell her,
- to make a charity of her,
- to contract a mukatib with her.

It must be known that to set some of her free is like setting all of her free. (For example, if an owner tells his female slave that he has set half of her or on-fourth of her free then it is tantamount to setting her free completely. And sexual intercourse will be forbidden with her.) In the same may removing some of her from one's ownership is tantamount to removing all of her from one's ownership.

If he says simply, "The first is forbidden to me then it does not permit him to have sexual intercourse with the other. It is the same thing as when the second does not become lawful because of the menstruation of lochia and ihram of fasting of the first.

• If a man has had sexual intercourse with each of the two slave sisters in his possession then he can no more have sexual intercourse with either of them unless he forbids one of her to himself in the foregoing method.

• If a man sold one of the two slave sisters in his possession, but she was returned because of a defect in her,

or, he had presented her to someone, but cancelled his gift,

or, he had given her in marriage to someone, but her husband divorced, her and her iddah is over,-

in these cases the man cannot have sexual intercourse with either of them without first forbidding one of them to himself.

• If a man marries a female slave but before having a sexual intercourse with her, he purchased her sister, too, then it is unlawful for him to obtain sexual pleasure with the female slave he has purchased. The reason is that the prerogative of being a wife is established through marriage. So, if he has a sexual intercourse with the newly purchase female slave then it will amount to giving the right of wifehood to two sisters at one time which is forbidden.

• If a man has sexual intercourse with his female slave and then marries her sister then his marriage is correct. Given that, he must not have sexual intercourse with the female slave even if he has not had a sexual intercourse with his new wife. Moreover, he must not have a sexual intercourse with his wife until he forbids his female slave (the sister of his wife) himself according to the foregoing method.

• If he marries the sister of his female slave without having a sexual intercourse with the female slave then he may have a sexual intercourse with his wife (the sister of his female slave).

• If a man has a sexual intercourse with his female slave and then marries her sister but

that marriage was broken for some reason then the female slave will not be forbidden to her on that account. But, if he has a sexual intercourse with his wife (his slave's sister) then it is forbidden to him to have a sexual intercourse with the female slave.

- If two sisters say to a man, "We give ourselves to you in marriage for so much dower" and both speak out these words together and he accepts one of them then this marriage is allowed.
- If this man says to both these sisters, "I marry each one of you against rupees one thousand each," One of them accepts and the other rejects him, then both marriages are void.
- Imam Muhammad رحمه الله said about a man that he appointed a man as his agent to get him married. Later, he appointed another man for the same purpose. Both of them chose a woman each and contracted his marriage without the permission of these women, Later, it transpire that they were foster sisters and both the agents had uttered the words of marriage simultaneously. In this case, both their marriages will be void.
- If in the foregoing case, the marriage was performed with the permission of both the women or of one of them and not the other, then the same command applies.
- A man, zayd marries two sisters though one of them was already married to another man or was divorced by him and was till the in her iddah or waiting period. In this case, Zayd's marriage will be valid only with the other sister (the unmarried one).
- A man divorces his wife or resorts to one of the kind of steps to divorce, or his marriage to her is annulled for some reason, or he falls in doubt and has sexual intercourse with a woman. In short, the woman passes her iddah. During this period of the woman's iddah (waiting period), this man cannot marry her sister.
- In the same way, as it is not allowed to him to marry her sister during her iddah (waiting period), so, too, he is disallowed to marry any of her related woman who falls under the category of dhawal arham and her marriage at the same time as this woman to him is unlawful. For example, during her iddah (waiting period) it is forbidden him to marry her niece.
- In the same way, he is not allowed to have as wife four women beside her during her iddah (waiting period).
- If a man sets free his female slave who was an umm walad (meaning, mother of his child) then till her iddah (waiting period) is over, it is not allowed to him to marry her sister. However, Imam Abu Hanifah رحمه الله holds that during her period of iddah (waiting period), he is permitted to marry four women apart from her moreover, the two disciples, Imam Abu Yus'uf رحمه الله and Imam Muhammad رحمه الله hold that during the iddah (waiting period) he may even marry her sister.
- If a man quotes his divorced wife as saying that her waiting period after divorce (Iddah (waiting period)) is over (so he can marry her sister) , then it will be calculated how many days had passed since her divorce. If he required number of days have not passed then he should not be believed. Similarly, his divorced wife should not be believed. However, if she speaks of some other reason for her iddah (waiting period) to have been over then her words would be believed, like her citing her miscarriage. Beside if the number of days seem to have passed for the iddah (waiting period) to be over and the woman confirms her husband's statement or she is not there then he may be trusted. In that case, he would be permitted to have four other women as wives or to marry hi wife's sister.

In fact, that Hanafi scholars maintain that if the wife belies her husband, in the this situation, even then word of the husband would be believed.

- If a man's wife apostates and goes away to an enemy land, then he is allowed to marry

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her sister without waiting for the iddah (waiting period) of the woman to end. It is like being allowed to marry the sister of one who dies. Later, if that apostate woman returns from enemy territory having reverted to Islam, the marriage of her husband to her sister will not be revoked.

• If, in the foregoing case, she returns before he marries her sister, then according to Imam Abu Hanifah رحمه الله , even this situation he is allowed to marry her sister. But, Imam Abu Yusuf رحمه الله and Imam Muhammad both, contend that he cannot now marry her sister (when this situation arises before he could marry her).

• It is not allowed to have as wives at one time two such women as are paternal aunts or maternal aunts of one another. For example, Zayd married Amr's mother and Amr married Zayd's mother. Both couples had daughters born to them. Each girl was the paternal aunt of the other. Or Zayd married Amr's daughter and Amr married Zayd's daughter, so each daughter was the maternal aunt of the other.

In each of these cases it is unlawful to have both of them as wives at one time.

• Suppose that a man marries two women. One of them was forbidden to him for one of these reasons:

- She was a muhrim of him
- She was already married, or
- She was an idol worshiper. The other was permitted to him in marriage.

Hence, in this case, his marriage to the latter is correct, but void to the former. The specified dower will be paid in full to one whose marriage is correct. This ruling is based on the contention of Imam Abu Hanifah رحمه الله.

• If in the foregoing example the man has a sexual intercourse with the woman to whom his marriage was not lawful then she will get the dower mahr mithl whatever the amount. As for the other whose marriage was correct, she will be paid the entire dower.

5. **BEING OWNED:** This is about the female slaves whom it is forbidden to marry if one already has a free woman as a wife.

It is also forbidden to marry a free woman and a female slave at one time.

The same applies to a mudabbarah and to a umm walad.

(A mudabbarah is a female slave to whom her master says 'you are free after my death,' An umm walad is the female slave who begets her master's child.)

If a man marries a free woman and a slave by a single contract, then the marriage with the free woman will be correct but the marriage with the female slave will be void, provided the free woman is one with whom he is permitted to marry (not of the forbidden degrees). However, if the free woman whom he marries if of a forbidden degree, like an aunt, then his marriage with the female slave will not be void.

• If a man divorces his wife who is a free woman with talaq ba'in (irrevocable divorce) or three pronouncements and while she is in her iddah (waiting period) (waiting period) , he marries a female slave, then according to Imam Abu Hanifah رحمه الله , this marriage is disallowed. But, Imam Abu Yusuf رحمه الله and Imam Muhammad رحمه الله hold that it is permitted.

• If a ma marries a female slave after divorcing his wife with talaq raj'I (revocable divorce) and she is observing her iddah (waiting period), then the unanimous opinion is that his marriage with the slave is not lawful.

• If a man marries a female slave as well as a free woman who was observing her iddah (waiting period) for a broken invalid marriage or a doubtful marriage, then the marriage

with the female slave will be correct.

• A ma divorces his wife, a female slave, with a revocable divorce and during her iddah (waiting period) marries a free woman and also revokes the divorce of the female slave (to take her back as his wife). This is permitted.

• A slave marries a free woman without his master's permission and has sexual intercourse with her. Again, without his master's permission, he marries a female slave. Then his master gives him permission for both marriage. In this situation, the marriage of the free woman is correct but that of the female slave is void.

• A man marries the female slave of another person but did not obtain his permission. He also did not consummate the marriage with her. Then he marries a free woman, too, after which the female slave's owner gave his consent. In this case, too. The marriage with the female slave is void.

• A man marries a female slave without the permission of her master. After that he marries her daughter who is a free woman. Meanwhile, the master of the female slave gave his permission for her marriage. The marriage of her daughter is correct but her own marriage is void.

• A man has an adult daughter and an adult female slave. He says to a man, "I marry both of them to you against 'so-much' dower." The man accepts to marry the female slave, but this marriage is void.

• If he accepted to marry the free woman after that, then this would be valid.

• If a man is able to marry a free woman but, in spite of that, marries a female slave who is a Muslim or a Jew or a Christian (one of the Peoples of the Book) , the marriage will be correct. However, it is mukruh to marry a female slave if one is capable and competent to marry a free woman.

• If a man marries through a single contract four female slaves and five free women, then only the marriage with the female slave would be proper.

5. **WOMAN ON WHOM OTHERS HAVE A RIGHT:** It is forbidden to marry those women on whom other men have a right. These are a woman who is:

- married to someone,
- observing an iddah (waiting period) for someone, of divorce, death of husband, broken marriage which was consummated, or if which there was an uncertainty.

It is not permitted to marry such woman.

• If anyone unknowingly marries another man's wife and also has sexual intercourse with her, then on separating, the iddah (waiting period) will be *wajib (obligatory)* on the woman to observe.

• If that man knew that she was someone else's wife then on separating from him the iddah (waiting period) will not be *wajib (obligatory)* on this woman. Her husband will not be disallowed to have sexual intercourse with her.

• If her husband divorces her then the (other) man responsible for her iddah (waiting period) is permitted to marry her during her iddah (waiting period) provided she is not precluded from marrying by any other reason.

• If a woman is pregnant after having committed adultery then it is allowed to marry her. However, until she is pregnant and does not deliver her child, her husband is not allowed to have sexual intercourse with her and to do everything that leads to it (like kissing, touching, etc).

• If the man who committed adultery with her and is responsible for her pregnancy

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marries her then their marriage is correct. Also, he is allowed to have sexual intercourse with her even before she delivers a child. The woman deserves maintenance allowance.

- A man marries a woman. After some time she had a miscarriage and the limbs were observed duly formed. If the miscarriage had taken place after marriage by four months or more then that, then the marriage is lawful. It is took place in less then four months then the marriage is not lawful, because the limbs of the foetus do not develop in less than four moths. (In the former case, the woman is deemed to have conceived her husband's child, but in the latter case, she would have conceived before their marriage someone else's child. Clearly in that case, this marriage cannot be valid,)
- If a woman is known to have conceived a child of someone legitimately then the unanimous decision is that it is not allowed to marry her.
- Imam Abu Yusuf رحمه الله reported that Imam Abu Hanifah رحمه الله said that if a woman conceives a child of a disbeliever of the enemy and emigrates or is brought to the Islamic territory as a slave then it is allowed to marry her, but it is not allowed to have sexual intercourse with her till she delivers her child. While Imam Tahawi رحمه الله abides by this very opinion, Imam Muhammad رحمه الله has cited another tradition of Imam Abu Hanifah رحمه الله that it is not allowed to marry in this case. Imam Karkhi رحمه الله goes by this opinion (of Abu Hanifah) رحمه الله. This opinion moreover is better and reliable.
- If a man marries his umm walad to another man though she was pregnant by her master, then this marriage will be invalid.
- If she was not pregnant then it is proper.
- A man has sexual intercourse with his female slave. After that, he gives her in marriage to another man. This marriage is legal but it would be *mustahab (desirable)* (better) for the master to get the husband to delay sexual intercourse with the female slave till she gets her menstruation in order to preserve his child if she has conceived. But, since the marriage is allowed, it is also allowed to the husband not to wait for her menses before having sexual intercourse. This is as the opinion of Imam Abu Hanifah رحمه الله and Imam Abu Yusuf رحمه الله. As for Imam Muhammad رحمه الله , he said, "I do not like that her husband should not wait for her menses before having sexual intercourse with her." The jurist Abu Layth رحمه الله preferred the opinion of Imam Muhammad رحمه الله to be on the safe side.
- However, these opinions concern the case when the master has given her in marriage without having her first experience her menses.
- If the female slave did have her menstruation after the master has copulated with her and before she was married then it is the agreed opinion that her husband need not wait anymore before having sex with her.
- A man sees a woman commit adultery and then marries her himself. In this case, Imam Yusuf رحمه الله say that he is allowed to have sexual intercourse with her without waiting for her first menses after marriage. But Imam Muhammad رحمه الله said the same thing as before that the husband should preferably wait for one menstruation of his wife.
- If a man marries the female slave of his son then the Hanafis allow it.
- If a woman is brought from enemy territory to the Islamic state as a captive and her husband was not with her then it is not *wajib (obligatory)* for her to observe an iddah (waiting period) and any man may marry her.
- In the foregoing case if the woman had embraces Islamic then according to Imam Abu Hanifah رحمه الله she too need not observe the iddah (waiting period) and any man may marry

ıer, but Imam Abu Yusuf رحمه الله and Imam Muhammad رحمه الله hold that it is *wajib (obligatory)* ın her to observe the iddah (waiting period) during which no one may marry her. There is ıo difference of opinion, however, that it is not allowed to have sexual intercourse with her ill she experiences one menstruation.

'. **DIFFERENCE RELIGION:** These are the woman whom it is forbidden to marry because ›f their being polytheists or idolaters.

t is not allowed to marry woman who are fire worshippers or idol worshippers rrespective of whether they are free woman or slave girls.

The idol-worshippers include woman who worship the sun and stars and their preferred ›ictures and they who subscribe to the Greek Philosophy of a powerless God. Others ımong them are the zindiq (atheists), the batinis and the abahiyahs. (They are respectively who attribute hidden meaning to the Quran and who regard every deed in the work as ›ermissible whether good or bad) In the same say, every woman is included in this ›rohibition who follows a false religion.

• Therefore, it is not allowed also to have sexual relationship with a female slave who is a fire worshipper.

• A Muslim is permitted to marry a kitabiyah (who believes in a heavenly Book , meaning a Jewess or a Christian woman) , who resides in enemy territory, and a dhimmi disbelieving woman (who pays the kharaj (homage revenue) to the Islamic state and resides in it). This woman may be free or slave. But, it is better not to marry any of them. Their slaughtered animal, too, should not be eaten unless necessary.

• If a Muslim marries a Jewess or a Christian woman, then he is authorized to forbid her from going to her house of worship (a synagogue or a church) and to prepare wine in his home. However, he has no authority to compel her to have purifying bath after menstruation, child birth bleeding and sexual intercourse.

• If a Muslim marries an enemy's woman, who follows one of the books, in enemy territory, then his marriage is lawful. But, it is makruh (disapproved). Later when the spouses come to the Islamic territory, their marriage will be retained. However, of the husband comes to the Islamic territory leaving his wife there, then there will be separation of both of them because of change of their countries of residence.

• Those people who follow a heavenly religion and they also have their heavenly Book are counted among the people of the Book. Examples are the scriptures of prophet Ibrahim عليه السلام and Prophet Shith عليه السلام , and Prophet Dawud's عليه السلام Zubur, and so on. Muslim men are allowed to marry their woman. Their slaughtered animal is also permitted to Muslim to eat.

• If one parent of a person is a follower of a heavenly book and the other a fire-worshiper, then he is regarded as one of the people of the Book.

• A Muslim man married a woman from the people of the Book. Then she converted to a fire worshipper, so she becomes forbidden to her Muslim husband, Their marriage will be revoked.

• If he had married a Jewess or a Christian woman and she converted to Christianity or Jewism, then the marriage will remain intact.

• The criterion in such cases is to see that if one of the spouses converts to another religion then is it one which would have barred them from marriage at the initial stage when they contemplated marriage? For example, a Muslim can never marry a fire-worshipper. Thus, if one of thc spouses converts from Islam to one of the spouses converts from Islam to one

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of such religions then the marriage will be null and void.

WHAT AFTER THAT?

If a woman is the cause of marriage being broken - say, she convert to a Magian, then the spouses will separate. The woman will not be paid her dower and she will get no maintenance, provided she had converted to another religion before having the sexual intercourse.

- If she converts to another religion (say, Margian) after her husband had sexual intercourse with her, then she will be paid her dower in full.
- If man is the cause of the marriage being broken - suppose, he converts to Magian - and the spouse separate, then he will have to pay his wife half of the agreed dower provided this situation transpired before they could have a sexual intercourse. If a dower was not determined before hand then he should give her a pair of garments. If this happened after they had a sexual intercourse then it is *wajib (obligatory)* to pay her the full dower.
- When a Muslim man apostates, his marriage is not lawful:
  - with an apostate woman
  - with a disbelieving woman, or
  - with a Muslim woman
- When a Muslim woman apostates, her marriage too is not lawful with any man.
- A Muslim woman's marriage is not lawful with
  - a polytheist or
  - a Jew or
  - a Christian
- The marriage of an idolatress is proper with any polytheist or disbeliever, but not with an apostate.
- The disbelieving dhimmis may marry each other though their creeds differ.
- It is allowed to a Muslim man who had a Muslim wife to marry a kitabiyah (Jew or Christian) also, and to
- a Muslim man who has a wife from the kitabiyah (Jew or Christian) to marry also a Muslim woman.

-- in each of these cases the rights of both wives should be equal (as for as allotting nights to them is concerned).

8. **WOMAN OWNERS:** They are the woman who are forbidden to their slaves because they are their owners.

- No woman is permitted to marry her slave.
- She is also disallowed to wed a slave who is common property of hers and of another person.
- If after a marriage, either of the spouses becomes owner of the entire or part of the other then the marriage becomes void.
- If a man marries his female slave, or a female slave of whom he is a part owner then this marriage is not correct.

However, it must be borne in mind that, in the current times, the buying and selling of slaves, male or female, is not practiced at all. Moreover, those rules and conditions governing the sexual intercourse with female slaves no more exist today.

Therefore, some ulama (Scholars) maintain that if the custom of having female slave exists any where, then (sexual intercourse must not be had with them, but) they should be married so that if they really are not the female slave but a free woman then marriage

would legalize sexual intercourse with them.

- If a freeman buys his wife (who is someone's female slave) on terms of the condition of khiyar then his marriage will not void. This is decision of Imam Abu Hanifah رحمه الله.

a. **DIVORCE**

These are woman who are forbidden by divorce.

- If a man pronounces three divorces to his wife who is a free woman then it is not allowed to him to marry her after that. However, if she completes her iddah (waiting period) and marries another man who consummates their marriage and divorces her, then after completing her iddah (waiting period) on this divorce, the two may remarry.
- If a man marries a female slave and, later, divorces, her with two pronouncement, then it is not allowed to him to marry her.
- Also, it is also not allowed to him to have her as his slave girl and have sexual intercourse with her.
- A man marries someone else's female slave. Later, he divorces her with two pronouncements. Then he buys her and sets her free. Now. If he wishes to marry her then she must first marry someone else who consummates his marriage with her and divorces her. When her days of iddah (waiting period) are over, the man, her first husband (who had set her free) may marry her.

RELATED RULINGS

The subject of the muharrimat having been discussed, some essential rulings concerning this chapter are reproduced.

Nikah (wedlock) mut'ah is unlawful. Since it is not allowed to marry a woman in this way (mut'ah), clearly it is also forbidden to have sexual intercourse with her. Neither will divorce be pronounced on her nor will be commands of eela and zihar apply to her.

(Eala is to abandon. A husband swears not to approach his wife for a certain period of time. Zihar is a husband's telling his wife that she is to him like his mother and so unlawful to him.)

MUT'AH: The *nikah (wedlock)* mut'ah is a usufructuary marriage. [1]

(It is contracted for a certain period of time to make use of the woman against a specified amount of money paid to her).

It is that a man offers a woman who is not hindered or forbidden to him in any way (like being someone's wife or observing an iddah (waiting period)): 'I shall pay so much money to you and there against derive benefit from you for so much time or he says "Against so much money give me enjoyment for so many days."

MUWAQQAT: In the same way as *nikah (wedlock)* mut'ah, *nikah (wedlock)* muwaqqat is also unlawful. It may be contracted for a short time or a long time, or a defined nature or an undefined nature. Be that as it may, it is unlawful.

PERPETUAL: If both the spouses define such a long time as a beyond their life expectancy, then the command of *nikah (wedlock)* muwaqqat will not be applied. It will be regarded as a correct marriage in which the stipulation of time would be disregarded.

- Similarly, when the period of marriage is defined to be till the last Hour or till the day of resurrection, or till when the dajjal (Antichrist) appears, or till the descent of Prophet Easa عليه السلام – in all these cases, the marriage will be considered to be correct and the time limit would be ignored.

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[1] The Hidaya, English Translation, Dar ul Isha'at Karachi (v1 p 62)

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- Similarly, if the period for which the marriage is contracted is not defined but the husband did think mentally that he would keep her for one year then divorce her, then the marriage would be correct.
- If a man marries a woman on condition that he would divorce her after one mouth, then the marriage is correct.
- If a man stipulates at the time of the marriage, saying to his wife, "I shall stay with you by day but not at night." Then the marriage will be correct.
- A man and a woman who both have assumed the ihram are allowed to contract their marriage in this condition.
- So, too, a guardian who is in the state of ihram is permitted to give in marriage the woman whose guardian he is.
- A woman claimed (before a judge) that a man, say Zayd, had married him. She also cited two witnesses to support her petition. The judge upheld her plea and ruled that Zayd was indeed her husband but, in truth, he had not married her. However, it is allowed to them to live together and Zayd is permitted to have sexual intercourse wither if she wishes to have it.

This is the ruling of Imam Abu Hanifah رضی اللہ عنہ. The first opinion of Imam Abu Yusuf رحمہ اللہ was in agreement with him but his second verdict contradicts it and agrees with that of Imam Muhammad رحمہ اللہ who said that the man is not allowed to have a sexual intercourse with the woman in this case. The judgement of the judge is about the marriage contract. (It will be presumed that he performed the marriage at the time. So, the woman could live with the man, auf Imam Abu Hanifah رحمہ اللہ opined that, if she wished, they could have a sexual intercourse.) However, there is the condition that the woman is eligible to marry (meaning, there is no obstruction to her living as Zayd's wife). For instance, at the time of judgement:

She was someone else's wife or, was observing an iddah (waiting period) of divorce by her first husband, or, Zayd himself may have pronounced three divorces to her.

In such cases, the judge's judgement will not be enforced. She will not Zayd's wife. Also, must ulama (Scholars) say that another condition is that witnesses should be present when the judge pronounces the judgement.

- If, on the other hand, the man, Zayd, makes a claim about a woman that he had married her and presents witnesses in support of his claim, then the same command will apply as in the previous case.
- If a woman pleads before a judge that her husband had divorced her and she brings false witnesses too then the judge will pass a judgement of divorce. Of course, the woman knowingly lies. She will be divorced and she will observed the iddah (waiting period) and after that she might marry any man. Any of the witnesses too will be eligible to marry her. She will not be lawful for her first husband and he cannot marry her.

DISSENT: Imam Abu Yusuf رحمہ اللہ, however, ruled that in this case neither will be woman be lawful for her first husband who cannot marry her nor will it be allowed to her to marry any other man.

Imam Muhammad ruled that as long as her second husband does not have sexual intercourse with her, she is lawful for her first husband. If another man has sexual intercourse with her, then till she completes her iddah (waiting period), she will be forbidden to her first husband

because the iddah (waiting period) is *wajib (obligatory)* on her.
In other words, Imam Muhammad رحمه الله says that her marriage with anyone else is simply not allowed.

- Suppose a man Zayd claims that a woman Khalidah had married him, but she denies that she had married him. Then, Zayd offered to make peace with her and to pay her some money if she conceded that they were married.
- If she accepts his statement, then it becomes *wajib (obligatory)* on Zayd to pay her the money and her acceptance would be deemed to be the contract of marriage and if she accepts it in the presence of witnesses then the marriage will be deemed to have been performed correctly and her residence with Zayd will be correct in the sight of Allah. (Not only will they be husband and wife accordingly to worldly standards but also no sin will be attached to them because of this.
- If Khalidah did not present witnesses when she accepted Zayd's statement, the marriage will not be deemed to have been performed and it would not be proper for her to live with him.

SECTION I اَلْفَصْلُ الْاَوَّلُ

AUNTS, PATERNAL & MATERNAL WITH NIECE

(٣١٦٠) عَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا يُجْمَعُ بَيْنَ الْمَرْأَةِ وَعَمَّتِهَا وَلَا بَيْنَ الْمَرْاَةِ وَخَالَتِهَا۔ (متفق عليه)

3160. Sayyiduna Abu Hurayrah رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "A woman must not be taken in marriage with her paternal aunt. And no woman may be taken in marriage with her maternal aunt."[1]

COMMENTARY: The aunts cover both sisters of father and of mother as well as the ancestors, aunts of parents, etc. This hadith speaks only of aunts because perhaps the Prophet صلى الله عليه وسلم might have been asked about them.
As we know and have seen previously, there are other women who may not be married when another of the forbidden degree is already a man's wife.

(٣١٦١) وَعَنْ عَآئِشَةَ قَالَتْ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَحْرُمُ مِنَ الرَّضَاعَةِ مَا يَحْرُمُ مِنَ الْوَلَادَةِ۔

(رواه البخارى)

3161. Sayyiduna Ayshah رضى الله عنها narrated that Allah's Messenger صلى الله عليه وسلم said, "That which is unlawful because of consanguinity is unlawful (also) because of fosterage."[2]

COMMENTARY: What is forbidden by reason of birth (or blood relationship) is also forbidden by reason of suckling.
For instance, just as a real sister is forbidden to her brother so too a foster sister is forbidden. There are however, some cases of exception to this rule. Sometimes a difference arises between them and this has been discussed previously.
Allamah (The learned Scholar) Nawawi رحمه الله said that marriage is forbidden by reason of

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[1] Bukhari # 5109, Muslim # 33-1408, Abu Dawud # 2066.
[2] Bukhari # 5099, Muslim # 2-2444, Darimi # 2249, Muwatta Maalik # 1 (Rada'ah)

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fosterage and looking at one another, travelling in company and being alone become permitted by the same taken. However, all commands and prerogatives of consanguinity are not available to fosterage. In the letter, relatives do not inherit from one another and they are not responsible for mutual maintenance. Also, if any of them becomes a slave of another, he does not earn an automatic emancipation. Furthermore, if a foster mother kills one whom she suckles, she gets no remittance from retaliation (or qisas).
In such cases, those foster relatives are exactly like strangers.

(٣١٦٢) وَعَنْهَا قَالَتْ جَاءَ عَمِّي مِنَ الرَّضَاعَةِ فَاسْتَأْذَنَ عَلَيَّ فَأَبَيْتُ أَنْ أَذَنَ لَهُ حَتَّى أَسْأَلَ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَجَاءَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَسَأَلْتُهُ فَقَالَ إِنَّهُ عَمُّكِ فَأْذَنِي لَهُ قَالَتْ فَقُلْتُ يَا رَسُوْلَ اللّٰهِ إِنَّمَا أَرْضَعَتْنِي الْمَرْأَةُ وَلَمْ يُرْضِعْنِي الرَّجُلُ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ إِنَّهُ عَمُّكِ فَلْيَلِجْ عَلَيْكِ وَذٰلِكَ بَعْدَ مَا ضُرِبَ عَلَيْنَا الْحِجَابُ۔ (متفق علیه)

3162. Sayyidah Ayshah رضی اللہ عنہا narrated that her paternal uncle through fosterage came and sought permission to meet her. She declined to permit him (admittance to her house) till she had first asked Allah's Messenger صلی اللہ علیہ وسلم (about it). So, when he came she asked him and he said, "He is your paternal uncle. So, let him in." She said (to him), "O Messenger of Allah, only the woman had suckled me, not the man." Allah's Messenger صلی اللہ علیہ وسلم said, "He is your paternal uncle and may visit you." (She added:) "That was after the veil had been made *wajib (obligatory)* for us."[1]

COMMENTARY: The foster uncle of Sayyidah Ayshah رضی اللہ عنہا was Aflah. The woman who had suckled her was the wife of Abu Al-Qays. He and Aflah were brothers.
Sayyidah Ayshah رضی اللہ عنہا wondered how fosterage could be traced to the brother of the husband of the woman who had suckled her. So, she was told that the relationship through fosterage passed on to the male relatives too of both of woman and her husband.
The prohibition through fosterage applies to all these relatives on both sides, the woman's and her husband's

FOSTER NIECE IS OF FORBIDDEN DEGREE

(٣١٦٣) وَعَنْ عَلِيٍّ أَنَّهُ قَالَ يَا رَسُوْلَ اللّٰهِ هَلْ لَكَ فِي بِنْتِ عَمِّكَ حَمْزَةَ فَإِنَّهَا أَجْمَلُ فَتَاةٍ فِي قُرَيْشٍ فَقَالَ لَهُ أَمَا عَلِمْتَ أَنَّ حَمْزَةَ أَخِي مِنَ الرَّضَاعَةِ وَأَنَّ اللّٰهَ حَرَّمَ مِنَ الرَّضَاعَةِ مَا حَرَّمَ مِنَ النَّسَبِ۔ (رواه مسلم)

3163. Sayyiduna Ali رضی اللہ عنہ narrated that he asked, "O Messenger of Allah, why do you not like (for yourself) the daughter of your paternal uncle, Hamzah? She is the most beautiful girl of the Quraysh." He said to him, "Do you not know that Hamzah is my foster brother and Allah has forbidden through fosterage what he has forbidden through genealogy?"[2]

COMMENTARY: Sayyiduna Hamzah رضی اللہ عنہ was the uncle of the Prophet صلی اللہ علیہ وسلم like Abu Lahab. He also was the Prophet's صلی اللہ علیہ وسلم foster brother.

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[1] Bukhari # 2644, 5239, Muslim # 7-1445, Tirmidhi # 1151, Abu Dawud # 2057, Ibn Majah # 1949, Musnad Ahmad 6-794, Muwatta 2 (*Nikah (wedlock)*).
[2] Muslim # 11-1446.

Abu Lahab had a female slave named Thawbiyah. She had suckled Sayyiduna Hamzah رضی اللہ عنہ and four years later she suckled the Prophet صلی اللہ علیہ وسلم

Thawbiyah is the one who had conveyed the news of the birth of the Prophet صلی اللہ علیہ وسلم to Abu Lahab who was delighted at the birth of his nephew and set her free. It is reported that because of his expression of delight, punishment is softened on him on every Monday by Allah because the Prophet صلی اللہ علیہ وسلم was born on this day.

Four woman had suckled the prophet صلی اللہ علیہ وسلم. They were:

his respected mother Sayyidah Amna, Sayyidah Halimah رضی اللہ عنہا, Thawbiyah and Umm Ayman and female slave of his father the respected Abdullah.

LIMIT OF SUCKLING

(٣١٦٤-٣١٦٥-٣١٦٦) وَعَنْ اُمِّ الْفَضْلِ قَالَتْ اِنَّ نَبِيَّ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لَا تُحَرِّمُ الرَّضْعَةُ اَوِالرَّضْعَتَانِ وَفِيْ رِوَايَةِ عَائِشَةَ قَالَ لَا تُحَرِّمُ الْمَصَّةُ وَالْمَصَّتَانِ وَفِيْ اُخْرٰى لِاُمِّ الْفَضْلِ قَالَ لَا تُحَرِّمُ الْاِمْلَاجَةُ اَوِالْاِمْلَاجَتَانِ هٰذِهٖ رِوَايَاتٌ لِمُسْلِمٍ۔

3164. Sayyidah Umm al-Fadl رضی اللہ عنہا narrated that Allah's Prophet صلی اللہ علیہ وسلم said, "A suck or two will not cause (marriage) unlawful."[1]

3165. According to Sayyidah Ayshah's رضی اللہ عنہا version, he said, "One or two sips will not make (marriage) unlawful."[2]

3166. According to another version of Sayyidah Umm al-Fadl رضی اللہ عنہا, he said, "Drawing from the breast once or twice will not render (marriage) unlawful."[3]

COMMENTARY: According to the hadith, prohibition by reason of fosterage occurs on three sucklings or more. However, the Hanafis and most ulama (Scholars) hold that prohibition occurs on suckling milk even if once whether little or more provide the child swallows the milk into its belly and is taken during the age period of suckling. The period of suckling is two years according to most scholars including the two disciples Imam Abu Yusuf رضی اللہ عنہ and Imam Muhammad رضی اللہ عنہ, but two years and a half according to Imam Abu Hanifah رحمہ اللہ, though the Hanafis observe the verdict of the two disciples.

The ulama (Scholars) who say that prohibition by reason of fosterage occurs on suckling any number of times without distinction cite the verse of the Quran:

وَاُمَّهٰتُكُمُ الّٰتِيْ اَرْضَعْنَكُمْ۔ (النساء ۴: ۲۳)

{....and your mother who have suckled you} (4: 23)

He cannot say that fosterage occurs when a child suckles three or more sips. They cite the hadith of Sayyidah Ayshah رضی اللہ عنہا (# 3162) that prohibition by reason of fosterage occurs as prohibition by reason of genealogy.

Imam Shafi'I رحمہ اللہ cites the next hadith (# 3167) to say that prohibition by fosterage is established when a child has five sucklings.

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[1] Muslim # 21-1451, Ibn Majah # 1940.

[2] Muslim # 17-1450, Tirmidhi # 1152, Abu Dawud # 2063, Nasai'i # 3312, Ibn Majah # 1941.

[3] Muslim # 18-1451, Nasai'i # 3310, Musnad Ahmad # 4-16

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(٣١٦٧) وَعَنْ عَائِشَةَ قَالَ كَانَ فِيمَا أُنْزِلَ مِنَ الْقُرْاٰنِ عَشْرُ رَضَعَاتٍ مَعْلُوْمَاتٍ يُحَرِّمْنَ ثُمَّ نُسِخْنَ بِخَمْسٍ مَعْلُوْمَاتٍ فَتُوُفِّيَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَهِيَ فِيمَا يُقْرَأُ مِنَ الْقُرْاٰنِ۔ (رواه مسلم)

3167. Sayyidah Ayshah رضی اللہ عنہا narrated that among that was revealed in the Quran was (the command) that ten sucklings known (to have been swallowed) made marriage unlawful. Then the command was abrogated by five (sucklings) known (to have been swallowed). Then Allah's Messenger صلی اللہ علیہ وسلم died and it continued to be recited from the Quran.[1]

COMMENTARY: The command about fosterage occurring on ten sucklings was withdrawn and the Quranic verse about five sucklings was revealed. Then the recital of this verse too was abrogated according to all the sahabah (Prophet's Companions) رضی اللہ عنہم but not according to Sayyidah Ayshah رضی اللہ عنہا Imam Shafi'I رحمہ اللہ maintains that the command is still valid, though recital is abrogated.

However, Imam Abu Hanifah رحمہ اللہ and other ulama (Scholars) say that both recital and command of this verse are abrogated.

SUCKLING AFTER PERIOD OF SUCKLING DOES NOT BRING PROHIBITION

(٣١٦٨) وَعَنْ عَائِشَةَ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ دَخَلَ عَلَيْهَا وَعِنْدَهَا رَجُلٌ فَكَاَنَّهُ كَرِهَ ذٰلِكَ فَقَالَتْ اِنَّهُ اَخِيْ فَقَالَ انْظُرْنَ مَنْ اِخْوَانُكُنَّ فَاِنَّمَا الرَّضَاعَةُ مِنَ الْمَجَاعَةِ۔ (متفق عليه)

3168. Sayyidah Ayshah رضی اللہ عنہا narrated that the Prophet صلی اللہ علیہ وسلم came to her while a man was with her. He seemed not to like it, so, she said, "He is my brother." He said, "You (woman) must be careful who your brothers are for fosterage results from hunger."[2]

COMMENTARY: The Prophet's صلی اللہ علیہ وسلم words mean that the commands of fosterage apply only when milk is suckled as nutrition to remove hunger. Hence this thing is possible only during the period of suckling which is up to two years although Imam Abu Hanifah رحمہ اللہ regards it as upto two and a half years. The infant's food is provided through mother's milk.

If anyone suckles after that age that does not qualify him for fosterage relationship. The man sitting with Sayyidah Ayshash رضی اللہ عنہا was one such. He had suckled after the age of suckling had passed.

This is why the Prophet صلی اللہ علیہ وسلم did not approved of it. (He gave a general edict concerning foster relationship.)

WOMAN'S TESTIMONY ABOUT FOSTERAGE

(٣١٦٩) وَعَنْ عُقْبَةَ بْنِ الْحَارِثِ اَنَّهُ تَزَوَّجَ ابْنَةً لِاَبِيْ اِهَابِ بْنِ عَزِيْزٍ فَاَتَتِ امْرَاَةٌ فَقَالَتْ قَدْ اَرْضَعْتُ عُقْبَةَ وَالَّتِيْ تَزَوَّجَ بِهَا فَقَالَ لَهَا عُقْبَةُ مَا اَعْلَمُ اَنَّكِ قَدْ اَرْضَعْتِنِيْ وَلَا اَخْبَرْتِنِيْ فَاَرْسَلَ اِلٰى اٰلِ اَبِيْ اِهَابٍ فَسَاَلَهُمْ فَقَالُوْا مَا عَلِمْنَا اَرْضَعَتْ صَاحِبَتَنَا فَرَكِبَ اِلَى النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ بِالْمَدِيْنَةِ فَسَاَلَهُ فَقَالَ رَسُوْلُ اللّٰهِ

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[1] Muslim # 24-1452, Abu Dawud # 2062, Nasai'i # 3309, Darimi # 2253.

[2] Bukhari # 5102, Muslim # 32-1455, Abu Dawud # 2058, Nasai'i # 3312, Darimi # 2256.

صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ كَيْفَ وَقَدْ قِيْلَ فَفَارَقَهَا عُقْبَةُ وَنَكَحَتْ زَوْجًا غَيْرَهٗ۔ (رواه البخاری)

3169. Sayyiduna Uqbah ibn Al-Harith رضی اللہ عنہ **narrated (about himself) that he married the daughter of Abu Ihab ibn Aziz. Then a woman came and claimed that she had suckled him as well as the woman he had married. (Thus, they were foster siblings) He exclaimed, "I do not know that you had done so. Besides you did not inform me (earlier)." And, he sent (someone) to the family of Abu Ihab and asked them but they responded that they did not know about the woman having suckled their daughter. So, he rode to the prophet** صلی اللہ علیہ وسلم **in Madinah and asked him (about what should he do). Allah's Messenger** صلی اللہ علیہ وسلم **said, "How can (you keep her as your wife when) indeed it has been disclosed (to you) ?" So, Sayyiduna Uqbah** رضی اللہ عنہ **separated (from) her and she married (another) man.**[1]

COMMENTARY: Imam Ahmad رحمہ اللہ deduced from this hadith that one woman's testimony is enough to establish a fosterage relationship.

However, Imam Abu Hanifah and other scholars stated that proof of suckling is through the testimony of two men, or one man and two women, all just people. This hadith concerns taqwa (piety) and being on the safe side.

So, the Prophet صلی اللہ علیہ وسلم did not consider it reasonable for uqbah رضی اللہ عنہ to keep that woman as his wife.

WOMAN CAPTIVE FROM ENEMY TERRITORY

(۳۱۷۰) وَعَنْ اَبِي سَعِيْدِنِ الْخُدْرِيِّ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَوْمَ حُنَيْنٍ بَعَثَ جَيْشًا اِلٰى اَوْطَاسٍ فَلَقُوْا عَدُوًّا فَقَاتَلُوْهُمْ فَظَهَرُوْا عَلَيْهِمْ وَاَصَابُوْا لَهُمْ سَبَايَا فَكَاَنَّ نَاسًا مِنْ اَصْحَابِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ تَحَرَّجُوْا مِنْ غِشْيَانِهِنَّ مِنْ اَجْلِ اَزْوَاجِهِنَّ مِنَ الْمُشْرِكِيْنَ فَاَنْزَلَ اللّٰهُ تَعَالٰى فِيْ ذٰلِكَ وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ اِلَّا مَا مَلَكَتْ اَيْمَانُكُمْ اى فَهُنَّ لَهُمْ حَلَالٌ اِذَا انْقَضَتْ عِدَّتُهُنَّ رَوَاهُ مُسْلِمٌ۔

3170. Sayyiduna Abu Sa'eed Khudri رضی اللہ عنہ **narrated that on the day of (the battle of) Hunayn, Allah's Messenger** صلی اللہ علیہ وسلم **sent an army to Awtas (which is near Ta'if). They encountered the enemy and fought against them and got the upper hand. They took captives (woman among them, too). Some men from the companions of the Prophet** صلی اللہ علیہ وسلم **abstained from having sexual intercourse with them because they had their spouses who were polytheists.**

Then, Allah, the Exalted, revealed concerning that:

وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ اِلَّا مَا مَلَكَتْ اَيْمَانُكُمْ

{And (forbidden, too) are the married women except those whom your right hands possess} (4: 24)

(Meaning: women whom you have taken captives in the battle whose husbands are in enemy territory).

These women were lawful to them after they passed their iddah (waiting period).[2]

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[1] Bukhari # 2640.

[2] Muslim # 33-1456, Tirmidhi # 1135, Abu Dawud # 2155, Nasai'i # 3335, Musnad Ahmad 3-72.

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COMMENTARY: It is not allowed to marry another man's wife or to have sexual intercourse with her. However, women captives of war whose disbelieving husbands are in enemy territory may pass their iddah (waiting period) after which sexual intercourse may be had with them. In this case iddah (waiting period) means 'when they have had their first menstruation after capture, or, if they are pregnant, they have delivered their child, or, if they do not get menses, then after one month.

Teebi رحمه الله has said that Ibn Abbas رضى الله عنه explained this verse (4: 24) to mean that when a married slave girls is sold, her marriage breaks. The buyer may have sexual intercourse with her after she has had a menstruation, delivered her child, or she has spent one month in captivity.

Other ulama (Scholars) do not agree with him. The marriage of the captive woman does not break and the verse does not concern every female slave having a husband. Rather, it concerns only those female slaves taken into captivity in a battle.

SECTION II اَلْفَصْلُ الثَّانِيْ

WOMEN WHO MAY NOT BE KEPT AS CO-WIVES

(٣١٧١) عَنْ اَبِيْ هُرَيْرَةَ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ نَهٰى اَنْ تُنْكَحَ الْمَرْاَةُ عَلٰى عَمَّتِهَا اَوِالْعَمَّةُ عَلٰى بِنْتِ اَخِيْهَا وَالْمَرْاَةُ عَلٰى خَالَتِهَا اَوِالْخَالَةُ عَلٰى بِنْتِ اُخْتِهَا لَا تُنْكَحُ الصُّغْرٰى عَلَى الْكُبْرٰى وَلَا الْكُبْرٰى عَلَى الصُّغْرٰى رَوَاهُ التِّرْمِذِيُّ وَاَبُوْدَاوٗدَ وَالدَّارِمِيُّ وَالنَّسَائِيُّ وَرِوَايَتُهٗ اِلٰى قَوْلِهٖ بِنْتِ اُخْتِهَا۔

3171. Sayyiduna Abu Hurayrah رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم forbade that a woman should be married to the same man to whom her paternal aunt is married, or a paternal aunt to the same man to whom her brother's daughter is married, or a woman to the same man to whom her maternal aunt is married, or a maternal aunt to the same man to whom her sister's daughter is married."

(He also said,) "Neither must the younger (relative) be married to the same man to whom the elder is married, not the elder (relative) be married to the same man to whom the younger is married.[1]

COMMENTARY: The second portion of the hadith emphasizes the first portion. The elder relatives are the two aunts and the younger relatives are the nieces.

If the aunt is already married to a man then he must not marry her niece while she is alive. Or, if he divorces her and she has completed her iddah (waiting period) then he may marry the niece.

If the niece is already married to a man then he can only marry her aunt when the niece dies or he divorces her and she goes thorough her iddah (waiting period).

The version in Nasa'I ends at the first portion 'to whom her sister's daughter is married.'

(The translation of Tirmidhi[2] of the second portion is:

'Neither must the younger sister be married to the man to whom her elder sister is married to the m an to whom her elder sister is married nor must the elder be married to the man to whom the younger is married already.'

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[1] Bukhari # 5108, Abu Dawud # 2065, Nasai'i # 3293, Tirmidhi # 1129.

[2] Darul Isha'at Karachi.

FATHER'S WIFE IS FORBIDDEN

(٣١٧٢) وَعَنِ الْبَرَاءِ بْنِ عَازِبٍ قَالَ مَرَّ بِيْ خَالِيْ اَبُوْ بُرْدَةَ بْنُ نِيَّارٍ وَمَعَهُ لِوَاءٌ فَقُلْتُ اَيْنَ تَذْهَبُ فَقَالَ بَعَثَنِي النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِلٰى رَجُلٍ تَزَوَّجَ اِمْرَاَةَ اَبِيْهِ اُتِيْهِ بِرَأْسِهٖ رَوَاهُ التِّرْمِذِيُّ وَاَبُوْدَاوٗدَ وَفِيْ رِوَايَةٍ لَهٗ وَلِلنَّسَائِيِّ وَابْنِ مَاجَةَ وَالدَّارِمِيِّ فَاَمَرَنِيْ اَنْ اَضْرِبَ عُنُقَهٗ وَاٰخُذَ مَالَهٗ وَفِيْ هٰذِهِ الرِّوَايَةِ قَالَ عَمِّيْ بَدَلَ خَالِيْ۔

3172. Sayyiduna Bara ibn Aazib رضی اللہ عنہ narrated that his maternal uncle Abu Bardah ibn Niyar رضی اللہ عنہ came by him carrying a standard in his hand. He asked him, "where are you headed?" He said, "Allah's Messenger صلی اللہ علیہ وسلم has sent me to a man who has married his father's wife that I might bring him the man's head."[1] According to a version: "He has commanded me to sever his head and seize his property." And, instead of 'maternal uncle' it has 'paternal uncle.'[2]

COMMENTARY: The standard in the hand of Abu Burdah رضی اللہ عنہ was a token from the Prophet صلی اللہ علیہ وسلم. It showed that he was on a mission.

Teebi رحمہ اللہ said that not only did he married his father's wife, he also believed that it was lawful to do it. This was what the pre-Islamic people (of the days of ignorance did). His belief was apposed to Islamic ء (divine law) and anyone who believes the unlawful to be lawful is a disbeliever. He should be eliminated and his property should be confiscated.

SUCKLING AFTER PRESCRIBED TIME

(٣١٧٣) وَعَنْ اُمِّ سَلَمَةَ قَالَتْ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا يُحَرِّمُ مِنَ الرَّضَاعِ اِلَّا مَا فَتَقَ الْاَمْعَاءَ فِي الثَّدْيِ وَكَانَ قَبْلَ الْفِطَامِ۔ (رواه الترمذی)

3173. Sayyidah Umm Salamah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Suckling does not make (married) unlawful unless it (the milk) enters the belly and is from the breasts and is done before weaning."[3]

COMMENTARY: The milk enter the belly and satiates the child just as a hungry stomach is fed. The milk finds its place in the intestines of the child.

This is done during the age of suckling which is upto two years or thirty months. After this age, prohibition by reason of fosterage is not effective.

The words 'from the breasts' are redundant. They merely express a procedure, otherwise it is not necessary that she should feed the infant directly from the breasts. She may spoon feed the infant or use any other way. That is as good as suckling, if her milk is used.

This portion is emphasized by the words that it must be done before the time of weaning.

The jurists say that if a child's suckling is stopped before the time of weaning then that does not mean that the prohibition will not be effective after that. For instance, if a mother stops suckling a child but within the age of suckling another woman suckles it, prohibition by reason of suckling will be effective from her nevertheless.

It is also necessary to know that it is not allowed to suckle a child after the time of weaning. It is unlawful to use a person's portion unnecessarily and clearly the use of milk as

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[1] Tirmidhi # 1367, Abu Dawud # 4457.

[2] Nasai'i # 3331, Ibn Majah # 2607, Musnad Ahmad 4-292, Abu Dawud # 4456.

[3] Tirmidhi # 1155.

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medicine after weaning is not allowed.
The physicians say that a daughter's milk is good for the eyes of parents. But, some ulama (Scholars) say that it is not allowed to use it. Other say that if it is certain that a daughter's milk is good for the eyes then it may be used and is allowed.

HOW MAY A WET NURSE BE PAID

(٣١٧٤) وَعَنْ حَجَّاجِ بْنِ حَجَّاجٍ الْاَسْلَمِيِّ عَنْ اَبِيْهِ اَنَّهٗ قَالَ يَا رَسُوْلَ اللّٰهِ مَا يُذْهِبُ عَنِّيْ مَذِمَّةَ الرَّضَاعِ فَقَالَ غُرَّةٌ عَبْدٌ اَوْ اَمَةٌ۔ (رواه الترمذی وابوداؤد والنسائی والدارمی)

3174. Sayyiduna Hajj (pilgrimage)aj ibn Hajj (pilgrimage)aj Al-Aslami رضی اللہ عنہ narrated from his father that he asked Allah's Messenger صلی اللہ علیہ وسلم "O Allah's Messenger صلی اللہ علیہ وسلم how may I be relieved of the obligation due on me for fostering (me as) a child?' He said, "A good slave or slave girl."[1]

COMMENTARY: The person who asked wished to know how he might reimburse the wet nurse. She renders a great service and must be repaid well with a servant. So service is repaid with service.

PROPHET صلی اللہ علیہ وسلم RESPECTED HIS WET NURSE

(٣١٧٥) وَعَنْ اَبِي الطُّفَيْلِ الْغَنَوِيِّ قَالَ كُنْتُ جَالِسًا مَعَ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِذْ اَقْبَلَتِ امْرَاَةٌ فَبَسَطَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ رِدَائَهٗ حَتّٰى قَعَدَتْ عَلَيْهِ فَلَمَّا ذَهَبَتْ قِيْلَ هٰذِهٖ اَرْضَعَتِ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ۔ (رواه ابوداؤد)

3175. Sayyiduna Abu At-Tufayl Al-Ghanawi رضی اللہ عنہ narrated that he was seated with the prophet صلی اللہ علیہ وسلم when a woman arrived. The Prophet صلی اللہ علیہ وسلم spread out his cloak (for her) so that she sat on it. When she departed, the astonishment of every one was quelled when) someone said "She had suckled the Prophet صلی اللہ علیہ وسلم." (She was Sayyidah Halimah رضی اللہ عنہ.)[2]

NOT MORE THAN FOUR MARRIAGES

(٣١٧٦) وَعَنِ ابْنِ عُمَرَ اَنَّ غَيْلَانَ بْنَ سَلَمَةَ الثَّقَفِيَّ اَسْلَمَ وَلَهٗ عَشْرُ نِسْوَةٍ فِي الْجَاهِلِيَّةِ وَاَسْلَمْنَ مَعَهٗ فَقَالَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَمْسِكْ اَرْبَعًا وَفَارِقْ سَائِرَهُنَّ۔ (رواه احمد والترمذی وابن ماجة)

3176. Sayyiduna Ibn Umar رضی اللہ عنہ narrated that Ghaylan ibn Salamah Thaqafi رضی اللہ عنہ embraced Islam. He had ten wives (whom he had married) in pre-Islamic days and they too had embraced Islam alongwith him. So the Prophet صلی اللہ علیہ وسلم instructed him to retain four of them and separate from the rest of them.[3]

COMMENTARY: This hadith confirms the marriages contracted during the jahiliyah (ignorance period) are valid. Hence, the Prophet صلی اللہ علیہ وسلم did not ask him to remarry them. If they were of the prohibited degrees who could not be married at the same time,

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[1] Tirmidhi # 1157, Abu Dawud # 2064, Nasai'i # 3329, Darimi # 2254, Musnad Ahmad 3. 45.
[2] Abu Dawud # 5144.
[3] Tirmidhi # 1131, Ibn Majah # 1953, Musnad Ahmad # 4609.

they were separated. Besides, only four wives are allowed at a time in Islam.

(٣١٧٧) وَعَنْ نَوْفِلِ بْنِ مُعَاوِيَةَ قَالَ اَسْلَمْتُ وَتَحْتِيْ خَمْسُ نِسْوَةٍ فَسَأَلْتُ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ فَارِقْ وَاحِدَةً وَاَمْسِكْ اَرْبَعًا فَعَمِدْتُ اِلٰى اَقْدَمِهِنَّ صُحْبَةً عِنْدِيْ عَاقِرٍ مُنْذُ سِتِّيْنَ سَنَةً فَفَارَقْتُهَا۔

(رواه فی شرح السنة)

3177. Sayyiduna Nawfal ibn Mu'awiyah رضی اللہ عنہ narrated that when he embraced Islam he had five wives. So he asked the Prophet صلی اللہ علیہ وسلم (about it). He said, "Separate one and retain four." So, he decided to separate the one who had been with him the longest (his first wife) and was barren since sixty years. He separated from her.[1]

MARRYING TWO SISTERS AT ONE TIME

(٣١٧٨) وَعَنِ الضَّحَّاكِ بْنِ فَيْرُوْزَ الدَّيْلَمِيِّ عَنْ اَبِيْهِ قَالَ قُلْتُ يَا رَسُوْلَ اللّٰهِ اِنِّيْ اَسْلَمْتُ وَتَحْتِيْ اُخْتَانِ قَالَ اخْتَرْ اَيَّتَهُمَا شِئْتَ۔ (رواه الترمذی وابوداؤد وابن ماجة)

3178. Sayyiduna Ad-Dahhak Ibn Fayruz (or Firuz ad Daylami) رحمہ اللہ reported that his father (Sayyidua Fayruz) رضی اللہ عنہ narrated that he said, "O Messenger of Allah, I have embrace Islam and have two sisters as my wives." He said, "Choose whichever of the two you like."[2]

COMMENTARY: Imam Shafi'I رحمہ اللہ and Imam Maalik رحمہ اللہ contend that when a man becomes a Muslim and he has among his wives two sisters who too have become Muslims, then he is allowed to keep either of them as his wife, the first wife or the second of them. Imam Abu Hanifah رحمہ اللہ says that if he had married both sisters to get her then he is not allowed to keep any of them. If he had married them one after the other then he is allowed to retain the one he had married first as his wife. He cannot retain the one he had married afterwards.

MARRIAGE OF INFIDELS WHEN ONE OF THEM BECOMES MUSLIM

(٣١٧٩-٣١٨٠) وَعَنِ ابْنِ عَبَّاسٍ قَالَ اَسْلَمَتِ امْرَأَةٌ فَتَزَوَّجَتْ فَجَاءَ زَوْجُهَا اِلَى النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ يَا رَسُوْلَ اللّٰهِ اِنِّيْ قَدْ اَسْلَمْتُ وَعَلِمَتْ بِاِسْلَامِيْ فَانْتَزَعَهَا رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مِنْ زَوْجِهَا الْآخِرِ وَرَدَّهَا اِلٰى زَوْجِهَا الْاَوَّلِ وَفِيْ رِوَايَةٍ اَنَّهُ قَالَ اِنَّهَا اَسْلَمَتْ مَعِيْ فَرَدَّهَا عَلَيْهِ رَوَاهُ اَبُوْدَاوٗدَ وَرُوِيَ فِيْ شَرْحِ السُّنَّةِ اَنَّ جَمَاعَةً مِنَ النِّسَاءِ رَدَّهُنَّ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ بِالنِّكَاحِ الْاَوَّلِ عَلٰى اَزْوَاجِهِنَّ عِنْدَ اِجْتِمَاعِ الْاِسْلَامَيْنِ بَعْدَ اخْتِلَافِ الدَّيْنِ وَالدَّارِ مِنْهُنَّ بِنْتُ الْوَلِيْدِ بْنِ مُغِيْرَةَ كَانَتْ تَحْتَ صَفْوَانَ ابْنِ اُمَيَّةَ فَاَسْلَمَتْ يَوْمَ الْفَتْحِ وَهَرَبَ زَوْجُهَا مِنَ الْاِسْلَامِ فَبَعَثَ اِلَيْهِ ابْنَ عَمِّهٖ وَهْبَ بْنَ عُمَيْرٍ بِرِدَاءِ رَسُوْلِ

[1] Bukhari in Sharh us *Sunnah (Prophet's صلی اللہ علیہ وسلم practice)* # 2289.

[2] Tirmidhi # 1133 (and 1132), Abu Dawud # 2243, Ibn Majah # 1950, 1951, Musnad Ahmad 4-221.

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اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَمَانًا لِصَفْوَانَ فَلَمَّا قَدِمَ جَعَلَ لَهُ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ تَسْيِيْرًا اَرْبَعَةِ اَشْهُرٍ حَتّٰى اَسْلَمَ فَاسْتَقَرَّتْ عِنْدَهُ وَاَسْلَمَتْ اُمُّ حَكِيْمٍ بِنْتُ الْحَارِثِ بْنِ هِشَامٍ امْرَاَةُ عِكْرِمَةَ بْنِ اَبِي جَهْلٍ يَوْمَ الْفَتْحِ بِمَكَّةَ وَهَرَبَ زَوْجُهَا مِنَ الْاِسْلَامِ حَتّٰى قَدِمَ الْيَمَنَ فَارْتَحَلَتْ اُمُّ حَكِيْمٍ حَتّٰى قَدِمَتْ عَلَيْهِ الْيَمَنَ فَدَعَتْهُ اِلَى الْاِسْلَامِ فَاَسْلَمَ فَثَبَتَا عَلٰى نِكَاحِهِمَا رَوَاهُ مَالِكٌ عَنِ ابْنِ شِهَابٍ مُرْسَلًا۔

3179. Sayyiduna Ibn Abbas رضی اللہ عنہ narrated that a woman embraced Islam and married (a man). But her (first) husband met the Prophet صلی اللہ علیہ وسلم and submitted "O Messenger of Allah, I have embraced Islam and she had known about my Islam. (She married another man in spite of that.) " So Allah's Messenger صلی اللہ علیہ وسلم took her away from her second husband and returned her to her first (husband).

According to another version: He said, "She had embraced Islam with me." So, he returned her to him.[1]

3180. It is reported in Sharh us *sunnah (Prophet's صلی اللہ علیہ وسلم practice)* about a number of women (like them):

The prophet صلی اللہ علیہ وسلم returned them because of their first marriage to their husbands (respectively) who had embraced Islam alongwith them after their differences of religion and native lands. (When one of the spouses embraced Islam and moved to Islamic territory and the other resided in enemy territory, so there was a difference of religion and residence. But when the other followed suit, the Prophet صلی اللہ علیہ وسلم let their previous marriage hold and joined the two again, there being no need to renew their marriage contact:)

Among these women were:

The daughter of walid ibn Mughirah. She was the wife of Safwan ibn Umayyah. She had embraced Islam (before her husband did) on the day of the conquest of Makkah but her husband had kept away from Islam. His paternal cousin wahb ibn Umayr رضی اللہ عنہ was sent to him with the cloak of Allah's Messenger صلی اللہ علیہ وسلم as a token of security to Safwan (that he would not be harmed when he arrived Allah's Messenger صلی اللہ علیہ وسلم granted him four months' respite (to think over) before embracing Islam. She stayed with him (he having embraced Islam two months after his wife had done).

(Another woman was) Umm Hakim, daughter of Hirith ibn HIsham and wife of Ikrimah ibn Jahl who embraced Islam in Makkah on the day of the conquest of Makkah. Her husband, however, kept away from Islam and fled towards Yemen. She (got the Prophet's صلی اللہ علیہ وسلم permission and after a few days) went to Yemen (herself). When she urged him to embrace Islam, he submitted. Their marriage, too, was retained.

(Imam Maalik has transmitted this hadith mursal from Ibn Shihab.)[2]

COMMENTARY: The question is whether the marriage of couple would continue as it is if one of them becomes a Muslim and the other persists on the religion they had been

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[1] Tirmidhi # 147, Abu Dawud # 2238, Ibn Majah # 1951, Musnad Ahmad 4-271.

[2] Muwata Maalik # 44 (*Nikah (wedlock)*).

following. Mazhar رحمه الله cites Imam Shafi'I رحمه الله and Imam Ahmad رحمه الله as saying that if the non Muslim (partner) embraces Islam before the iddah (waiting period) or waiting period of the woman finishes (whether husband or wife) , then their marriage will remain undisturbed. It does not matter what religion they had been following (both the same or different). One may have been an idol-worshipper and the other a Christian or a Jew. It also does not matter whether they resided in Islamic territory or in enemy land, or both were divided one here and the other there.

Imam Abu Hanifah رحمه الله , however, said that they would be separated for one of three reason.

(i) The days of iddah (waiting period) are over.
(ii) The Muslim among them urges the non-Muslim to accept Islam, but to no avail.
(iii) One of them moves from Islamic territory to enemy land, or from enemy land to Islamic land.

Furthermore, Imam Abu Hanifah رحمه الله says that it is one and the same thing whether either of them had embraced Islam before they had had a sexual intercourse or after that.

(see the Life of Prophet Muhammad صلى الله عليه وسلم[1]

Ibn Kathir - English translation of seeratun Nabi عليه السلام , p 518 - for Ikrimah's perdon and p 525 - for protection to Safwan.)

(The following is an extract on this subject from siratun Nabi صلى الله عليه وسلم of Allama Shibli Nu'mani and Sayid Sulayman Nadvi v2, Era of peace p 300)

Ikrimah was Islam's enemy and Abu Jahl's son. He himself was an arch enemy of the Prophet صلى الله عليه وسلم in the same way as his father. He fled Makah at the time of its liberation and was headed towards Yaman. His wife had become a Muslim. She travelled to Yaman, convinced him, turned him into a Muslim and brought him back to Makkah and presented him before the Holy Prophet صلى الله عليه وسلم. On seeing him, the Prophet صلى الله عليه وسلم stood up, extremely pleased and walked towards him rapidly, his cloak falling down his body in the process.[2]

These words came to his lips:

مَرْحَبًا بِالرَّاكِبِ الْمُهَاجِرِ

"Welcome to you, O migrant rider!"[3]

Safwan ibn Umayyah was a chief of the pagan Quraysh and the staunchest enemy of Islam. He was the one who had promised Umayr Ibn Wahb a reward if he killed the Prophet صلى الله عليه وسلم. When Makkah was liberated, he fled to jaddah having resolved to go to Yaman by sea. Umayr ibn Wahb submitted to the Prophet صلى الله عليه وسلم. "O Messenger of Allah! Safwan ibn Umayyah is the Chief of his tribe. He has fled out of fear and will plunge himself into the sea." He said, "He is guaranteed security." The man said, "O Messenger of Allah, is there a token of the guarantee that he may trust me?" He gave him his turbgan which he took Safwan who said, "I fear for my life over there." Umayr said, "Safwan you do not yet realise how kind and forgiving Muhammad is." So, he came with Umayr to the Prophet صلى الله عليه وسلم and his first question was. "Umayr says that you have given me protection?" He said, "That is true!" Sufwan said, "Give me respite for two months." The Prophet صلى الله عليه

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[1] Darul Isha'at Karachi.

[2] Muwatta Maalik (*Nikah (wedlock)*).

[3] Tirmidhi.

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وسلم said, "Not two, but four month." Thereafter, he became a Muslim of his own accord. This account is found in detail in Ibn HIsham.[1]

SECTION III اَلْفَصْلُ الثَّالِثُ

THE MUHARRIMAT RELATIVES

(٣١٨١) عَنِ ابْنِ عَبَّاسٍ قَالَ حُرِّمَ مِنَ النَّسَبِ سَبْعٌ وَمِنَ الصِّهْرِ سَبْعٌ ثُمَّ قَرَأَ حُرِّمَتْ عَلَيْكُمْ اُمَّهَاتُكُمْ الْآيَةَ۔ (رواه البخاری)

3181. Sayyiduna Ibn·Abbas رضی اللہ عنہ asserted that by reason of consanguinity seven kinds of women are prohibited and by reason of relationship by virtue of marriage seven kinds are forbidden. Then he recited:

حُرِّمَتْ عَلَيْكُمْ اُمَّهَاتُكُمْ (النساء ۴: ۲۳)

{Forbidden to you are your mothers....} (the verse 4: 23)

COMMENTARY: The seven women relatives through genealogy who are of the forbidden degrees are:

mother, daughter, sister, paternal aunt, maternal aunt, brother's daughter and sister's daughter.

The relationship by virtue of marriage called (مصاهرت) (Musahirat) or in - laws' are established through marriage. The seven women who are forbidden because of it include four who are prohibited for ever. It is never allowed to marry any of them at any time or in any condition. They are:

(i) Wife's mother or one's mother - in law.
(ii) Wife of son and wife of grandson (son's son) meaning daughter-in-law and grand daughter-in-law, down the family tree no matter how law.
(iii) Wives of father and grandfather and so on up the tree (wives of great grandfather....)
(iv) Daughter of one's own wife with whom one has had a sexual intercourse.

The other three relatives by marriage who are not forbidden perpetually ar e:

(i) Wife's sister
(ii) Wife's father's sister.
(iii) Wife's mother's sister.

The verse of surah on Nisa that Sayyiduna Ibn Abbas رضی اللہ عنہ recited mentions all the seven women relatives by consanguinity and most of those who are forbidden because of marriage. The verse reads:

حُرِّمَتْ عَلَيْكُمْ اُمَّهٰتُكُمْ وَبَنَاتُكُمْ وَاَخَوٰتُكُمْ وَعَمّٰتُكُمْ وَخٰلٰتُكُمْ وَبَنَاتُ الْاَخِ وَبَنَاتُ الْاُخْتِ وَاُمَّهٰتُكُمُ الّٰتِيْٓ اَرْضَعْنَكُمْ وَاَخَوٰتُكُمْ مِّنَ الرَّضَاعَةِ وَاُمَّهٰتُ نِسَآئِكُمْ وَرَبَآئِبُكُمُ الّٰتِيْ فِيْ حُجُوْرِكُمْ مِّنْ نِّسَآئِكُمُ الّٰتِيْ دَخَلْتُمْ بِهِنَّ فَاِنْ لَّمْ تَكُوْنُوْا دَخَلْتُمْ بِهِنَّ فَلَا جُنَاحَ عَلَيْكُمْ وَحَلَآئِلُ اَبْنَآئِكُمُ الَّذِيْنَ مِنْ اَصْلَابِكُمْ وَاَنْ تَجْمَعُوْا بَيْنَ الْاُخْتَيْنِ اِلَّا مَا قَدْ سَلَفَ اِنَّ اللّٰهَ كَانَ غَفُوْرًا رَّحِيْمًا * ۔ (النساء ۴: ۲۳)

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[1] Darul Isha'at Karachi.

{Forbidden to you (in marriage) are your mothers and your daughters and your sisters and your paternal aunts and your maternal aunts and your brother's daughter and your sister's daughters and your mothers who have suckled you and your foster sisters and mothers of your wives and your step daughters, who are under your ward ship, (born) of your wives to whom you have gone in - but if you have gone in to them, there is no blame on you - and the wives of your sons who are from your own loins; and that you should have two sisters together, except what has already passed. Surely Allah is ever forgiving, Merciful}

WIFE'S DAUGHTER IS FORBIDDEN

(٣١٨٢) وَعَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ اَبِيْهِ عَنْ جَدِّهٖ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اَيُّمَا رَجُلٍ نَكَحَ اِمْرَأَةً فَدَخَلَ بِهَا فَلَا يَحِلُّ لَهٗ نِكَاحُ ابْنَتِهَا وَاِنْ لَمْ يَدْخُلْ بِهَا فَلْيَنْكِحِ ابْنَتَهَا وَاَيُّمَا رَجُلٍ نَكَحَ امْرَأَةً فَلَا يَحِلُّ لَهٗ اَنْ يَنْكِحَ اُمَّهَا دَخَلَ بِهَا اَوْلَمْ يَدْخُلْ۔ رَوَاهُ التِّرْمِذِيُّ وَقَالَ هٰذَا حَدِيْثٌ لَا يَصِحُّ مِنْ قِبَلِ اِسْنَادِهٖ وَاِنَّمَا رَوَاهُ ابْنُ لَهِيْعَةَ وَالْمُثَنّٰى بْنُ الصَّبَّاحِ عَنْ عَمْرِو بْنِ شُعَيْبٍ وَهُمَا يُضَعَّفَانِ فِي الْحَدِيْثِ۔

3182. Sayyiduna Amr ibn Shu'ayb رحمه الله reported on the authority of his father who from his grandfather (Sayyiduna Abdullah) رضى الله عنه that Allah's Messenger صلى الله عليه وسلم said, "To a man who marries a woman and consummates the marriage, it is not lawful to marry her daughter. But, if he did not have a sexual intercourse with her, then he may marry her daughter. And, to a man who marries a woman, it is not lawful to marry her mother irrespective of whether he has consummated the marriage or not."[1]

COMMENTARY: The prohibition to marry the daughter of one's wife is in line with the verse of the Quran:

وَرَبَآئِبُكُمُ الّٰتِيْ فِيْ حُجُوْرِكُمْ مِّنْ نِّسَآئِكُمُ الّٰتِيْ دَخَلْتُمْ بِهِنَّ فَاِنْ لَّمْ تَكُوْنُوْا دَخَلْتُمْ بِهِنَّ فَلَا جُنَاحَ عَلَيْكُمْ۔ (النساء ۴: ۲۳)

{And your step daughters, who are being brought up under your care, from wives with whom you had intercourse, but if you have not had intercourse with them, then there is no harm for you} (4: 23) (that you marry them.)

The command not to marry the mother of one's wife, meaning his mother-in-law, absolutely, in any case, is borne out from this verse:

وَاُمَّهٰتُ نِسَآئِكُمْ۔

{and mothers of your wives (are forbidden to you).} (4: 23)

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[1] Tirmidhi # 1120.

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CHAPTER - VI

SEXUAL INTERCOURSE بَابُ الْمُبَاشَرَةِ

SECTION I اَلْفَصْلُ الْاَوَّلُ

A WRONG NOTION OF THE JEWS

(٣١٨٣) عَنْ جَابِرٍ قَالَ كَانَتِ الْيَهُوْدُ تَقُوْلُ اِذَا اَتَى الرَّجُلُ امْرَاَتَهٗ مِنْ دُبُرِهَا فِيْ قُبُلِهَا كَانَ الْوَلَدُ اَحْوَلَ فَنَزَلَتْ نِسَاؤُكُمْ حَرْثٌ لَّكُمْ فَاْتُوْا حَرْثَكُمْ اَنّٰى شِئْتُمْ۔ (متفق علیه)

3183. Sayyiduna Jabir رضی اللہ عنہ narrated that the Jews believed that if a man has intercourse with his wife at the vagina but comes (to it) from her rear then the child will be squint-eyed. So this verse was revealed:

نِسَاؤُكُمْ حَرْثٌ لَّكُمْ فَاْتُوْا حَرْثَكُمْ اَنّٰى شِئْتُمْ

{Your wives are tillage for you, so come to your tillage as you will}[1] (2: 223)

COMMENTARY: Wives are like tillage like their produce, children are born to wives. Men are at liberty to enter from whichever side and in whatever position they like. However, intercourse is only at the vagina, for, only then may it be compared to a tithe. Intercourse at the rectum or anus is forbidden not only by Islam but by all religions. It is an unnatural act.

COITUS INTERRUPT US

(٣١٨٤) وَعَنْهُ قَالَ كُنَّا نَعْزِلُ وَالْقُرْاٰنُ يَنْزِلُ۔ مُتَّفَقٌ عَلَيْهِ وَزَادَ مُسْلِمٌ فَبَلَغَ ذٰلِكَ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَلَمْ يَنْهَنَا۔

3184. Sayyiduna Jabir رضی اللہ عنہ said, 'We used to practice azl (coitus interruptus). Meanwhile, the Quran continued to be revealed (but this practice was not forbidden)."

According to the version in Muslim: 'This was conveyed to the Prophet صلی اللہ علیہ وسلم but he did not forbid us."[2]

COMMENTARY: Azl or coitus interruptus is to withdraw the penis before emission of semen. In this way, the woman is prevented from conceiving.

Ibn Hammam رحمہ اللہ said that most of the ulama (Scholars) regard azl to be allowed. However, some people including a few sahabah (Prophet's Companions) رضی اللہ عنہم consider it as not permitted. In any case, the correct thing is that azl is permitted. It is stated in Durr Mukhtar that azl is allowed in expediencies.

While it is allowed to observe it with one's female slave without her permission, it cannot be practiced with one's free woman, meaning wife, without her consent.

If a man is married to someone else's female slave then he can practice azl with her only with her master's permission.

Imam Shafi'i رحمہ اللہ also held that azl may be practiced with one's wife who is a free woman

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[1] Bukhari # 2158, Muslim # 117-1435, Tirmidhi # 2989, Abu Dawud # 2163, Nasai'i, Ibn Majah # 1925, Darimi # 2213.

[2] Bukhari # 5208, Muslim # 138-1440, Tirmidhi # 1140, Ibn Majah # 1927, Musnad Ahmad 3-309.

only with her consent but no permission is necessary from a female slave whether owned or married to oneself.

Imam Nawawi رحمه الله who was a follower of Shafi'I said that azl is makruh (disapproved) because it halts procreation.

(٣١٨٥) وَعَنْهُ قَالَ إِنَّ رَجُلًا أَتَى رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ إِنَّ لِيْ جَارِيَةً هِيَ خَادِمَتُنَا وَأَنَا أَطُوْفُ عَلَيْهَا وَأَكْرَهُ أَنْ تَحْمِلَ فَقَالَ اِعْزِلْ عَنْهَا إِنْ شِئْتَ فَإِنَّهُ سَيَأْتِيْهَا مَاقُدِّرَ لَهَا فَلَبِثَ الرَّجُلُ ثُمَّ أَتَاهُ فَقَالَ إِنَّ الْجَارِيَةَ قَدْ حَبِلَتْ فَقَالَ قَدْ أَخْبَرْتُكَ أَنَّهُ سَيَأْتِيْهَا مَاقُدِّرَ لَهَا۔ (رواه مسلم)

3185. Sayyiduna Jabir رحمه الله narrated that a man came to Allah's Messenger صلى الله عليه وسلم and submitted that he had a female slave who was their servant and with whom he had sexual intercourse but he did not like that she should become pregnant. So, he suggested, observe azal with her if you like. But that which is decreed for her will come to pass." After some time the man come and submitted. "The female slave has become pregnant. And, Allah's Messenger صلى الله عليه وسلم said. "I did tell you that whatever is decreed for her would come her."[1]

COMMENTARY: Allamah (The learned Scholar) Nawawi رحمه الله said that if a woman conceives even after observing coitus interrupt is then too the genealogy of the newborn is established in the light of this hadith.

Allamah (The learned Scholar) Ibn Hammam رحمه الله said that the question, whether the man who has observed azl may reject the child conceived in spite of observing azl, is complex.

The scholars say that if a man, having observed azl, inserted his penis in the vagina once again without having passed urine, then it is not proper to deny the child so conceived. Some drops of semen may have remained on the penis and penetrated into the oval on his second insertion.

It is why Imam Abu Hanifah رحمه الله contends that if a man has a bath (after having sexual intercourse but) before passing urine, and, after the bath, when he urinates he finds drops of semen, then he must have a fresh bath.

(٣١٨٦) وَعَنْ أَبِيْ سَعِيْدِنِ الْخُدْرِيِّ قَالَ خَرَجْنَا مَعَ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فِيْ غَزْوَةِ بَنِي الْمُصْطَلَقِ فَأَصَبْنَا سَبْيًا مِنْ سَبْيِ الْعَرَبِ فَاشْتَهَيْنَا النِّسَاءَ وَاشْتَدَّتْ عَلَيْنَا الْعُزْبَةُ وَاحْبَبْنَا الْعَزْلَ فَأَرَدْنَا أَنْ نَعْزِلَ وَقُلْنَا نَعْزِلُ وَرَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ بَيْنَ أَظْهُرِنَا قَبْلَ أَنْ نَسْأَلَهُ فَسَأَلْنَاهُ عَنْ ذٰلِكَ فَقَالَ مَا عَلَيْكُمْ أَنْ لَا تَفْعَلُوْا مَا مِنْ نَسَمَةٍ كَائِنَةٍ إِلٰى يَوْمِ الْقِيَامَةِ إِلَّا وَهِيَ كَائِنَةٌ۔ (متفق عليه)

3186. Sayyiduna Abu Sa'eed al-Khudri رضى الله عنه narrated that they proceeded along with Allah's Messenger صلى الله عليه وسلم on the expedition against the Banu Mustaliq. They captured some Arab woman captives, and yearned for women because of continued separation from their wives. So, they intended to observe azl (with these captives to forestall conception) and decided on that finally, but wondered if they could do it (or not particularly) when Allah's Messenger صلى الله عليه وسلم was among

[1] Muslim # 134-1439, Abu Dawud # 2173, Musnad Ahmad 3-312.

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them and not ask him? Thus they asked him about it and he said, "If you do not observe azl, you will not suffer, because every soul that is (destined) to be born till the day of resurrection will be born definitely)."[1]

COMMENTARY: Imam Nawawi رحمه الله said that even the Arabs may be taken captives in battle. These people of Banu Mustaliq belonged to the tribe of Khuza'ah.
The Prophet's صلى الله عليه وسلم words have the word (ان) which could be read (ان) (in) or (أن) (an) (meaning "you will not lose ..." or "that you observe it, will not harm you...")
It makes no difference whether you observe azl or not. In this sense, this hadith does not approve azl.
But wit h the word (أن) (in the second meaning), it approves azl.

(٣١٨٧) وَعَنْهُ قَالَ سُئِلَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَنِ الْعَزْلِ فَقَالَ مَامِنْ كُلِّ الْمَاءِ يَكُوْنُ الْوَلَدُ وَ إِذَا أَرَادَ اللّٰهُ خَلْقَ شَيْءٍ لَمْ يَمْنَعْهُ شَيْءٌ۔ (رواه مسلم)

3187. Sayyiduna Abu Sa'eed al-Khudri رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم was asked about azl (coitus interrupt us). He said, "It is not from all the semen that a child is born. When Allah decides to create something, nothing prevents him (from doing it)."[2]

COMMENTARY: The question was intended to get permission for practicing coitus interrupt us. The Prophet صلى الله عليه وسلم explained that a woman does not conceive every time a man's semen drops in her ovary or reproductive organ. It is only when Allah wills that the semen and the ova combine to grow a child. So it is Allah's will that decides whether she will conceive or not. If he decrees, then the reproductive process will begin and in spite of azl an active drop of semen might find its way into the ovary.
Of course, Allah has power to create a child even without semen going into the woman's ovary. On the face of it, this hadith does not approve azl. See also the commentary to a previous hadith (# 3040 3185).

(٣١٨٨) وَعَنْ سَعْدِ بْنِ اَبِيْ وَقَّاصٍ اَنَّ رَجُلًا جَاءَ إِلَى رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ إِنِّيْ اَعْزِلُ عَنِ امْرَأَتِيْ فَقَالَ لَهُ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لِمَ تَفْعَلُ ذٰلِكَ فَقَالَ الرَّجُلُ أُشْفِقُ عَلٰى وَلَدِهَا فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَوْ كَانَ ذٰلِكَ ضَارًّا ضَرَّ فَارِسَ وَالرُّوْمَ۔ (رواه مسلم)

3188. Sayyiduna Sa'd ibn Abu Waqqas رضى الله عنه narrated that a man came to Allah's Messenger صلى الله عليه وسلم and disclosed that he practiced coitus interruptus with his wife. He asked him, "Why do you do it?" The man submitted, "I fear for her infant." Allah's Messenger صلى الله عليه وسلم said, "If that was harmful then it would surely have hurt the Persians and the Greeks!"[3]

COMMENTARY: It was presumed generally that if a man had sexual intercourse with his wife and she conceived a child during the days she also suckled an earlier child then it would render the milk poor and harm the infant. Moreover, they also imagined that it

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[1] Bukhari # 4138, Muslim # 125-1428, Abu Dawud # 2172, (Maalik) Muwatta # 95 (Talaq).
[2] Muslim # 133-1438.
[3] Muslim # 143-1443, Musnad Ahmad 5-203.

would reduce the quantity of milk. So, this man wished to prevent his wife conceiving another child during this period of suckling.

The Prophet صلى الله عليه وسلم pointed out to the man that the Persians and Greeks (Romans)[1] Were used to do this thing. Their woman conceived during the period they were suckling their infant. Hence, it is not harmful to have sexual intercourse during the period of suckling or to conceive a child.

Hence, azl is of no purpose. In other words, the prophet صلى الله عليه وسلم disapproved resort to coitus interruptus.

(٣١٨٩) وَعَنْ جُدَامَةَ بِنْتِ وَهْبٍ قَالَتْ حَضَرْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فِيْ أُنَاسٍ وَهُوَ يَقُوْلُ لَقَدْ هَمَمْتُ اَنْ اَنْهٰى عَنِ الْغِيْلَةِ فَنَظَرْتُ فِي الرُّوْمِ وَ فَارِسَ فَإِذَاهُمْ يُغِيْلُوْنَ اَوْلَادَهُمْ فَلَا يَضُرُّ اَوْلَادَهُمْ ذٰلِكَ شَيْئًا ثُمَّ سَأَلُوْهُ عَنِ الْعَزْلِ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ ذٰلِكَ الْوَأْدُ الْخَفِيُّ وَهِيَ وَإِذَا الْمَوْءٗدَةُ سُئِلَتْ۔ (رواه مسلم)

3189. Sayyidah Judamah bint Wahb رضى الله عنه said that she went to Allah's Messenger صلى الله عليه وسلم who had some people around him. He said to them, "I had intended to forbid ghilah. Then I thought of the Greeks and the Persians. Behold! They practice ghilah without it causing any harm to their children." Then, they asked him about azl. So, Allah's Messenger صلى الله عليه وسلم said, "That is a quiet burying alive (and a bad habit) referred to in this verse: "

وَإِذَا الْمَوْءٗدَةُ سُئِلَتْ۔ الآية

{And when the girl-child buried alive is questioned} (81: 8)[2]

COMMENTARY: Ghilah is to suckle a child at the same time as the woman is pregnant. Nihayah says that it is to have sexual intercourse with one's wife during the days she is suckling her infant The Arabs abstained from this because they imagined that it was harmful to their suckling child. The Prophet صلى الله عليه وسلم had also decided to prohibit it but he did not because of the example of the Greeks and the Persians

During the jahiliyah (ignorance period), the Arabs used to bury their new born babies alive. The verse cited in the hadith speaks of it. Parents of these girls would be subject to harsh reckoning.

The prophet صلى الله عليه وسلم described azl as a kind of burying a child alive. Thus it is better and preferable to abstain from azl.

One day the prophet's صلى الله عليه وسلم sahabah were assembled. Among them were Sayyiduna Ali رضى الله عنه. Zubayr رضى الله عنه and Sa'd رضى الله عنه besides the amir ul mumineen, Umar رضى الله عنه. They discussed azl and the general view was that it was permitted. However, one of them remarked that certain people compared it to burying alive one's own child, saying that it was a minor form of it. Sayyiduna Ali رضى الله عنه said that it can be so called only if the child begins to breath, meaning if an abortion is forced after the foetus stars living or a live child is born and it is buried then that is like burying alive a child.

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[1] The Arabic (الروم) (Room) is rendered Greeks.

[2] Muslim # 141-1442, Abu Dawud # 3682, Nasai'i # 3326, Ibn Majah # 2011, Darimi # 2217, Muwatta Maalik # 16 (Rad'ah) Musnad Ahmad 6-434.

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Umar رضی اللہ عنہ said, "May you live long Ali, you have spoken the truth. Accordingly, the juristic ruling also is that abortion is permitted till the foetus is lifeless. It is one hundred and twenty days after conception that soul is blown in the foetus after which abortion is disallowed.
Some people say that these words of the Prophet صلی اللہ علیہ وسلم do not point to prohibition of azl but to its being makruh (disapproved). It is certainly a resemblance to burying a child alive because it is a throwing away of the sperm, the essence of conception leading to child birth.
Ibn Hammam رحمہ اللہ said that it is correctly reported of Ibn Mas'ud رضی اللہ عنہ that he compared azl to a minor form of burying alive.
Abu Umamah رضی اللہ عنہ said on being asked about azl that he had never known of a Muslim do it.
Ibn Umar رضی اللہ عنہ reported that Umar رضی اللہ عنہ beat some people for practicing azl.
Uthman رضی اللہ عنہ also forbade people from practicing azl (coitus interruptus).
However, the ulama (Scholars) say of all these prohibitions that they amount to nahi tanzihi (which is a prohibition nearer lawful).

WARNING TO ONE WHO DISCLOSES SECRETS OF HIS WIFE

(٣١٩٠) وَعَنْ اَبِيْ سَعِيْدِنِ الْخُدْرِيِّ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِنَّ اَعْظَمَ الْاَمَانَةِ عِنْدَ اللّٰهِ يَوْمَ الْقِيَامَةِ وَفِيْ رِوَايَةٍ اِنَّ مِنْ اَشَرِّ النَّاسِ عِنْدَ اللّٰهِ مَنْزِلَةً يَوْمَ الْقِيَامَةِ الرَّجُلُ يُفْضِيْ اِلٰى امْرَأَتِهٖ وَتُفْضِيْ اِلَيْهِ ثُمَّ يُنْشِرُ سِرَّهَا۔ (رواه مسلم)

3190. Sayyiduna Abu Sa'eed al Khudri رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "The greatest trust in the sight of Allah on the day of resurrection..." But according to another version: "Surely, the most wicked of all men in the sight of Allah on the day of resurrection....is the men who has sexual intercourse with his wife and she is locked in his arms, and afterwards, he goes around revealing her secrets."[1]

COMMENTARY: Allamah (The learned Scholar) Teebi رحمہ اللہ said about the greatest trust that it is such that one who commits breach of it will be subjected to strict reckoning on the day of resurrection. This trust is the private life of husband and wife and their secrets. It is great responsibility of the husband to protect his wife from disclosure of her secrets. If a man spreads the secrets of his wife then he will be questioned on the day of resurrection.
Ashraf رحمہ اللہ said that it means that treachery in the greatest of trust as measured on the day of resurrection, in Allah's sight is to set people know about one's wife's secrets. It is what shameless people do. They disclose the shortcomings of their wives or the good qualities and characteristics of their wives which it is essential to conceal according to ء (divine law) and etiquette.
Ibn Maalik رحمہ اللہ said that it applies to both husband and wife. Neither must disclose such things of the other as that partner would not like to be known. Such disclosure is treachery. In short, this conduct is punishable in the hereafter.
It would not be incongruous and unprofitable to recount here a didactic event.
A learned and wise man intended to divorce his wife. The people asked him what prompted him to think of that. He said, "How may I disclose her shortcoming?" (If I tell you of the reasons, that would amount to revealing her secrets. I cannot do that.) After he divorced her, they asked him again, "Why did you do that?" This time he excused himself,

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[1] Muslim # 124-1438, Abu Dawud # 4870, Musnad Ahmad 3-69.

saying "How may I speak of the defects of a stranger woman?" (This is not proper.)
Some of the ulama (Scholars) say that this prohibition to the couple to disclose one another's secrets is only when there is no benefit in it and no purpose served. If there is some advantage then it is not disallowed. For instance, a husband may be impotent or hard to please and uncaring. In such cases, his wife is allowed to complain of these things and this is what Allah himself permits;

لَا يُحِبُّ اللّٰهُ الْجَهْرَ بِالسُّوْٓءِ مِنَ الْقَوْلِ اِلَّا مَنْ ظُلِمَ۔

{And Allah likes not shoutting of evil words except by one who has been wronged.} (4: 148)
(The Urdu translation has 'making known' instead of 'shoutting.')

SECTION II الفصل الثانی

NO INTERCOURSE DURING MENSTRUATION & NO UNNATURAL ACT

(۳۱۹۱) عَنِ ابْنِ عَبَّاسٍ قَالَ اُوْحِیَ اِلٰی رَسُوْلِ اللّٰهِ صَلَّی اللّٰهُ عَلَیْهِ وَسَلَّمَ نِسَآؤُكُمْ حَرْثٌ لَّكُمْ فَاْتُوْا حَرْثَكُمْ اَنّٰی شِئْتُمْ فَاَتَاهُ الْاٰیَةُ اَقْبِلْ وَاَدْبِرْ وَاتَّقِ الدُّبُرَ وَالْحَیْضَةَ۔ (رواه الترمذی و ابن ماجة والدارمی)

3191. Sayyiduna Ibn Abbas رضی اللہ عنہ narrated that this verse was revealed to Allah's Messenger صلی اللہ علیہ وسلم:

نِسَآؤُكُمْ حَرْثٌ لَّكُمْ فَاْتُوْا حَرْثَكُمْ اَنّٰی شِئْتُمْ۔ الآیة

{You wives are a tillage for you, so come to your tillage as you will} (2: 223)
Hence, come to it from the front or from behind (to the vagina). But refrain from (going into the) anus, and from sexual intercourse during (her) menstruation.[1]

COMMENTARY: The words 'come to it from the front' refer to coming to the vagina from the front, and the words 'come to it from the behind' also refer to the vagina but coming from the rear. They elaborate the text (فاتوا حرثكم) {So come to your tillage}. In any case penetrate the front, meaning vagina.
It is absolutely forbidden to commit an unnatural act at the anus.
Also, it is forbidden to enter the vagina too when the woman experiences her menstruation.

(۳۱۹۲) وَعَنْ خُزَیْمَةَ بْنِ ثَابِتٍ اَنَّ النَّبِیَّ صَلَّی اللّٰهُ عَلَیْهِ وَسَلَّمَ قَالَ اِنَّ اللّٰهَ لَا یَسْتَحْیِیْ مِنَ الْحَقِّ لَا تَاْتُوا النِّسَاءَ فِیْ اَدْبَارِهِنَّ۔ (رواه احمد و الترمذی و ابن ماجة و الدارمی)

3192. Sayyiduna Khuzaymah ibn Thabit رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said "Surely, Allah is not ashamed of the truth. Do not commit an unnatural act with woman through their anus."[2]

COMMENTARY: The word haya translated ahsmed is a kind of shyness depicted by a change in a person on being blamed. Since any kind of change is not associated with Allah, here haya is used figuratively to man 'to give up.' Thus: 'Allah does not give up speaking the truth and disclosing it.'

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[1] Tirmidhi # 2991, Musnad Ahmad 1/297, Ibn Majah, Dararmi.
[2] Ibn Majah # 1924, Darimi # 2213, Musnad Ahmad 5-213, Tirmidhi # 1167.

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This is spoken ahead of the subject of the hadith and a warning is sounded that approaching a woman at her anus is a forbidden act. It is so bad that even speaking of it is shameful though it be to prohibit it. But, it is a question of ء (divine law), so must be spoken.
The prohibition is stronger when practiced between men.
Teebi رحمه الله said that the Prophet صلى الله عليه وسلم did not assert, "I am not ashamed of the truth..." but he attributed the words to Allah to emphasise the evil of the act. Those people who permit it are misled badly.
Teebi رحمه الله said that if anyone does it with a woman who is a stranger then he is an adulterer. If he does it to his wife or female slave then he perpetrates a grave sin. But he will not be stoned to death and will not be awarded the prescribed punishment. However, he will be punished definitely.
Nawawi رحمه الله said that if anyone commits it with his slave then he will come under the purview of one doing it to a strange.
Imam Abu Hanifah رحمه الله said that both the active and the passive men involved in the unnatural acct deserve discretionary punishment. However, if the passive one is young, mad or compelled then he will not be punished.

PERPETRATOR OF UNNATURAL WITH WIFE IS ACCURSED

(٣١٩٣) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَلْعُوْنٌ مَنْ اَتٰى اِمْرَأَتَهٗ فِيْ دُبُرِهَا۔ (رواه احمد و ابوداؤد)

3193. Sayyiduna Abu Hurayrah رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "Accursed is he who approaches his wife through her anus."[1]

(٣١٩٤) وَعَنْهُ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِنَّ الَّذِيْ يَأْتِيْ امْرَأَتَهٗ فِيْ دُبُرِهَا لَا يَنْظُرُ اللّٰهُ اِلَيْهِ۔ (رواه فى شرح السنة)

3194. Sayyiduna Abu Hurayrah رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "Surely, Allah will not look (with mercy and kindness) at one who approaches his wife at her anus."[2]

(٣١٩٥) وَعَنِ ابْنِ عَبَّاسٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا يَنْظُرُ اللّٰهُ اِلٰى رَجُلٍ اَتٰى رَجُلًا اَوِ امْرَأَةً فِي الدُّبُرِ۔ (رواه الترمذى)

3195. Sayyiduna Ibn Abbas رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "Allah will not cast a look (of mercy and compassion) on a man who commits an unnatural act with a man or a woman at the anus."[3]

GHILAH IS FORBIDDEN

(٣١٩٦) وَعَنْ اَسْمَاءَ بِنْتِ يَزِيْدَ قَالَتْ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ لَا تَقْتُلُوْا اَوْلَادَكُمْ

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[1] Abu Dawud # 2162, Musnad Ahmad 2-444.
[2] Ibn Majah # 1923, Baghawi in Sharh us *sunnah (Prophet's صلى الله عليه وسلم practice)* # 2297.
[3] Tirmidhi # 1168.

سِرًّا فَإِنَّ الْغَيْلَ يُدْرِكُ الْفَارِسَ فَيُدَعْثِرُهُ عَنْ فَرَسِهِ۔ (رواه ابوداؤد)

3196. Sayyidah Asma bint Yazid رضی اللہ عنہ narrated that she heard Allah's Messenger صلی اللہ علیہ وسلم say. "Do not kill your children quietly (in a secret way) because gill overtakes the horseman and hurls him down from his horse."[1]

COMMENTARY: Do not harm your children through ghilah. It was explained previously (hadith # 3189, commentary) that ghilah is to suckle an infant during pregnancy, or to have sexual intercourse during the period of suckling.

The hadith says that ghilah creates an impairment in the temperament of the child. Its energy saps, the effect remains upto his adulthood too so that he is weak in the battlefield and falls down from his horse.

So do not observe ghilah lest you be the cause of your child's destruction.

However, previously it has been affirmed that ghilah has no adverse effect on a child (for example, hadith # 3189). Teebi رحمہ اللہ explains that previously the action of the jahiliyah (ignorance period) was rejected that ghilah was the true cause of injury. This hadith speaks of ghilah as a general effective agent but the real cause lies in Allah's hands. Nothing happens without his will. Or, we may say that this hadith gives a command of the kind of nahi tanzihi, meaning it is nearer lawful then unlawful while the Prophet's صلی اللہ علیہ وسلم previous saying:

لَقَدْ هَمَمْتُ الخ

"I had intended to forbid ghilah...." is based on prohibition.

We may also say that both ahadith are based on the ijtihad (independent judgment) of the Prophet صلی اللہ علیہ وسلم. When he observed that when the Arabs practiced ghilah, their children turned out to be weak, so he forbade this practice of ghilah. But, when he observed that the Greeks and the Persians also practiced it without adverse effect on their children, he reversed the decision. The hadith (# 3189) of Sayyiduna Judamah upholds this contention.

SECTION III اَلْفَصْلُ الثَّالِثُ

CONDITIONAL PERMISSION FOR AZL

(٣١٩٧) عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ نَهٰى رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَنْ يُعْزَلَ عَنِ الْحُرَّةِ اِلَّا بِاِذْنِهَا۔

(رواه ابن ماجة)

3197. Sayyiduna Umar ibn Khattab رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم forbade coitus interruptus with a free woman without her permission.

COMMENTARY: It is a night for one's wife, a free woman, that azl may not be practiced with her without her permission. She might wish to have a child or to enjoy sexual intercourse. Both these things are denied to her if the penis is withdrawn before emission.

As for sexual intercourse with a female slave, her permission is not required to perform azl.

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[1] Abu Dawud # 2881, Ibn Majah # 2012, Musnad Ahmad 6. 458.

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CHAPTER - VII

CONTINUATION OF PREVIOUS CHAPTER

بَابٌ

SECTION I

اَلْفَصْلُ الْاَوَّلُ

FEMALE SLAVE MAY ANNUAL HER MARRIAGE ON EMANCIPATION

(٣١٩٨) عَنْ عُرْوَةَ عَنْ عَائِشَةَ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لَهَا فِيْ بَرِيْرَةَ خُذِيْهَا فَاَعْتِقِيْهَا وَكَانَ زَوْجُهَا عَبْدًا فَخَيَّرَهَا رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَاخْتَارَتْ نَفْسَهَا وَلَوْ كَانَ حُرًّا لَمْ يُخَيِّرْهَا۔ (متفق علیه)

3198. Sayyiduna Urwah رضی اللہ عنہ narrated on the authority of Sayyidah Ayshah رضی اللہ عنہا that Allah's Messenger صلی اللہ علیہ وسلم said to her concerning Sayyidah Barirah رضی اللہ عنہ, "Buy her and set her free." Her husband was a slave, so Allah's Messenger صلی اللہ علیہ وسلم gave her option (about herself) and she elected to separated herself (from her husband). If he were a free man then the prophet صلی اللہ علیہ وسلم would not have given her option.[1]

COMMENTARY: The case of Sayyidah Barirah has been recorded in detail in the Kitab Buyu. (see hadith # 2877, and commentary).

She was the female slave of a Jew. Sayyidah Ayshah رضی اللہ عنہا bought her and set her free. Her husband was a slave, so the Prophet صلی اللہ علیہ وسلم gave her choice to stay with him to revoke their marriage and separate from him because she was a free woman. She opted to separate.

The last sentence of the hadith seems to be the opinion of Urwah رضی اللہ عنہ. This coincides with the opinion of Shafi'I رحمہ اللہ Maalik رحمہ اللہ and Ahmad رحمہ اللہ that after getting freedom a female slave has the option to separated from her husband only if he is a slave, but not if he is a free man.

However, Abu Hanifah رحمہ اللہ disagrees, He says that she has a choice in any case whether her husband is a slave or a free man.

Arguments of the ulama (Scholars) of both sides may be seen in books of fiqh (Islamic jurisprudence).

If both the spouses are set free together then the ulama (Scholars) say that the wife does not have the option to revoke their marriage. Also, if only the husband gets freedom then he does not have the choice to revoke his marriage, his wife may be a slave or a free woman.[2]

(٣١٩٩) وَعَنِ ابْنِ عَبَّاسٍ قَالَ كَانَ زَوْجُ بَرِيْرَةَ عَبْدًا اَسْوَدَ يُقَالُ لَهُ مُغِيْثٌ كَاَنِّيْ اَنْظُرُ اِلَيْهِ يَطُوْفُ خَلْفَهَا فِيْ سِكَكِ الْمَدِيْنَةِ يَبْكِيْ وَدُمُوْعُهُ تَسِيْلُ عَلٰى لِحْيَتِهٖ فَقَالَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لِلْعَبَّاسِ يَا عَبَّاسُ اَلَا تَعْجَبُ مِنْ حُبِّ مُغِيْثٍ بَرِيْرَةَ وَمِنْ بُغْضِ بَرِيْرَةَ مُغِيْثًا فَقَالَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَوْ رَاجَعْتِيْهِ فَقَالَ يَا رَسُوْلَ اللّٰهِ تَاْمُرُنِيْ قَالَ اِنَّمَا اَشْفَعُ قَالَتْ لَا حَاجَةَ لِيْ فِيْهِ۔ (رواه البخاری)

3199. Sayyiduna Ibn Abbas رضی اللہ عنہ narrated that the husband of Sayidah Barirah رضی

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[1] Bukhari # 2536, Muslim # 8-1504, Tirmidhi # 12157, Abu Dawud # 2233, Nasai'i # 3449, Ibn Majah # 2073, Muwatta Maalik # 25 (Talaq), Musnad Ahmad 6-42, Darami # 2289.

[2] See Siratun Nabi Shibli Nu'man (Mutual Dealings Behaviour) v7 p 44.

رضی اللہ عنہ was a black slave, named Sayyiduna Mughith رضی اللہ عنہ. "It is as though I see him still going round following her though her streets of Madinah weeping. Tears rolled down to his beard." The prophet صلی اللہ علیہ وسلم said to Abbas رضی اللہ عنہ, "O Abbas, does it not astonish you how much Mughith loves Barirah and how much Barirah dislikes Mughith?" The prophet صلی اللہ علیہ وسلم exclaimed, "Would that you take him back!" She asked, "O Messenger of Allah, do you command me (to do this) ?" He said, "I only make a recommendation." She said, "I have no need of him."[1]
(She meant that she was not willing to live with him.)

COMMENTARY: Some traditions say that Mugith was a free man. In this case it would imply that he was an ugly black man like a black slave. Or he was a slave who had been emancipated. This hadith speaks of a few things:

(i) A leader or ruler may make a recommendation for one of his subjects.
(ii) It is not *wajib (obligatory)* to accede to the ruler's recommendation.
(iii) The ruler has no right to call for an explanation from one who does not accept his recommendation.
(iv) It is allowed to separate from a person because of his ugly looks.

SECTION II اَلْفَصْلُ الثَّانِيْ

HUSBAND SHOULD BE SET FREE BEFORE WIFE

(۳۲۰۰) عَنْ عَآئِشَةَ اَنَّهَا اَرَادَتْ اَنْ تُعْتِقَ مَمْلُوْكَيْنِ لَهَا زَوْجٌ فَسَأَلَتِ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَاَمَرَهَا اَنْ تَبْدَأَ بِالرَّجُلِ قَبْلَ الْمَرْأَةِ۔ (رواه ابوداؤد و النسائی)

3200. Sayyidah Ayshah رضی اللہ عنہا reported that she intended to set free her two slaves who were husband and wife. So she asked the Prophet صلی اللہ علیہ وسلم about it and he instruct ed her that she should begin with the man before the woman.[2]

COMMENTARY: If the female slave were set free before the male then she would have had an option to separate from her husband. This is as stated in the previous commentary. Generally, a man tolerates a slave girl as his wife but a woman seems uncomfortable with a husband who is a slave.

FEMALE SLAVE WHO CHOOSES HER HUSBAND CANNOT REPUDIATE MARRIAGE AFTER HER FREEDOM

(۳۲۰۱) وَعَنْ عَآئِشَةَ اَنَّ بَرِيْرَةَ عَتَقَتْ وَهِيَ عِنْدَ مُغِيْثٍ فَخَيَّرَهَا رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَقَالَ لَهَا اِنْ قَرِبَكِ فَلَا خِيَارَ لَكِ۔ (رواه ابوداؤد)

3201. Sayyidah Ayshah رضی اللہ عنہا narrated that Sayyidah Barirah رضی اللہ عنہا was set free when she was with Sayyiduna Mughith رضی اللہ عنہ (as his wife). Allah's Messenger صلی اللہ علیہ وسلم offered her an option (to let her marriage stay or revoke it). But, he also said to her, "If he has sexual intercourse with you, then you will no longer have an option" (because that will suggest that you are pleased with him).[3]

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[1] Bukhari # 5383, Tirmidhi # 1155, Abu Dawud # 2231, Darimi # 2292, Musnad Ahmad 1-215.
[2] Abu Dawud # 2237, Nasai'i # 3446, Ibn Majah # 2532.
[3] Abu Dawud # 2236.

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COMMENTARY: The Hidayah states that if a female slave marries with the consent of her master, or he gives her in marriage with her permission or without her permission and she gets freedom later on then the option to retain or revoke her marriage rests with her, whether her husband is a free man or a slave.

If she marries someone without her master's consent and later he sets her free, then upon gaining freedom her marriage remains valid. She retains no option to repudiate her marriage. The three imams say that if she has married a free man then after gaining freedom she has no right to decide on her marriage.

Ibn Hamman رحمه الله said that the difference of opinion between Abu Hanifah رحمه الله and the three imams stems from the varying traditions about the husband of Sayyidah Barirah رضی الله عنه. Both Bukhari and Muslim have the hadith of Sayyidah Ayshah رضی الله عنها that the husband was a slave. But they also reproduce the hadith that he was a free man.

Similar traditions are found also in the four sun an, Trimdhi, Abu Dawud Nasa'i and Ibn Majah. Tirmidhi رحمه الله has described the hadith as hasan sahih.

The three imams رحمه الله go by the first tradition while Abu Hanifah رضی الله عنه goes by the second.

Mulla Ali Qari رحمه الله has cited this saying of Ibn Hamman رحمه الله in MIrqat in detail. We have reproduced only a summary of it.[1]

CHAPTER - VIII

THE DOWER بَابُ الصَّدَاقِ

As Sadaq (الصداق) is the dower. It is the recompense paid to the woman by her husband against the right of wifehood. If a man decides at the time of marriage that he shall not pay the dower, then the marriage will not be valid. However, it is not necessary to mention the dower at the time of marriage, for it is not a condition, and the husband will haye to pay mahr mithl (or the proper dower) in this case.

THE AMOUNT: ﷻ (divine law) has not defined any amount of dower as *wajib (obligatory)* not has it mentioned its maximum limit. Rather, it has left it to the means of the husband. A man must determine it according to his ability to pay, However, the minimum limit of the dower is specified lest husbands begin to pay very low sums of money towards dower.

According to the Hanafis the minimum dower is ten dirhams (or 30. 62 gram of silver). If any one suggests a dower less than this then it would not be correct.

Imam Maalik رحمه الله holds that the lowest possible dower is one fourth dinar.

Imam Shafi'I رحمه الله and Imam Ahmad say that whatever is priced - or eligible to be priced - may be fixed as a dower.

DOWER OF THE PROPHET'S صلی الله علیه وسلم RESPECTED WIVES رضی الله عنها AND DAUGHTER رضی الله عنها: Apart from Sayyidah Umm Habibah رضی الله عنها among the wives of the Prophet صلی الله علیه وسلم and Sayyidah Fatimah رضی الله عنها among his daughters, the dower of all the rest of them was five hundred dirham's equivalent silver weighing 1 to 10 gram and 530 grams. The present value is about rupees nine hundred and eighteen only.

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[1] Hidayah (commentary on Islamic Laws) v1 pp 108-109 Dar ul Isha'at Karachi.

The dower of Sayyidah Umm Habibah رضی اللہ عنہا was four thousand dirhams or four hundred dinars. It is equivalent to 12 Kilograms and twenty grams of silver. Its current value is Rs.7348.

The dower of Sayyidah Fatimah رضی اللہ عنہا was about one kilogram and seven hundred and fifty grams silver. The current value of it is about Rs. 1050.

(This valuation is not correct in the current times The value keep fluctuating. So, current value of silver must be calculated.) (Asghar – meem)

SECTION I اَلْفَصْلُ الْاَوَّلُ

MINIMUM AMOUNT OF DOWER

(۳۲۰۲) وَعَنْ سَهْلِ بْنِ سَعْدٍ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ جَاءَتْهُ اِمْرَاَةٌ فَقَالَتْ يَا رَسُوْلَ اللّٰهِ اِنِّيْ وَهَبْتُ نَفْسِيْ لَكَ فَقَامَتْ طَوِيْلًا فَقَامَ رَجُلٌ فَقَالَ يَا رَسُوْلَ اللّٰهِ زَوِّجْنِيْهَا اِنْ لَمْ تَكُنْ لَكَ فِيْهَا حَاجَةٌ فَقَالَ هَلْ عِنْدَكَ مِنْ شَيْءٍ تُصْدِقُهَا قَالَ مَا عِنْدِيْ اِلَّا اِزَارِيْ هٰذَا قَالَ فَالْتَمِسْ وَلَوْ خَاتَمًا مِنْ حَدِيْدٍ فَالْتَمَسَ فَلَمْ يَجِدْ شَيْئًا فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ هَلْ مَعَكَ مِنَ الْقُرْاٰنِ شَيْءٌ قَالَ نَعَمْ سُوْرَةُ كَذَا وَسُوْرَةُ كَذَا فَقَالَ قَدْ زَوَّجْتُكَهَا بِمَا مَعَكَ مِنَ الْقُرْاٰنِ وَفِيْ رِوَايَةٍ قَالَ انْطَلِقْ فَقَدْ زَوَّجْتُكَهَا فَعَلِّمْهَا مِنَ الْقُرْاٰنِ۔ (متفق علیہ)

3202. Sayyiduna Sahl ibn Sa'd رضی اللہ عنہ narrated that a woman come to Allah's Messenger صلی اللہ علیہ وسلم (one day) and said. "O Messenger of Allah, I present myself as a gift to you." She stood there (after saying that) for a long time. But (He did not give a response and while he was quit) a man stood up and submitted, "O Messenger of Allah, marry her to me if you have no need for her." So, he asked, "Have you anything to give for a dower?" He said, "I have this waist wrapper on me and nothing else." He said, "(Go and) see if you can find something, even an iron ring." He looked for something but could not find any thing. So, Allah's Messenger صلی اللہ علیہ وسلم asked him, "Have you any thing of the Quran with you (in your memory) ?" He submitted, "Yes! Surah so and so and surah so and so." So, he said "Indeed, I have given her to you in marriage for what is with you (in memory) of the Quran.

According to another version: He said, "Go! Indeed, I have given her to you in marriage, so teach her from the Quran."[1]

COMMENTARY: As long as he lived, whenever any woman offered herself to the prophet صلی اللہ علیہ وسلم and he accepted her gift, she became lawful to him. No dower was *wajib (obligatory)* on him. This was neither permitted to any else not is it allowed now. It was among the Prophet's صلی اللہ علیہ وسلم peculiarities, being allowed to him exclusively. The Quran confirms it:

وَاِمْرَاَةً مُّؤْمِنَةً اِنْ وَّهَبَتْ نَفْسَهَا لِلنَّبِيِّ اِنْ اَرَادَ النَّبِيُّ اَنْ يَّسْتَنْكِحَهَا خَالِصَةً لَّكَ مِنْ دُوْنِ

[1] Bukhari # 5-135, Muslim # 76. 1425, Tirmidhi # 1116, Abu Dawud # 2111, Ibn Majah # 1889, Darimi # 2201, Muwatta Maalik # 8 (*Nikah (wedlock)*) Musnad Ahmad 5-330.

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الْمُؤْمِنِيْنَ۔ (النساء۳۳: ۵۰)

{and a believing woman, if she dedicates herself to the prophet provided the prophet desires to wed her. This exclusively is for you only apart from the believers} (33: 50)

According to Imam Shafi'I رحمه الله a marriage without dower but only with the word (هبة) (hibah, gift) was allowed only to the prophet صلى الله عليه وسلم. It is not permitted to anyone else. The Hanafis contend that marriage with the word hibah is permitted to everyone, but it was only for the Prophet صلى الله عليه وسلم that dower was not *wajib (obligatory)*. Thus, if a woman offers herself to a man and he accepts her gift then their marriage will be correct but the mahrmithl (proper dower) will be *wajib (obligatory)* on the man, though the woman does not mention any dower or even offers herself without dosing a dower. So, the verse cited (33: 50) means according to the Hanafis:

{This is exclusively for you without a dower being *wajib (obligatory)* on you}

AN IRON RING: This stipulation shows that any kind of property may be assigned as dower, no matter how insignificant, provided both husband and wife agree to it. While Imam Shafi'I رحمه الله and Imam Ahmad subscribe to t his edict, the ruling of Imam Abu Hanifah رحمه الله and Imam Maalik رحمه الله is mentioned at the beginning of this chapter. The Hanafis rely on the hadith of Sayyiduna Jabir رضى الله عنه in Daraqutni:

قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَاتُنْكِحُوا النِّسَاءَ اِلَّا الْاَكْفَاءَ وَلَا يُزَوِّجُهُنَّ اِلَّا الْاَوْلِيَاءُ وَلَا مَهْرَ دُوْنَ عَشَرَةِ دَرَاهِمَ۔

(Allah's Messenger صلى الله عليه وسلم said, "Woman be given away in marriage only to their equals and their guardians must give them away in marriage, and a dower less than ten dirhams is not reliable.")

This is further upheld by the hadith of Sayyiduna Ali رضى الله عنه in daraqutni and Bayhiqi:

لَا صَدَاقَ اَقَلُّ مِنْ عَشَرَةِ دَرَاهِمَ

(Dower less then ten dirhams is not valid).

The Hanafis say about this hadith of Sayyiduna Sahl رضى الله عنه that it is about mahr majjal (prompt dower) because the Prophet صلى الله عليه وسلم used to give part of the dower immediately before consummating his marriages to his respected wives رضى الله عنهن. This is why he gave the same command to the man, "Bring whatever you find so that you may give something at least to this woman after contracting the marriage, as a dower,

It is on this basis what some ulama (Scholars) have deduced that a husband must give to his wife, after their marriage, but before having sexual intercourse, some of the dower.

Ibn Abbas رضى الله عنه Ibn Umar رضى الله عنه , Zuhri رحمه الله , and Qatadah رحمه الله , ruled on these lines they pointed out that when Sayyiduna Ali رضى الله عنه married Sayyidah Fatimah رضى الله عنها , the Prophet صلى الله عليه وسلم did not let him go to her unless he had paid something to her out of the dower. Sayyiduna Ali رضى الله عنه submitted, "O Messenger of Allah, I do not have anything with me now." He said, "give her your armour." So he gave her his armour. Then, he went to her and her dower was four hundred mithqal silver. The Prophet صلى الله عليه وسلم had instructed him to give out of that an armour's worth. Hence, these people have ruled that,

before consummating the marriage, it is *wajib (obligatory)* to pay the woman something out of the specified dower. The Hanafis say that it is *mustahab (desirable)*, not *wajib (obligatory)*.
The concluding words of the hadith suggest that the prophet صلى الله عليه وسلم made 'teaching of the Quran' as a dower. So, some imams regard it as permitted. But, Imam Abu Hanifah رحمه الله does not agree that it is allowed. He says about this kind of dower that the marriage will be valid but mahr mithl (Proper dower) remains *wajib (obligatory)* on the husband (to pay to his wife). He says about this hadith that the words 'for what is with you of the Quran do not mean 'a dower' but their being Muslims – acceptance of Islam – was the reason of their marriage. He did not specify that to serve as a dower.
"So teach her from the Quran." This command, too was not binding. Rather, it was a recommendation. Hence, this cannot be cited as evidence that the prophet رحمه الله had declared teaching the Quran to serve as a dower.

AMOUNT OF DOWERS OF THE WIVES رضى الله عنهن OF THE PROPHET صلى الله عليه وسلم

(٣٢٠٣) وَعَنْ اَبِيْ سَلَمَةَ قَالَ سَأَلْتُ عَائِشَةَ كَمْ كَانَ صَدَاقُ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَتْ كَانَ صَدَاقُهٗ لِاَ زْوَاجِهٖ ثِنْتَيْ عَشْرَةَ اَوْقِيَّةً وَنَشٌّ قَالَتْ اَتَدْرِيْ مَا النَّشُّ قُلْتُ لَا قَالَتْ نِصْفُ اُوْقِيَّةٍ فَتِلْكَ خَمْسُمِائَةِ دِرْهَمٍ۔ رَوَاهُ مُسْلِمٌ وَنَشٌّ بِالرَّفْعِ فِيْ شَرْحِ السُّنَّةِ وَفِيْ جَمِيْعِ الْاُصُوْلِ۔

3203. Sayyiduna Abu Salamah رضى الله عنه narrated that he asked Sayyidah Ayshah رضى الله عنها, "What dower had the Prophet صلى الله عليه وسلم fixed (for his respected رضى الله عنه wives) ?" She said, "His dower to his wives was twelve ooqiyas and one nashsh." Then she asked, "Do you know what a nashsh is?" He (Abu Salamah) رضى الله عنه said, "No!" She said, "Half an ooqiyah and that makes it five hundred dirhams."[1]
Sharh us *sunnah (Prophet's* صلى الله عليه وسلم *practice)* and other sources have nashsh in the nominative case.

COMMENTARY: Earlier in the chapter, we have spoken on the current weight and usage of five hundred dirhams.
The Shafi'i go by this hadith to say that a dower of five hundred dirhams is *mustahab (desirable)*.
It must be clarified here that Sayyidah Ayshah رضى الله عنها has mentioned the dower of all those of the Prophet's صلى الله عليه وسلم wives whose dower he had himself determined. As for Sayyidah Umm Salamah رضى الله عنه, her dower was fixed by the emperor of Ethiopia.

SECTION II الفصل الثانى

HEAVY DOWER DISALLOWED

(٣٢٠٤) عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ اَلَا لَا تُغَالُوْا صَدُقَةَ النِّسَاءِ فَاِنَّهَا لَوْ كَانَتْ مَكْرُمَةً فِي الدُّنْيَا وَتَقْوٰى عِنْدَ اللّٰهِ لَكَانَ اَوْلَاكُمْ بِهَا نَبِيُّ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَا عَلِمْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ نَكَحَ شَيْئًا مِنْ نِسَائِهٖ وَلَا اَنْكَحَ شَيْئًا مِنْ بَنَاتِهٖ عَلٰى اَكْثَرَ مِنْ اثْنَتَيْ عَشْرَةَ اُوْقِيَّةً۔ (رواه احمد والترمذى و ابوداؤد و النسائى و ابن ماجة و الدارمى)

[1] Muslim # 78-1426, Abu Dawud # 2105, Ibn Majah # 1886, Darimi # 2199.

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3204. Sayyiduna Umar ibn at Khattab رضی اللہ عنہ said, "Beware! Do not be extravagant in fixing dower of the women, If it were more honorable in this world and more pious in Allah's sight, then the most qualified (among you) to do it was Allah's Prophet صلی اللہ علیہ وسلم. I do not know of Allah's Messenger صلی اللہ علیہ وسلم marrying any of his wives, or giving away any of his daughters in marriage for more then twelve ooqiyas (as dower)."[1]

COMMENTARY: the word taqwa (piety) (piety) implies a greater degree of taqwa (piety). Allah says:

إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَاكُمْ

{Surely the noblest among you in the sight of Allah is the most pious of you.} (49: 13) Taqwa (piety) entitles one to be distinguished in Allah's sight.

A heavy dower is not a means of raising one in honour in this world. Rather, it also does not raise one in the sight of Allah. If that is so then why must one indulge in that which bears no fruit?

There are three traditions about the dower of the wives رضی اللہ عنہ of the Prophet صلی اللہ علیہ وسلم. On the face of it, they contradict each other. We have seen the tradition of Sayyidah Ayshah رضی اللہ عنہا (# 3202) and part from this one under discussion we shall see Sayyidah Umm Habibah's رضی اللہ عنہ hadith (# 3208) which is an exception, for, the Negus of Ethiopia had fixed her dower as high as four thousand dinars out of respect for the Prophet صلی اللہ علیہ وسلم.

As for the versions of Sayyidah Ayshah رضی اللہ عنہا and Sayyiduna Umar رضی اللہ عنہ , even they are not contradictory Sayyidah Ayshah رضی اللہ عنہا was precise and mentioned the half ooqiyah too while Umar رضی اللہ عنہ only gave a round figure. It may also be that Sayyiduna Umar رضی اللہ عنہ was not aware of the half ooqiyah or one nashsh.

It must be borne in mind that Sayyiduna Umar رضی اللہ عنہ did not mean to say that there cannot be dower higher than that. It is allowed to raise the dower above it.

BETTER TO PAY PART OF DOWER PROMPTLY

(٣٢٠٥) وَعَنْ جَابِرٍ أَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ مَنْ أَعْطٰى فِيْ صَدَاقِ امْرَأَتِهٖ مِلْأَ كَفَّيْهِ سَوِيْقًا أَوْ تَمْرًا فَقَدِ اسْتَحَلَّ۔ (رواه ابوداؤد)

3205. Sayyiduna Jabir رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "If a man gives his wife (part of) the dower (as prompt payment) , say two handfuls of flour or dates then he has made her lawful for himself."[2]

(٣٢٠٦) وَعَنْ عَامِرِ بْنِ رَبِيْعَةَ أَنَّ امْرَأَةً مِنْ بَنِيْ فَزَارَةَ تَزَوَّجَتْ عَلٰى نَعْلَيْنِ فَقَالَ لَهَا رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ أَرَضِيْتِ مِنْ نَفْسِكِ وَمَالِكِ بِنَعْلَيْنِ قَالَتْ نَعَمْ فَأَجَازَهٗ۔ (رواه الترمذی)

3206. Sayyiduna Aamir ibn Rabi'ah narrated that a woman of Banu Fazarah married against a dower of a pair of shoes. So, Allah's Messenger صلی اللہ علیہ وسلم asked

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[1] Tirmidhi # 1100, Abu DAwud # 2106, Nasa'i # 3351, Ibn Majah # 1887, Darimi # 2200, Musnad Ahmad 1-41.

[2] Abu Dawud # 2110, Musnad Ahmad 3-355.

her, "Are you leased, in spite of your wealth (and property) to give you person (in marriage) against a pair of shoes?" She said, "Yes!" And, he gave her permission.[1]

COMMENTARY: This hadith may also be presumed to be about prompt dower. When the woman agreed to marry against one pair of shoes, she become rightful to get the mahr mithl (Or, proper dower). On being pleased with that she surrendered her right to get more, So, the Prophet صلى الله عليه وسلم gave her permission.

This hadith is da'if (weak).

WHEN MAHR MITHL BECOMES *WAJIB (OBLIGATORY)* - ONE POSSIBILITY

(٣٢٠٧) وَعَنْ عَلْقَمَةَ عَنِ ابْنِ مَسْعُوْدٍ اَنَّهُ سُئِلَ عَنْ رَجُلٍ تَزَوَّجَ امْرَأَةً وَلَمْ يَفْرِضْ لَهَا شَيْئًا وَلَمْ يَدْخُلْ بِهَا حَتّٰى مَاتَ فَقَالَ ابْنُ مَسْعُوْدٍ لَهَا مِثْلُ صَدَاقِ نِسَائِهَا لَا وَكْسَ وَلَا شَطَطَ وَعَلَيْهَا الْعِدَّةُ وَلَهَا الْمِيْرَاثُ فَقَامَ مَعْقِلُ بْنُ سِنَانٍ الْاَشْجَعِيُّ فَقَالَ قَضٰى رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فِيْ بِرْوَعَ بِنْتِ وَاشِقٍ امْرَأَةٍ مِنَّا بِمِثْلِ مَا قَضَيْتَ فَفَرِحَ بِهَا ابْنُ مَسْعُوْدٍ۔ (رواه الترمذی و ابوداؤد والنسائی والدارمی)

3207. Sayyiduna Alqamah رحمه الله narrated from Sayyiduna Ibn Mas'ud رضى الله عنه that he was asked about a man who married a woman but did not determine any dower for her and died before consummating the marriage. (He took time to think over it and decided through his personal deduction). He said, 'Her dower is like the dower of the women of her family (meaning, her match) , neither less nor more. She will observe the iddah (waiting period) as *wajib (obligatory)* and is entitled to (her share of) inheritance." Thereupon, Maqil ibn Sinan al-Ashja'I got up and said, "Indeed, Allah's Messenger صلى الله عليه وسلم had decided the case of Birwa bint washiq a woman among us, just as you have decided. So, Ibn Mas'ud رضى الله عنه was delighted with it.[2]

COMMENTARY: Allah has bestowed on Ibn Mas'ud رضى الله عنه wisdom, foresight and a vast understanding of religion. He solved complex issues to be in agreement with the Quran and hadith. He took one month to study this issue before giving his verdict which was in conformity with what the Prophet صلى الله عليه وسلم had decided in a similar case. So, Ibn Mas'ud رضى الله عنه was deeply delighted on having given a correct judgement.

In this case, the opinion of Sayyiduna Ali رضى الله عنه and some other sahabah (Prophet's Companions) رضى الله عنهم was that because the marriage was not consummated, the woman was not entitled to any dower but it was *wajib (obligatory)* on her to observe the iddah (waiting period) and she deserved to get her share of inheritance, too.

Imam Shafi'I رحمه الله gave verdicts. One of these concurred with that of Sayyiduna Ali رضى الله عنه and the other with the decision of Sayyiduna Ibn Mas'ud رضى الله عنه with which Imam Abu Hanifah رحمه الله and Imam Ahmad رحمه الله agreed.

WHAT IS MAHR MITHL: It is the same dower as of the women in her father's family who are like her in age, beauty, wealth, time, intelligence, religion, virginity and woman hood, knowledge, manner and habits.

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[1] Tirmidhi # 1115, Ibn Majah # 1888, Musnad Ahmad 3-455.

[2] Tirmidhi # 1148, Abu Dawud # 2114, Nasa'i # 3521, Ibn Majah # 1891, Musnad Ahmad 4. 279, Darimi # 2246.

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SECTION III اَلْفَصْلُ الثَّالِثُ

PROPHET'S صلی اللہ علیہ وسلم MARRIAGE WITH UMM HABIBAH رضی اللہ عنہ & HER DOWER

(٣٢٠٨) عَنْ اُمِّ حَبِيْبَةَ اَنَّهَا كَانَتْ تَحْتَ عَبْدِاللّٰهِ بْنِ جَحْشٍ فَمَاتَ بِاَرْضِ الْحَبَشَةِ فَزَوَّجَهَا النَّجَاشِيُّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَاَمْهَرَهَا عَنْهُ اَرْبَعَةَ اٰلَافٍ وَفِيْ رِوَايَةٍ اَرْبَعَةَ اٰلَافِ دِرْهَمٍ وَبَعَثَ بِهَا اِلٰى رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَعَ شُرَحْبِيْلِ ابْنِ حَسَنَةَ۔ (رواه ابوداؤد و النسائی)

3208. Sayyidah Umm Habibah رضی اللہ عنہا was married to Abdullah ibn Jahsh who died in Ethiopia. So, the Negus gave her away in marriage to the Prophet صلی اللہ علیہ وسلم paying her a dower of four thousand on his behalf.
Another version has: four thousand dirhams.
Then he sent her to Allah's Messenger صلی اللہ علیہ وسلم with Sayyiduna Shurhbil ibn Hasanah.

COMMENTARY: The first husband of Sayyidah Umm Habibah رضی اللہ عنہ is given in all the copies of Mishkat as Abdullah ibn Jahsh, but this is wrong. His name was Ubaydullah ibn Jahsh. This is what is found in sunan Abu Dawud and other sources.
The real name of Sayyidah Umm Habibah رضی اللہ عنہ was Ramlah رضی اللہ عنہ.
She was the daughter of Abu Sufyan رضی اللہ عنہ and sister of Mu'awiyah رضی اللہ عنہ. She was married first to Ubaydullah ibn Jahsh who had embraced Islam and had emigrated with her to Ethiopia from Makkah. There, he apostated, giving up Islam for Christianity. He died there. She remained a staunch Muslim.
The Prophet صلی اللہ علیہ وسلم sent Amr ibn Umayyah Damri رضی اللہ عنہ to the king of Ethiopia, the Negus, whose name was Ashumah asking him to convey his proposal of marriage to Sayyidah Umm Habibah رضی اللہ عنہا. So, he sent his slave girl, Abrahah, to her with the proposal.
Sayyidah Umm Habibah رضی اللہ عنہا accepted the proposal with great joy. She also sent someone posthaste to Sayyiduna Khalid ibn Sa'eed, رضی اللہ عنہ her father's paternal cousin, requesting him to act as her guardian for the marriage.
She also presented Abrahah a pair of clothing and a silver ring for bringing her the good, auspicious news.
In the evening, the Negus invited Sayyiduan Ja'far ibn Abu Talib رضی اللہ عنہ and all the Muslims who were in Ethiopia. When they were assembled, he deliverd the marriage sermon:

اَلْحَمْدُ لِلّٰهِ الْمَلِكِ الْقُدُّوْسِ السَّلَامِ الْمُؤْمِنِ الْمُهَيْمِنِ الْعَزِيْزِ الْجَبَّارِ اَشْهَدُ اَنْ لَّا اِلٰهَ اِلَّا اللّٰهُ وَ اَنَّ مُحَمَّدًا عَبْدُهٗ وَ رَسُوْلُهٗ اَرْسَلَهٗ بِالْهُدٰى وَدِيْنِ الْحَقِّ لِيُظْهِرَهٗ عَلَى الدِّيْنِ كُلِّهٖ وَلَوْ كَرِهَ الْمُشْرِكُوْنَ۔

Then, he said:
"To proceed, Allah's Messenger صلی اللہ علیہ وسلم has commanded me to conduct his marriage to Umm Habibah bint Abu Sufyan. I have obeyed him and have fixed a dower of four hundred dinars. I give the four hundred dinars, "placing them before these people."
After that Sayyiduna Khalid ibn Sa'eed رضی اللہ عنہ delivered this sermon:

اَلْحَمْدُ لِلّٰهِ الْمَلِكِ الْقُدُّوْسِ السَّلَامِ الْمُؤْمِنِ الْمُهَيْمِنِ الْعَزِيْزِ الْجَبَّارِ اَشْهَدُ اَنْ لَّا اِلٰهَ اِلَّا اللّٰهُ وَ اَنَّ مُحَمَّدًا عَبْدُهٗ وَ رَسُوْلُهٗ اَرْسَلَهٗ بِالْهُدٰى وَدِيْنِ الْحَقِّ لِيُظْهِرَهٗ عَلَى الدِّيْنِ كُلِّهٖ وَلَوْ كَرِهَ الْمُشْرِكُوْنَ۔

Then he said:
"To proceed! I have obeyed Allah's Messenger صلى الله عليه وسلم and I have married the daughter of Abu Sufyan رضى الله عنه , Umm Habibah رضى الله عنه , to the Prophet صلى الله عليه وسلم May Allah bless it. (Ameen)
After this proposal and acceptance, the four hundred dinars of the dower were paid to Khalid ibn Sa'eed رضى الله عنه.
The people prepared to depart as the marriage was contracted, but the Negus requested them to Stay on saying, "It is the *sunnah (Prophet's* صلى الله عليه وسلم *practice)* of the Prophet عليه السلام to serve a meal at a wedding." Then, he had food served to them after which they dispersed to their homes.
This took place in 7AH. At this time the father of Sayyidah Umm Habiba رضى الله عنها , Abu Sufyan was (not a Muslim but) an idolater and a sworn enemy of the Prophet صلى الله عليه وسلم. Later he accepted Islam.[1]

EMBRACING ISLAM AFFIXES THE SEAL

(٣٢٠٩) وَعَنْ اَنَسٍ قَالَ تَزَوَّجَ اَبُوْطَلْحَةَ اُمَّ سُلَيْمٍ فَكَانَ صَدَاقُ مَابَيْنَهُمَا الْاِسْلَامُ اَسْلَمَتْ اُمُّ سُلَيْمٍ قَبْلَ اَبِيْ طَلْحَةَ فَخَطَبَهَا فَقَالَتْ اِنِّيْ قَدْ اَسْلَمْتُ فَاِنْ اَسْلَمْتَ نَكَحْتُكَ فَاَسْلَمَ فَكَانَ صَدَاقَ مَا بَيْنَهُمَا۔ (رواه نسائی)

3209. Sayyiduna Anas رضى الله عنه narrated that (Sayyiduna) Abu Talhah رضى الله عنه married (Sayyidah) Umm Sulaym رضى الله عنها. Islam was the dower between them. (Sayyidah) Umm Sulaym رضى الله عنها embraced Islam before (Sayyiduna) Abu Talhah رضى الله عنه did. Then he proposed to her and she said, "I have, indeed, embraced Islam. So, if you submit to Islam. I shall marry you." Thus, he embraced Islam and submission to Islam become the dower between them.[2]

COMMENTARY: Sayyidah Umm Sulaym رضى الله عنه was the daughter of Milhan and mother of Anas ibn Maalik رضى الله عنه. She had been married to Maalik ibn Nadr and Anas رضى الله عنه was born to them, but Maalik did not embrace Islam and was killed as an idolater.
Afterwards Umm Sulaym embraced Islam. Abu Talhah was an idolater. He proposed marriage and she was married to him.
The Hanafis says that they were married against a dower agreed between them but when she married him in keeping with her promise when he embraced Islam, she waived her dower. In other words, his submission to Islam was their reason to marry. It was not her dower.
However, other Imam take the hadith in its literal sense. They regard his Islam as the dower arranged between them.

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[1] See also the Life of Prophet Muhammad صلى الله عليه وسلم , Ibn Kathir, pp 418-19 (Darul Isha'at Karachi).
[2] Nasa'i # 3340.

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CHAPTER - IX

THE *WALIMAH* OR THE WEDDING FEAST بَابُ الْوَلِيْمَةِ

Walimah is the food that is served at the wedding. The word comes from altiyam which means 'getting together.' So, it is the banquet thrown when the spouses get together.

***WALIMAH'S* POSITION IN SHARI'AH (DIVINE LAW):** Most ulama (Scholars) say that wlimah is masnun, but some call it *mustahab (desirable)* and yet other regard it as *wajib (obligatory)*.

TIME: They differ also on the proper time of the *Walimah*. Some ulama (Scholars) say that the correct time for it is after consummation of marriage. Some of them put it with the contract of the marriage. Another opinion is that it is served at both times - at the marriage and after the consummation.

Some ulama (Scholars) say that it is *makruh (disapproved)* to serve it for up to two days. The most according to them is two days after marriage. Imam Maalik رحمه الله contends that it is *mustahab (desirable)* to serve it for one week.

However, the very correct thing is that it depends on the husband's means. If he serves only once or for many days and at many times, then he may do it.

KINDS OF FEAST: It is stated in Majma ul Bihar that there are eight kinds of feast.

(i) *Walimah.*
(ii) *Khars.* (خرس)
(iii) *I'dhar.* (اعذار)
(iv) *Wakirah* (وكيره)
(v) *Naqi'ah* (نقيعة)
(vi) *Wadimah* (وضيمة)
(vii) *Aqiqah.* (عقيقة)
(viii) *Madbah.* (مادبة)

The Walimah is at someone's marriage, Khars is to celebrate a birth. I'dhar is at a child's circumcision. Wakirah is when one's house is built and ready to occupy. Naqi'ah is when a traveller arrives. Wadimah is when one is in distress, so that it might be removed. Aqiqah is when a child is named. And Madbah is any feast that is hosted without any motive.

All these kinds are *mustahab (desirable)* with the exception of *Walimah* which some people call *wajib (obligatory)*.

SECTION I اَلْفَصْلُ الْاَوَّلُ

COMMAND TO SERVE *WALIMAH*

(٣٢١٠) وَعَنْ اَنَسٍ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ رَاٰى عَلٰى عَبْدِالرَّحْمٰنِ بْنِ عَوْفٍ اَثَرَ صُفْرَةٍ فَقَالَ مَاهٰذَا قَالَ اِنِّيْ تَزَوَّجْتُ امْرَاَةً عَلٰى وَزْنِ نَوَاةٍ مِنْ ذَهَبٍ قَالَ بَارَكَ اللّٰهُ لَكَ اَوْلِمْ وَلَوْ بِشَاةٍ۔ (متفق عليه)

3210. Sayyiduna Anas رضى الله عنه narrated that the Prophet صلى الله عليه وسلم observed a trace of yellow (saffron) on (the clothing) of Abdur Rahman ibn Awf رضى الله عنه. so, he asked him, "What is this?" He submitted, "I have married a woman for one nawah of gold." He said, "May Allah bless you! Throw a wedding feast though it be only

with a sheep."[1]

(Nawah also means date seed, so gold equivalent to the seed.)

COMMENTARY: The Prophet صلى الله عليه وسلم may have simply asked Sayyiduna Abdur Rahman ibn Awf رضى الله عنه the reason for the colour on him, or he may have questioned him why he had applied it while men are disallowed to apply perfume. He explained that he had not applied in intentionally but it may have dropped on him from his new bride.

Qadi رحمه الله said that while a nashsh is twenty dirhams and an ooqiyah forty dirhams weight, so nawah is five dirhams in weight. Thus, her dower was five dirhams some authorities say that nawah means nawah tamr or seed of date and this seems more correct. In t his case, he may have given gold equivalent to the seed as dower.

'Though it be only a sheep could describe the bare minimum, but here it means 'even if it casts too much. In those days, sheep could not be said to represent a minimum amount because Muslims were not well-off. They faced dire poverty and observed the *sunnah (Prophet's* صلى الله عليه وسلم *practice)* with parched barley meal or such other inexpensive things. Moreover, even Abdur Rahman ibn Awf رضى الله عنه was not so with at that time as to be expected to regard sheep as a minimum.

THE PROPHET'S صلى الله عليه وسلم G RAND *WALIMAH* WHEN HE MARRIED ZAYNAB رضى الله عنه

(٣٢١١) وَعَنْهُ قَالَ مَا اَوْلَمَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَلٰى اَحَدٍ مِّنْ نِّسَائِهٖ مَا اَوْلَمَ عَلٰى زَيْنَبَ اَوْلَمَ بِشَاةٍ۔ (متفق عليه)

3211. Sayyiduna Anas رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم did not host a *Walimah* for any of his wives as he did for Sayyidah Zaynab رضى الله عنها. He hosted the *Walimah* (for her marriage) with a sheep.[2]

COMMENTARY: The previous contention is proved that when sheep is served in a *Walimah* it is a sumptuous feast and very expensive.

(٣٢١٢) وَعَنْهُ قَالَ اَوْلَمَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ حِيْنَ بَنٰى بِزَيْنَبَ بِنْتِ جَحْشٍ فَاَشْبَعَ النَّاسَ خُبْزًا وَّلَحْمًا۔ (رواه البخارى)

3212. Sayyiduna Anas رضى الله عنه said that Allah's Messenger صلى الله عليه وسلم hosted a *Walimah* after consummating his marriage with Sayyidah Zaynab bint jahsh. He served bread and meat to the people to satiation point.[3]

EMANCIPATION AS DOWER FOR WOMAN

(٣٢١٣) وَعَنْهُ قَالَ اِنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَعْتَقَ صَفِيَّةَ وَتَزَوَّجَهَا وَجَعَلَ عِتْقَهَا صَدَاقَهَا وَاَوْلَمَ عَلَيْهَا بِحَيْسٍ۔ (متفق عليه)

3213. Sayyiduna Anas رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم set

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[1] Bukhari # 5148, Musilm # 79-1427, Tirmidhi # 1034, Abu Dawud # 2109, Ibn Majah # 1907, Darimi # 2204, Muwatta Maalik # 47 (*Nikah (wedlock)*) , Musnad Ahmad 3-205.

[2] Bukhari # 5168, Muslim # 80-1428, Abu Dawud # 3743, Ibn Majah # 1908, Musnad Ahmad 3. 227.

[3] Bukhari # 4794.

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Sayyidah Safiyyah رضی اللہ عنہا free and (after that) he married her. He made her freedom her dower. He also host ed a *Walimah* for her with hays.[1]
(Hays is a mixture of dates, clarified butter and dried curd.)

COMMENTARY: Sayyidah Safiyah رضی اللہ عنہا was the daughter of Huyyay ibn Akhtab who was the chief of the tribes of Khaybar, Banu Qurayzah and Banu Qurayzah and Banu Nadir when the Muslim defeated the Jews and conquered Khaybar, she too was among the captives, and was given to the prophet صلی اللہ علیہ وسلم as a female slave. He set her free and married her so that she earned the highest honour of the world and religion.

IS IT ALLOWED TO REGARD FREEDOM AS A DOWER: There are different views about whether freedom of a woman may serve as her dower. Some sahabah (Prophet's Companions) رضی اللہ عنہم and some ulama (Scholars) abide by this hadith and hold that a slave girl's emancipation may be regarded to be her dower. However, another section of the sahabah (Prophet's Companions) رضی اللہ عنہم and ulama (Scholars) hold that it is disallowed to do so. The Hanafis are among the latter. They say about this hadith that this is an exceptional case, exclusive for the prophet صلی اللہ علیہ وسلم but not allowed to anyone else.

It is stated in Sharh Hidayah that if a man sets his female slave free on condition that against her freedom she should marry him and she agrees to it (no dower being payable) then setting her free would be correct. However, as for as her marriage is concerned, she is at liberty. If she marries the man t hen it will be *wajib (obligatory)* to pay her mahr mithl (the proper dower).

Hays is a sweet dish prepared from dates, clarified butter, cheese etc.

THE *WALIMAH* OF SAYYIDAH SAFIYAH رضی اللہ عنہا

(٣٢١٤) وَعَنْهُ قَالَ اَقَامَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ بَيْنَ خَيْبَرَ وَالْمَدِيْنَةِ ثَلَاثَ لَيَالٍ يُبْنٰى عَلَيْهِ بِصَفِيَّةَ فَدَعَوْتُ الْمُسْلِمِيْنَ اِلٰى وَلِيْمَتِهٖ وَمَا كَانَ فِيْهَا مِنْ خُبْزٍ وَلَا لَحْمٍ وَمَا كَانَ فِيْهَا اِلَّا اَنْ اَمَرَ بِالْاَنْطَاعِ فَبُسِطَتْ فَاُلْقِيَ عَلَيْهَا التَّمْرُ وَالْاِقِطُ وَالسَّمْنُ۔ (رواه البخاری)

3214. Sayyiduna Anas رضی اللہ عنہ said that the Prophet صلی اللہ علیہ وسلم halted for three nights between Khaybar and Madinah after his marriage with Sayyidah Safiyah رضی اللہ عنہا Anas رضی اللہ عنہ invited the Muslims to his *Walimah* which had no bread and no meat. He had some table spreads placed. Then dates, dried curd and clarified butter were laid on them.[2]

COMMENTARY: The previous hadith had a word hays. This hadith mentions its ingredients.

THE *WALIMAH* OF ONE OF THE WIVES

(٣٢١٥) وَعَنْ صَفِيَّةَ بِنْتِ شَيْبَةَ قَالَ اَوْلَمَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَلٰى بَعْضِ نِسَائِهٖ بِمُدَّيْنِ مِنْ شَعِيْرٍ۔ (رواه البخاری)

3215. Sayyidah Safiyah bint Sahaybah رضی اللہ عنہا said that the Prophet صلی اللہ علیہ وسلم host

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[1] Bukhari # 5169, Muslim # 84-1365, Tirmidhi # 1115, Abu Dawud # 2054, Nasa'i # 3342, Ibn Majah # 1958, Musnad Ahmad 3-99.

[2] Bukhari # 4213, Nasa'i # 3382, Musnad Ahmad 3-264.

ed a *Walimah* for one of his wives (probably, Umm Salamah) رضی اللہ عنہ with two mudds of barley.[1]

ACCEPT INVITATION TO FEAST

(٣٢١٦) وَعَنْ عَبْدِاللّٰهِ ابْنِ عُمَرَ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اِذَا دُعِيَ اَحَدُكُمْ اِلَى الْوَلِيْمَةِ فَلْيَاْتِهَا۔ مُتَّفَقٌ عَلَيْهِ وَفِيْ رِوَايَةٍ لِمُسْلِمٍ فَلْيُجِبْ عُرُسًا كَانَ اَوْنَحْوَهٗ (متفق علیہ)

3216. Sayyiduna Abdullah ibn Umar رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "When one of you is invited, to a *Walimah*, he must go to it."
According to another version in Muslim: "He must accept (the invitation) be it a *Walimah* or another (feast) like it." [2]

COMMENTARY: Another feast could be one of these to celebrate circumcision, aqiqah, etc. Thus *Walimah* stands only for wedding feast.
Some people say that it is *wajib (obligatory)* to accept the invitation to a *Walimah*. If anyone does not attend it without any excuse then he commits a sin in the light of the words of the prophet صلی اللہ علیہ وسلم:

مَنْ تَرَكَ الدَّعْوَةَ فَقَدْ عَصَى اللّٰهَ وَرَسُوْلَهٗ

"He who rejects an invitation has indeed disobeyed Allah and his Messenger."
Some ulama (Scholars) say that it is not *wajib (obligatory)* to accept it, but *mustahab (desirable)*. Moreover, to accept an invitation is to attend it. As for having the meal, if he is not fasting then it is *mustahab (desirable)* to eat.
As for other invitations besides *Walimah*, it is *mustahab (desirable)* to accept.
Teebi رحمہ اللہ and Ibn Maalik رحمہ اللہ hold that whether it is *wajib (obligatory)* or *mustahab (desirable)*, some reasons are there to reject or not attend it. They are:

(i) The food is likely to be unlawful.
(ii) Only the rich are invited,
(iii) One of the invitees is likely to be harmful or is a disagreeable person.

Thus, if anyone does not accept an invitation in such cases, then it does not mater.
Also, if a person is invited only to flatter him, or to word off any possible harm from him, or to earn a worldly favour from him, then this invitation must not be accepted.
Similarly, the invitation need not be accepted if prohibited things like wine are served there, or dance and singing or such tings as disallowed by Shari'ah (divine law) are organized.
The foregoing also covers an invitation where silk is spread on the ground.
We must remember that most of the invitations today are not without the foregoing evils, if not all then most of them.
Therefore, the Sufis say that azlah (or staying aloof or separated) is now lawful. Rather, now a days isolation or seclusion is *wajib (obligatory)*.
Hence, if a person exercises caution and prefers to be secluded not attending any gathering or invitation, then it is better for him to practice seclusion.

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[1] Bukhari # 5172, Musnad Ahmad 6-113.

[2] Bukhari # 5173, Muslm # 16-1429, Darimi # 2205, Muwatta Maalik # 49 (*Nikah (wedlock)*) Abu Dawud # 3736, Ibn Majah # 1914, Musnad Ahmad 2-22.

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(٣٢١٧) وَعَنْ جَابِرٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ إِذَا دُعِيَ أَحَدُكُمْ إِلَى طَعَامٍ فَلْيُجِبْ فَإِنْ شَاءَ طَعِمَ وَإِنْ شَاءَ تَرَكَ (رواه مسلم)

3217. Sayyiduna Jabir رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, When any of you is invited to a meal (of a wedding or like it) , he must go it to it. There, If he likes, he may eat or if he likes, he may abstain"[1]

COMMENTARY: While accepting an invitation may be *wajib (obligatory)* or *mustahab (desirable)* eating food there is *mustahab (desirable)* only and that too if one is not fasting.
Ibn Maalik رحمہ اللہ said that the command to accept an invitation is of the kind of *wajib (obligatory)* provided the invitee has no excuse. If he has an excuse then he may not go.

VERY BAD TO INVITE ONLY THE RICH

(٣٢١٨) وَعَنْ أَبِي هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ شَرُّ الطَّعَامِ طَعَامُ الْوَلِيْمَةِ يُدْعَى لَهَا الْأَغْنِيَاءُ وَيُتْرَكُ الْفُقَرَاءُ وَمَنْ تَرَكَ الدَّعْوَةَ فَقَدْ عَصَى اللّٰهَ وَرَسُوْلَهُ (متفق عليه)

3218. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "The worst (kind) of food is the meal at the *Walimah* to which the wealthy are invited while the poor are ignored. If anyone skips an invitation (without an excuse) then he disobeys Allah and His Messenger."[2]

COMMENTARY: This hadith does not mean that this is the only food of the worst kind. Indeed, some may be worse than this food. Thus the words

شَرُّ النَّاسِ مَنْ أَكَلَ وَحْدَهُ

'The worst of men is he who eats by himself.'
imply that this class is the worst. There can be many of them.
This hadith does not condemn *Walimah* itself but questions the one that is exclusive for the rich. Those authorities who say that it is *wajib (obligatory)* to accept an invitation cite this hadith. But, a majority of u lama hold that this hadith emphasizes it as a *mustahab (desirable)*.

SERVING FOOD THE GATE CRASHER

(٣٢١٩) وَعَنْ أَبِي مَسْعُوْدٍ الْأَنْصَارِيِّ قَالَ كَانَ رَجُلٌ مِنَ الْأَنْصَارِ يُكْنَى أَبَا شُعَيْبٍ كَانَ لَهُ غُلَامٌ لَحَّامٌ فَقَالَ اِصْنَعْ لِيْ طَعَامًا يَكْفِيْ خَمْسَةً لَعَلِّيْ أَدْعُو النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ خَامِسَ خَمْسَةٍ فَصَنَعَ لَهُ طُعَيِّمًا ثُمَّ أَتَاهُ فَدَعَاهُ فَتَبِعَهُمْ رَجُلٌ فَقَالَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَا أَبَا شُعَيْبٍ إِنَّ رَجُلًا تَبِعَنَا فَإِنْ شِئْتَ أَذِنْتَ لَهُ وَإِنْ شِئْتَ تَرَكْتَهُ قَالَ لَا بَلْ أَذِنْتُ لَهُ (متفق عليه)

3219. Sayyiduna Abu Mas'ud Al-Ansari narrated that a man of the ansar whose kunyah was Abu Shuayb had a slave (or servant or a young boy) who sold meat. (one day) he said to him, "Prepare for me food that will suffice five people that

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[1] Muslim # 105-1430, Abu Dawud # 3140.

[2] Bukhari # 5177, Muslim # 107-1432, Abu Dawud # 3742, Ibn Majah # 1913, Darimi # 2066, Muwatta # 50 (*Nikah (wedlock)*) , Musnad Ahmad 2-241.

might invite the prophet صلى الله عليه وسلم as the fifth of the five (meaning, four others)." Thus he prepared a little food for him. Then he came (to the Prophet صلى الله عليه وسلم and invited him (with four others). A man followed them. So, the prophet صلى الله عليه وسلم said (when they came to his home) , "O Abu Shu'ayb, a man has followed us. If you wish you may permit him to join us (for the meal) , but if you like you may leave him (at the door, outside). He said, "No, rather, I shall permit him (to join us)."[1]

COMMENTARY: It is not allowed to anyone to go to some other person's feast uninvited. It is not allowed to a guest, too, to take along one who is not invited. If the host has given a general permission or the guest known that the host will not object then he may take along someone who is not invited. Thus hadith tells us other things too:

(i) It is not allowed to enter a person's house without his permission.

(ii) If a person invites a limited number of people and if an uninvited man goes with them, then the guests must as a *mustahab (desirable)*, seek the hosts permission for him.

(iii) It is *mustahab (desirable)* for the host to not prevent an uninvited guest from eating unless the guests are inconvenienced. If a person is turned away without eating for some reason, then he must be dealt with politely and it is better that he is given some food if he deserves it.

Sharh us *sunnah (Prophet's صلى الله عليه وسلم practice)* also says that it is not allowed to an uninvited person to join the feast.

Some ulama (Scholars) say that if a person invites someone and placing the food before him makes him owner of the food then the guest has authority to eat it, or feed it to any other man, or take it home. But, if the host lays the table spread and places the food on it then it is a sign that he has not made the guest owner of the food. He only permits him to eat there at the table spread. What ever is leftover, the host will take it away. Hence the guest must sit and eat according to procedure and custom. He may neither take any of it home nor feed another person.

It is highly laudable for people sitting around the dining mat to keep moving the platters in front of each other on the same mat. If there are more dining mats, guests on one dining mat must not offer the platters. To those on another mat.

SECTION II اَلْفَصْلُ الثَّانِي

WALIMAH OF SAYYIDAH SAFIYAH رضى الله عنها

(٣٢٢٠) وَعَنْ اَنَسٍ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَوْلَمَ عَلٰى صَفِيَّةَ بِسَوِيْقٍ وَتَمْرٍ۔ (رواه احمد و الترمذى و ابوداؤد و ابن ماجة)

3220. Sayyiduna Anas رضى الله عنه said that the Prophet صلى الله عليه وسلم gave the *Walimah* for Sayyidah safiyah رضى الله عنها with fine flour and dates.[2]

COMMENTARY: A previous hadith (# 3213) about her mentions her *Walimah* wit h hees. It means that both these things were served in the *Walimah* of the Prophet's صلى الله عليه وسلم marriage spoke of what they found.

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[1] Bukhari # 5461, Muslim # 138-2036, Tirmidhi # 1101, Darimi # 2668, Musnad Ahmad 4-121.

[2] Tirmidhi # 1097, Abu Dawud # 3744, Ibn Majah # 1909, Musnad Ahmad 3/110.

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PROPHET صلى الله عليه وسلم ABSTAINED FROM WORLDLY THINGS

(٣٢٢١) وَعَنْ سَفِيْنَةَ اَنَّ رَجُلًا ضَافَ عَلِيَّ بْنَ اَبِيْ طَالِبٍ فَصَنَعَ لَهُ طَعَامًا فَقَالَتْ فَاطِمَةُ لَوْ دَعَوْنَا رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَاَكَلَ مَعَنَا فَدَعَوْهُ فَجَاءَ فَوَضَعَ يَدَيْهِ عَلٰى عِضَادَتَيِ الْبَابِ فَرَاَى الْقِرَامَ قَدْ ضُرِبَ فِيْ نَاحِيَةِ الْبَيْتِ فَرَجَعَ قَالَتْ فَاطِمَةُ فَتَبِعْتُهُ فَقُلْتُ يَا رَسُوْلَ مَارَدَّكَ قَالَ اِنَّهُ لَيْسَ لِيْ اَوْلِنَبِيٍّ اَنْ يَدْخُلَ بَيْتًا مُزَوَّقًا۔ (رواه احمد و ابن ماجة)

3221. Sayyiduna Safinah رضى الله عنه narrated that Sayyiduna Ali Ibn Abu Talib رضى الله عنه had a guest for whom he prepared food. Sayyidah Fatimah رضى الله عنها remarked, 'would that we invited Allah's Messenger صلى الله عليه وسلم and he ate with us!" So, they invited him. He came (and as he entered the house) and put his hands on the handgrip of the doors, he saw an adorned curtain hanging at the extreme of the house. So, he returned (from the house). Sayyidah Fatimah رضى الله عنها said that she pursued him and submitted, "O Messenger of Allah, what made you turn back?" He said, "It does not behave me, or (for that matter) any prophet, to enter a house that is adorned."[1]

COMMENTARY: The Arabic word in the text is qiram (قرام) It means 'a curtain.' There may not have been a picture on it but it had covered the wall in such a manner as the stage of a bride and bridegroom is decorated and covered with curtains. This is an unnecessary demonstration of the worldly minded and the affluent. The Prophet صلى الله عليه وسلم turned back on seeing it, thereby indicating that it was not proper to decorate walls, the useless adornment of the world will cause less in the hereafter.

GATE CRASHERS CONDEMNED

(٣٢٢٢) وَعَنْ عَبْدِاللّٰهِ بْنِ عُمَرَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ دُعِيَ فَلَمْ يُجِبْ فَقَدْ عَصَى اللّٰهَ وَ رَسُوْلَهُ وَمَنْ دَخَلَ عَلٰى غَيْرِ دَعْوَةٍ دَخَلَ سَارِقًا وَخَرَجَ مُغِيْرًا۔ (رواه ابوداؤد)

3222. Sayyiduna Abdullah ibn Umar رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "He who is invited (to a meal) but does not accept it has, indeed, disobeyed Allah and His messenger. And he who enters (someone gathering) uninvited goes in like a thief and returns like a plunderer."[2]

COMMENTARY: A thief enters someone's house furtively. So does the uninvited guest. Both commit sin.

The Prophet صلى الله عليه وسلم taught his *ummah* two basic manners.

(i) To fails to accept an invitation without reason is a sign of arrogance.

(ii) To go uninvited to an invitation or function is shameless and a sign of greed.

IF TWO INVITATIONS ARRIVE AT ONE TIME

(٣٢٢٣) وَعَنْ رَجُلٍ مِنْ اَصْحَابِ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ

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[1] Abu Dawud # 3755, Ibn Majah # 3360, Musnad Ahmad 5-220.

[2] Abu Dawud # 3741.

إِذَا اجْتَمَعَ الدَّاعِيَانِ فَأَجِبْ أَقْرَبَهُمَا بَابًا وَإِنْ سَبَقَ أَحَدُهُمَا فَأَجِبِ الَّذِي سَبَقَ۔ (رواه احمد و ابوداؤد)

3223. A man from among the companions رضی اللہ عنہ of Allah's Messenger صلی اللہ علیہ وسلم narrated that he said, "When two people invite at the same time, accept the invitation of the person whose door is nearer (to your house).But, if one of them precedes (the other). Than accept the invitation of him who has preceded."[1]

COMMENTARY: If the invitee can attend both invitations then he must attend both. If two neighbours invite at the same time then the nearest neighbour's invitation is accepted. If the inviters are far off then other considerations take effect, like familiarity, reconciliation and rights. One who is more known, more pious or has more right than the other will be preferred. In the same way, if two students come to a scholar at the same time as two men who wish to know an answer to a problem or an issue then he must first attend those who had come to him before the others.

OSTENTATIONS WEDDING FEASTS FOR MANY

(٣٢٢٤) وَعَنِ ابْنِ مَسْعُوْدٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ طَعَامُ أَوَّلِ يَوْمٍ حَقٌّ وَطَعَامُ يَوْمِ الثَّانِيْ سُنَّةٌ وَطَعَامُ يَوْمِ الثَّالِثِ سُمْعَةٌ وَمَنْ سَمَّعَ سَمَّعَ اللّٰهُ بِهٖ۔ (رواه الترمذی)

3224. Sayyiduna Ibn Mas'ud رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, 'To serve food (of the wedding feast) on the first day in just; on the second day, it is a *sunnah (Prophet's صلی اللہ علیہ وسلم practice)*; but on the third day, it is to make oneself heard. If anyone yearns to make himself heard, then Allah will make him heard."[2]

COMMENTARY: On the first day, the wedding feast is *sunnah* muwakkadah (emphasized practice of Holy Prophet صلی اللہ علیہ وسلم). Those who say it is *wajib (obligatory)*, then the (حق) 'just' in the hadith implies *wajib (obligatory)*.

If anyone invites on the second day then it is sun nah and *mustahab (desirable)*.

However, if anyone goes on to invite on the third day too then clearly he is showing off and wants to become popular and heard. ON the day of resurrection, Allah will have it proclaimed about him that he was a liar and a forger. He will be debased before all the creatures. Teebi رحمہ اللہ said that when Allah bestows a blessing on someone then he must be grateful to him . (For instance, if he marries then he must invite people to a *Walimah*).

This may be done on the first or second day. Thereafter, "It is *makruh (disapproved)* to accept an invitation.

This hadith contradicts the contention of the Maalikis that it is *mustahab (desirable)* to hold the *Walimah* for seven days.

FORBIDDEN TO PARTAKE OF FOOD OF THE ARROGANT WHO VIE WITH ONE ANOTHER

(٣٢٢٥) وَعَنْ عِكْرِمَةَ عَنِ ابْنِ عَبَّاسٍ أَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ نَهٰى عَنْ طَعَامِ الْمُتَبَارِيَيْنِ أَنْ يُؤْكَلَ۔ رَوَاهُ أَبُوْدَاوٗدَ وَقَالَ مُحْيِ السُّنَّةِ وَالصَّحِيْحُ أَنَّهٗ عَنْ عِكْرِمَةَ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مُرْسَلًا۔

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[1] Abu Dawud # 3756, Musnad Ahmad 5-407.

[2] Tirmidhi # 1099.

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3225. Sayyiduna Ikrimah رضی اللہ عنہ reported that Sayyiduna Ibn Abbas رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم forbade partaking the food of the two people who compete with one another (being boastful).[1]

COMMENTARY: These are two people who compete to cook more food each aiming to outdo the other in food and having more guests. We are instructed not to participate in their feasts.

These days care is not exercised. IN ancient times, learned men avoided such functions when they had doubts about the sincerity of the inviters.

SECTION III اَلْفَصْلُ الثَّالِثُ

(٣٢٢٦) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ الْمُتَبَارِيَانِ لَا يُجَابَانِ وَلَا يُؤْكَلُ طَعَامُهُمَا قَالَ الْاِمَامُ اَحْمَدُ يَعْنِي الْمُتَعَارِضَيْنِ بِالْمُبَاهَاةِ فَخْرًا وَّرِيَاءً۔

3226. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "The invitation of such two people should not be accepted as compete with one another (to prepare food). And, their food should not be eaten." Imam Ahmad رحمہ اللہ explained that it is about the two who vie with one another to provide a meal proudly and ostentatiously.[2]

REJECT THE INVITATION OF THE SINNERS

(٣٢٢٧) وَعَنْ عِمْرَانَ بْنِ حُصَيْنٍ قَالَ نُهِيَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَنْ اِجَابَةِ طَعَامِ الْفَاسِقِيْنَ۔

3227. Sayyiduna Imran ibn Husayn رضی اللہ عنہ said that Allah's Messenger صلی اللہ علیہ وسلم disallowed that invitation to meal by an indecent, (sinful or rebellious) person should be accepted.[3]

COMMENTARY: The Arabic word (فاسق) (sinner or rebellious) is one who is involved in sin in any way. His invitation must not be accepted. Most of them are cruel and unjust. They appropriate properties of the people forcibly. It is forbidden to eat their food. Besides, accept their invitation is tantamount to pleasing them and honouring them. This conduct is contrary to Shari'ah (divine law).

DO NOT PROBE LAWFULNESS OF THE FOOD OF THE PIOUS

(٣٢٢٨) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِذَا دَخَلَ اَحَدُكُمْ عَلٰى اَخِيْهِ الْمُسْلِمِ فَلْيَأْكُلْ مِنْ طَعَامِهٖ وَلَا يَسْأَلْ وَيَشْرَبْ مِنْ شَرَابِهٖ وَلَا يَسْأَلْ رَوَى الْاَحَادِيْثَ الثَّلَاثَةَ الْبَيْهَقِيُّ فِيْ شُعَبِ الْاِيْمَانِ وَقَالَ هٰذَا اِنْ صَحَّ فَلِاَنَّ الظَّاهِرَ اَنَّ الْمُسْلِمَ لَا يُطْعِمُهٗ وَلَا يَسْقِيْهِ اِلَّا مَا هُوَ حَلَالٌ عِنْدَهٗ۔

3228. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "When any of you goes to his Muslim brother he should eat his food without probing ad drink from his water without probing (how is it and from where?) "[4] Bayhaqi transmitted these three....a Muslim would necessarily provided the lawful.

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[1] Abu Dawud # 3745.

[2] Bayhaqi # 6018 Sha'b ul Eeman

[3] Bayhaqi Shab ul Eeman # 5803

[4] Bayhaqi in Shab ul Eeman # 5801.

CHAPTER - X

VISITING WIVES BY TURNS

بَابُ الْقَسْمِ

If a man has more wives than one then it is *wajib (obligatory)* to determine visits to them one after the other. He must go to them by turns. Some things must be borne in mind, for instance:

(i) Once the visits to each wife are determined, it is not allowed to go on the appointed night to another wife (other than the one whose turn it is).

(ii) It is disallowed to visit two wives on one night. But, if they consent and are prepared for that, then one may visit both of them. It is said about the Prophet صلى الله عليه وسلم that on one night he had sexual intercourse with more of his wives than one, because till then it was not *wajib (obligatory)* to fix visits to one's wives. Or, he had his wives permission in this regard. Besides, the Hanafis say that it was not *wajib (obligatory)* on the Prophet صلى الله عليه وسلم to fix his visits to his wives, but he had determined his visits on his own out of kindness for his wives.

(iii) The wives do not enjoy the right of visits during a journey. It is not necessary to be mindful of these visits but it all depends on the husband's discretion to take along on the journey any of his wives. However, the better course is to draw lots among them to accompany him on the journey.

(iv) For a resident, the visits cover the nights while days are secondary to them. However, if anyone is occupied during the night then his visits cover daytime (for example, a guard who is on night duty will determine visits to his wives by days and nights will be secondary to days.

EQUAL TREATMENT: According to Durr Mukhtar, it is *wajib (obligatory)* on a man with many wives to share his visits to them by night and to feed and clothe them equally. But, it Is not *wajib (obligatory)* to have or not have intercourse with them, and to love them equally; yet it is *mustahab (desirable)* to do so.

A woman's right to have sexual intercourse with her husband elapses after having it once. The husband is free to decide on the question of sexual intercourse with his wife. However, fidelity demands that he must have sexual intercourse with her now and then. It is not proper for him to put it off for the period of eela (which is four months) unless his wife so desires.

A husband must stay with each of his wives one day and one night. But, being equal and fair in necessary only for the nights. Thus, if a man goes to one of his wives after (the *salah (prayer)*) of maghrib and to another after (the *salah (prayer)*) of isha (on her turn) then his action is not fair and he has not given them equal treatment.

A man must not have sexual intercourse with one of his wives on the night his visit is scheduled for another wife and not for her similarly, he must not go to a wife on an unscheduled night on which he ought to have been with another. However, if she is ill, then he may go to her on a sick visit. Rather, if she is seriously ill then it is allowed to stay with her even when it is not her turn till she regains health or dies, provided she has no one else to look after her and share her grief.

If the husband himself is ill, then he may call to him each of his wives on the nights he is

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due to visit her.

SECTION I اَلْفَصْلُ الْاَوَّلُ

THE NUMBER OF WIVES OF THE PROPHET صلى الله عليه وسلم

(٣٢٢٩) عَنِ ابْنِ عَبَّاسٍ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قُبِضَ عَنْ تِسْعِ نِسْوَةٍ وَكَانَ يَقْسِمُ مِنْهُنَّ لِثَمَانٍ۔ (متفق عليه)

3229. Sayyiduna Ibn Abbas رضى الله عنه stated that when Allah's Messenger صلى الله عليه وسلم died, he had nine wives. He used to visit eight of them equally.[1]

COMMENTARY: The Prophet صلى الله عليه وسلم has eleven wives. This hadith mentions only those of his wives who were alive when he died. They were:

(i) Sayyidah Ayshah رضى الله عنها.
(ii) Sayyidah Hafsah رضى الله عنها.
(iii) Sayyidah Umm Habibah رضى الله عنها.
(iv) Sayyidah Sawdah رضى الله عنها.
(v) Sayyidah Umm Salamah رضى الله عنها.
(vi) Sayyidah Safiyah رضى الله عنها.
(vii) Sayyidah Maymunah رضى الله عنها.
(viii) Sayyidah Zaynab bint Jahsh رضى الله عنها.
(ix) Sayyidah Juwayriyah رضى الله عنها.

Of these nine, Sayyidah Sawdah رضى الله عنها had surrendered her turn of his visits to Sayyidah Ayshash رضى الله عنها willingly of her own accord.

The Prophet صلى الله عليه وسلم visited Sayyidah Ayshash رضى الله عنها also on days when he was scheduled to visit Sayyidah Sawdah رضى الله عنها, as the next hadith tells us.

A WIFE MAY ASSIGN HER TURN OF VISITS TO HER CO WIFE

(٣٢٣٠) وَعَنْ عَائِشَةَ اَنَّ سَوْدَةَ لَمَّا كَبُرَتْ قَالَتْ يَا رَسُوْلَ اللّٰهِ قَدْ جَعَلْتُ يَوْمِيْ مِنْكَ لِعَائِشَةَ فَكَانَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقْسِمُ لِعَائِشَةَ يَوْمَيْنِ يَوْمَهَا وَيَوْمَ سَوْدَةَ۔ (متفق عليه)

3230. Sayyidah Ayshah رضى الله عنها narrated that when Sayyidah Sawdah رضى الله عنها advanced in years, she said, "O Messenger of Allah, I assign to Ayshash the day of your visit to me.
So, Allah's Messenger determined two days for Sayyidah Ayshah رضى الله عنها her own and Sawdah's[2]

COMMENTARY: Sayyidah Sawdah رضى الله عنها was the daughter of Zam'ah. Her mother was Samus. She had been married to Sayyiduna Sakran رضى الله عنه. Both of them had embraced Islam during the initial days of the Prophet's mission. They had emigrated to Ethiopia. When her husband, Sakran رضى الله عنه, died, the Prophet صلى الله عليه وسلم married her after the death of Sayyidah Khadijah رضى الله عنها. After that the Prophet صلى الله عليه وسلم married Sayyidah

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[1] Bukhari # 5067, Muslim # 51-1465, Nasa'i # 3197, Musnad Ahmad 1-231.
[2] Bukhari # 5212, Muslim # 47-1463, Ibn Majah # 1972, Musnad Ahmad 6-76.

Ayshah رضی اللہ عنہا. She died in the era of Sayyiduna Umar رضی اللہ عنہ or Sayyiduna Mu'awiyah رضی اللہ عنہ. She was buried in Madinah.

The jurists say that if a man's wife surrenders her husband's visit (to her) to her co-wife then it is allowed provided her husband has not bribed or compelled her into doing it. Moreover, this woman is permitted to withdraw her offer whenever she chooses.

(٣٢٣١) وَعَنْهَا اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ كَانَ يَسْأَلُ فِيْ مَرَضِهِ الَّذِيْ مَاتَ فِيْهِ اَيْنَ اَنَا غَدًا اَيْنَ اَنَا غَدًا يُرِيْدُ يَوْمَ عَآئِشَةَ فَاَذِنَّ لَهٗ اَزْوَاجُهٗ يَكُوْنُ حَيْثُ شَاءَ فَكَانَ فِيْ بَيْتِ عَائِشَةَ حَتّٰى مَاتَ عِنْدَهَا۔

(رواه البخاری)

3231. Sayyidah Ayshah رضی اللہ عنہا narrated that Allah's Messenger صلی اللہ علیہ وسلم used to ask during his illness that led to his death, "where shall I be tomorrow?" Where shall I be tomorrow?" He intended to ask about the day of Ayshah رضی اللہ عنہا (out of love for her and waiting for her day). His (respected) wives (sense sing his internal restlessness) gave him permission to stay where he liked. So, he stayed in the house of Ayshah رضی اللہ عنہا till he died near her.[1]

COMMENTARY: He asked every day where he would be on the next day to know about his visit to Sayyidah Ayshah رضی اللہ عنہا and to get their permission to stay there. They permitted him to stay there.

CASTING LOTS ON SETTING OUT FOR JOURNEY

(٣٢٣٢) وَعَنْهَا قَالَتْ كَانَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِذَا اَرَادَ سَفَرًا اَقْرَعَ بَيْنَ نِسَائِهٖ فَاَيَّتُهُنَّ خَرَجَ سَهْمُهَا خَرَجَ بِهَا مَعَهٗ۔ (متفق علیه)

3232. Sayyidah Ayshah رضی اللہ عنہا narrated that whenever Allah's Messenger صلی اللہ علیہ وسلم intended to embark on a journey, he cast lots among his (respected) wives رضی اللہ عنہ (to select the one who would accompany him). Hence, the one whose name was drawn, she went out with him.[2]

(٣٢٣٣) وَعَنْ اَبِيْ قِلَابَةَ عَنْ اَنَسٍ قَالَ مِنَ السُّنَّةِ اِذَا تَزَوَّجَ الرَّجُلُ الْبِكْرَ عَلَى الثَّيِّبِ اَقَامَ عِنْدَهَا سَبْعًا وَقَسَمَ، وَاِذَا تَزَوَّجَ الثَّيِّبَ اَقَامَ عِنْدَهَا ثَلَاثًا ثُمَّ قَسَمَ قَالَ اَبُوْقِلَابَةَ وَلَوْ شِئْتُ لَقُلْتُ اِنَّ اَنَسًا رَفَعَهٗ اِلَى النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ۔ (متفق علیه)

3233. Sayyiduna Abu Qilabah[3] رحمہ اللہ reported that Sayyiduna Anas رضی اللہ عنہ narrated that it is a *sunnah* (*Prophet's* صلی اللہ علیہ وسلم *practice*) for a man who marries a virgin over his previous wife who had been a widow or a divorcee that he should stay with her for seven nights before sharing visits between them. And if he marries a divorcee or a widow the he must stay with her for three nights before sharing visits between them.

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[1] Bukhari # 5217, Muslim # 84-2443.

[2] Bukhari # 2688, Muslim # 56-277, Ibn Majah # 1970, Musnad 6-269.

[3] Bukhari # 5214, Muslim # 44-1461, Tirmidhi # 1139, Abu Dawud # 2124, Musnad Ahmad 2-178.

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Abu Qilabah رحمه الله said that if he wished, he could say that Anas رضى الله عنه had narrated this hadith (in a marfu form) from the Prophet صلى الله عليه وسلم.

COMMENTARY: Imam Shafi'I رحمه الله goes by this hadith and says that if a man has some wives or one wife and he again marries a virgin then he must stay with her seven nights and then resume sharing nightly visits among his wives. If he marries a thayb (who is a widow or a divorced woman) then he must stay with her for the first three nights and then resume sharing visits among the new and previous wives night by night, equally.

However, Imam Abu Hanifah رحمه الله holds that there is no difference between the virgin and the thayb (a previously married woman) They are all at per as for as sharing visits is concerned. He goes by both the ahadith (# 3225, 3226) of Section II of this chapter. They make no such difference. He explains this hadith to mean that a man who is already married takes another wife then depending on whether she is a virgin or a previously married woman he will stay with her for the first seven or three nights and then the same number of nights with each of his previous wives before resuming the normal visits of one night to each.

The concluding words of Abu Qilabah رحمه الله mean that when a sahabi رضى الله عنه says, 'it is a *sunnah (Prophet's صلى الله عليه وسلم practice)*' then he means 'this hadith is marfu.'

(٣٢٣٤) وَعَنْ اَبِيْ بَكْرِ بْنِ عَبْدِالرَّحْمٰنِ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ حِيْنَ تَزَوَّجَ اُمَّ سَلَمَةَ وَاَصْبَحَتْ عِنْدَهٗ قَالَ لَهَا لَيْسَ بِكِ عَلٰى اَهْلِكِ هَوَانٌ اِنْ شِئْتِ سَبَّعْتُ عِنْدَكِ وَسَبَّعْتُ عِنْدَ هُنَّ وَ اِنْ شِئْتِ ثَلَّثْتُ عِنْدَكِ وَدُرْتُ قَالَتْ ثَلِّثْ وَفِيْ رِوَايَةٍ اَنَّهٗ قَالَ لَهَا لِلْبِكْرِ سَبْعٌ وَّ لِلثَّيِّبِ ثَلَاثٌ۔ (رواه مسلم)

3234. Sayyiduna Abu Bakr ibn Abdur Rahman رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم married Sayyidah Umm Salamah رضى الله عنها. On the morning following, he said to her, "There will be humiliation for your family about you so if you wish then I shall stay with you for seven nights and then seven (each) with them (meaning the other wives) but if you wish, then three nights with you and then.. make rounds (with the others). She said, "three nights!"

According to a version: He said to her, "For the virgin are seven nights and for the thayb (Previously married) are three nights."[1]

COMMENTARY: Sayyidah Umm Salamah رضى الله عنها was a thayb (a previously married woman). So, according to Shariah, he could stay with her for three nights and then stay with each of his other wives three nights. After that the routine of one night each would be resumed. But, he did offer to stay seven nights with her if she took three nights as an affront. Sayyidah Umm Salamah رضى الله عنها preferred to abide by Shari'ah (divine law) and to respect the disposition of the Prophet صلى الله عليه وسلم she opted for the three nights of the thayb.

SECTION II الفصل الثانى

NO ONE IS BOUND TO LOVE ALL HIS WIVES ALIKE

(٣٢٣٥) عَنْ عَآئِشَةَ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ كَانَ يَقْسِمُ بَيْنَ نِسَائِهٖ فَيَعْدِلُ وَيَقُوْلُ اَللّٰهُمَّ هٰذَا قَسْمِيْ

[1] Muslim # 42-1460, Abu Dawud # 2122, Darimi # 2210, Muwatta Maalik # 14 (*Nikah (wedlock)*).

فِيْمَا اَمْلِكُ فَلَا تَلُمْنِيْ فِيْمَا تَمْلِكُ وَلَا اَمْلِكُ۔ (رواه الترمذی و ابوداؤد و النسائی و ابن ماجة و الدارمی)

3235. Sayyidah Ayshah رضی اللہ عنہا narrated that the Prophet صلی اللہ علیہ وسلم did always share his time equally with his wives (and justly). And, he prayed (after being fair to them) , "O Allah, this is how I share what I own. Hence, do not blame me about what you own and I do not own."[1]

COMMENTARY: The Prophet صلی اللہ علیہ وسلم said in his prayer that he tried to be fair to his wives in sharing visits to them and in providing them their needs from whatever was in his power. But, he could not love them equally for that was not in his power, so he should not be questioned about it.

WARNING TO THE UNJUST WITH HIS WIVES

(۳۲۳۶) وَعَنْ اَبِيْ هُرَيْرَةَ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اِذَا كَانَتْ عِنْدَ الرَّجُلِ امْرَاَتَانِ فَلَمْ يَعْدِلْ بَيْنَهُمَا جَاءَ يَوْمَ الْقِيَامَةِ وَشِقُّهُ سَاقِطٌ۔ (رواه الترمذی و ابوداؤد و النسائی و ابن ماجة و الدارمی)

3236. Sayyiduna Abu Hurayrah narrated that the Prophet صلی اللہ علیہ وسلم said, "When a man has two wives but he is not just to them, he will come on the day of resurrection with half his body sagging."[2]

COMMENTARY: To be equal to all wives is to share visits with them equally. It is *wajib (obligatory)*. The husband must stay the same number of hours in the night with each wife. But, it is not *wajib (obligatory)* to have intercourse the same number of times with all wives. It must be understood that all wives should be given equal treatment irrespective of anyone being a new bride, the first wife, young, old, Muslim or follower of any other Book. All of them have equal rights. However, relative to a free woman, a slave girl, mukatabah, mudabbarah and umm walad have a share of visits, half of the free woman. It is not *wajib (obligatory)* to determine time for a slave girl.

SECTION III اَلْفَصْلُ الثَّالِثُ

EIGHT OF PROPHET'S صلی اللہ علیہ وسلم NINE WIVES HAD A SHARE OF HIS VISITS

(۳۲۳۷) عَنْ عَطَاءٍ قَالَ حَضَرْنَا مَعَ ابْنِ عَبَّاسٍ جَنَازَةَ مَيْمُوْنَةَ بِسَرِفٍ فَقَالَ هٰذِهٖ زَوْجَةُ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَاِذَا رَفَعْتُمْ نَعْشَهَا فَلَا تُزَعْزِعُوْهَا وَلَا تُزَلْزِلُوْهَا وَارْفُقُوْا بِهَا فَاِنَّهٗ كَانَ عِنْدَ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ تِسْعُ نِسْوَةٍ كَانَ يَقْسِمُ مِنْهُنَّ لِثَمَانٍ وَلَا يَقْسِمُ لِوَاحِدَةٍ قَالَ عَطَاءٌ الَّتِيْ كَانَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا يَقْسِمُ لَهَا بَلَغَنَا اَنَّهَا صَفِيَّةُ وَكَانَتْ اَحْرَصَهُنَّ مَوْتًا مَاتَتْ بِالْمَدِيْنَةِ۔ مُتَّفَقٌ عَلَيْهِ وَقَالَ رَزِيْنٌ قَالَ غَيْرُ عَطَاءٍ هِيَ سَوْدَةُ وَهُوَ صَحٌّ وَهَبَتْ يَوْمَهَا لِعَائِشَةَ حِيْنَ اَرَادَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ طَلَاقَهَا فَقَالَتْ لَهٗ اَمْسِكْنِيْ قَدْ وَهَبْتُ يَوْمِيْ لِعَائِشَةَ لَعَلِّيْ اَنْ اَكُوْنَ مِنْ نِّسَائِكَ فِي الْجَنَّةِ۔

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[1] Tirmidhi # 1140, Abu Dawud # 2134, Nasa'i # 3943, Ibn Majah # 1971, Darimi # 2207, Musnad Ahmad 6-144.

[2] Tirmidhi # 1141, Abu Dawud # 3133, Nasa'i # 3942, Ibn Majah # 1919, Darim # 2206, Musnad Ahmad 2 347.

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3237. Sayyiduna Ata رحمه الله narrated that they participated with Sayyiduna Ibn Abbas رضی الله عنه in the funeral of Sayyidah Maymunah رضی الله عنها at Sarif. He said, "She is the wife of Allah's Messenger صلی الله علیه وسلم. So, do not jerk or shake the bier when you lift her. (Rather, be respectful) and be gentle with hr. Indeed, Allah's Messenger صلی الله علیه وسلم had nine wives and gave a share of his visits to eight but he gave no time to one of them."

Sayyiduna Ata رحمه الله said that they had learnt that the one of whom Allah's Messenger صلی الله علیه وسلم had not given a share was Sayyidah Safiyah رضی الله عنها, the last of them to die. She died in Madinah.

And, Razin added that authorities, other then Ata رحمه الله named her as (Sayyidah) Sawdah رضی الله عنها. And that is more correct. She had presented her day to (Sayyidah) Ayshah رضی الله عنها when Allah's Messenger صلی الله علیه وسلم intended to divorce her. She pleaded with him. "Hold me! I have presented my day to Ayshah. I hope to be among you wives in paradise."[1]

COMMENTARY: Sayyidah Maymunah رضی الله عنها was the maternal aunt of Sayyiduna Ibn Abbas رضی الله عنه. Her father was Harith and mother was Hindah. Her own name was Barrah but the Prophet صلی الله علیه وسلم changed it to Maymunah رضی الله عنه.

She had been married to Mas'ud ibn Amr, and Abu Dahm after him. Then she was married to Allah's Messenger صلی الله علیه وسلم in 6 AH at Sarif about eight miles from Makkah.

It was at Sarif that she was married, her marriage was consummated here and she died at the same place. She is also buried here.

There is a difference of opinion on which of the Prophet صلی الله علیه وسلم wives had no share of the Prophet's صلی الله علیه وسلم visits. The correct name is Sawdah رضی الله عنه. In fact, Khattabi رحمه الله, said, that Ata رحمه الله also named her as Sawdah رضی الله عنه but one of the sub-narrators got confused and mixed up the names.

The hadith says that Sayyidah Safiyah رضی الله عنها was the last of the Prophet صلی الله علیه وسلم wives to die. She died in Madinah. Before we dwell on it, let us see which of his wives died when. The compiler of Mawahib has written:

- Sayyidah Safiyah رضی الله عنها died in 50 AH in the month of Ramadan. Some scholars put her death in the time of Mu'awiyah رضی الله عنه in 52 AH or 55 AH. She is buried in al-Baqi.
- Sayyidah Maymunah رضی الله عنها died in 51 AH. But, some authorities palce her death in 66 Ah or 63 AH.
- Sayyidah Ayshah رضی الله عنها died in Madinah in 57 AH but some scholars say that she died in 58 AH.
- Sayyidah Sawdah رضی الله عنها died in 54 AH.
- Sayyidah Hafsah رضی الله عنها died in 50 AH, or, as some authorities say in 41 AH.
- Sayyidah Umm Salamah رضی الله عنها died in 59 AH.
- Sayyidah Umm Habibah رضی الله عنها died in 44 AH. Some scholars however, say that she died in 43 AH.
- Sayyidah Zaynab bint Jashsh رضی الله عنها died in 60 AH or , as some say, 61 AH.

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[1] Bukhari # 5067 Muslim # 51-1465, Nasa'i # 3196, Musnad Ahmad 1-348.

- Sayyidah Jawayriyah رضی اللہ عنہا died in 50 AH.
- Sayyidah Khadijah رضی اللہ عنہا died before the hijrah in Makkah.
- Sayyidah Zaynab bint Khuzaymah رضی اللہ عنہا died during the Prophet's صلی اللہ علیہ وسلم life time.

On looking at this detail. We can say safely that Sayyidah Sufiyah رضی اللہ عنہا was not the one who was the last of the Prophet صلی اللہ علیہ وسلم to die. Also, Sayyidah Maymunah, رضی اللہ عنہا too, was not the one who died last.of all.
Only Allah known the truth.[1]

CHAPTER - XI

THE SOCIAL LIVING OF WOMEN & THE RIGHTS OF EACH OF THEM

بَابُ عِشْرَةِ النِّسَاءِ وَمَا لِكُلِّ وَاحِدَةٍ مِّنَ الْحُقُوْقِ

The ahadith in this chapter are about the company of women, intercourse with them and kind treatment of women, as also the rights of each of them,
Instead of saying 'the rights of women,' the heading has 'the right of each woman.' This is because it does not concern women as a whole. Rather, it is about the kinds of women, meaning that the women who are married are of different kind:
the virgins, the divorced,
the widow, the good natured,
the bad tempered,
and so the rich, the poor, and so on.
This is why the heading has 'the rights of each of them.'

SECTION I — اَلْفَصْلُ الْاَوَّلُ

HARSHNESS CANNOT REMOVE INSOLENCY

(۳۲۳۸) عَنْ اَبِیْ هُرَیْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اسْتَوْصُوْا بِالنِّسَاءِ خَيْرًا فَاِنَّهُنَّ خُلِقْنَ مِنْ ضِلَعٍ وَ اِنَّ اَعْوَجَ شَيْءٍ فِي الضِّلَعِ اَعْلَاهُ فَاِنْ ذَهَبْتَ تُقِيْمَهٗ كَسَرْتَهٗ وَاِنْ تَرَكْتَهٗ لَمْ يَزَلْ اَعْوَجَ فَاسْتَوْصُوْا بِالنِّسَاءِ۔ (متفق علیہ)

3238. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Go by the advice to show kindness to women, for, they are created from a rib (that is crooked) and its most crooked portion is its top. So, if you try to straighten it, you might break it, If you let it be as it is, it will remain crooked. Hence, accept the advice to be kind to women."[2]

COMMENTARY: The worthy words of the Prophet صلی اللہ علیہ وسلم mention two basic essentials of a woman's creation and nature. They are:

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[1] For a further reading of this subject, please see 'The Life of prophet Muhammad رضی اللہ عنہ ' Ibn Kathir, English translation of his sirah from al Bidayah wa an-Nihayah, pp 737 to 744, And, sirat un Nabi, Era of peace by Allamah (The learned Scholar) Shibli Nu'mani and Syed Sulayman Nadvi English Translation V2 pp 331 to 344. Both books are published by Dar ul Isha'at, Karachi)

[2] Bukhari # 5186, Muslim # 60-1468

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(i) Women have their origin in Sayyidah Hawwa عليها السلام who was created from the top portion of the rib of Sayyiduna Aadam عليه السلام. This portion is very crooked. So, there is crookedness in the original creation of women. No one can set it right.

(ii) Just as a rib will not straighten if anyone attempts to make it straight but is liable to snap, and if it is left as it is it will keep crooked, so too a woman has a twist in her deeds and manner and if any man wishes to put that twist right, he will not succeed but might snap it (which is to divorce her, as in the next hadith).

Therefore, women must be left to their nature. Then, they will work to benefit and be of use. The hadith advises that anger and harshness will serve no purpose with women. A cool attitude will be helpful. Any confrontation with them will lead to divorce which will not only harm women but will also cause difficulty to men who try to correct it.

Man should be mild and kind with his woman. He should not expect her to obey him in whatever he demands.

However, it does not mean that if they transgress into sin then too they must be left alone. In such cases, it is not proper to look the other side and let them commit sin. It will be proper to ignore only so long as they do not venture into sin.

(٣٢٣٩) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِنَّ الْمَرْاَةَ خُلِقَتْ مِنْ ضِلَعٍ لَنْ تَسْتَقِيْمَ لَكَ عَلٰى طَرِيْقَةٍ فَاِنِ اسْتَمْتَعْتَ بِهَا اسْتَمْتَعْتَ بِهَا وَبِهَا عِوَجٌ وَاِنْ ذَهَبْتَ تُقِيْمُهَا كَسَرْتَهَا وَكَسْرُهَا طَلَاقُهَا۔ (رواه مسلم)

3239. Sayyiduna Abu Hurayrah رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "Woman is created from a rib (of Sayyiduna Aadam عليه السلام). So, she will never be straight for you (on any one path). Hence, if you wish to enjoy her, do so while crookedness persists in her. But, if you wish to set her straight, you might break her. And to break her is to divorce her."[1]

COMMENTARY: A man cannot hope to bring a woman to a single course. She will keep changing because she is created in that way. She might turn ungrateful from being thankful, or become disobedient after being obedient. She may throw contentment overboard and greed mighty become her nature. Her temperament will keep changing.

DO NOT DISLIKE WOMEN

(٣٢٤٠) وَعَنْهُ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا يَفْرَكْ مُؤْمِنٌ مُؤْمِنَةً اِنْ كَرِهَ مِنْهَا خُلُقًا رَضِيَ مِنْهَا اٰخَرَ۔ (رواه مسلم)

3240. Sayyiduna Abu Hurayrah رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "No believing man must dislike a believing woman. If he dislikes some habit or quality in her, some other habit in her will please him."[2]

COMMENTARY: Not all deeds of man or his peculiarities are bad. If some of them are bad, there also are some good characteristics in man.

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[1] Bukhari # 5184, Muslim # 59-1468, Tirmidhi # 1188 (1192) Musnad Ahmad 2-530.

[2] Muslim # 61. 1469, Musnad Ahmad 2. 329.

A husband must look at the good qualities of his wife and endure any weakness in her. One cannot find a faultless person, absolutely compatible to one's own temperament. Similarly, there cannot exist a man, chiefly a Muslim, without some good quality in him. So, intelligence demands that the good characteristics in anyone should be kept in view while a disagreeable thing must be overlooked.[1]

CROOKEDNESS IS INHERITED

(٣٢٤١) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ لَوْ لَا بَنُوْ اِسْرَائِيْلَ لَمْ يُخَنَّزِ اللَّحْمُ وَلَوْ لَا حَوَّاءُ لَمْ تَخُنْ اُنْثٰى زَوْجَهَا الدَّهْرَ۔ (متفق عليه)

3241. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Were it not for the Banu Isra'il meat would not have rotted. And, were it not Hawwa a woman would have been unfaithful to her husband."[2]

COMMENTARY: In the time of prophet Musa علیہ السلام. A tables spread wit h manna and quails (mann and salwa) used to descend from heaven into the open for the Banu Isra'il, or the Jews. They were commanded to take from it only so much as they needed. They were forbidden to take more than necessary to store with them. But, they did not cease to disobey Allah and began to collect surplus to hoard it. But, Allah caused all that they collected beyond need to decay. Thus, the meat began to not only after they failed to trust Allah and to show excessive greed.

Thereafter, it became natural for meat to putrefy. This is why the Prophet صلی اللہ علیہ وسلم said that the Banu Isr'ail were responsible for the decay of meat otherwise people would have been able to store it according to their actual needs.

The hadith does not use the word 'unfaithful' for the woman to imply committing breach of trust, or cheating. Rather, it means perversity. Thus Sayyidah Hawwa علیہا السلام incited Sayyiduna Aadam علیہ السلام to eat from the tree which Allah had forbidden them to approach. The Prophet صلی اللہ علیہ وسلم said that the same habit was found in all woman. If Sayyidah Hawwa علیہا السلام had not done this, other woman would not have inherited this habit.

BEATING WOMEN

(٣٢٤٢) وَعَنْ عَبْدِ اللّٰهِ بْنِ زَمْعَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا يَجْلِدُ اَحَدُكُمْ اِمْرَأَتَهٗ جَلْدَ الْعَبْدِ ثُمَّ يُجَامِعُهَا فِيْ اٰخِرِ الْيَوْمِ وَفِيْ رِوَايَةٍ يَعْمِدُ اَحَدُكُمْ فَيَجْلِدُ امْرَاتَهٗ جَلْدَ الْعَبْدِ فَلَعَلَّهٗ يُضَاجِعُهَا فِيْ اٰخِرِ يَوْمِهٖ ثُمَّ وَعَظَهُمْ فِيْ ضَحِكِهِمْ مِنَ الضَّرْطَةِ فَقَالَ لِمَ يَضْحَكُ اَحَدُكُمْ مِمَّا يَفْعَلُ۔ (متفق عليه)

3242. Sayyiduna Abdullah ibn Zam'ah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم admonished them concerning women that one of them should beat them as he beats his slave and then have sexual intercourse with her at the close of the day. According to another version, he said, "One of you begins to beat his wife as a slave is whipped but then lies with her at the close of the day.

Then he admonished them for laughing when one of them breaks wind. He said,

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[1] See also the social Living of women, by Nasa'i English translation Darul Isha'at, Karachi.

[2] Bukhari # 3399, Muslim # 63-1470. Musnad Ahmad 2. 304.

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"Why should any of you laugh when he himself does it?"[1]

COMMENTARY: The closing words ask man how it is that he beats the very woman with whom he has sexual intercourse later on in the evening. On the one hand, he is loving and on the other he treats her savagely. How can he justify his conduct? Of course, it is allowed to beat one's wife when she is rude but not in a savage manner. The message of the hadith is that a man should be kind and loving to his wife and treat her well.

The hadith also tells man that he should not laugh at something that is natural and happens to everyone.

Let us recount a lesson, bearing event of a great scholar. He was Aasim رحمه الله. He was not deaf but pretended to be so. This begin when a woman came to him to ask him for a ruling. While she was putting the question, she happened to break wind. Aasim رحمه الله saved her the embarrassment and discomfit. He behave as though he was deaf and said, "please speak loudly. I can't hear you." This was a relief for the woman but Aasim رحمه الله had to put up with his act for ever.

Allamah (The learned Scholar) Teebi رحمه الله pointed out that the hadith also gives a latent message that every intelligent Muslim must consider before he decides to point out his brother's shortcomings whether he himself has the same defect in himself, or any other flaw. If he does not find himself, free from any deficiency then it is better for him to concentrate on removing the deficiency in him.

A wise man did lament:

> "Often do I see people look for faults in others - but they are blind to their own faults."

(Also: "No one gossips about other people's secret virtues.' - Bertrand Russell.)

(And: Those who live in glass houses should not throw stones on others - English proverb, mid 17th century)

BE KIND TO YOUR WIFE

(٣٢٤٣) وَعَنْ عَائِشَةَ قَالَتْ كُنْتُ أَلْعَبُ بِالْبَنَاتِ عِنْدَ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَكَانَ لِيْ صَوَاحِبُ يَلْعَبْنَ مَعِيَ فَكَانَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ إِذَا دَخَلَ يَنْقَمِعْنَ مِنْهُ فَيُسَرِّبُهُنَّ إِلَيَّ فَيَلْعَبْنَ مَعِيَ۔ (متفق عليه)

3243. Sayyidah Ayshah رضى الله عنها narrated that she used to play with dolls in the Prophet's صلى الله عليه وسلم house (when she was a child and had been married to the Prophet صلى الله عليه وسلم recently) and she had companions who played with her. But, when Allah's Messenger صلى الله عليه وسلم came in they went away from her and he sent them to her again so that they played with her.[2]

COMMENTARY: The hadith implies that to live with one's wife in a pleasant manner and to be mindful of her emotions is an assurance of a successful life. Without this a peaceful and content life is impossible.

As for playing with dolls, this has been spoken of in a previous chapter on wali (hadith # 3129)

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[1] Bukhari # 4942, Muslim # 49-2855, Tirmidhi # 3343, Nasa'i # 687, Ibn Majah # 1983, Musnad Ahmad 4-12, Darimi 2-147.

[2] Bukhari # 6130, Muslim # 81-2440, Musnad Ahmad 6-234, Abu Dawud # 4931, Ibn Majah # 1982.

(٣٢٤٤) وَعَنْهَا قَالَتْ وَاللّٰهِ لَقَدْ رَأَيْتُ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْمُ عَلٰى بَابِ حُجْرَتِيْ وَالْحَبَشَةُ يَلْعَبُوْنَ بِالْحِرَابِ فِي الْمَسْجِدِ وَرَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَسْتُرُنِيْ بِرِدَائِهٖ لِاَنْظُرَ اِلٰى لَعْبِهِمْ بَيْنَ اُذُنِهٖ وَعَاتِقِهٖ ثُمَّ يَقُوْمُ مِنْ اَجْلِيْ حَتّٰى اَكُوْنَ اَنَا الَّتِيْ اَنْصَرِفُ فَاقْدُرُوْا قَدْرَ الْجَارِيَةِ الْحَدِيْثَةِ السِّنِّ الْحَرِيْصَةِ عَلَى اللَّهْوِ۔ (متفق علیہ)

3244. Sayyidah Ayshah رضی اللہ عنہا said, "By Allah I did see the Prophet صلی اللہ علیہ وسلم stand at the door of my room while the Ethiopians played with spears in the mosque. He concealed me with his cloak so that I might watch their play over his shoulder. Then he stood up for my sake till I was the first to retire. So, imagine how much may a young girl (a few y ears old) stand to watch the play."[1]

COMMENTARY: The words mosque means the portion attached to the mosque. Of course, even if they demonstrated their skill in the mosque, then there was no harm in it because they played with spears which could be an exercise of jihad. It seems that the veil was not imposed till then.

TOKEN OF PLEASURE & DISPLEASURE OF SAYYIDAH AYSHAH رضی اللہ عنہا

(٣٢٤٥) وَعَنْهَا قَالَتْ قَالَ لِيْ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِنِّيْ لَاَعْلَمُ اِذَا كُنْتِ عَنِّيْ رَاضِيَةً وَاِذَا كُنْتِ عَلَيَّ غَضْبٰى فَقُلْتُ مِنْ اَيْنَ تَعْرِفُ ذٰلِكَ فَقَالَ اِذَا كُنْتِ عَنِّيْ رَاضِيَةً فَاِنَّكِ تُقْسِمِيْنَ لَا وَرَبِّ مُحَمَّدٍ وَاِذَا كُنْتِ عَلَيَّ غَضْبٰى قُلْتِ لَا وَرَبِّ اِبْرَاهِيْمَ قَالَتْ قُلْتُ اَجَلْ وَاللّٰهِ يَا رَسُوْلَ اللّٰهِ مَا اَهْجُرُ اِلَّا اسْمَكَ۔ (متفق علیہ)

3245. Sayyidah Ayshah رضی اللہ عنہا narrated that, "Allah's Messenger صلی اللہ علیہ وسلم said to me, 'I do recognize when you are pleased with me and when you are displeased with me.' So, I asked, 'How do you recognize it?' He said, 'when you are pleased with me, you swear: No, by the Lord of Muhammad! But, when you are displeased with me, you swear: No, by the Lord of Ibrahim. So, I said, "Of course, by Allah, O Messenger of Allah, that is so! But, I omit only you name."[2]

COMMENTARY: She said, that she merely dropped his name on her tongue otherwise she had her love for him in her heart to the full. There was no change in that.

WOMAN MUST NOT REFUSE HUSBAND'S ADVANCES

(٣٢٤٦) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِذَا دَعَى الرَّجُلُ امْرَاَتَهٗ اِلٰى فِرَاشِهٖ فَاَبَتْ فَبَاتَ غَضْبَانَ لَعَنَتْهَا الْمَلَائِكَةُ حَتّٰى تُصْبِحَ مُتَّفَقٌ عَلَيْهِ وَفِيْ رِوَايَةٍ لَهُمَا قَالَ وَالَّذِيْ نَفْسِيْ بِيَدِهٖ مَا مِنْ رَجُلٍ يَدْعُوْ امْرَاَتَهٗ اِلٰى فِرَاشِهٖ فَتَاْبٰى عَلَيْهِ اِلَّا كَانَ الَّذِيْ فِي السَّمَآءِ سَاخِطًا عَلَيْهَا حَتّٰى يَرْضٰى عَنْهَا۔

3246. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "When a man invites his wife to his bed (to have sexual intercourse) and she refuses causing him to pass the night angry (at her) , then the angels curse her till

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[1] Bukhari # 454, 5236, Muslim # 18, 19-892, Nasa'i # 1595, Musnad Ahmad 6-84, 85, 166, 247.

[2] Bukhari # 5228, Muslim # 80-2439, Musnad Ahmad 6-61.

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it is morning.

According to another version: He said, "By Him in whose hand is my soul, "no man invites his wife to his bed and she refuses, without He who is in heaven being displeased wit h her till her husband is pleased with her."[1]

COMMENTARY: This warning applies as long as the woman does not have an excuse valid in Shariah. Some authorities say that menstruation is not a valid reason because even when a wife experiences menstruation, her husband is allowed to fondle her over her clothes. Some ulama (Scholars) say that he may caress her on her body except at the vagina when she has her menses.

The hadith says that the angels curse her till morning. This anticipates his advances in the night because generally it is so. If the husband invites her in the day and she refuses to oblige, then the angel will curse her till evening, if the husband is angry at her.

The words He who is in heaven refer to Allah. Of course, Allah is omnipresent. His command is enforced in the heavens as on earth and He is worshipped in the heavens and on earth. This is as He says.

وَهُوَ الَّذِيْ فِي السَّمَاءِ اِلٰهٌ وَفِي الْاَرْضِ اِلٰهٌ

{He (Allah) is who in the heaven is God and in the earth is God} (43: 84)

However, the hadith mentions only the God of the heaven because that is more honourable than earth and the purpose is served when only heaven is mentioned. It is also possible that 'He who is in heaven; refer to angels.

This hadith tells us that a husbands displeasure is the means of Allah's wrath, If this is the case when a husband is displeased over sexual intercourse, then the significance of his anger on disobedience in worldly matters may be surmised.

NO WOMAN MUST HURT HER FELLOW WIFE

(٣٢٤٧) وَعَنْ اَسْمَاءَ اَنَّ امْرَأَةً قَالَتْ يَا رَسُوْلَ اللّٰهِ اِنَّ لِيْ ضَرَّةً فَهَلْ عَلَيَّ جُنَاحٌ اِنْ تَشَبَّعْتُ مِنْ زَوْجِيْ غَيْرَ الَّذِيْ يُعْطِيْنِيْ فَقَالَ الْمُتَشَبِّعُ بِمَا لَمْ يُعْطَ كَلَابِسِ ثَوْبَيْ زُوْرٍ۔ (متفق علیه)

3247. Sayyidah Asma رضی اللہ عنہا narrated that a woman submitted, "O Messenger of Allah I have a co wife. Will it be sinful on my part if a brag about receiving from my husband what he does not give me?" He said, "(It is a very bad thing.) one who brags about getting that which is not given to him is like one who wears two garments of falsehood."[2]

COMMENTARY: Two garments are the cloak over the upper torso and the waist wrapper. This expression covers a liar like a person who pretends to be saintly or scholarly.

It is said that there was an Arab who put on very fine and nice garments that people might respect him and believe him even if he gave a false testimony.

This hadith compares with their very man.

WHAT IS EELA

(٣٢٤٨) وَعَنْ اَنَسٍ قَالَ اٰلٰى رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مِنْ نِسَائِهٖ شَهْرًا وَكَانَتِ انْفَكَّتْ رِجْلُهٗ فَاَقَامَ فِيْ

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[1] Bukhari # 3237, Muslim # 122-1436, Abu Dawud # 2141, Darimi # 2228, Musnad Ahmad 2-439.

[2] Bukhari # 5219, Muslim # 126, 127-2130, Abu Dawud # 4997, Musnad Ahmad 6-345.

مَشْرَبَةٍ تِسْعًا وَعِشْرِيْنَ لَيْلَةً ثُمَّ نَزَلَ فَقَالُوْا يَا رَسُوْلَ اللّٰهِ اٰلَيْتَ شَهْرًا فَقَالَ اِنَّ الشَّهْرَ يَكُوْنُ تِسْعًا وَعِشْرِيْنَ۔ (رواه البخاری)

3248. Sayyiduna Anas رضی اللہ عنہ narrated the Allah's Messenger صلی اللہ علیہ وسلم observed eela from his wives for one month. Meanwhile, his foot had been dislocated (during this time) , so he retired to an upper room for twenty nine nights after which he came down. He told (on coming down). "O Messenger of Allah, you had decided on eela for one month." He said, "Surely, a month can be of twenty nine days (too)."[1]

COMMENTARY: Eela is to swear or take an oath. In the terminology of Shari'ah (divine law), eela is to resolve oath not to approach one's wife for four months or more. In other words, a man swears not to have sexual intercourse with his wife for four months or more. When he fulfils his oath then one divorce ba'inah takes place and if they wish to live together, then they will have to remarry. (Ba'in or ba'inah is irrevocable) However, if he does not fulfil the oath and goes to his wife before the time is over, then eela will become void and it will be *wajib (obligatory)* on him to make an expiation for breaking his oath.

If a man is married to someone's female slave, then the minimum period of eela is two months. If any one observes on eela for less than four months when his wife is a free woman, or less than two moths when she is a female slave, then the eela will not be termed Shari'ah (divine law) recognized. Accordingly, the Prophet صلی اللہ علیہ وسلم had not observed that is Shari'ah recognized eela. It was an ordinary eela, of common parlance.

He had resolved on oath not to approach his wives for a month because they had demanded from him an enlarged allowance. He found it very discomforting and he resolved to stay way from them for one month.

One of these days, he fell down from a horse and hurt his leg. Then he remained in an upper room and did not come down. Perhaps, that month had twenty nine days. So he came down after twenty nine days.

THE EELA OBSERVED BY THE PROPHET صلی اللہ علیہ وسلم

(٣٢٤٩) وَعَنْ جَابِرٍ قَالَ دَخَلَ اَبُوْبَكْرٍ يَسْتَأْذِنُ عَلٰى رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَوَجَدَ النَّاسَ جُلُوْسًا بِبَابِهٖ لَمْ يُؤْذَنْ لِاَحَدٍ مِنْهُمْ قَالَ فَاُذِنَ لِاَبِيْ بَكْرٍ فَدَخَلَ ثُمَّ اَقْبَلَ عُمَرُ فَاسْتَأْذَنَ فَاُذِنَ لَهٗ فَوَجَدَ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ جَالِسًا حَوْلَهٗ نِسَائُهٗ وَاجِمًا سَاكِتًا قَالَ فَقُلْتُ لَا قُوْلَنَّ شَيْئًا اُضْحِكُ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ يَا رَسُوْلَ اللّٰهِ لَوْ رَاَيْتَ بِنْتَ خَارِجَةَ سَأَلَتْنِي النَّفَقَةَ فَقُمْتُ اِلَيْهَا فَوَجَأْتُ عُنُقَهَا فَضَحِكَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَقَالَ هُنَّ حَوْلِيْ كَمَا تَرٰى يَسْأَلْنَنِي النَّفَقَةَ فَقَامَ اَبُوْبَكْرٍ اِلٰى عَائِشَةَ يَجَأُ عُنُقَهَا وَقَامَ عُمَرُ اِلٰى حَفْصَةَ يَجَأُ عُنُقَهَا كِلَاهُمَا يَقُوْلُ تَسْأَلِيْنَ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَا لَيْسَ عِنْدَهٗ فَقُلْنَ وَاللّٰهِ لَا نَسْأَلُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ شَيْئًا اَبَدًا لَيْسَ عِنْدَهٗ ثُمَّ اِعْتَزَلَهُنَّ شَهْرًا اَوْتِسْعًا وَّ

[1] Bukhari # 5201.

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عِشْرِيْنَ ثُمَّ نَزَلَتْ هٰذِهِ الْآيَةُ يَآ اَيُّهَا النَّبِيُّ قُلْ لِّاَزْوَاجِكَ حَتّٰى بَلَغَ لِلْمُحْسِنَاتِ مِنْكُنَّ اَجْرًا عَظِيْمًا قَالَ فَبَدَأَ بِعَائِشَةَ فَقَالَ يَا عَآئِشَةُ اِنِّيْ اُرِيْدُ اَنْ اُعْرِضَ عَلَيْكِ اَمْرًا اُحِبُّ اَنْ لَا تَعْجِلِيْ فِيْهِ حَتّٰى تَسْتَشِيْرِيْ اَبَوَيْكِ قَالَتْ وَمَاهُوَ يَا رَسُوْلَ اللّٰهِ فَتَلَا عَلَيْهَا الْآيَةَ قَالَتْ اَفِيْكَ يَا رَسُوْلَ اللّٰهِ اَسْتَشِيْرُ اَبَوَيَّ بَلْ اَخْتَارُ اللّٰهَ وَرَسُوْلَهٗ وَالدَّارَ الْآخِرَةَ وَاَسْاَلُكَ اَنْ لَا تُخْبِرَ امْرَاَةً مِنْ نِسَائِكَ بِالَّذِيْ قُلْتُ قَالَ لَا تَسْاَلُنِيْ امْرَاَةٌ مِنْهُنَّ اِلَّا اَخْبَرْتُهَا اِنَّ اللّٰهَ لَمْ يَبْعَثْنِيْ مُعَنِّتًا وَلَا مُتَعَنِّتًا وَلٰكِنْ بَعَثَنِيْ مُعَلِّمًا مُيَسِّرًا۔ (رواه مسلم)

3249. Sayyiduna Jabir رضی اللہ عنہ narrated that (Sayyiduna) Abu Bakr رضی اللہ عنہ arrived and sought permission to enter to see the Prophet صلی اللہ علیہ وسلم but he found the people seated at his door, not having been allowed in (all of them having come when the Prophet صلی اللہ علیہ وسلم observed eela with his wives for one month). However, Abu Bakr رضی اللہ عنہ was given the permission and he went in. Then Umar رضی اللہ عنہ came and on seeking permission, he too was allowed in. He found that while his wives رضی اللہ عنہ were sitting around him, the Prophet صلی اللہ علیہ وسلم sat looking sat and qüiet.

Sayyiduna Jabir رضی اللہ عنہ went on to narrated that Umar رضی اللہ عنہ thought to himself, "I should say something that would make the Prophet صلی اللہ علیہ وسلم laugh." So, he remarked, "O Messenger of Allah, would that you had seen the daughter of kharijah (my wife) when she asked me for a raised allowed maintenance). I got up and slapped her smack on the neck." (He said it in such a way that) the prophet صلی اللہ علیہ وسلم laughed and said, "These (my wives around me whom you see. They ash me for (more maintenance."

(Sayyiduna) Abu Bakr رضی اللہ عنہ got up, went to (his daughter) Ayshah رضی اللہ عنہا and hit (her) on her neck. Umar رضی اللہ عنہ (too) got up, went to his daughter) Hafsah رضی اللہ عنہ and hit her on her neck. They both asked. "Do you demand from Allah's Messenger صلی اللہ علیہ وسلم what he does not have?" (Is it not that you worry him?) They all (woman) agreed, "By Allah, we shall not ask Allah's Messenger صلی اللہ علیہ وسلم for any thing at all that he does not own (and we regret our folly). After that he kept away from them for one month of twenty-nine days because he had sworn to do so. The narrator was in doubt here whether Jabir رضی اللہ عنہ said 'One month' or twenty-nine days')

Then this verse was revealed:

يَآ اَيُّهَا النَّبِيُّ قُلْ لِّاَزْوَاجِكَ اِنْ كُنْتُنَّ تُرِدْنَ الْحَيٰوةَ الدُّنْيَا وَزِيْنَتَهَا فَتَعَالَيْنَ اُمَتِّعْكُنَّ وَاُسَرِّحْكُنَّ سَرَاحًا جَمِيْلًا، وَاِنْ كُنْتُنَّ تُرِدْنَ اللّٰهَ وَرَسُوْلَهٗ وَالدَّارَ الْآخِرَةَ فَاِنَّ اللّٰهَ اَعَدَّ لِلْمُحْسِنَاتِ مِنْكُنَّ اَجْرًا عَظِيْمًا۔ (الاحزاب ۳۳: ۲۸، ۲۹)

{O prophet say to your wives, "If you desire the life of this world and its adornment, come! I shall provide for your comfort and allow you to depart by a fair departing. But if you desire Allah and His Messenger and the abode of the hereafter, then surely Allah has prepared for the good-doers among you a might reward} (33: 28-29)

Jabir narrated further that (after this verse was revealed) the Prophet صلى الله عليه وسلم went first of all to (Sayyidah) Ayshah رضى الله عنها and said, "O Ayshah, I wish to place before you a proposal and ask you not to be hasty in replying without first consulting your parents." She asked, "And what it is, O Messenger of Allah?" So, he recited to her the (foregoing) verse. She exclaimed. "O Messenger of Allah, shall I get the advice of my parents concerning you? No (I have no hesitation) I have chosen Allah, His Messenger and the abode of the hereafter. And I request you! Please do not inform any of your wives of what I have said," He said, "No! (that is not possible.) If any of them asks me, I shall inform her. Allah has not sent me that I should grieve any one or hurt him for no reason at all. Rather, He has sent me to teach (His creatures the religion) and make things easy."[1]

COMMENTARY: Clearly this happened before the veil was imposed otherwise Sayyiduna Umar رضى الله عنه would not have entered the room while the women were sitting there. They too would not have remained in the room when he came.

This hadith teaches us that if a person is sad, his friends and companions must say something that pleases him and brings a smile on his face. This is *mustahab (desirable)*. It is said that the Prophet صلى الله عليه وسلم did the same thing when he found any of his companions in a depressed mood.

The prophet صلى الله عليه وسلم was apprehensive that Sayyidah Ayshah رضى الله عنها being young might be carried away to choose the world and so hurt her parents too. But, she displayed her sagacity and without consulting her parents chose Allah. His Messenger صلى الله عليه وسلم and the abode of the hereafter.

Sayyidah Ayshah رضى الله عنها requested that prophet صلى الله عليه وسلم not to disclose to his other wives what she had chosen. Her aim was that none of them should be influenced by her decision. If any of them opted to depart from the Prophet صلى الله عليه وسلم , she (Sayyidah Ayshah) رضى الله عنها would have more of his love. She would no more have anyone else to share his love with her. However, the Prophet صلى الله عليه وسلم did not accede to her request. He had the good of everyone in mind. He could not let anyone suffer.

(It is worth consulting sirat un Nabi v1 pp 437-444. Sayid Sulaiman Nadvi. Dar ul Isha'at, Karachi, for more information on this subject)

We reproduce here some random selections from it.)

Sayyidah Ayshah رضى الله عنها and Sayyidah Hafsah رضى الله عنها had joined together an issue that was particular to them, but in the case of an increase in pocket money all the Wives had formed a union. The Prophet's صلى الله عليه وسلم place of mind was disturbed to such an extent that he vowed not to approach any of his wives رضى الله عنهن for a month. By a coincidence, during these days, he fell down from his horse and injured his leg. As a result, he went to the upper room to rest himself, and stayed all alone. The people supposed that he had divorced all his Wives.

The man of Quraysh exercised control over their women and had an upperhand. But, in Madinah, the Ansar woman dominated their husbands Our women observed them and began to imitate them. One day I called my wife to account but she answered me back. I reminded her that she was answering me back and she retorted. 'What are you? The wives

[1] Muslim # 29. 1478.

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رضی اللہ عنہ of the Prophet صلی اللہ علیہ وسلم answer him back and stop speaking to him all day long I thought that was very bad and went to Hafsah رضی اللہ عنہا (my daughter and the Prophet's صلی اللہ علیہ وسلم wife). I asked her if she really got angry at the Prophet صلی اللہ علیہ وسلم and she confirmed that it was so. I asked her. 'Do you not know that the Prophet صلی اللہ علیہ وسلم displeasure is to invite Allah's displeasure. By Allah the prophet صلی اللہ علیہ وسلم has my thought otherwise he would have divorced you. Then I went to Umm Salamah and made the same complaint to her She said, Umar رضی اللہ عنہ you have taken to interfering in everyone affairs, even in the private affairs of the Prophet صلی اللہ علیہ وسلم and his wives رضی اللہ عنہن I kept quiet and went away.

The Arabic word for upper storey in the Hadith is (مشربہ) (Mashrabah) and it was generally used for the upper room of Umm Ibrahim (Mariyah) So, some people supposed that he went to that particular upper room but that was a wrong impression because that was out of Madinah. The impression derived from the Hadith of Sayyiduna Umar رضی اللہ عنہ which the author has cited in the following lines and which appears in all books of Sihah is also that it is the same place. It was next to the Masjid Nabawi رضی اللہ عنہ and the house of Sayyidah Hafsah رضی اللہ عنہا for Sayyiduna Umar رضی اللہ عنہ ran from here to there quickly. It is stated in Abu Dawud that the upper room was above Sayyidah Ayshah's رضی اللہ عنہا room, and it was next to Masjid Nabawi صلی اللہ علیہ وسلم and the names of other Wives رضی اللہ عنہ of the Prophet صلی اللہ علیہ وسلم Abu Dawud, chapter al-Imam.

(٣٢٥٠) وَعَنْ عَائِشَةَ قَالَتْ كُنْتُ اَغَارُ عَلَى اللَّائِيْ وَهَبْنَ اَنْفُسَهُنَّ لِرَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقُلْتُ اَتَهَبُ الْمَرْاَةُ نَفْسَهَا فَلَمَّا اَنْزَلَ اللّٰهُ تَعَالٰى تُرْجِيْ مَنْ تَشَاءُ مِنْهُنَّ وَتُؤْوِيْ اِلَيْكَ مَنْ تَشَاءُ وَمَنِ ابْتَغَيْتَ مِمَّنْ عَزَلْتَ فَلَا جُنَاحَ عَلَيْكَ قُلْتُ مَا اَرٰى رَبَّكَ اِلَّا يُسَارِعُ فِيْ هَوَاكَ۔ (متفق علیہ)

3250. Sayyidah Ayshah رضی اللہ عنہا said, "I used to look down upon the women who offered themselves to Allah's Messenger صلی اللہ علیہ وسلم. So, I wondered (aloud) , 'Is it that a woman offers herself, ever?'
Then this verse was revealed by Allah, the Exalted:

تُرْجِيْ مَنْ تَشَاءُ مِنْهُنَّ وَتُؤْوِيْ اِلَيْكَ مَنْ تَشَاءُ وَمَنِ ابْتَغَيْتَ مِمَّنْ عَزَلْتَ فَلَا جُنَاحَ عَلَيْكَ

{You may (O prophet) put off whom you will of them and take to you whom you please; and if you desire any whom you have set aside, there is no blame on you} (33: 51)
So, I remarked, 'I see not but that your Lord hurries to satisfy your wishes and desires"[1]

COMMENTARY: Sayyidah Ayshah رضی اللہ عنہا though that it was shameful on the part of the women who dedicated shameful on the part of the woman who dedicated themselves to the Prophet صلی اللہ علیہ وسلم. She wondered, "How could a woman offer herself to a stronger male?" However, the women who did dedicate themselves to him took it as a great honour. Indeed that really was honourable and they considered it to be their good fortune. But, Sayyidah Ayshah رضی اللہ عنہا thought otherwise.

The verse quoted could mean:

(i) Let those of your wives whom you choose be your wives whom you choose be

[1] Bukhari # 4788, Muslim # 49. 1464, Nasa'i # 3199, Ibn Majah # 2000, Musnad Ahmad 6-134.

your bed mates. And keep part those you went to be apart.

(ii) Retain those of your wives whom you wish and divorce those you want to separate.

(iii) Marry those women of your *ummah* whom you like but decline those that you do not like to marry

Imam Nawawi said that this verse is actually the abrogator of the verse:

لَا يَحِلُّ لَكَ النِّسَاءُ مِنْ بَعْدُ

{(Besides these,) it is not lawful for you take (more) wives after this} (33: 52)

This is because till the Prophet's صلى الله عليه وسلم death other woman besides his wives رضى الله عنه were permitted to him.

Imam Baghawi رحمه الله said that this verse in his hadith is about the Prophet's صلى الله عليه وسلم visits to his wives, by turns. "This," He says, "is the most correct opinion." It was *wajib (obligatory)* on the Prophet صلى الله عليه وسلم too, to determine his visits to his wives but when this verse was revealed the *wajib (obligatory)* nature was withdrawn. He was no more bound to observe a set form of visits. He could call any of them he liked and could have intercourse with whichever wife he liked. There was no sin in that, on him. In other words, Allah slowed his excellence over other men of the *ummah*. He was also permitted to pass over the turn of any of his wives.

The words of Sayyidah Ayshah رضى الله عنها when the verse (33: 51) (ترجى من تشاء) was revealed were that his Lord Satisfies his desire quickly. She meant, as Nawawi رضى الله عنه says, "Allah makes some commands soft for you..."

WHICH WOMAN: The question arises who the woman was who had offered herself to the prophet صلى الله عليه وسلم is marriage. Some scholars say that she was Sayyidah Maymunah رضى الله عنها. some other name her Sayyidah as Umm Sharik رضى الله عنها. Yet others say that she was Sayyidah Zaynab bint Khuzaymah رضى الله عنها. There are those who suggest that she was Khawlah رضى الله عنه bint Hakim.

However, this hadith implies that there was not just one woman but there were many such women.

وَحَدِيْثُ جَابِرٍ اِتَّقُوا اللّٰهَ فِي النِّسَاءِ ذُكِرَ فِيْ قِصَّةِ حَجَّةِ الْوَدَاعِ

The hadith of Jabir رضى الله عنه saying "Fear Allah concerning women" has been narrated in the account of the Farewell pilgrimage. (hadith # 2555)

SECTION II اَلْفَصْلُ الثَّالِثُ

KIND TREATMENT TO HIS WIVES

(٣٢٥١) عَنْ عَآئِشَةَ اَنَّهَا كَانَتْ مَعَ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فِيْ سَفَرٍ قَالَتْ فَسَابَقْتُهُ فَسَبَقْتُهُ عَلٰى رِجْلَيَّ فَلَمَّا حَمَلْتُ اللَّحْمَ فَسَابَقْتُهُ فَسَبَقَنِيْ قَالَ هٰذِهٖ بِتِلْكَ السَّبْقَةِ۔ (رواه ابوداؤد)

3251. Sayyiah Ayshah رضى الله عنها spoke of a journey of hers with Allah's Messenger صلى الله عليه وسلم she raced him on foot and overtook him. Later, she had become fat and again raced him but he overtook her. He remarked, "This answers for that

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earlier) outstripping."[1]

COMMENTARY: She raced on foot. It is to emphasise that they did not race on horse back, etc. It is like saying, 'I wrote with my own hands,' 'I saw with my eyes.

This hadith teaches the men of the *ummah* to be pleasant and friendly with their wives.

Qadi Khan said that competition is allowed in four things: camels mules, horses, on foot archery. These competitions should be free of betting. But, if only one.side puts conditions then it is allowed. For instance, one of them stipulates that if he wins then he would take so much but if the other wins nothing will be paid to him.

If both sides put conditions or bet then it is forbidden.

The two can put such conditions whereby the winner will get something if they include a third with them who will get nothing if he wins.

However, while the pool will be lawful yet the competitors must not yearn for that, for, Shari'ah (divine law) does not condone it. Prizes to winners are nevertheless legal. The jurists all on it.

HE IS BEST WHO IS KIND TO HIS WIFE

(٣٢٥٢-٣٢٥٣) وَعَنْهَا قَالَتْ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ خَيْرُكُمْ خَيْرُكُمْ لِاَهْلِهٖ وَاَنَا خَيْرُكُمْ لِاَهْلِي وَاِذَا مَاتَ صَاحِبُكُمْ فَدَعُوْهُ۔ رَوَاهُ التِّرْمِذِيُّ وَالدَّارِمِيُّ وَرَاهُ ابْنُ مَاجَةَ عَنِ ابْنِ عَبَّاسٍ اِلٰى قَوْلِهٖ لِاَهْلِي۔

3252. Sayyidah Ayshah رضی اللہ عنہا narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "The best of you is the best of you to his family, and I am the best of you to my family (for I treat my family better than any of you treats his family which includes wife, children, relatives and servants). And, when your companion dies leave him alone (and do not speak ill of him)."[2]

3253. Sayyiduna Ibn Abbas رضی اللہ عنہ narrated the same hadith up to the words to my family.[3]

COMMENTARY: The best of you people if he who is kind and well-meaning to his wife and children and kith and kin, and servants and subordinates. That conduct points out to his good temperament.

When any of you dies, be he a relative or a friend, stop speaking ill of him. Do not backbite him. According to a hadith:

"Remember your, dead with good words."

Speak only of their good qualities and do not mention their shortcomings.

Some scholars interpret these words to mean: 'when anyone dies among you, do not cry and mourn over him and his love. Realise that you no more have a physical relationship with him.

Some scholars interpret the word sahib (companion) in the hadith to mean his own self. The *ummah* is urged, 'when I depart from this world, do not exhibit grief and restlessness because Allah is your Helper. He who had made my life a means of guidance and auspiciousness for you. Will also retain you on the same guidance and auspicious after me.'

Yet other scholars interpret it to mean: 'when I die, leave me alone by not hurting my ahl ul bayt (people of my house) , my sahabah and followers of my Shari'ah (described code of

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[1] Abu Dawud # 2578, Ibn Majah # 1979, Musnad Ahmad 6-39.

[2] Tirmidhi # 3921, Darimi # 2260.

[3] Ibn Majah # 1977.

life), the scholars and the awliya(pious people). For if you hurt them, it is tantamount to hurting me.

TIDING OF PARADISE TO OBEDIENT WIFE

(٣٢٥٤) وَعَنْ اَنَسٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَلْمَرْاَةُ اِذَا صَلَّتْ خَمْسَهَا وَصَامَتْ شَهْرَهَا وَاَحْصَنَتْ فَرْجَهَا وَاَطَاعَتْ بَعْلَهَا فَلْتَدْخُلْ مِنْ اَيِّ اَبْوَابِ الْجَنَّةِ شَاءَتْ۔ رَوَاهُ اَبُوْنُعَيْمٍ فِي الْحِلْيَةِ۔

3254. Sayyiduuna Anas رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said. "The woman who offers the five times *salah (prayer)*, fasts during the month (of Ramadan) , preserves her chastity and obey her husband, may enter paradise from whichever gate she chooses."[1]

PROSTRATION IF ALLOWED TO OTHERS

(٣٢٥٥) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَوْكُنْتُ اٰمِرُ اَحَدًا اَنْ يَسْجُدَ لِاَحَدٍ لَاَمَرْتُ الْمَرْاَةَ اَنْ تَسْجُدَ لِزَوْجِهَا۔ (رواه الترمذی)

3255. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, 'Were I to command anyone to prostrate himself be fore a person. I would have definitely commanded woman to prostrate herself before her husband.[2]

COMMENTARY: It is not allowed to prostrate oneself before anyone, but the Lord, Creator. This hadith emphasizes that obedience to husband is *wajib (obligatory)* on a woman.

HUSBAND PLEASURE IS IMPORTANT

(٣٢٥٦) وَعَنْ اُمِّ سَلَمَةَ قَالَتْ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَيُّمَا امْرَاَةٍ مَاتَتْ وَزَوْجُهَا عَنْهَا رَاضٍ دَخَلَتِ الْجَنَّةَ۔ (رواه الترمذی)

3256. Sayyidah Umm Salamah رضی اللہ عنہا narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Any woman who dies while her husband was pleased with her (always till her death) will enter paradise."[3]

COMMENTARY: This reward accrues to the woman whose husband whom she pleases is a scholar and a righteous man. But, if she pleases him and he is a sinner an ignorant then nothing may be said of this deed.

OBEY HUSBAND

(٣٢٥٧) وَعَنْ طَلْقِ بْنِ عَلِيٍّ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِذَا الرَّجُلُ دَعَا زَوْجَتَهٗ لِحَاجَتِهٖ فَلْتَاْتِهٖ وَاِنْ كَانَتْ عَلَى التَّنُّوْرِ۔ (رواه الترمذی)

3257. Sayyiduna Talq ib Ali رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "when a man invites his wife to fulfill his need, she must came to him even though she be at the oven (and must satisfy his sexual urge)."[4]

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[1] Abu Nu'aym in Hilyah

[2] Tirmidhi # 1159.

[3] Tirmidhi # 1161, Ibn Majah # 1854.

[4] Tirmidhi # 1160, Musnad Ahma[illegible]

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COMMENTARY: This implies that even if there are possibilities of loss or damage if a woman leaves what she is doing to respond to her husband's call to have sexual intercourse, she must go to him promptly.

DO NOT ANNOY YOUR HUSBAND

(٣٢٥٨) وَعَنْ مُعَاذٍ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لَا تُؤْذِي امْرَأَةٌ زَوْجَهَا فِي الدُّنْيَا إِلَّا قَالَتْ زَوْجَتُهُ مِنَ الْحُوْرِ الْعِيْنِ لَا تُؤْذِيْهِ قَاتَلَكِ اللّٰهُ فَإِنَّمَا هُوَ عِنْدَكِ دَخِيْلٌ يُوْشِكُ أَنْ يُفَارِقَكِ إِلَيْنَا۔ رَوَاهُ التِّرْمِذِيُّ وَابْنُ مَاجَةَ وَقَالَ التِّرْمِذِيُّ هٰذَا حَدِيْثٌ غَرِيْبٌ۔

3258. Sayyiduna Mu'adh رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "No woman annoys her husband in this world without his wife among the large eyed maidens protesting, 'Do not annoy him. May Allah curse you (and deprive you of paradise and His mercy) He is nothing but a guest with you and will soon separate from you and come to us."[1]

COMMENTARY: According to another version: (لَعَنَ الْمَلَائِكَةُ لِعَاصِيَةِ الزَّوْجِ)
"The angels curse the woman who is disobedient to her husband."
These kind of ahadith disclose that the dwellers of the heaven learn of what human being do in this world.

WOMEN'S RIGHT ON HUSBAND

(٣٢٥٩) وَعَنْ حَكِيْمِ بْنِ مُعَاوِيَةَ الْقُشَيْرِيِّ عَنْ أَبِيْهِ قَالَ قُلْتُ يَا رَسُوْلَ اللّٰهِ مَا حَقُّ زَوْجَةِ أَحَدِنَا عَلَيْهِ قَالَ أَنْ تُطْعِمَهَا إِذَا طَعِمْتَ وَتَكْسُوَهَا إِذَا اكْتَسَيْتَ وَلَا تَضْرِبِ الْوَجْهَ وَلَا تُقَبِّحْ وَلَا تَهْجُرْ إِلَّا فِي الْبَيْتِ۔

(رواه احمد وابوداؤد وابن ماجة)

3259. Sayyiduna Hakim ibn Mu'awiyah رحمہ اللہ Al-Qushayri رحمہ اللہ reported from his father that he asked, "O Messenger of Allah, what right does a wife of one of us have over him?" He said, "You should feed her when you eat, clothe her when you clothe yourself and you must not strike (her) on the face, nor revile her. You should not keep apart from her save within the house."[2]

COMMENTARY: The face is the most superior of all limbs. So, it is mentioned specifically that one should not strike on the face. It means that a man is allowed to strike a wife on any other limb when it is necessary for some serious lapse like committing indecency, omitting the obligatory duties, etc. But, he should never strike on the face.

MAY A HUSBAND BEAT HIS WIFE DISCIPLINE HER: Without doubt, man and woman are of the same status as human beings. Again, in the sight of Islam, too, they are on an equal plain. However, when man and woman marry and become life partners, there is a small difference in their positions from the point of view of Shari'ah (divine law). The husband enjoys a peculiar excellence and it is not concerned with human nobility and honour. Rather, it has to do with their mutual relationship and rights. The husband, therefore, can keep his wife bound to obey his commands that Shari'ah (divine law) has

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[1] Tirmidhi # 1174, Ibn Majah # 2014, Musnad Ahmad 5-252.

[2] Abu Dawud # 2142, Nasa'i # 124, 447, Ibn Majah # 1850, Musnad Ahmad 4. 447.

authorized him to enforce. They relate to the *fard (compulsory)* and *wajib (obligatory)* duties. Thus if a wife does not obey her husband in these things and his entreaties and warnings have no effect and he is certain that there is no likelihood of her reforming without taking harsh measures then he may beat her provided her disobedience is within what Shari'ah (divine law) has classified so. According to Fatawa Qadi Khan, a husband may beat his wife over four things:

(i) She does not adorn herself in spite of his command.
(ii) He wishes to have a sexual intercourse but she refuses to have it though she has no excuse (like menstruation etc.)
(iii) She neglects the obligatory duties, like *salah (prayer)* etc. and does not have a purifying bath after her menses and sexual intercourse.
(iv) She goes out of the house without his permission.

TEMPORARILY APART: The concluding portion of the hadith means that if it become necessary to keep apart from one's wife for some reason, then instead of separating from her for ever, it is better to keep apart from her within the house. In this way, she might mend and take heed, so that the extreme step of divorce is avoided.
The Quran says about it:

وَالّٰلاتِیْ تَخَافُوْنَ نُشُوْزَهُنَّ فَعِظُوْهُنَّ وَاهْجُرُوْهُنَّ فِی الْمَضَاجِعِ وَاضْرِبُوْهُنَّ ط۔ (النساء ۴: ۳۴)

{And those from whom you fear defiance, admonish then first, (then if necessary) banish them to their beds apart and (as a last resort). You may beat them} (4: 34)

DIVORCE THE FOUL MOUTHED WIFE

(۳۲۶۰) وَعَنْ لَقِیْطِ بْنِ صَبِرَةَ قَالَ قُلْتُ یَا رَسُوْلَ اللّٰہِ اِنَّ لِیْ امْرَأَةً فِیْ لِسَانِهَا شَیْءٌ یَعْنِی الْبَذَاءَ قَالَ طَلِّقْهَا قُلْتُ اِنَّ لِیْ مِنْهَا وَلَدًا وَلَهَا صُحْبَةٌ قَالَ فَمُرْهَا یَقُوْلُ عِظْهَا فَاِنْ یَکُ فِیْهَا خَیْرٌ فَسَتَقْبَلُ وَلَا تَضْرِبَنَّ ظَعِیْنَتَکَ ضَرْبَکَ اُمَیَّتَکَ۔ (رواه ابوداؤد)

3260. Sayyiduna Laqit ibn Saburah (لقیط ابن صبرة) رضی اللہ عنہ narrated that he asked, "O Messenger of Allah, I do have a wife who has something (like a bite) in her tongue," say an abusive speech. He said, "Divorce her." He submitted, "I have children from her and a (long) companionship." He said, "Command her!" He said, "Admonish her. If she has some good in her, he will (relent and) accept. Do not beat your wife, as the beating of your female slave."[1]

COMMENTARY: The word 'Admonish her" are a narrator's to explain the Prophet's صلی اللہ علیہ وسلم word s' Command her!" The Prophet صلی اللہ علیہ وسلم meant to say that he should exhort her. The hadith concludes with a latent massage to first advice, urge and coax the woman to cease from abusive language and irritative conduct. If that fails, then give her a light beating.

DO NOT BEAT WOMEN

(۳۲۶۱) وَعَنْ اِیَاسِ بْنِ عَبْدِاللّٰہِ قَالَ قَالَ رَسُوْلُ اللّٰہِ صَلَّی اللّٰہُ عَلَیْهِ وَسَلَّمَ لَا تَضْرِبُوْا اِمَاءَ اللّٰہِ فَجَاءَ عُمَرُ اِلٰی رَسُوْلِ اللّٰہِ صَلَّی اللّٰہُ عَلَیْهِ وَسَلَّمَ فَقَالَ ذَئِرْنَ النِّسَاءُ عَلٰی اَزْوَاجِهِنَّ فَرَخَّصَ فِیْ ضَرْبِهِنَّ فَاَطَافَ بِاٰلِ رَسُوْلِ اللّٰہِ

[1] Abu Dawud # 142, Musnad Ahmad 4-33

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صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ نِسَاءٌ كَثِيْرٌ يَشْكُوْنَ اَزْوَاجَهُنَّ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَقَدْ طَافَ بِاٰلِ مُحَمَّدٍ نِسَاءٌ كَثِيْرٌ يَشْكُوْنَ اَزْوَاجَهُنَّ لَيْسَ اُولٰئِكَ بِخِيَارِكُمْ۔ (رواه ابوداؤد وابن ماجة والدارمی)

3261. Sayyiduna Iyas ibn Abdullah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Do not beat Allah's female servants (meaning, your wives). "Then, Sayyiduna Umar رضی اللہ عنہ came to Allah's Messenger صلی اللہ علیہ وسلم (after this command of Allah's Messenger) صلی اللہ علیہ وسلم and submitted, "The woman have become bold (against their husbands)." So, he gave permission to beat them. Then the women, plenty of them, went round the wives of Allah's Messenger صلی اللہ علیہ وسلم and complained about their husband (who beat them). Allah's Messenger صلی اللہ علیہ وسلم said, "A great number of women have gone round Muhammad's wives and complained of their husbands. They (who beat their wives) are not the best of you."[1]

COMMENTARY: They are the best of people who do not beat their wives. They endure the hardship caused by their wives.

Imam Shafi'I رحمہ اللہ said that the Prophet صلی اللہ علیہ وسلم had forbidden men to beat women before the revelation of verse (4: 34). Then he allowed it when women become daring against their husbands. This verse was revealed to uphold his command that they may be beaten.

When the women made their complaints, he advised that though it is permitted to beat women yet it is better to show patience at their daring and boldness.

INCITING WOMAN AGAINST HUSBAND IS VERY BAD

(٣٢٦٢) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَيْسَ مِنَّا مَنْ خَبَّبَ اِمْرَأَةً عَلٰى زَوْجِهَا اَوْ عَبْدًا عَلٰى سَيِّدِهٖ۔ (رواه ابوداؤد)

3262. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "One who entices a woman against her husband, or a slave against his master, dues not belong to us."[2]

COMMENTARY: It is a very wrong thing to prompt evil to woman against her husband or a slave against his master. The same command applies to inciting a man against his wife or his slave or his female slave, or a female slave against her master.

SIGN OF PERFECT FAITH

(٣٢٦٣) وَعَنْ عَآئِشَةَ قَالَتْ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِنَّ مِنْ اَكْمَلِ الْمُؤْمِنِيْنَ اِيْمَانًا اَحْسَنَهُمْ خُلُقًا وَاَلْطَفُهُمْ بِاَهْلِهٖ۔ (رواه الترمذی)

3263. Sayyiduna Ayshah رضی اللہ عنہا narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "The believer who has the most perfect faith is he who is the best of them in manners and who is most mild to his family."[3]

COMMENTARY: Anyone who possesses perfect faith and is find to his family is a perfect believer.

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[1] Abu Dawud # 2146, Ibn Majah # 1985.

[2] Abu Dawud # 5170, Musnad Ahmad 2. 397.

[3] Tirmidhi # 2621, Musnad Ahmad 6. 47.

(٣٢٦٤) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَكْمَلُ الْمُؤْمِنِيْنَ اِيْمَانًا اَحْسَنُهُمْ خُلُقًا وَخِيَارُكُمْ خِيَارُكُمْ لِنِسَائِهِمْ رَوَاهُ التِّرْمِذِيُّ وَقَالَ هٰذَا حَدِيْثٌ حَسَنٌ صَحِيْحٌ، رَوَاهُ اَبُوْدَاوٗدَ اِلٰى قَوْلِهٖ خُلُقًا۔

3264. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "The best believers having the most perfct faith are they who possess the best m anners. And, the best of you are they who are the best to their wives."[1]

A HAPPY MOMENT WITH AYSHAH رضی اللہ عنہا

(٣٢٦٥) وَعَنْ عَائِشَةَ قَالَتْ قَدِمَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مِنْ غَزْوَةِ تَبُوْكَ اَوْ حُنَيْنٍ وَفِيْ سَهْوَتِهَا سِتْرٌ فَهَبَّتْ رِيْحٌ فَكَشَفَتْ نَاحِيَةَ السِّتْرِ عَنْ بَنَاتٍ لِعَائِشَةَ لُعَبٍ فَقَالَ مَا هٰذَا يَا عَائِشَةُ قَالَتْ بَنَاتِيْ وَرَاٰى بَيْنَهُنَّ فَرَسًا لَهٗ جَنَاحَانِ مِنْ رِقَاعٍ فَقَالَ مَا هٰذَا الَّذِيْ اَرٰى وَسْطَهُنَّ؟ قَالَتْ فَرَسٌ قَالَ وَمَا الَّذِيْ عَلَيْهِ قَالَتْ جَنَاحَانِ قَالَ فَرَسٌ لَهٗ جَنَاحَانِ؟ قَالَتْ اَمَا سَمِعْتَ اَنَّ لِسُلَيْمَانَ خَيْلًا لَهَا اَجْنِحَةٌ قَالَتْ فَضَحِكَ حَتّٰى رَاَيْتُ نَوَاجِذَهٗ۔ (رواه ابوداؤد)

3265. Sayyidah Ayshah رضی اللہ عنہا narrated that Allah's Messenger صلی اللہ علیہ وسلم returned from the Battle of Tabuk or Hunayn. A curtain hung before her storeroom which the wind raised high bringing into view some of her dolls. He asked, "What is this, O Ayshah?" She said, "My dolls!" He also saw among them a horse that had two wing contrived out of rags or paper. He asked, "What is it that I see among them?" She said, "A horse!" He asked, "And what is that over it?" She said, "Wings!" He asked (in astonishment). "A horse that has wings?" She quipped, "Have you not heard that (prophet) Ṣulayman علیہ السلام had horses with wings?" She added that he laughed so much (on hearing her words) that she could see his back teeth.[2]

COMMENTARY: The sub-narrator was unsure whether the Prophet صلی اللہ علیہ وسلم had returned from the battle of Tabuk or Hunayn. So he expresses his doubt in the hadith.
Tabuk is about 465 miles from Madinah on the road to Damascus. The Prophet صلی اللہ علیہ وسلم had led his army there in 9 AH, but the enemy retreated without contending.
Hunayn is a valley to the north east of Makkah towards Ta'if. It is also called Awtas. The Battle of Hunayn was fought here in 8 AH after the conquest of Makkah.
The ruling about playing with dolls has been mentioned previously in the chapter on wali (hadith # 3129).

SECTION III اَلْفَصْلُ الثَّالِثُ

NOT ALLOWED TO PROSTRATES ONESELF BEFORE ANOTHER

(٣٢٦٦-٣٢٦٧) وَعَنْ قَيْسِ بْنِ سَعْدٍ قَالَ اَتَيْتُ الْحِيْرَةَ فَرَاَيْتُهُمْ يَسْجُدُوْنَ لِمَرْزُبَانٍ لَهُمْ فَقُلْتُ لِرَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَحَقُّ اَنْ يُسْجَدَ لَهٗ فَاَتَيْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقُلْتُ اِنِّيْ اَتَيْتُ

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[1] Tirmidhi # 1165, Abu Dawud # 4682 but only up (Arabic) manner.
[2] Abu Dawud # 4932.

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الْحِيْرَةَ فَرَأَيْتُهُمْ يَسْجُدُوْنَ لِمَرْزُبَانٍ لَهُمْ فَأَنْتَ اَحَقُّ بِاَنْ يُسْجَدَ لَكَ فَقَالَ لِي اَرَأَيْتَ لَوْ مَرَرْتَ بِقَبْرِيْ اَكُنْتَ تَسْجُدُ لَهُ فَقُلْتُ لَا فَقَالَ لَا تَفْعَلُوْا لَوْ كُنْتُ اٰمُرُ اَحَدًا اَنْ يَسْجُدَ لِاَحَدٍ لَاَمَرْتُ النِّسَاءَ اَنْ يَسْجُدْنَ لِاَزْوَاجِهِنَّ لِمَا جَعَلَ اللّٰهُ لَهُمْ عَلَيْهِنَّ مِنْ حَقٍّ۔ رَوَاهُ اَبُوْدَاوٗدَ وَرَوَاهُ اَحْمَدُ عَنْ مُعَاذِ بْنِ جَبَلٍ۔

3266. Sayyiduna Qays ibn Sa'd رضی اللہ عنہ reported: I came to Hirah (a city near Kufah) and observed them prostrating themselves before their local governor. I thought (to myself). "Allah's Messenger صلی اللہ علیہ وسلم is more deserving of the prostration to be made before him." Thus, when I came to Allah's Messenger صلی اللہ علیہ وسلم , I said to him, "I had gone to Hirah. And I observed them prostrate themselves before their local governor but you have more right that people should prostrate themselves before you." He said, "What do you say? Were you to pass by my grave, would you prostrate yourself to it?" I said, "No." He said, "Do not do it any of you (even while I am alive). Were I to command anyone to prostrate himself before another, I would surely have commanded the women to prostrate themselves before their husbands because of the right over them conferred on the husbands by Allah."[1]

3267. Sayyiduna Mu'adh ibn Jabal رضی اللہ عنہ narrated that same hadith.[2]

COMMENTARY: Sayyiduna Qays رضی اللہ عنہ thought who could be more deserving of prostration being made before him then the chief of the two worlds, the prophet صلی اللہ علیہ وسلم. He had seen the people of Hirah prostrating themselves before their ruler. But, the Prophet صلی اللہ علیہ وسلم made it clear to him in a very simple manner that the human forehead is so much sacred that it may prostrate itself only before its creator and none else, not any creature at all. Allah says:

لَا تَسْجُدُوْا لِلشَّمْسِ وَلَا لِلْقَمَرِ وَاسْجُدُوْا لِلّٰهِ الَّذِيْ خَلَقَهُنَّ اِنْ كُنْتُمْ اِيَّاهُ تَعْبُدُوْنَ۔ (فصلت ۴۱: ۳۷)

{Prostrate not yourselves unto the sun nor to the moon, but prostate yourselves to Allah who created them, if it is, in truth, Him whom you warship.} (41: 37)

BEATING ONE'S WIFE

(۳۲۶۸) وَعَنْ عُمَرَ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لَا يُسْئَلُ الرَّجُلُ فِيْمَا ضَرَبَ اِمْرَأَتَهُ عَلَيْهِ۔

(رواه ابوداؤد وابن ماجة)

3268. Sayyiduna Umar رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "(If a man beats his wife for a valid reason) , he will not be asked why he beat her."[3]

COMMENTARY: The words 'he will not be asked' mean that it will not be sinful for him if he beats his wife provided he observed the relative conditions and did not transgress. The word 'disobedience' is understood in words (واللاتی تخافون نشوزهن الخ) (why).

OPTIONAL FASTING ONLY ON HUSBAND'S PERMISSION

(۳۲۶۹) وَعَنْ اَبِيْ سَعِيْدٍ قَالَ جَاءَتْ اِمْرَأَةٌ اِلٰى رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَنَحْنُ عِنْدَهُ فَقَالَتْ زَوْجِيْ

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[1] Abu Dawud # 2140, Darimi # 1463.

[2] Musnad Ahmad 5-227.

[3] Abu Dawud # 2147, Ibn Majah # 1986.

صَفْوَانُ بْنُ الْمُعَطَّلِ يَضْرِبُنِيْ إِذَا صَلَّيْتُ وَيُفَطِّرُنِيْ إِذَا صُمْتُ وَلَا يُصَلِّي الْفَجْرَ حَتّٰى تَطْلُعَ الشَّمْسُ قَالَ وَصَفْوَانُ عِنْدَهٗ قَالَ فَسَاَلَهٗ عَمَّا قَالَتْ فَقَالَ يَا رَسُوْلَ اللّٰهِ اَمَّا قَوْلُهَا يَضْرِبُنِيْ إِذَا صَلَّيْتُ فَإِنَّهَا تَقْرَأُ بِسُوْرَتَيْنِ وَقَدْ نَهَيْتُهَا قَالَ فَقَالَ لَهٗ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَوْ كَانَتْ سُوْرَةً وَاحِدَةً لَكَفَتِ النَّاسَ قَالَ وَاَمَّا قَوْلُهَا يُفَطِّرُنِيْ إِذَا صُمْتُ فَإِنَّهَا تَنْطَلِقُ تَصُوْمُ وَاَنَا رَجُلٌ شَابٌّ فَلَا اَصْبِرُ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا تَصُوْمُ امْرَأَةٌ إِلَّا بِإِذْنِ زَوْجِهَا وَاَمَّا قَوْلُهَا إِنِّيْ لَا اُصَلِّيْ حَتّٰى تَطْلُعَ الشَّمْسُ فَإِنَّا اَهْلُ بَيْتٍ قَدْ عُرِفَ لَنَا ذَاكَ لَا نَكَادُ نَسْتَيْقِظُ حَتّٰى تَطْلُعَ الشَّمْسُ قَالَ فَإِذَا اسْتَيْقَظْتَ يَا صَفْوَانُ فَصَلِّ۔ (رواه ابوداؤد وابن ماجة)

3269. Sayyiduna Abu Sa'eed رضی اللہ عنہ narrated that a woman came to Allah's Messenger صلی اللہ علیہ وسلم while they were sitting with him. She complained, "My husband safwan ibn al-Mu'attal رضی اللہ عنہ beats me when I offer the *salah (prayer)*, compels me to break my fast when I fast and he himself offers the *salah (prayer)* of fajr only when the sun rises (or is about to rise)." (At that time,) Safwan رضی اللہ عنہ was there. So, he asked him about what she had said, He said, "O Messenger of Allah, as for her saying that I beat her when she offers the *salah (prayer)*, she recites two surahs though I have forbidden her (to recite lengthy two surahs in each raka'ah)." So, Allah's Messenger صلی اللہ علیہ وسلم said, "If only one surah is recited (after surah al-fatihah) that suffices the people." Then, he (Safwan) said, "As for her saying that I make her break her fast when she fasts, she goes on fasting (day after day, the supererogatory fasts). I am a young man (who does not get an opportunity in the night so I crave for her during the day) and I cannot check myself." On that, Allah's Messenger صلی اللہ علیہ وسلم said, "No woman may fast (a supererogatory fast) without her husband's permission." Then, he (Safwan) added, "As for her saying that I offer the *salah (prayer)* only when the sun rises, I am from a family that (works by night and) is known to awaken at sun rise. (We work on the field irrigating it all night)." He (the prophet) صلی اللہ علیہ وسلم said, "Safwan offer the *salah (prayer)* when you awake."

COMMENTARY: Safwan was a former. He had to attend to his field till late in the night and went to sleep at his farm. So, the Prophet صلی اللہ علیہ وسلم accepted his excuse and said to him, "Offer *salah (prayer)* when you awake but before attending to any other work."

OBEY HUSBAND EVEN A STRICT COMMAND

(٣٢٧٠) وَعَنْ عَائِشَةَ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ كَانَ فِيْ نَفَرٍ مِنَ الْمُهَاجِرِيْنَ وَالْاَنْصَارِ فَجَاءَ بَعِيْرٌ فَسَجَدَ لَهٗ فَقَالَ اَصْحَابُهٗ يَا رَسُوْلَ اللّٰهِ تَسْجُدُ لَكَ الْبَهَائِمُ وَالشَّجَرُ فَنَحْنُ اَحَقُّ اَنْ نَسْجُدَ لَكَ فَقَالَ اعْبُدُوْا رَبَّكُمْ وَاَكْرِمُوْا اَخَاكُمْ وَلَوْ كُنْتُ اٰمِرُ اَحَدًا اَنْ يَسْجُدَ لِاَحَدٍ لَاَمَرْتُ الْمَرْأَةَ اَنْ تَسْجُدَ لِزَوْجِهَا وَلَوْ اَمَرَهَا اَنْ تَنْقُلَ مِنْ جَبَلِ اَصْفَرَ إِلٰى جَبَلِ اَسْوَدَ وَمِنْ جَبَلِ اَسْوَدَ إِلٰى جَبَلِ اَبْيَضَ كَانَ يَنْبَغِيْ لَهَا اَنْ تَفْعَلَهٗ۔ (رواه احمد)

3270. Sayyidah Ayshah رضی اللہ عنہا narrated that (once) Allah's Messenger صلی اللہ علیہ وسلم

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was among a company of muhajirs (emigrants) and Ansars. A camel came and prostrated itself before him. His companions رضی اللہ عنہ said, "O Messenger of Allah, the animals and the trees prostrate themselves before you, so we are more eligible to prostrate ourselves before you." He said. "Worship your Lord and honour your brother" (meaning himself). "If I would command one to prostrate himself before any (other than Allah) , I would instruct a woman to prostrate herself before her husband. And, were he to command her to move stones from a yellow mountain to a black mountain and from a black mountain to a white mountain, it would be binding on her to do it."[1]

COMMENTARY: Prostration is truly a form of worship and only Allah has the right to be worshipped. No one other than Allah - not even a prophet - can be worshipped. Do not make me Allah's partner by worshipping me, for. He has sent me as His Prophet and Messenger to you not to get you to worship me, but to bring you out of polytheism to the path of monotheism. In other words, he called their attention to the verse:

وَمَا كَانَ لِبَشَرٍ اَنْ يُّؤْتِيَهُ اللّٰهُ الْكِتٰبَ وَالْحُكْمَ وَالنُّبُوَّةَ ثُمَّ يَقُوْلَ لِلنَّاسِ كُوْنُوْا عِبَادًا لِّيْ مِنْ دُوْنِ اللّٰهِ

وَلٰكِنْ كُوْنُوْا رَبّٰنِيّٖنَ۔ (ال عمران ۳: ۷۹)

{It does not become a human being that Allah should grant him the Book, the wisdom and the prophethood, then he should say to mankind, 'Be you worshippers of me, instead of Allah." but (he would say) , "Be you men of God.."} (3: 79)

As for the prostration of the camel before the prophet صلی اللہ علیہ وسلم , it should not cause any doubt because it was by way of something contrary to custom (and to the natural laws and traditions as something out of the ordinary). Allah has made the camel subservient. The Prophet صلی اللہ علیہ وسلم had no say in Allah's Command. Besides, the camel was completely under command. Just as Allah had commanded the angels to prostrate themselves before (Sayyiduna) Aadam علیہ السلام and their prostrating themselves before him caused no wonder and raised no questions because they were bound to obey Allah's command, so. Too the camel was under Allah's command to prostrate itself before the Prophet صلی اللہ علیہ وسلم. It had to obey Allah's command in any case.

The Prophet's صلی اللہ علیہ وسلم words that they should honour their brother, meaning himself, imply that his position and rank demanded from them only their love and obedience to him both outwardly and inwardly.

The mountains have been described with colours to suggest a long distance between them. Such mountains are not found near to one another. The sentence, therefore, means that even if two mountains are very for apart and the husband orders his wife to transfer stones from one to another mountain, then she must obey him and do that.

In short, if a husband issues such a strong and difficult command to his wife, she is bound to obey him.

SALAH (PRAYER) IS NOT APPROVED FULLY IF HUSBAND IS NOT PLEASED

(۳۲۷۱) وَعَنْ جَابِرٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ ثَلَاثَةٌ لَا تُقْبَلُ لَهُمْ صَلَاةٌ وَلَا يُصْعَدُ لَهُمْ حَسَنَةٌ

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[1] Musnad Ahmad 6-76

الْعَبْدُ الْآبِقُ حَتّٰى يَرْجِعَ إِلٰى مَوَالِيْهِ فَيَضَعَ يَدَهُ فِيْ أَيْدِيْهِمْ وَالْمَرْأَةُ السَّاخِطُ عَلَيْهَا زَوْجُهَا وَالسَّكْرَانُ حَتّٰى يَصْحُوَ رَوَاهُ الْبَيْهَقِيُّ فِيْ شُعَبِ الْإِيْمَانِ۔

3271. Sayyiduna Jabir رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Three there are whose *salah (prayer)* is not accepted (in a perfect manner) , and their pious deeds do not ascend (to Allah):

1. **A runaway slave until he comes back to his masters and puts his hand in theirs. (It means that he hands himself over to them and obeys them.)**
2. **And, a woman whose husband is displeased with her.**
3. **And, a drunkard until he gets sober."[1]**

COMMENTARY: The slave must come back to his masters. The plural form is used because it includes the master and his sons. The slave has to be faithful not only to his master but also to his master's sons.

According to another version, there are after the words (زوجها) her husband, the words(رضاعنها) gets pleased with her.

In this hadith under discussion, these words are implicit, so they are not mentioned. The meaning in either case is that either her husband becomes pleased with her or divorces her.

THE BEST WIFE

(٣٢٧٢) وَعَنْ أَبِيْ هُرَيْرَةَ قَالَ قِيْلَ لِرَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ أَيُّ النِّسَاءِ خَيْرٌ قَالَ الَّتِيْ تَسُرُّهُ إِذَا نَظَرَ وَتُطِيْعُهُ إِذَا أَمَرَ وَلَا تُخَالِفُهُ فِيْ نَفْسِهَا وَلَا فِيْ مَالِهَا بِمَا يَكْرَهُ رَوَاهُ النَّسَائِيُّ وَالْبَيْهَقِيُّ فِيْ شُعَبِ الْإِيْمَانِ۔

3272. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم was asked, "which woman is the best?" He said, "She who pleases (her husband) when he looks at her, obeys him when he asks her to do something (provided it does not contravene Shari'ah (divine law)) , and apposes not his wishes in regard to herself and her property by doing what he does not like."[2]

COMMENTARY: The distinction of the best women is that she pleases her husband when he looks at her. She has a very good disposition and good manners. This makes him happy. And, if she has good looks and conduct too, then his pleasure known no bunds.

Another distinction is that she does not act in a way that hurts her husband in any way. This concern both her self and property.

The property could be, her own as also her husband's. She may not use any of these in such a way as displeases her husband. It could also refer to her husband's property in her hands. She does not misuse it but spends only as her husband wished her to spend.

MERIT OF A TRUSTWORTHY WIFE

(٣٢٧٣) وَعَنِ ابْنِ عَبَّاسٍ أَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ أَرْبَعٌ مَنْ أُعْطِيَهُنَّ فَقَدْ أُعْطِيَ خَيْرَ الدُّنْيَا وَالْآخِرَةِ قَلْبٌ شَاكِرٌ وَّلِسَانٌ ذَاكِرٌ وَبَدَنٌ عَلَى الْبَلَاءِ صَابِرٌ وَزَوْجَةٌ لَا تَبْغِيْهِ خَوْنًا فِيْ نَفْسِهَا وَلَا مَالِهٖ رَوَاهُ الْبَيْهَقِيُّ فِيْ شُعَبِ الْإِيْمَانِ۔

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[1] Bayhaqi # 8600 in Shu'ab ul Eeman.

[2] Nasa'i # 3231, Bayhaqi in Shu'ab ul Eeman.

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3273. Sayyiduna Ibn Abbas رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Four things there are such as if bestowed on anyone then he is given the best in this world and the next. (They are:)

(i) A grateful heart (that thanks Allah for His bounties).

(ii) A tongue that is engaged in the remembrance of Allah in difficulty and ease).

(iii) A body that endures trials patiently.

(iv) A wife who does act treacherously (with him) in her person and his property.

CHAPTER - XII

AL-KHULA' WA AT-TALAQ KHULA' (OR SEPARATION INITIATED BY WIFE) & DIVORCE

بَابُ الْخُلْعِ وَالطَّلَاقِ

WHAT IS KHULA' (خلع): It is with a d*ummah* (.) of Kha (خ) , khula' and a fathah of the kha, Khala', a noun. The former in a literal sense is to remove or take out something and generally it is applied to removing or taking off a garment or socks, etc. in the terminology of Shariah, it is the removal of matrimonial bond. It is 'to get rid of the ownership by marriage against wealth with the word khula'.' Or, it is 'to acquire wealth from one's wife with the word khula' to revoke the ownership by marriage.'

This terminology of Shari'ah (divine law) is explained thus: if husband and wife are at loggerheads and there is no way they may reconcile and the husband does not pronounce divorce, then it is allowed to the woman to pay some money and pay her dower and get deliverance.

She may tell the man 'take so much money and make khula' It means 'get rid of me.' Or she tells him to get rid of her against the dower that is payable by him.

In response, the man may say, 'I get rid of you.' This causes one pronouncement of talaq ba'in on the woman (ba'in is irrevocable). Both will separate.

Mazhar رحمہ اللہ said that the ulama (Scholars) differ on whether it is divorce or annulment when a man says to his wife, 'I have made khula' with you against so much money' and she says, 'I have accepted it, and thereafter they separate. Imam Abu Hanifah رحمہ اللہ and Imam Maalik رحمہ اللہ say that it is talaq ba'in (an irrevocable divorce). An opinion of Imam Shafi'I رحمہ اللہ which is more rightly attributed to him agrees with them. However, Imam Ahmad رحمہ اللہ holds that it is faskh (an annulment) and an opinion of Imam Shafi'I رحمہ اللہ tends to agree with him.

If husband and wife are disunited because of the husband's injustice and the wife demands the khula' because of his injustices and excesses, then it is *makruh (disapproved)* for the husband to take anything against making khula', like money etc.

If the reason behind seeking khula is the wife's obstinacy and disobedience, then it is *makruh (disapproved)* for the husband to take against the khula' so much money as is in excess of what he has paid to his wife as a dower.

WHAT IS TALAQ: In the literal sense, talaq is 'to open or undo' and 'to leave or separate' In the terminology of Shari'ah (divine law) it is:

> 'a man's releasing the woman from the restrictions imposed on her because of the marriage."

Insha Allah the kind of talaq (divorce) and their commands will be mentioned in the

following lines.[1]

SECTION I اَلْفَصْلُ الْاَوَّلُ

DIVORCE FROM DISLIKED HUSBAND

(٣٢٧٤) عَنِ ابْنِ عَبَّاسٍ اَنَّ امْرَاَةَ ثَابِتِ ابْنِ قَيْسٍ اَتَتِ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَتْ يَا رَسُوْلَ اللّٰهِ ثَابِتُ بْنُ قَيْسٍ مَا اَعْتِبُ عَلَيْهِ فِيْ خُلُقٍ وَلَا دِيْنٍ وَلٰكِنِّيْ اَكْرَهُ الْكُفْرَ فِي الْاِسْلَامِ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَتَرُدِّيْنَ عَلَيْهِ حَدِيْقَتَهٗ قَالَتْ نَعَمْ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِقْبَلِ الْحَدِيْقَةَ وَطَلِّقْهَا تَطْلِيْقَةً۔ (رواه البخاری)

3274. Sayyiduna Ibn Abbas رضی اللہ عنہ narrated that the wife of Thabit ibn Qays رضی اللہ عنہ came to the Prophet صلی اللہ علیہ وسلم and submitted, "O Messenger of Allah, I do not blame Thabit ibn Qays, nor do I pick faults in his character and religion, but I do not like ingratitude (or sin) in regard to) Islam." So, Allah's Messenger صلی اللہ علیہ وسلم asked her, "Will you return to him his garden (that he had given you as your dower)?" She said, "Yes!" Allah's Messenger صلی اللہ علیہ وسلم said (To Thabit) , 'Accept the garden and pronounce divorce to her once."[2]

COMMENTARY: The wife of Sayyiduna Thabit ibn Qays رضی اللہ عنہ had no complaint against him, but she did not like him. She feared that this might cause her to be ungrateful or disobedient to him. She would not like that to happen so why should they not separate.

It is said that Sayyiduna Thabit ibn Qays رضی اللہ عنہ was very ugly and short statured. His wife's name was (Sayyidah) Habibah or Jamilah. She was very beautiful and charming. Hence, they were unmatched - strange bedfellows! She was not disposed to him. The prophet صلی اللہ علیہ وسلم , therefore, instructed Sayyiduna Thabit رضی اللہ عنہ to divorce his wife but with only one pronouncement.

We know from this that it is better for a man who divorces his wife to declare it only once so that if they intend to revoke the divorce, they may do it. This was the reason why the Prophet صلی اللہ علیہ وسلم told him to declare divorce only once.

We also know from this that khula' is divorce, not an annulment. The compiler of the Hidayah has cited a hadith of the Prophet صلی اللہ علیہ وسلم:

اَلْخُلْعُ تَطْلِيْقَةٌ بَائِنَةٌ

"Khul'a effects an irreversible divorce."[3]

DO NOT DIVORCE A MENSTRUATING WOMEN

(٣٢٧٥) وَعَنْ عَبْدِاللّٰهِ بْنِ عُمَرَ اَنَّهٗ طَلَّقَ امْرَاَةً لَهٗ وَهِيَ حَائِضٌ فَذَكَرَ عُمَرُ لِرَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَتَغَيَّظَ فِيْهِ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ ثُمَّ قَالَ لِيُرَاجِعْهَا ثُمَّ يُمْسِكْهَا حَتّٰى تَطْهُرَ ثُمَّ تَحِيْضَ فَتَطْهُرَ فَاِنْ بَدَالَهٗ اَنْ يُطَلِّقَهَا فَلْيُطَلِّقْهَا طَاهِرًا قَبْلَ اَنْ يَمَسَّهَا فَتِلْكَ الْعِدَّةُ الَّتِيْ اَمَرَاللّٰهُ اَنْ تُطَلَّقَ لَهَا

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[1] See also the hidayah v1 pp 194-200, Marghinani. Darul Isha'at Karachi.

[2] Bukhari # 5273, Nasa'i # 3463, Ibn Majah # 2056, Musnad Ahmad 3-4.

[3] Hidayah v1 p 194.

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النِّسَاءَ وَفِيْ رِوَايَةٍ مُرْهُ فَلْيُرَاجِعْهَا ثُمَّ لِيُطَلِّقْهَا طَاهِرًا اَوْ حَامِلًا۔ (متفق عليه)

3275. Sayyiduna Abdullah ibn Umar رضی اللہ عنہ is reported to have divorced one of his wives while she was menstruating. Sayyiduna Umar رضی اللہ عنہ mentioned this to Allah's Messenger صلی اللہ علیہ وسلم who became angry at it, saying, "He must (atone for it and) take her back (by saying to her, 'I have taken you again as my wife). Then, he must keep her with him till she is purified and then has another menstruation and is purified again. Then, if it appears necessary to him to divorce her, he may divorce her when she is pure (of menses) before he has sexual intercourse with her. This, doing which Allah has commanded that woman be divorced (if that is to be done)." According to another version, he said, "Instruct him to take her back. Then, he may divorce her when she has purified from menstruation, or is pregnant."[1]

COMMENTARY: The Prophet صلی اللہ علیہ وسلم anger is indication that it is forbidden to divorce a woman when she is menstruating. It is forbidden because the man may have divorced her out of aversion for menstruation. He may not really have divorce in mind.

However, if anyone divorces his wife while she is menstruating, then divorce takes effect. This is why the Prophet صلی اللہ علیہ وسلم instructed Abdullah to reverse the divorce (or take her back). Clearly taking her back can only be after divorce.

The question arises why was he asked to defer divorce till she has had her second menses and purifies from it. The ulama (Scholars) say that there are several reasons for it.

(i) The ruju or reversing of divorce should not be with intention to divorce again. This is why the waiting period is postponed so that not only it becomes permitted to divorce but also the man has an opportunity to reconsider his decision. Perhaps, they might find something whereby it does not become necessary to divorce the woman. These two things can be possible only by deferring divorce till the second time purity is attained.

(ii) The postponement for such a long time is a punish the man for having divorced his wife while she was menstruation.

(iii) The menstruation during which the woman was divorced and the purity attained for it (and the period of purification are both, as it were, interconnected and counted as one). Thus, it divorce were given after the first menses during the first purification, it is deemed to have been given during the first menstruation.

However, it must be understood that it is not *wajib (obligatory)* to wait for the second purity to divorce the woman. It is better, of course.

THREE KINDS OF DIVORCE: There are three kinds of divorce depending on time and situation. They are:

(i) Ahsan.
(ii) Hasan, also called sunni
(iii) Bida'i

(i) The Ahsan form of divorce is that a talaq raji (revocable divorce) is pronounced during a purity within which sexual intercourse is not had and the woman is divorced in that very condition (meaning, he does not pronounce any more

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[1] Bukhari # 4908, Muslim # 1-1471, Tirmdhi # 1178, Abu Dawud # 2179, Nasa'i # # 2289, Ibn Majah # 3019, Darimi # 2362, Muwatta Maalik # 53 (Talaq) , Musnad Ahmad 2-26.

divorce and does not have sexual intercourse with her) till her *iddah* is over. This kind of divorce is the best.

(ii) The Hasan form of divorce is that a revocable divorce is pronounced during a state of such purity within which no sexual intercourse was had, provided the woman is madkhul biha (one with whom he has had sexual intercourse some time). If she is ghayr madkhul biha (meaning, less then nine years old or an adult with whom her husband has not had sexual intercourse) then one talaq hasan is pronounced for her. Also, she may be divorced even when she is menstruating. The talaq hasan for a minor girl and pregnant women and old women (past menopause) is that one pronouncement is made each month (for three months) and it is also allowed to divorce these woman after having sexual intercourse with them. This kind of divorce is also good.

(iii) The bida'I (or bida'i) form of divorce is the madkhul biha is divorced (completely) in just one period of her purity or on a single moment with three pronouncements of divorce, or with such two pronouncements that do not allow for a reversal (or revoking) , or pronounce divorce during a purity within which sexual intercourse has been had with her. Thus if a man divorce his wife when she is menstruating then this too is talaq bida'i. If the woman who is divorced is madkhul biha then, according to the most authentic tradition, it is *wajib (obligatory)* to revoke the divorce to her. But some ulama (Scholars) say that it is *mustahab (desirable)* to do so. When she gains purity and again gets her menses and again purifies from it, and till this time the man has not changed his mind and insists on divorcing her then divorce may be pronounced during her second purification. This third kind of divorce, is disliked by Shari'ah (divine law). Though divorce is valid yet the man giving the divorce has sinned.

TWO KINDS OF DIVORCE: In terms of their effectiveness, divorce is of two kinds:

(i) Raj'i.

(ii) Ba'in.

(i) The divorce raj'I or revocable or reversible. The man says once or twice in clear words (انت طالق) or (طلقت) meaning 'you are divorced' or 'I have, divorced you.' In this case, the man may reverse his pronouncement during the days of *iddah* (waiting period) or waiting period without remarriage with her. He may say, 'I have returned to you.' Or, he may touch her, or stroke her, or have a sexual intercourse with her, In these cases, the divorce is revoked and it is not necessary to marry the woman all over again.

(ii) The divorce ba'in or the irreversible or irrevocable divorce: The clear, obvious words of divorce are not used but such words are uttered as are not spoken for divorce yet they do indicate the intention. They do give the idea of divorce through a figurative speech. There are three such words recognized by jurists that are mentioned in books of fiqh (Islamic jurisprudence) and besides them the command of talaq (divorce) ba'in is that the woman comes out of the marriage and it is forbidden to keep her as a wife without marrying her again.

DIVORCE OF TWO KINDS: In terms of outcome too, divorce is of two kinds:

(i) Mughallazah.

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(ii) Mukhaffafah.

(i) The mughallazah or rude divorce is that three pronouncements of divorce are made in one breath, in one sitting. The man may say, 'I divorce you three times, Or he may repeat, 'I have divorced you, 'I have divorced you,' 'I have divorced you After that, the man cannot take her back as his wife without halalah. It is that the woman will go through her waiting period and marry another man who consummates the marriage with her and then divorces her. Then she goes through a waiting period (after this divorce) after which her previous husband may marry her.

(ii) Mukhaffafah (or light) divorce is to pronounce two divorces at once, or separately. Or, it is to pronounce just once. If clear, obvious words are used, then the husband can revoke it within the waiting period and it is not necessary for them to remarry. But, if figurative speech is used then he can keep her as his wife after re-marrying her.

WHOSE DIVORCE IS EFFECTIVE: The divorce pronounced by every sensible adult man takes effect. He may be a free man or a slave. The divorce may be given of his own free will or under compulsion, or he may give it while he is intoxicated.

If a sensible, adult man is dumb and gives divorce through pre-determined signs then his divorce is also effective.

WHOSE DIVORCE DOES NOT TAKE EFFECT: The divorce pronounced by a boy or an insane man does not take effect. Also, if a man who is asleep gives a divorce and says on awakening, 'I have divorced you during sleep' then his divorce does not take effect. If a m aster divorce his slave's wife then his divorce also does not take effect.

DEPENDS ON WOMAN: The subject of divorce is the woman. For a free woman, divorce is pronounced three times even if she is married to a slave. A slave girl is divorced by two pronouncements of divorce even if she is married to a free man.[1]

THE QUESTION OF IKHTIYAR (CHOICE)

(٣٢٧٦) وَعَنْ عَائِشَةَ قَالَتْ خَيَّرَنَا رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَاخْتَرْنَا اللّٰهَ وَرَسُوْلَهُ فَلَمْ يَعُدَّ ذٰلِكَ عَلَيْنَا شَيْئًا۔ (متفق علیه)

3276. Sayyidah Ayshah رضی اللہ عنہا said that Allah's Messenger صلی اللہ علیہ وسلم offered them a choice ("If you wish the life of this world and its ornaments then come, let me give you some of its enjoyments and part with you a noble parting. But if you wish for Allah and His Messenger and the abode of the hereafter, then surely Allah has prepared for those amongst you who do good, a great reward.")[2]

Hence, (against the luxuries of this world) they chose Allah and His Messenger صلی اللہ علیہ وسلم. That did not count (as any kind of divorce) against them in any way.[3]

COMMENTARY: This hadith makes it definite that if a husband asks his wife to choose

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[1] See also Tirmidhi v1 pp 493, 499. Also see p 499 for a clarification about divorce ahsan. Darul Isha'at Karachi.

[2] 33: 28, 29, (Surah al-Ahzab).

[3] Bukhari # 5262, Muslim # 24-1477, Tirmidhi # 1182, Abu Dawud # 2203, Nasa'i # 3441, Ibn Majah # 2052, Darimi # 2269, Musnad Ahmad 6-45.

between her self and himself and she opts for her husband then divorce of any kind whatsoever does not take effect Imam Abu Hanifah رحمه الله and Imam Shafi'I رحمه الله to by this hadith.
However, if the wife chooses herself then Imam Shafi'I رحمه الله and Imam Ahmad رحمه الله say that divorce of the form raj'I applies. Imam Abu Hanifah رحمه الله said that divorce ba'in applies and Imam Maalik رحمه الله said that three divorces apply.
It is reported that Sayyiduna Ali رضی الله عنه said, "Simply by giving the choice to one's wife, the divorce raj'I takes effect even if she choose her husband.
Sayyiduna Zayd ibn Ṭhabit رضی الله عنه ruled that divorce ba'in takes effect.
Hence Sayyidah Ayshah رضی الله عنها narrated the hadith rejecting both opinions. She made it clear that a husband's offering such a choice does not make any kind of divorce effective.

FORBIDDING SOMETHING TQ ONESELF CALLS FOR EXPIATIOṆ

(٣٢٧٧) وَعَنِ ابْنِ عَبَّاسٍ قَالَ فِي الْحَرَامِ يُكَفِّرُ لَقَدْ كَانَ لَكُمْ فِي رَسُوْلِ اللّٰهِ أُسْوَةٌ حَسَنَةٌ۔ (متفق علیه)

3277. Sayyiduna Ibn Abbas رضی الله عنه said, "On forbidding something to oneself an expiation becomes necessary. Indeed. (in this regard) for you there is in Allah's Messenger صلی الله علیه وسلم an excellent precedent.

COMMENTARY: If anyone declares something to be unlawful to him, it does not become unlawful but he has to make an atonement for it. The atonement will be for the oath and it has to be even for something like wine that is forbidden. And even if it belongs to another person. One may say, for example wine is forbidden to me.' 'another's property is forbidden 'to me' This will be regarded as an oath. He will have to make an atonement when he breaks the oath unless he gives that thing in charity or as a gift to someone. The Hanafi also say the same thing as Ibn Abbas رضی الله عنه says.
Sayyiduna Ibn Abbas رضی الله عنه also recited a verse of the Qur'an to lend support to his words:

لَقَدْ كَانَ لَكُمْ۔ الأية

{Certainly you have in the Messenger of Allah an excellent pattern (of conduct)} (33: 21)
He referred to the time when the Prophet صلی الله علیه وسلم had forbidden honey to himself, so the verse was revealed.

يَآأَيُّهَا النَّبِيُّ لِمَ تُحَرِّمُ مَا أَحَلَّ اللّٰهُ لَكَ

{O Prophet, why forbid you what Allah has made lawful to you...} (66: 1)
He was commended to make an atonement. This is mentioned in the next hadith Insha Allah. So, you are based to follow the Prophet صلی الله علیه وسلم example.
If anyone says, "All the lawful things, I forbid Myself," or, "I forbed myself everything that Allah has made lawful." The jurist say that such words mean that his wife is also divorced even though he had not made an intention to do that. If he says to his wife, "You are forbidden to me," then it would be an eela (an oath to keep away from one's wife for four months or more) , provided he had really formed an intention to do so, or any other intention. If while saying so he may have formed an intention to make zihar, then zihar will be effective. (zihar is to liken one's wife to one's mother or sister) If while saying. "you are forbidden to me," he may have intended to lie, then it is (لغو) foolish talk and nothing will take effect. This command is from the religious point of view, but the ruler (will go by zihar) and declare eela to take effect. If while speaking these words he had formed an

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intention to divorce then divorce of the ba'in kind becomes effective. If he had formed an intention to make three pronouncements of divorce then that will take effect. The ruling is that even if he had not formed an intention to divorce, nevertheless divorce of the ba'in kind will take effect.

(٣٢٧٨) وَعَنْ عَائِشَةَ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ كَانَ يَمْكُثُ عِنْدَ زَيْنَبَ بِنْتِ جَحْشٍ وَشَرِبَ عِنْدَهَا عَسَلًا فَتَوَاصَيْتُ اَنَا وَحَفْصَةُ اَنَّ اَيَّتَنَا دَخَلَ عَلَيْهَا النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَلْتَقُلْ اِنِّيْ اَجِدُ مِنْكَ رِيْحَ مَغَافِيْرَ اَكَلْتَ مَغَافِيْرَ؟ فَدَخَلَ عَلٰى اِحْدَاهُمَا فَقَالَتْ لَهُ ذَالِكَ فَقَالَ لَا بَأْسَ شَرِبْتُ عَسَلًا عِنْدَ زَيْنَبَ بِنْتِ جَحْشٍ فَلَنْ اَعُوْدَلَهُ وَقَدْ حَلَفْتُ لَا تُخْبِرِيْ بِذَالِكَ اَحَدًا يَبْتَغِيْ مَرْضَاةَ اَزْوَاجِهٖ فَنَزَلَتْ يَاَاَيُّهَا النَّبِيُّ لِمَ تُحَرِّمُ مَا اَحَلَّ اللّٰهُ لَكَ تَبْتَغِيْ مَرْضَاتَ اَزْوَاجِكَ۔ الْاٰيَةُ۔ (متفق عليه)

3278. Sayyidah Ayshah رضی اللہ عنہا narrated that the Prophet صلی اللہ علیہ وسلم used to stay a while with Sayyidah Zaynab bint Jahsh رضی اللہ عنہا and drink some honey at her place she and Sayyidah Hafsah رضی اللہ عنہا decided that whichever of them the Prophet صلی اللہ علیہ وسلم visited first should say, "I perceive from you the smell of maghafir.[1] Did you eat it?" So, when he visited one of them, she spoke those words and he said, "It does not matter. I only drank some honey at the house of Zaynab bint Jahsh. I shall not do it again and I have sworn (to abstain from it). Do not tell this to anyone (lest Zaynab feel bad about it)." His purpose was to please his wives. So, then (revelation) descended:

يَا اَيُّهَا النَّبِيُّ لِمَ تُحَرِّمُ مَا اَحَلَّ اللّٰهُ لَكَ تَبْتَغِيْ مَرْضَاتَ اَزْوَاجِكَ۔ الْاٰيَةُ

{O prophet, why forbid you what Allah has made lawful to you seeking to please your wives?....}[2] (66: 1)

COMMENTARY: The Prophet صلی اللہ علیہ وسلم stayed a while at the house of Sayyidah Zaynab bint Jashsh when he was on his (daily) rounds to his wives. This was not part of his visits to them, day by day.

'Maghafir' is the fruit of a tree. It resembles gum. It is bad smelling but also has a trace of the Smell of honey.

The Prophet صلی اللہ علیہ وسلم liked honey very much. So, Sayyidah Zaynab used to give him some to drink and he was delayed there because of it.

Sayyidah Ayshah رضی اللہ عنہا did not like it and she and Sayyidah Hafsah رضی اللہ عنہا who was very close to her conspired to put an end to it. Their plan marked as we read in the hadith but Allah did not approve.

SECTION II اَلْفَصْلُ الثَّانِيْ

WOMAN WHO ASKS FOR DIVORCE UNNECESSARILY

(٣٢٧٩) وَعَنْ ثَوْبَانَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَيُّمَا اِمْرَأَةٍ سَأَلَتْ زَوْجَهَا طَلَاقًا فِيْ غَيْرِ

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[1] A bad smelling resin, Gum of mimosa, coccidae. (The singular is mughfur).

[2] Bukhari # 4912, Muslim # 20-1474, Abu Dawud # 3714, Nasa'i # 3421.

مَابَأْسٍ فَحَرَامٌ عَلَيْهَا رَائِحَةُ الْجَنَّةِ۔ (رواه احمد والترمذی وابن ماجة والدارمی)

3279. Sayyiduna Thawban رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "The woman who seeks divorce from her husband for no reason whatever (will not perceive) the fragrance of paradise (because it) will be forbidden to her."[1]
(In the place of gathering the creatures will perceive the beautiful smell of paradise but she will deprived of it.)

DIVORCE IS DISLIKED

(۳۲۸۰) وَعَنِ ابْنِ عُمَرَ اَنَّ النَّبِیَّ صَلَّی اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اَبْغَضُ الْحَلَالِ اِلَی اللّٰهِ الطَّلَاقُ۔ (رواه ابوداؤد)

3280. Sayyiduna Ibn Uamr رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said "Of the lawful things, divorce is what angers Allah most."[2]

COMMENTARY: Though divorce is not forbidden, it is disliked by Allah. There are many things that are permitted but *makruh (disapproved)* (disliked). Examples are to offer the *fard (compulsory) salah (prayer)* at home without an excuse (instead of at the mosque) , or to offer *salah (prayer)* on a land snatched from someone. In both cases the *salah (prayer)* is valid but it is offered in a disliked manner.

DIVORCING WOMAN BEFORE MARRYING HER

(۳۲۸۱) وَعَنْ عَلِیٍّ عَنِ النَّبِیِّ صَلَّی اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لَا طَلَاقَ قَبْلَ نِكَاحٍ وَلَا عِتَاقَ اِلَّا بَعْدَ مِلْكٍ وَلَا وِصَالَ فِی صِيَامٍ وَلَا يُتْمَ بَعْدَ احْتِلَامٍ وَلَا رِضَاعَ بَعْدَ فِطَامٍ وَلَا صُمْتَ يَوْمٍ اِلَی اللَّيْلِ۔ (رواه فی شرح السنة)

3281. Sayyiduna Ali رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "Divorce is not given before marriage, slave is not set free before owning him, there is no perpetual fasting (without having meal at iftar but the Prophet صلی اللہ علیہ وسلم was exempt from it) , there is no orphan hood after the age of puberty (so anyone without parents when he is an adult cannot be called an orphan) there is no suckling after weaning and there is no silence all day (for there is no reward in that)."[3]

COMMENTARY: This hadith mentions some basic principles.
If a man divorces a woman before he marries her then what is the wisdom in a divorce without marriage?
In the same way, if one does not own a slave, what is the meaning of setting him free? That slave will not gain freedom (whom he names).
Imam Shafi'I رحمہ اللہ and Imam Ahmad رحمہ اللہ abide by this hadith however, Imam Abu Hanifah رضی اللہ عنہ contends that if anyone adds divorce before marriage as a condition then it is correct. For instance, Zayd says to a stranger woman, "If I marry you then I shall divorce you," Or, he says, "whichever woman I marry is divorced," then whenever he marries her divorce will take place forthwith.
The same will be with a slave, If he stipulates that if he becomes master of a certain slave, or if he becomes master of whichever slave, he is set free. So, the moment the slave comes in his possession, he will be deemed to be free.

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[1] Tirmidhi # 1191, Abu Dawud # 2226, Ibn Majah # 2055, Musnad Ahmad 5-277, Darimi # 2270.

[2] Abu Dawud # 2178, Ibn Majah # 2028.

[3] Baghawi in Sharhus *sunnah (Prophet's صلی اللہ علیہ وسلم practice)* # 2350.

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Hence, this hadith does not mean that divorce takes effect the moment it is uttered. And it does not reject a 'conditional divorce.'

SILENCE: The hadith also says that it is disallowed – or, meaningless to observe silence all day. This has been mentioned because some previous *ummahs*[1] observed silence as a form of worship. They believed that if anyone observes silence all day then he gains nearness to Allah. The Prophet صلى الله عليه وسلم made it clear that it is not proper in our *ummah* and this practice fetches no reward. But, it really is better then engaging one's tongue in meaningless and evil talk.

(٣٢٨٢) وَعَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ اَبِيْهِ عَنْ جَدِّهٖ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا نَذْرَ لِابْنِ اٰدَمَ فِيْمَا لَا يَمْلِكُ وَلَا عِتْقَ فِيْمَا لَا يَمْلِكُ وَلَا طَلَاقَ فِيْمَا لَا يَمْلِكُ۔ رَوَاهُ التِّرْمِذِيُّ وَزَادَ اَبُوْدَاوٗدَ وَلَا بَيْعَ اِلَّا فِيْمَا يَمْلِكُ۔

3282. Sayyiduna Amr ibn Shu'ayb رحمه الله narrated on the authority of his father (Shu'ab) that his grandfather (Abdullah ibn Amir) رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "The son of Aadam عليه السلام may make no vow, and he may not set free that which he does not possess and he may not divorce whom he does not have."

The version in Abu Dawud also has; 'And, he may not sell except what he owns."[2]

COMMENTARY: A vow to set a slave free for Allah's sake is not correct if the slave is not owned. If the slave comes into possession afterwards even then the slave will not get release. As for divorce and emancipation, the previous hadith and its commentary may be seen. (We reproduce here a commentary in Tirmidhi[3] on his hadith, v1 pp 503-4)

In this chapter, ahadith are also narrated by Sayyiduna Ali رضى الله عنه, Mu'az رضى الله عنه Jabir رضى الله عنه, Ibn Abbas رضى الله عنه and Sayyidah Ayshah رضى الله عنها. This hadith is hasan sahih and the (most) sahih in this chapter. Most sahabah (Prophet's Companions) رضى الله عنهم abide by it, among them Sayyiduna Ail ibn Abu Talib رضى الله عنه, Ibn Abbas رضى الله عنه, Jabir ibn Adullah رضى الله عنه, Sa'eed ibn Musayyab رضى الله عنه, Hasan, Sa'eed ibn Jubayr, Ali ibn Husayn, Shurrayn and Jabir ibn Zayd. Many tabi'in and Imam Shafi رضى الله عنه have also abided by it. However, Sayyiduna ibn Mas'ud رضى الله عنه said that if a man specifies the woman or her tribe then divorce is effective so that the moment he marries her divorce will take effect. Sufyan Thawri and Imam Maalik رحمه الله said, the same thing, both of them added that if he take the name of a woman or specifies a time or tribe then as he marries her, divorce will take effect. However, ibn Mubarak رحمه الله is very severe on this issue.

He says that if any man does this then that woman does not even become forbidden. Someone asked him about a man who swears that if he ever marries, his wife would be divorced, but soon longs to marry, should be in this case, obey the jurists who give permission (in such cases) to marry. Ibn Mubarak رحمه الله said, "If he had first regarded the

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[1] This is practiced by the Trappists of the Listercian order of monks. They live an austere life and it includes a vow of silence. They are a stricter branch of Benedictines, a Christian religious order.

[2] Tirmidhi # 1184, Abu Dawud # 2190, Ibn Majah # 2047, Musnad Ahmad # 7009.

[3] Published Darul Isha'at Karachi.

verdict of those jurists to be correct then he could now act on that, but if he first preferred the verdict of those who do not permit then now too he must not act on the jurist who permit." Ahmad said, "If he did marry then I would not suggest to him to separate from his wife. Ishaq said, "I do give permission because of the hadith of ibn Mas'ud رضی اللہ عنہ concerning any specified tribe, city or woman. So, if he does marry then I do not say that she is forbidden to her." Ishaq was more liberal about unspecified woman.

ABOUT TALAQ AL-BATTAH

(٣٢٨٣) وَعَنْ رُكَانَةَ بْنِ عَبْدِيَزِيْدَ اَنَّهٗ طَلَّقَ امْرَاَتَهٗ سُهَيْمَةَ الْبَتَّةَ فَاُخْبِرَ بِذٰلِكَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَقَالَ وَاللّٰهِ مَا اَرَدْتُ اِلَّا وَاحِدَةً فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَاللّٰهِ مَا اَرَدْتَّ اِلَّا وَاحِدَةً؟ فَقَالَ رُكَانَةُ وَاللّٰهِ مَا اَرَدْتُ اِلَّا وَاحِدَةً فَرَدَّهَا اِلَيْهِ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَطَلَّقَهَا الثَّانِيَةَ فِيْ زَمَانِ عُمَرَ وَالثَّالِثَ فِيْ زَمَانِ عُثْمَانَ رَوَاهُ اَبُوْدَاوٗدَ وَالتِّرْمِذِيُّ وَابْنُ مَاجَةَ وَالدَّارِمِيُّ اِلَّا اَنَّهُمْ لَمْ يَذْكُرُوْا الثَّانِيَةَ وَالثَّالِثَةَ۔

3283. Sayyiduna Rukanah ibn Abd Yazid رضی اللہ عنہ said that he divorced his wife, Suhaymah رضی اللہ عنہ , (of the kind) of battah (which is a complete severing of marital relationship). Then, he informed the Prophet صلی اللہ علیہ وسلم of that, saying, "By Allah, I did not intend but only one pronouncement of divorce." Allah's Messenger صلی اللہ علیہ وسلم asked him, "Is it (truly) by Allah, that you did not intend but just one pronouncement?" Rukanah رضی اللہ عنہ affirmed, "By Allah, I did not mean but just one pronouncement."

Therefore, Allah's Messenger صلی اللہ علیہ وسلم restored her to him. He then divorced her the second pronouncement in the time of Umar رضی اللہ عنہ and the third pronouncement in the time of Uthman رضی اللہ عنہ.[1]

COMMENTARY: Sayyiduna Rukana رضی اللہ عنہ had pronounced divorce in the words (انت طالق البقیہ) "You are the woman divorced with the utterance battah." This word means 'to sever' so the sentence implies 'a divorce that leaves no relationship of marriage and the woman is absolutely out of marriage.

As for the prophet صلی اللہ علیہ وسلم restoring the woman to Rukana رضی اللہ عنہ , Imam Shafi'I رحمہ اللہ understands by it that the Prophet صلی اللہ علیہ وسلم instructed Rukana رضی اللہ عنہ to reverse the divorce. It is as though Rukana said 'I restore you to my marriage,' and took her back as his wife.

Imam Shafi'I رحمہ اللہ understands in this way because he regards al-battah divorce to mean a single pronouncement of revocable divorce. If anyone intends two or three pronouncement with those words, then as many as intended will count.

Imam Abu Hanifah رحمہ اللہ contends that divorce with this words al-battah means one divorce of the ba'in kind, no mother whether the intention was formed. He says that the Prophet صلی اللہ علیہ وسلم returned the woman to Rukana though a fresh marriage.

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[1] Tirmidhi # 1180, Abu Dawud # 2206, Ibn Maiah # 2051, Darimi # 227.

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ORAL EXPRESSION OF MARRIAGE OR DIVORCE IN JEST IS TAKEN SERIOUSLY

(٣٢٨٤) وَعَنْ اَبِيْ هُرَيْرَةَ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ ثَلَاثٌ جِدُّهُنَّ جِدٌّ وَهَزْلُهُنَّ جِدٌّ النِّكَاحُ وَالطَّلَاقُ وَالرَّجْعَةُ۔ رَوَاهُ التِّرْمِذِيُّ وَاَبُوْدَاوٗدَ وَقَالَ التِّرْمِذِيُّ هٰذَا حَدِيْثٌ حَسَنٌ غَرِيْبٌ۔

3284. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "three things are considered seriously when done resolutely. But they also take place when done in jest. Then are marriage, divorce and revoking a divorce to take back the wife."[1]

COMMENTARY: The Arabic word jadd (جد) in the hadith is to endeavour to do something. Here it means to read the literal meaning of the word. For instance, the word (لکعت). (I married) when spoken orally may be taken in their literal sense. So too the word (طلقت) I have divorced.

The word hazel (هزل) is a jest but the literal meaning is not taken.

These three things here are taken seriously what they mean. If two strangers, a man and a woman, propose and accept before two witnesses in jest, they become husband and wife their jokes notwithstanding.

So, if a couple divorce in jest, the divorce takes effect all the same and if after that they jest to revoke their divorce then it is really restored.

Apart from these three things this principle applies to other things too, like by ing and selling.

ABOUT DIVORCE WHICH A MAN IS COMPELLED TO GIVE

(٣٢٨٥) وَعَنْ عَآئِشَةَ قَالَتْ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ لَا طَلَاقَ وَلَا عِتَاقَ فِيْ اِغْلَاقٍ۔ رَوَاهُ اَبُوْدَاوٗدَ وَابْنُ مَاجَةَ قِيْلَ مَعْنَى الْاِغْلَاقِ الْاِكْرَاهُ۔

3285. Sayyidah Ayshah رضی اللہ عنہا narrated that she heard Allah's Messenger صلی اللہ علیہ وسلم say, "There is no divorce and there is no emancipation through ighlaq." It is said, that (al-ighlaq I (al-ikhrah or 'dislike' 'compulsion.'[2]

COMMENTARY: The word ikrah means 'to compel.'

Thus, if any one compels a man to divorce his wife or to emancipate will divorce take effect, nor will the slave be free.

Imam Shafi'I رحمہ اللہ Imam Maalik رحمہ اللہ and Imam Ahmad رحمہ اللہ go by this hadith and rule accordingly.

Imam Abu Hanifah رحمہ اللہ said that both things are valid, basing his contention on hazl or jest. (The commentary to the foregoing hadith speaks of that.) the books of fiqh (Islamic jurisprudence) enumerate his arguments. Imam Abu Hanifah رحمہ اللہ contends that eleven things became valid even compulsion.

(i) Marriage.
(ii) Divorce.
(iii) Revoking divorce.
(iv) Eela, or abandoning wife for four months.

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[1] Tirmidhi # 1187, Abu Dawud # 2194, Ibn Majah # 2039.

[2] Abu Dawud # 2193, Ibn Majah # 2046, Musnad Ahmad 6. 276.

(v) Fa'I which is to revoke eela.
(vi) Zihar, or comparing wife to mother.
(vii) Iqaq, or setting slave free.
(viii) Pardoning Qisas or by passing retribution.
(ix) Oath.
(x) Vow.
(xi) Embracing Islam.

DIVORCE BY AN INSANE IS INVALID

(٣٢٨٦) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ كُلُّ طَلَاقٍ جَائِزٌ اِلَّا طَلَاقَ الْمَعْتُوْهِ وَالْمَغْلُوْبِ عَلٰى عَقْلِهٖ رَوَاهُ التِّرْمِذِيُّ وَقَالَ هٰذَا حَدِيْثٌ غَرِيْبٌ وَعَطَاء بْنُ عَجْلَانَ الرَّاوِيْ ضَعِيْفٌ ذَاهِبُ الْحَدِيْثِ۔

3286. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Every divorce becomes effective but not the divorce pronounced by the mentally deranged and the lunatic."[1]

COMMENTARY: Imam Abu Hanifah goes by this hadith. As for the words in the hadith (معتدة) means idiot and a person who is out of senses sometimes and at other times he is in his senses. The Qamus says that he 'has little sense.' The sirah says that it is 'an inverted bucket' and 'an insensible person' The book of fiqh (Islamic jurisprudence) give it this meaning.
In this way, the words of the hadith (والمغلوب على عقله) (lunatic) are sort of an elaboration of (معتوه) (mentally deranged). This is why some versions do not have the (و) waw between the two words (المقعتدةالمغلوب).
This establishes that if the divorce by the mentally deranged is not effective, then, without doubt, the divorce pronounced by a completely mad man who is totally bereft of senses is simply out of question and cannot be effective, at all.
Zayn ul Arab رحمہ اللہ said that usually (معتوة) is an idiot or an insensible person, but it also covers the lunatic, one who is asleep, the unconscious and the sick person who loses his senses because of his illness. Hence, the divorce uttered by any of these is not effective.
Ibn Hammam رحمہ اللہ has quoted some scholars to say that (معتوة) is a person who has poor sense and lacks understanding power and is a confused speaker and does foolish things, but he does not strike or abuse anyone. On the other hand a lunatic or a mad man roams about striking passers-by and abusing people.
Imam Tirmidhi رحمہ اللہ says that a sub-narrator (Ata ibn Ajlan) is a weak authority. But, this hadith is supported by the hadith narrated by Sayyiduna Ali: رضی اللہ عنہ

كُلُّ طَلَاقٍ جَائِزٌ اِلَّا طَلَاقَ الْمَعْتُوْهِ

(Every divorce is effective but not the divorce by the ma'tuh).

THREE ARE NOT RECKONED

(٣٢٨٧-٣٢٨٨) وَعَنْ عَلِيٍّ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ عَنِ النَّائِمِ حَتّٰى يَسْتَيْقِظَ

[1] Tirmidhi # 1195.

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وَعَنِ الصَّبِيِّ حَتّٰى يَبْلُغَ وَعَنِ الْمَعْتُوْهِ حَتّٰى يَعْقِلَ۔ رَوَاهُ التِّرْمِذِيُّ وَاَبُوْدَاوٗدَ وَالدَّارِمِيُّ عَنْ عَآئِشَةَ وَابْنُ مَاجَةَ عَنْهُمَا۔

3287. Sayyiduna Ali رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Three people are there for whom the pen is raised (and does not record their deeds because their words and actions are not blamed on them). They are: one who is asleep till he awakes, a chill till it attains puberty, done who is mentally deranged till he regains his senses.[1]

3288. Sayyidah Ayshah رضی اللہ عنہا narrated that the same hadith.[2]

DIVORCE WITH TWO PRONOUNCEMENTS FOR FEMALE SLAVE

(٣٢٨٩) وَعَنْ عَآئِشَةَ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ طَلَاقُ الْاَمَةِ تَطْلِيْقَتَانِ وَعِدَّتُهَا حَيْضَتَانِ۔ (رواه الترمذی وابوداؤد وابن ماجة والدارمی)

3289. Sayyidah Ayshah رضی اللہ عنہا narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "the divorce of a female slave is with two pronouncement and her *iddah* is till two menstruations are over."[3]

COMMENTARY: The *iddah* or waiting period of a free woman is upto three menses but if she has menopause then it is three months. And his *iddah* of a female slave is up to two courses or a month and a half.

In matters of divorce and the consequent waiting period, the woman is the deciding factor, not the husband.

If the woman is free, then her divorce is by three pronouncements and her *iddah* will be till she has menstruation three times, even if she is married to a slave.

If the woman is a female slave, then her divorce is by two pronouncements and her *iddah* will last till she gets two menstruations, even if she is married to a free man.

The Hanafis go by this edict, but Imam Shafi'I رحمہ اللہ contends that in matters of divorce and *iddah*, it depends on man's position. If the husband is a free man, then his wife's divorce will be by three pronouncements and her *iddah* will last till she has three menstruations, even it she is a female slave.

If the husband is a slave, then his wife's divorce is by two pronouncements and her *iddah* will last till she has had two menstruations, even if she is a free woman.

This hadith also establishes that the period of *iddah* relates to menstruation, not to purity. In other words, this hadith confirms that the words of the Quran:

ثَلَاثَةَ قُرُوْءٍ

mean 'three monthly periods,' not three purities.

SECTION III اَلْفَصْلُ الثَّالِثُ

WOMAN WHO ASKS FOR DIVORCE OR KHULA'

(٣٢٩٠) وَعَنْ اَبِيْ هُرَيْرَةَ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ الْمُنْتَزِعَاتُ وَالْمُخْتَلِعَاتُ هُنَّ الْمُنَافِقَاتُ۔ (رواه النسائی)

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[1] Tirmidhi # 1428, Abu Dawud # 4403, Musnad Ahmad 1-155, Ibn Majah # 2042.

[2] Ibn Majah # 2041, Darimi # 2296.

[3] Tirmidhi # 1182, Abu Dawud # 2180, Ibn Majah # 2080, Darimi # 2294.

3290. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "Woman who are disobedient to their husbands and (also) those who demand khula' (separation) from their husbands are hypocrites."[1]

COMMENTARY: The woman who ask their husband, for no reason at all, to divorce them, or they ask to be divorce against a compensation (like waiver of dowry), are all hypocrites. Outwardly, they profess adherence to Islam and its laws but inwardly they are sinners and disobedient.

MAKRUH (DISAPPROVED) TO DIVORCE WOMAN AGAINST ALL THAT SHE POSSESSES

(٣٢٩١) وَعَنْ نَافِعٍ عَنْ مَوْلَاةٍ لِصَفِيَّةَ بِنْتِ اَبِيْ عُبَيْدٍ اَنَّهَا اخْتَلَعَتْ مِنْ زَوْجِهَا بِكُلِّ شَيْءٍ لَهَا فَلَمْ يُنْكِرْ ذٰلِكَ عَبْدُاللّٰهِ بْنُ عُمَرَ۔ (رواه مالك)

3291. Sayyiduna Nafi رضی اللہ عنہ reported from a freed female slave of Sayyidah Safiyah bint Ubayd رضی اللہ عنہا that she (meaning, Safiyah) obtained khula' from her husband (Abdullah ibn Umar) رضی اللہ عنہ against everything that she possessed. And, Abdullah رضی اللہ عنہ did not demur to that.[2]

COMMENTARY: Sayyiduna Abdullah ibn Umar رضی اللہ عنہ did not forbid it because khula' is not forbidden after all. But, to concede to her demand for khula' against all that she possesses is *makruh (disapproved)*.

FORBIDDEN TO PRONOUNCE THREE DIVORCES IN ONE GO

(٣٢٩٢) وَعَنْ مَحْمُوْدِ بْنِ لَبِيْدٍ قَالَ اُخْبِرَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَنْ رَجُلٍ طَلَّقَ امْرَأَتَهٗ ثَلَاثَ تَطْلِيْقَاتٍ جَمِيْعًا فَقَامَ غَضْبَانَ ثُمَّ قَالَ اَيُلْعَبُ بِكِتَابِ اللّٰهِ عَزَّوَجَلَّ وَاَنَا بَيْنَ اَظْهُرِكُمْ حَتّٰى قَامَ رَجُلٌ فَقَالَ يَا رَسُوْلَ اللّٰهِ اَلَا اَقْتُلُهٗ۔ (رواه النسائی)

3292. Sayyiduna Mahmud ibn Labid رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم was informed of a man who divorced his wife by three pronunciations simultaneously. At that he arose angrily." Saying, 'will you make light of the Book of Allah Mighty and Glorious, while I am among you?" (He meant that the commands of Allah were made fun of). A man (among the sahabah) رضی اللہ عنہ stood up and submitted, "O Messenger of Allah. Shall I not kill him?"[3]

COMMENTARY: The Book of Allah, Mighty and Glorious, mentioned in the hadith refers to the verse:

اَلطَّلَاقُ مَرَّتَانِ تا وَلَا تَتَّخِذُوْا اٰيٰتِ اللّٰهِ هُزُوًا

{Divorce is twice, then either a retention with honour or a release with kindness. And it is not lawful for you (men) to take from them (your wives) anything of what you have given them, unless both (parties) fear they may not able to maintain the

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[1] Nasa'i # 3461, Musnad Ahmad 2-414.

[2] Muwatta Maalik # 32 (Talaq)

[3] Nasa'i # 3401.

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limits of Allah. If you fear that they cannot maintain the limit of Allah, there is not blame on them for that wherewith she gets her freedom. These are the limits of Allah, therefore, transgress them not; and whosoever transgresses the limits of Allah, so those-they are the evildoers. So if he divorces her, then she shall not be lawful to him thereafter, until she marries another husband. If he (the second husband) divorces her, there is no blame on them on returning to each other (by marriage), if they think they can maintain the limits of Allah. And those are the limits of Allah, which He makes clear for people who know.

And when you divorce (your) women, and they are about to complete their (waiting) terms, then you either retain them with honour or release them with honour, and retain them not to their hurt that you may transgress (against them). And whosoever does that, he has wronged himself. And take not Allah's revelations in mockery} (2: 229-231)

This verse directs that divorce must not be declared three times simultaneously. Rather, it must be given at intervals and Allah's words must not be taken as playthings. It any one divorces a woman three times in one breath then it is against Allah's will which is tantamount to ridiculing His command. He who disobeys Allah's commands, demonstrates that he does not esteem His commands and it is the same if he abides by them or not.

Imam Abu Hanifah رضی اللہ عنہ said that it is bid'ah and forbidden to pronounce divorce three times at one go.

Imam Shafi'I رضی اللہ عنہ said that while it is not forbidden to divorce three times at one go, it is contrary to the better procedure.

The ulama (Scholars) say that there is wisdom in not pronouncing three divorce together. If the husband makes only one declaration, Allah may cause him to relent after some time and revoke the divorce. Then, they might live a reconciled, happy life.

The ulama (Scholars) are divided on whether a man's saying (once) to his wife (انت طالق ثلاثة) (you are divorced three times) amounts to one pronouncement or to three. All the four imams and a majority of the scholars say that this will amount to three utterances of divorce. However, Tawus and some of the ahl us zahiriyahs maintain that it is just one utterance.

In the hadith, one of the sahabah (Prophet's Companions) رضی اللہ عنہم asked, "May I not kill him?" He said so because the prophet صلی اللہ علیہ وسلم called him one who made fun of Allah's Book which is like disbelief. If a Muslim veers into the limits of infidelity, then he is to killed in punishment. This sahabi had not known that whatever the Prophet صلی اللہ علیہ وسلم had said was by way of admonishing him and he did not mean that literally:

(٣٢٩٣) وَعَنْ مَالِكٍ بَلَغَهُ اَنَّ رَجُلًا قَالَ لِعَبْدِ اللّٰهِ بْنِ عَبَّاسٍ اِنِّي طَلَّقْتُ امْرَأَتِيْ مِائَةَ تَطْلِيْقَةٍ فَمَا ذَا تَرٰى عَلَيَّ فَقَالَ ابْنُ عَبَّاسٍ طُلِّقَتْ مِنْكَ بِثَلَاثٍ وَسَبْعٌ وَّتِسْعُوْنَ اتَّخَذْتَ بِهَا اٰيَاتِ اللّٰهِ هُزُوًا۔ (رواه فی الموطا)

3293. Sayyiduna Maalik رحمہ اللہ is reported to have learnt that a man boasted before Sayyiduna Abdullah ibn Abbas رضی اللہ عنہ "I have divorced my wife with one hundred pronouncements. What do you say about it against me?" So, Ibn Abbas رضی اللہ عنہ said, "She is divorced from three times. As for the (remaining) ninety seven, you have used them to make mockery of Allah's verses."[1]

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[1] Muwatta Maalik # 1 (Talaq)

COMMENTARY: Sayyiduna Ibn Abbas رضی اللہ عنہ referred to the verses of surah al-Baqarah cited in the previous commentary:

اَلطَّلَاقُ مَرَّتَانِ تا وَلَا تَتَّخِذُوْا اٰيَاتِ اللّٰهِ هُزُوًا

and told the man that he had disobeyed the command of Allah.

DIVORCE IS A BAD THING IN ALLAH'S SIGHT

(٣٢٩٤) وَعَنْ مُعَاذِ بْنِ جَبَلٍ قَالَ قَالَ لِيْ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَا مُعَاذُ مَا خَلَقَ اللّٰهُ شَيْئًا عَلٰى وَجْهِ الْاَرْضِ اَحَبَّ اِلَيْهِ مِنَ الْعِتَاقِ وَلَا خَلَقَ اللّٰهُ شَيْئًا عَلٰى وَجْهِ الْاَرْضِ اَبْغَضَ اِلَيْهِ مِنَ الطَّلَاقِ۔ (رواه الدارقطنی)

3294. Sayyiduna Mu'adh ibn Jabal رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said to him, "O Mu'adh, "Allah has not created on the surface of the earth anything dearer to Him then setting a slave free. And He has not created on the surface of the earth anything more disliked to Him than divorce."[1]

COMMENTARY: Allah is pleased most when a slave is set free. It is the birth night and an innate privilege of man that he should be delivered from bandage of a creation which is at per with him as human beings. Then, he gets freedom and ample time to worship and obey his Lord.

Moreover, his master who set him free earns for himself deliverance from hell because of his sacrifice and good gesture.

The divorce is bad in Allah's sight that is given only to satisfy one's ego without any kind of need to oneself.

Ibn Hammam رحمہ اللہ said that in some cases, it is *mustahab (desirable)* to divorce one's wife. Examples are when she does not offer *salah (prayer)* or she is an indecent woman.

It is stated in Fatawa Qadi khan that if anyone's wife does not offer *salah (prayer)*, then she deserves to be divorced, even if the man does not have enough to pay her dower.

Abu Hafs, Bukhari رحمہ اللہ is reported to have said, "If a man meets Allah (on his death) with the dower of his wife on his neck, then in my sight it is more preferable than having sexual intercourse with a wife who does not offer *salah (prayer)*.

The hadith also tells us that marrying is better than going into seclusion to be able to worship Allah.

CHAPTER - XIII

THE WOMAN WHO IS DIVORCES BY THREE PRONOUNCEMENTS

بَابُ الْمُطَلَّقَةِ ثَلٰثًا

The chapter is about the woman who is divorced by three pronouncements.

If her husband who has pronounced three divorces (changes his mind and) wishes to retain her as his wife, then it is only possible when she marries another man who has sexual intercourse with her. Then this man divorces her and she passes her *iddah* (or days of waiting). After her waiting periods is over, she may marry her first husband all over again. Only after she passes through these stages will she be lawful for her first husband.

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[1] Daraqutni # 44 (Talaq)

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In some copies of Mishkat, after the words

بَابُ الْمُطَلَّقَةِ ثَلٰثًا

'Chapter - the woman who is divorced by three pronouncements.
the following is added:

وَفِيْهِ ذِكْرُ الظِّهَارِ وَالْإِيْلَاءِ

'And in it is mention of zihar and Eela.'

The meaning of zihar and eela and some rulings about them will be mentioned in the following lines, insha Allah.

SECTION I اَلْفَصْلُ الْاَوَّلُ

HILALAH - WHEN IS IT VALID

(٣٢٩٥) وَعَنْ عَائِشَةَ قَالَتْ جَاءَتِ امْرَأَةُ رِفَاعَةَ الْقُرَظِيِّ إِلٰى رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَتْ إِنِّيْ كُنْتُ عِنْدَ رِفَاعَةَ فَطَلَّقَنِيْ فَبَتَّ طَلَاقِيْ فَتَزَوَّجْتُ بَعْدَهُ عَبْدَ الرَّحْمٰنِ بْنَ الزَّبِيْرِ وَمَا مَعَهُ إِلَّا مِثْلُ هُدْبَةِ الثَّوْبِ فَقَالَ أَتُرِيْدِيْنَ أَنْ تَرْجِعِيْ إِلٰى رِفَاعَةَ قَالَتْ نَعَمْ قَالَ لَا حَتّٰى تَذُوْقِيْ عُسَيْلَتَهُ وَيَذُوْقَ عُسَيْلَتَكِ۔ (متفق عليه)

3295. Sayyidah Ayshah رضی اللہ عنہا narrated that the wife of (Sayyiduna) Rafa'ah al-Qurazi رضی اللہ عنہ came to Allah's Messenger صلی اللہ علیہ وسلم and submitted "I was married to Rafa'ah till he divorced me making it batta (meaning, three pronouncements and irrevocable). After that, I married Abdur Rahman az Zubayr, but he has nothing except the hem of a garment." (She used figurative speech to say that he was impotent) So he asked, "Do you wish to go back to Rafa'ah?" She submitted, "Yes!" He said, "You cannot! Until Abdur Rahman enjoys your sweetness and you taste his sweetness."[1]

COMMENTARY: The concluding words of the hadith (mean that she could re-marry her previous husband, Ra'fa'ah رضی اللہ عنہ only after her second husband has sexual intercourse with her, meaning consummates their marriage. Then he may divorce her and she must spend the waiting period.

This hadith makes it clear that halalah, meaning becoming lawful for the previous husband, is not merely that the woman marry another man, but they must have a sexual intercourse too. Of course, the intercourse may be limited to only penetrating the vagina. Ejaculation is not a condition.

SECTION II اَلْفَصْلُ الثَّانِيْ

PROPHET'S صلی اللہ علیہ وسلم CURSE ON THOSE WHO BY PASS THE LAW

(٣٢٩٦-٣٢٩٧) وَعَنْ عَبْدِ اللّٰهِ ابْنِ مَسْعُوْدٍ قَالَ لَعَنَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ الْمُحَلِّلَ وَالْمُحَلَّلَ لَهُ رَوَاهُ التِّرْمِذِيُّ وَرَوَاهُ ابْنُ مَاجَةَ عَنْ عَلِيٍّ وَابْنِ عَبَّاسٍ وَعُقْبَةَ بْنِ عَامِرٍ۔

3296. Sayyiduna Abdullah ibn Mas'ud رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ

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[1] Bukhari # 2639, Muslim # 111-1433, Tirmidhi # 1118, Nasa'i # # 3408, Ibn Majah # 1932, Darimi # 2268, Muwatta Maalik # 17 (*Nikah (wedlock)*) , Musnad Ahmad 6-42.

ﷺ cursed the muhallil (the man who makes a woman lawful for her first husband) and the muhallil lahn (the firmed husband for whom she is made lawful).[1]

3297. (Sayyiduna) Ali رضى الله عنه , Ibn Abbas رضى الله عنه and Uqbah ibn Aamir رضى الله عنه narrated the same hadith.[2]

COMMENTARY: If a husband divorces his wife with three utterances and later repents, then he finds a way to circumvent the law and remarry the divorce. He arranges with another men to marry his former wife and then divorce her after consummating their marriage. The woman will spend the waiting period after getting divorce from her second (planted) husband, and then she will remarry her first husband.

It is this man who is instrumented in getting the two together again and the first husband who planted the man to enable him to marry, are both cursed by Allah's Messenger. One of them makes remarriage lawful and the other is one for whom it is made lawful.

This device to get one's wishes achieved makes fun of the institution of marriage. The woman's honour and innocence is shattered. In another hadith the woman is called a borrowed sheep.

The first husband is cursed because he was the real motive behind the woman's (second) marriage. However it must be know that the hadith does not say whether the marriage will be void. Rather, it swords establish that marriage is valid because the hadith calls him who marries 'muhallal.' Clearly, a man can be so-called (muhallal) only if the (marriage) contract is valid. If it is void than he cannot be muhallal. Therefore, the prophet's ﷺ saying does not use the word 'curse' in its true sense. Rather, the aim here is to focus on the unworthiness of the muhallal and the muhallal lahu, and to make it clear that it is an ugly act which no sound - natured man would agree to do.[3]

HALALLAH IS *MAKRUH (DISAPPROVED)* TAHRIMI (IF): It is learnt from the Hidayah and other books of fiqh (Islamic jurisprudence) that if halalah is made conditional by an oral declaration of the new husband, "I marry you to make you lawful for your previous husband who had divorced you." - or, the woman says to the muhallal, "I marry you because I might become lawful for my former husband" - then in this case halalah is *makruh tahrimi (disapproved to forbidden).*

However, if it is not expressed orally, though there was on undeclared intention to the effect, then neither is the muhallal blamed nor is a curse invoked on him, for it will be presumed that his intention was to ameliorate the unsatisfactory situation.

Ibn Hammam رحمه الله said that if a woman who is divorced by three pronouncements marries an unequal man without her guardian's permission and the man also consummates the marriage then too she will not be lawful to her former husband. The fatawa (edict) is according to this."[4]

MORE ON EELA

(٣٢٩٨) وَعَنْ سُلَيْمَانَ بْنِ يَسَارٍ قَالَ اَدْرَكْتُ بِضْعَةَ عَشَرَ مِنْ اَصْحَابِ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ

[1] Tirmidhi # 1120, Nasa'i # 3416, Darimi # 2258, Musnad Ahmad 1-448.

[2] Ibn Majah # 1934.

[3] See also 'Instructions of Shari'ah (divine law) for woman' pp 326, 364, 372 Darul Isha'at Karachi.

[4] See also The Hidayah v 1pp 186f Darul Isha'at Karachi (regalizind condition)

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كُلُّهُمْ يَقُوْلُ يُوْقَفُ الْمُوْلِيْ۔ (رواه فى شرح السنة)

3298. Sayyiduna Sulayman ibn Yasar رحمه الله narrated that he had met more-than ten companions of Allah's Messenger صلى الله عليه وسلم all of whom said that the man who observes eela must be compelled to stop.[1]

COMMENTARY: Eela is man's vow not to have sexual intercourse with his wife for four months or more. If he does not approach her for four months then most of the sahabah (Prophet's Companions) رضى الله عنهم contend that divorce will not take effect merely because four months have passed (without his having had intercourse with her). Rather, the man observing eela will be made to 'stop.' meaning that the ruler of qadi: (judge) will hold him back and order him:

> Either to return to his wife and have sexual intercourse with her and make an expiation for overstepping his vow, or to divorce his wife.

Thus, Imam Maalik رحمه الله , Imam Shafi'I رحمه الله and Imam Ahmad رحمه الله rule in this way. Furthermore, Imam Shafi'I رحمه الله contends that if that man does not abide by the judgement of the ruler or qadi, and neither reconciles with his wife nor divorces her, then the ruler is authorized to rule that the man's wife stands divorced.

As for Imam Abu Hanifah, رحمه الله he contends that if the man has sexual intercourse with his wife within four months then his eela becomes void and he will be bound to make an expiation for the broken vow. On the other hand, if he does not have sexual intercourse with her and the four months pass away then his wife will be considered to have been divorced with one talaq ba'in.

More rulings on eela and a full picture of it may be studied from books of fiqh (Islamic jurisprudence).

THE COMMAND ABOUT ZIHAR

(٣٢٩٩-٣٣٠٠) وَعَنْ اَبِيْ سَلَمَةَ اَنَّ سُلَيْمَانَ ابْنَ صَخْرٍ وَّيُقَالُ لَهُ سَلَمَةُ ابْنُ صَخْرٍ الْبَيَاضِيُّ جَعَلَ امْرَأَتَهُ عَلَيْهِ كَظَهْرِ اُمِّهِ حَتّٰى يَمْضِيَ رَمَضَانُ فَلَمَّا مَضٰى نِصْفٌ مِنْ رَمَضَانَ وَقَعَ عَلَيْهَا لَيْلًا فَاَتٰى رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَذَكَرَ ذٰلِكَ لَهُ فَقَالَ لَهُ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَعْتِقْ رَقَبَةً قَالَ لَا اَجِدُهَا قَالَ فَصُمْ شَهْرَيْنِ مُتَتَابِعَيْنِ قَالَ لَا اَسْتَطِيْعُ قَالَ اَطْعِمْ سِتِّيْنَ مِسْكِيْنًا قَالَ لَا اَجِدُ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لِفَرْوَةَ بْنِ عَمْرٍو اَعْطِهِ ذَالِكَ الْعَرَقَ وَهُوَ مِكْتَلٌ يَأْخُذُ خَمْسَةَ عَشَرَ صَاعًا اَوْ سِتَّةَ عَشَرَ صَاعًا لِيُطْعِمَ سِتِّيْنَ مِسْكِيْنًا رَوَاهُ التِّرْمِذِيُّ وَرَوٰى اَبُوْدَاوٗدَ وَابْنُ مَاجَةَ وَالدَّارِمِيُّ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ عَنْ سَلَمَةَ بْنِ صَخْرٍ نَحْوَهُ قَالَ كُنْتُ امْرَأً اُصِيْبُ مِنَ النِّسَاءِ مَالَا يُصِيْبُ غَيْرِيْ وَفِيْ رِوَايَتِهِمَا اَعْنِيْ اَبَا دَاوٗدَ وَالدَّارِمِيَّ فَاَطْعِمْ وَسْقًا مِنْ تَمْرٍ بَيْنَ سِتِّيْنَ مِسْكِيْنًا۔

3299. Sayyiduna Abu Salamah رضى الله عنه narrated that Sulayman ibn Sakhr رضى الله عنه who was called salamah ibn Sakhr Bayadi compared his wife to the back of his

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[1] Baghawi in Sharh us *Sunnah (Prophet's صلى الله عليه وسلم practice)* # 2363, Daraqutni # 148 in Kita but talaq.

mother (which is called zihar) till the end of the month of Ramadan. Barely had half of the month passed when he had sexual intercourse with her during the night. So, he came to Allah's Messenger صلى الله عليه وسلم and mentioned to him what had transpired. He said to him, "Set a slave free," but he pleaded that he could not do that. He said, "Then fast two successive months," but, again he submitted, "I am unable to do so."[1]

He said, "In that case, feed sixty poor people," but he had the same plea, "I do not find the means," So, Allah's Messenger صلى الله عليه وسلم said to Sayyiduna Farwah ibn Amr رضى الله عنه (a sahabi) , "Give him that araq (which is a basket of dates weighting fifteen or sixteen sa') that he might feed sixty poor people."[2]

3300. Sayyiduna Sulayman ibn Yasar رضى الله عنه narrated on the authority of Sayyiduna Salamah ibn Sakhr رضى الله عنه something like it, saying. "I am a man who is more inclined to woman than any other man (so could not hold myself back from having sexual intercourse)."[3]

Another version has: "Feed sixty poor people one wasq (come load) of dates."[4]

COMMENTARY: This hadith speaks of zihar. Zihar, in the language of law, signifies a man comparing his wife to any of his female relation within such prohibited degree of kindered whether by blood, by fosterage or by marriage, as render marriage with them invariably unlawful, like saying to her you are to me like the back of my mother.'[5]

A man says to his wife, or any of her limbs which might stand for her whole body, or any of her limb that is unspecified that she is like one of his female relatives of the prohibited degree or to one of her limbs which is not lawful to see. Examples are saying to her, 'you are like my mother's back' forbidden to me,' or, 'your head, or 'kalf your body is like my mother's back, or belly, or thighs. Or, he may compare her to his sister's or paternal aunt's back. When he says in this manner, he is prohibited from having sexual intercourse with his wife or doing anything to her that could lead to sexual intercourse unless he make an expiation for zihar. However, if he has sexual intercourse with her before making an expiation then though nothing will be *wajib (obligatory)* on him beyond the first expiation, he should seek Allah's forgiveness and refrain from further sexual intercourse till he has made an expiation.

Zihar (in the manner described) is as effective with one's wife who is a free woman or someone's slave, whether she is a Muslim or follower of a Book - Christian or Jew, other ruling about zihar may be studied from books of fiqh (Islamic jurisprudence).

Allamah (The learned Scholar) Teebi رحمه الله said the zihar for a specified time, as in the hadith; 'till the end of Ramadan, is correct.

Qadi Khan رحمه الله said that if anyone observes zihar for a specified time, he becomes one observing zihar from that very moment and when the specified time is over, zihar is nullified.

Ibn Hammam رضى الله عنه said that if any one make zihar but makes an exception, say of Friday,

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[1] The fasts have to be kept two months without break during which sexual intercourse is disallowed which he could not do.

[2] Tirmidhi # 1204.

[3] Abu Dawud # 2214, Darimi # 2273, Musnad Ahmad 5-436.

[4] Abu Dawud, Darimi.

[5] Hidayah v2 p 201 (English translation) Darul Isha'at Karachi.

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then it is not correct. But, if he makes zihar of one day, or one month, (a specified period) , then it is correct to specify a period and when the period is over, zihar will have expired too.
As for feeding sixty poor people, it could be done by feeding sixty of them two times to a full stomach, or by giving each of them raw wheat, etc equal to sadaqah (charity) fitr, or its value in money. Moreover, they must be fed before having sexual intercourse with one's wife to atone for the broken vow. It is the same it a slave is set freeor fasts are observed for two months; expiation must precede breaking the vow to abserve zihar by having sexual intercourse with the wife.

HOW MUCH TO EACH: The prophet صلى الله عليه وسلم instructed Ibn Sakhr رضى الله عنه to feed sixty poor people towards his expiation. But, he also got him dates weighing fifteen or sixteen sa which implies that it is not necessary to give one sa' to each poor man. On the other hand, the books of fiqh (Islamic jurisprudence) say that if dates are given then they should be the quantity of sadaqat ul fitr, which amounts to one sa' each. Time the words of the hadith and the ruling of the jurists do not seem to agree. However, there is in the words of hadith an implicit meaning. 'that these dates might be used to feed the sixty poor together with what he can afford,"
Moreover the version in Abu Dawud and Darimi is
'Feed sixty poor people one wasq.'
So, this makes it clear that the dates offered by the Prophet صلى الله عليه وسلم were to be put together with other dates to add up to one wasq and fed each poor person one sa' dates.
It must be remembered that one wasq is equal to sixty sa'.

IF EXPIATION IS DEFERRED TO AFTER INTERCOURSE

(٣٣٠١) وَعَنْ سُلَيْمَانَ بْنِ يَسَارٍ عَنْ سَلَمَةَ بْنِ صَخْرٍ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فِي الْمُظَاهِرِ يُوَاقِعُ قَبْلَ أَنْ يُكَفِّرَ قَالَ كَفَّارَةٌ وَاحِدَةٌ۔ (رواه الترمذى وابن ماجة)

3301. Sayyiduna Sulayman ibn Yasar رضى الله عنه narrated on the authority of Sayyiduna Salamah ibn Sakhr that the Prophet صلى الله عليه وسلم said concerning a man who makes a zihar but has intercourse with his wife before - having made an expiation, "Only one expiation is *wajib (obligatory)*."[1]

COMMENTARY: Most ulama (Scholars) maintain that when a man vows to make his wife like the back of one of the prohibited degrees of female relative, but fails to keep his vow and has sexual intercourse with her before making an atonement, then only one atonement is *wajib (obligatory)*.
Some ulama (Scholars) say, however, that two atonements will be *wajib (obligatory)* in such cases (for breaking the vow and for deferring the atonement).
If a man has more wives, say up to four, and he makes zihar with all of them, then the ulama (Scholars) say unanimously that his zihar will be effective with all of them. However, the ulama (Scholars) differ on whether one expiation will be *wajib (obligatory)* on him or more.
Imam Abu Hanifah رحمه الله and Imam Shafi'I رحمه الله hold that he will have to make expiation for each of his wives with whom he intends to have sexual intercourse beforehand. Hasan رحمه الله , zuhri رحمه الله and Thawri رحمه الله also say the some thing.

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[1] Tirmidhi # 1202, Ibn Majah # 2064.

However, Imam Maalik رحمه الله and Imam Ahmad رحمه الله hold that only one expiation will be *wajib (obligatory)* on him. They mean to say that he will make on expiation first and then he may have sexual intercourse with each of his wives.

SECTION III اَلْفَصْلُ الثَّالِثُ

(٣٣٠٢) وَعَنْ عِكْرِمَةَ عَنِ ابْنِ عَبَّاسٍ اَنَّ رَجُلًا ظَاهَرَ مِنْ امْرَأَتِهٖ فَغَشِيَهَا قَبْلَ اَنْ يُكَفِّرَ فَاَتَى النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَذَكَرَ ذَالِكَ لَهٗ فَقَالَ مَا حَمَلَكَ عَلٰى ذَالِكَ قَالَ يَا رَسُوْلَ اللّٰهِ رَاَيْتُ بَيَاضَ خَجْلَيْهَا فِي الْقَمَرِ فَلَمْ اَمْلِكْ نَفْسِيْ اَنْ وَقَعْتُ عَلَيْهَا فَضَحِكَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَاَمَرَهٗ اَنْ لَا يَقْرَبَهَا حَتّٰى يُكَفِّرَ۔ رَوَاهُ ابْنُ مَاجَةَ وَرَوَى التِّرْمِذِيُّ نَحْوَهٗ وَقَالَ هٰذَا حَدِيْثٌ حَسَنٌ صَحِيْحٌ غَرِيْبٌ وَرَوَى اَبُوْدَاوٗدَ وَالنَّسَائِيُّ نَحْوَهٗ مُسْنَدًا وَمُرْسَلًا وَقَالَ النَّسَائِيُّ الْمُرْسَلُ اَوْلٰى بِالصَّوَابِ مِنَ الْمُسْنَدِ۔

3302. Sayyiduna Ikrimah رحمه الله narrated on the authority of Sayyiduna Ibn Abbas رضى الله عنه that a ma had made zihar with his wife, but he (faltered and) had sexual intercourse with her before making an expiation (for the broken vow). So, he came to the Prophet صلى الله عليه وسلم and mentioned that to him. He asked, 'what led you to do that?" He said 'My eyes fell on the whiteness of her silver anklets in the moonlight and I could not check myself from going to her." Allah's Messenger صلى الله عليه وسلم laughed and instructed him not to approach her (a gain) till he had made an expiation.[1]

CHAPTER - XIV

بَابٌ

SECTION I اَلْفَصْلُ الْاَوَّلُ

ABOUT SETTING A SLAVE FREE TO MAKE AN EXPIATION - SHOULD THE SLAVE BE A BELIEVER

(٣٣٠٣) عَنْ مُعَاوِيَةَ بْنِ الْحَكَمِ قَالَ اَتَيْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقُلْتُ يَا رَسُوْلَ اللّٰهِ اِنَّ لِيْ جَارِيَةً كَانَتْ تَرْعٰى غَنَمًا لِيْ فَجِئْتُهَا وَقَدْ فَقَدْتُ شَاةً مِنَ الْغَنَمِ فَسَاَلْتُهَا عَنْهَا فَقَالَتْ اَكَلَهَا الذِّئْبُ فَاٰسِفْتُ عَلَيْهَا وَكُنْتُ مِنْ بَنِيْ اٰدَمَ فَلَطَمْتُ وَجْهَهَا وَعَلَيَّ رَقَبَةٌ اَفَاُعْتِقُهَا فَقَالَ لَهَا رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَيْنَ اللّٰهُ؟ فَقَالَتْ فِي السَّمَآءِ فَقَالَ مَنْ اَنَا؟ فَقَالَتْ اَنْتَ رَسُوْلُ اللّٰهِ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَعْتِقْهَا رَوَاهُ مَالِكٌ وَفِيْ رِوَايَةِ مُسْلِمٍ قَالَ كَانَتْ لِيْ جَارِيَةٌ تَرْعٰى غَنَمًا لِيْ قِبَلَ اُحُدٍ وَالْجَوَانِيَّةِ فَاطَّلَعْتُ ذَاتَ يَوْمٍ فَاِذَا الذِّئْبُ قَدْ ذَهَبَ بِشَاةٍ مِنْ غَنَمِنَا وَاَنَا رَجُلٌ مِنْ بَنِيْ اٰدَمَ اٰسِفُ كَمَا يَاْسَفُوْنَ لٰكِنْ

[1] Ibn Majah # 2065 (Tirmidhi # 1203, Abu Dawud # 2221, Nasa'i # 3457 - similar).

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صَكَكْتُهَا صَكَّةً فَأَتَيْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَعَظَّمَ ذَالِكَ عَلَيَّ قُلْتُ يَا رَسُوْلَ اللّٰهِ أَفَلَا أُعْتِقُهَا قَالَ ائْتِنِي بِهَا فَأَتَيْتُهُ بِهَا فَقَالَ لَهَا أَيْنَ اللّٰهُ قَالَتْ فِي السَّمَاءِ قَالَ مَنْ أَنَا قَالَتْ أَنْتَ رَسُوْلُ اللّٰهِ قَالَ أَعْتِقْهَا فَإِنَّهَا مُؤْمِنَةٌ۔

3303. Sayyiduna Mu'awiyah ibn al-Hakam رضی اللہ عنہ narrated that he came to Allah's Messenger صلی اللہ علیہ وسلم and submitted, "O Messenger of Allah, I have a female slave who was herding my sheep. I went to her and found a sheep missing from the flock. I asked her about it and she said that a wolf had eaten it. I got angry at her, and, a human that I am, I slapped her on the face. Now, I was (already) bound to set free a slave (against an expiation I have to make for a previous lapse). So, shall I set her free? (and absolve myself of the obligation and stone for striking her too on hearing that) Allah's Messenger صلی اللہ علیہ وسلم (had her brought to him and) asked her, 'where is Allah?' She said, 'In the heaven.' He asked, 'who am I?' She said, 'you are Allah's Messenger.' So, Allah's Messenger صلی اللہ علیہ وسلم said, set her free.'

According to Muslim's version:

He (Mu'awiyah) رضی اللہ عنہ said, "I had a female slave who was herding my sheep towards Uhud (mountain) and Jawwaniyah (a place near Uhud). One day, I learnt that a wolf had gone off with a sheep from our (flock of) sheep. Being a man among the children of Aadam who gets upset as all get upset, I gave her (only) a single slap (though I wished to give her a good thrashing). Then I went to Allah's Messenger (and told him everything). He considered it as a grave matter against me. So, I asked him, 'O Messenger of Allah, shall I not set her free?' He said, 'Bring her to me,.' I brought her to him and he asked her, 'where is Allah?' She said, 'In the heaven.' Then, he asked her, 'who am I?' She said, 'you are Allah's Messenger.' He said, 'Set her free. She is a believer.'"[1]

COMMENTARY: By presenting this hadith in this chapter, the compiler wishes to make clear that slave (male or female) that as to be set free, against breaking vow of) zihar, should be a Muslim. Imam Shaf'I رحمہ اللہ abides by this hadith, but the Hanafis do not consider it necessary. They say that this hadith merely suggests a better and more meritorious course.

The Prophet صلی اللہ علیہ وسلم asked the girl, 'where is Allah?' His aim was to know whether she was a Muslim or an idol-worshipper. Her answer revealed that she was monotheist.

The version of Maalik رحمہ اللہ suggests that Mu'awiyah رضی اللہ عنہ affirms that it had previously become obligatory on him to set free a slave for some reason so when he slapped this girl, he asked the Prophet صلی اللہ علیہ وسلم if he may fulfil that obligation by setting her free so that he may achieve two things at one stroke: fulfil his previous obligation and get over the remorse he felt on slapping her.

However, version of Muslim رحمہ اللہ seems to stress that Mu'awiyah رضی اللہ عنہ had no reason to set her free other than his harshness to the girl yet it does not rule not out that he could have had another reason too.

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[1] Maalik Muwata # 8 (Itq) , Muslim # 33-37, Musnad Ahmad 1-449, (Muwatta Maalik Lahore edition # 1254) Abu Dawud (similar) # 3282.

SOME RULINGS ABOUT EXPIATION FOR ZIHAR: According to the Hanafis:

FIRST: The first preference is to set free a slave (male or female when making an expiation for zihar. The slave may be a Muslim or a non-Muslim, male or female young or old, cockeyed and deaf but able to hear a loud voice. He may have one hand and one foot amputated (by surgery or otherwise) provided these severed limbs are on opposite sides. It is allowed to emancipate a mukatab who has not paid any thing towards of his release. However, such expiation cannot be made of a slave who is dumb or completely deaf and can hear nothing at all. Similarly, these kinds are also not acceptable:

(i) whose both hands are cut off,
(ii) whose both feet are cut off,
(iii) whose both big toes are severed,
(iv) whose one hand and one foot are cut off on the same side,
(v) who is insane (all the time) ,
(vi) who is a madabbar (freed on the death of his master)
(vii) who is an umm walad (who conceives child of her master) ,
(viii) who is a mukatab who has paid something towards his/her freedom.

Expiation will not have been paid if any of them are set free towards it.

SECOND: The second preference while making an expiation for zihar when a slave cannot be found is to fast for two months consecutively ensuring that the two months do not overlap the month of Ramadan or such days on which it is disallowed to fast, like days of eed and tashriq. Moreover, for the full length of two months (when the continuous fasting is over) , sexual intercourse with wife is not allowed. If a man has sexual intercourse with the woman (with whom he had observed zihar) then he will have to begin the fasting all over again. It is the same if he had approached her during day time or during night, whether he did willfully or on impulse. Also if he breaks a fast out of compulsion or without reason then, too, he will have to begin the fasts all over again.

THIRD: The third preference while making an expiation is to feed sixty poor people if a man is not able to fast in the manner prescribed in the foregoing lines. The sixty needy and poor people are to be fed twice, or given uncooked grain half a sa' to each, or one sa' (3kg 2nd gram) dates or barley, or the monetary value of any of these things. It is also allowed to give any two of these things instead of only, for example 817 gram of wheat with 633 gram of barley.

IBAHAH IS PERMITTED IN MAKING EXPIATION: Ibahah is to cook food and place it before the poor people so that they may eat as much as they like from it. It is allowed to observe for expiations and for fidyah (which is a recompense for missed fasts of Ramadan), but not allowed for *wajib (obligatory)* sadaqah (charity), like zakah (Annual due charity), etc. because in these cases it is imperative that ownership should be transferred to the poor people.

Moreover, for the expiation against zihar sixty poor people must be fed two times to a full stomach. It does not matter if this is done twice on the same day, in the afternoon and evening. The feeding is to a full stomach no matter in how less are they satiated (there being no other measure). As for the kind of food, it depends on what the man feeding can afford. If there is barley bread, then it is necessary to serve gravy or stew, but not with wheat bread.

If instead of sixty poor people twice a day, only one is fed twice a day for sixty days, then this too is acceptable. But only one poor person cannot be given the food of sixty on a single day and if this is done then it will count as though one poor person was fed.

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If the man who makes zihar resorts to sexual intercourse during the feeding of the poor, then though he will have committed a sin yet he will not be required to feed the poor all over again.
If a man if liable to make two expiations for two zihars and he gives sixty poor people one sa' wheat to each of them at half sa' per expiation, for both than only one expiation will be valid, not both.
If a man has to make an expiation for zihar and another for breaking fast and he gives one sa' wheat to each poor man then this valid expiations and both have been paid.

CHAPTER - XV

INVOKING CURSES

بَابُ اللِّعَانِ

DEFINITION: Li'an (لعان) and mula'anah (ملاعنه) mean to curse each other.
In the terminology o Shari'ah (divine law), when a husband accuses his wife of infidelity or denies parenthood of a child that is born to her, saying that he does not know to whom it belongs, but the wife refutes the accusation, then she may complain to the judge or a relevant authority. He will summon the husband and ask him to prove the allegation. So, if he proves his case through witnesses, the judge will enforce the hadd (or prescribed punishment) on the man's wife. But, if the husband cannot prove his allegation through four witnesses, then the judge will ask him first to declare, "I call upon Allah as a witness and assert that I am true in accusing her of adultery." He must point to the woman and speak these words four times, and again he should point to her the fifth time and declare, "If I am false in accusing this woman of adultery then may Allah's curse be on me."
When the husband makes the fifth declaration, the wife must point to him and say four times. "I call upon Allah as a witness that he is a liar in the accusation he has levelled against me of infidelity." Then, the fifth time she should point to him and say. "If this man is true in accusing me of adultery then may Allah's wrath be on me."
When both of them have cursed one another in this manner, then the ruler should separate them and that will amount to one divorce – talaq ba'in and the woman will be forbidden to the man for ever unless the man retracts his accusation (saying, "I had accused her falsely") then the hadd will be enforced on him for scandalizing the woman and thereafter it will be correct for him to remarry the woman. But, Imam Abu Yusuf رحمه الله maintains that even in that case when the man confesses that he was false, the woman remains forbidden to him for ever.

SECTION I — اَلْفَصْلُ الْاَوَّلُ

A CASE OF LI'AN IN THE PROPHET'S صلى الله عليه وسلم TIMES

(٣٣٠٤) عَنْ سَهْلِ بْنِ سَعْدِنِ السَّاعِدِيِّ قَالَ اِنَّ عُوَيْمِرَ الْعَجْلَانِيَّ قَالَ يَا رَسُوْلَ اللّٰهِ اَرَأَيْتَ رَجُلًا وَجَدَ مَعَ امْرَأَتِهٖ رَجُلًا اَيَقْتُلُهٗ فَيَقْتُلُوْنَهٗ اَمْ كَيْفَ يَفْعَلُ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَدْ اُنْزِلَ فِيْكَ وَصَاحِبَتِكَ فَاذْهَبْ فَأْتِ بِهَا قَالَ سَعْدٌ فَتَلَاعَنَا فِي الْمَسْجِدِ وَاَنَا مَعَ النَّاسِ عِنْدَ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَلَمَّا فَرَغَا قَالَ عُوَيْمِرٌ كَذِبْتُ عَلَيْهَا يَا رَسُوْلَ اللّٰهِ اِنْ اَمْسَكْتُهَا فَطَلَّقَهَا ثَلَاثًا ثُمَّ قَالَ رَسُوْلُ اللّٰهِ

صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اُنْظُرُوْا فَاِنْ جَاءَتْ بِهٖ اَسْحَمَ اَدْعَجَ الْعَيْنَيْنِ عَظِيْمَ الْاَلْيَتَيْنِ خَدَلَّجَ السَّاقَيْنِ فَلَا اَحْسِبُ عُوَيْمِرًا اِلَّا قَدْ صَدَقَ عَلَيْهَا وَاِنْ جَاءَتْ بِهٖ اُحَيْمِرَ كَاَنَّهٗ وَحَرَةٌ فَلَا اَحْسِبُ عُوَيْمِرًا اِلَّا قَدْ كَذَبَ عَلَيْهَا فَجَاءَتْ بِهٖ عَلَى النَّعْتِ الَّذِىْ نَعَتَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مِنْ تَصْدِيْقِ عُوَيْمِرٍ فَكَانَ بَعْدُ يُنْسَبُ اِلٰى اُمِّهٖ۔ (متفق علیہ)

3304. Sayyiduna Sahl ibn Sa'd Sa'adi رضی اللہ عنہ narrated that (a sahabi) Sayyiduna Uwaymir al Ajlami رضی اللہ عنہ (came to the Prophet صلی اللہ علیہ وسلم and) submitted. "O Messenger of Allah tell me about a man who finds his wife with a man. Should he kill him? Then his heirs would slay him in retaliation, or what should he do?" (Or, should he show patience?) Allah's Messenger صلی اللہ علیہ وسلم said, "A revelation had been sent down concerning you and your wife. So, go and bring her here."

Sahl said that (he brought her to the mosque and) they cursed one another in the mosque (Masjid Nabawi), and that he was present there alongwith other people near Allah's Messenger صلی اللہ علیہ وسلم When they had finished cursing (one another), Uwaymir رضی اللہ عنہ said, "I would be lying if I retained her, O Messenger of Allah, and he uttered divorce to her three times. Then, Allah's Messenger صلی اللہ علیہ وسلم said, "Observe! If she bears a child that is dark with very black eyes, large buttocks and thick legs, I will not but presume that Uwaymir has spoken the truth about her. But, if she delivers a child bright red as though the colour of wahrah (which is a kind of a lizard), I shall only presume that Umaymir has lied against her."

She gave birth to a child that matched the description Allah's Messenger صلی اللہ علیہ وسلم had given if Uwaymir had spoken the truth. Thereafter, the child's linage was traced to its mother.[1]

COMMENTARY: If anyone finds a stranger with his wife, then the ulama (Scholars) differ on whether he may kill the stranger. Most of them say that he will be awarded a death penalty unless he presents four witnesses (that the stranger was with her alone) or the stranger's heirs confirm (that he had committed sin) in which case he will not be killed. If the witnesses are not found and the heirs of the dead man do not blame him and this man is given the death penalty for murdering the stranger and he was true in accusing him. Then he is not a sinner in the sight of Allah.

The saying, "A revelation has been sent down concerning you and your wife refers to these verses:

وَالَّذِيْنَ يَرْمُوْنَ اَزْوَاجَهُمْ وَلَمْ يَكُنْ لَّهُمْ شُهَدَآءُ اِلَّآ اَنْفُسُهُمْ فَشَهَادَةُ اَحَدِهِمْ اَرْبَعُ شَهٰدٰتٍ بِاللّٰهِ اِنَّهٗ لَمِنَ الصّٰدِقِيْنَ * وَالْخَامِسَةُ اَنَّ لَعْنَتَ اللّٰهِ عَلَيْهِ اِنْ كَانَ مِنَ الْكٰذِبِيْنَ۔ الاٰیۃ۔ (النساء۲۴: ۶، ۷)

{And those who accuse their wives and there are no witnesses for them except themselves, the testimony of one of them shall be swearing by Allah four times that he is of the truthful. And a fifth time, that the curse of Allah shall be upon him, if he should be of the liars....} (24: 607 and following)

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[1] Bukhari # 5308, Muslim # 1-1492, Abu Dawud # 2245, Nasa'i # 3466, Ibn Majah # 2066, Muwatta Maalik # 34 (Talaq) Musnad Ahmad 5-334.

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Some exegetes say that these verses were revealed in 9 AH in the month of Sha'ban.
Ibn Maalik رحمه الله said that it appears from this hadith that these verses on invoking curses were revealed about the case of Uwaymir رضى الله عنه and the first li'an in Islam was observed by him.
Some other exegetes says that these verses were revealed concerning Hilal ibn Umayyyah رضى الله عنه and the first li'an in Islam was observed by Hilal رضى الله عنه. A subsequent hadith (# 3307) of Ibn Abbas رضى الله عنه names him. Accordingly, the prophet's رضى الله عنه saying to Uwaymis رضى الله عنه. A revelation has been sent down concerning you and your wife. Refers to the verses already revealed about a similar case.
Some people say that the verses was revealed about both who presented their case to the Prophet صلى الله عليه وسلم. But Hilal رضى الله عنه was the first man to observe li'an.
Uwaymir رضى الله عنه said after observing the li'an that if he continued to keep his wife then it would imply that he was accusing her falsely.
(In the text of the hadith in its first few lines, Uwaymir said, "Then his heirs will kill him," for the Arabic (فيقتلونه), but Bukhari has quoted him to say, 'whereupon you would kill him, or what would he do?" for the Arabic (فتقتلونه). Muslim also has the same words as Bukhari. Maalik # 29. 13-34 has 'and be killed himself.' Mishkat has as given here in the text.)

SEPARATING THE COUPLE AFTER LI'AN

(٣٣٠٥) وَعَنِ ابْنِ عُمَرَ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا عَنَ بَيْنَ رَجُلٍ وَامْرَاَتِهٖ فَانْتَفٰى مِنْ وَلَدِهَا فَفَرَّقَ بَيْنَهُمَا وَاَلْحَقَ الْوَلَدَ بِالْمَرْاَةِ مُتَّفَقٌ عَلَيْهِ وَفِيْ حَدِيْثِهِمَا لَهُمَا اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَعَظَهٗ وَذَكَّرَهٗ وَاَخْبَرَهٗ اَنَّ عَذَابَ الدُّنْيَا اَهْوَنُ مِنْ عَذَابِ الْاٰخِرَةِ ثُمَّ دَعَاهَا فَوَعَظَهَا وَذَكَّرَهَا وَاَخْبَرَهَا اَنَّ عَذَابَ الدُّنْيَا اَهْوَنُ مِنْ عَذَابِ الْاٰخِرَةِ۔

3305. Sayyiduna Ibn Umar رضى الله عنه narrated that the Prophet صلى الله عليه وسلم made a man and his wife invoke curses (about another). He disowned her child. The Prophet صلى الله عليه وسلم (also) separated the two of them and handed over the child to the woman. According to another of his hadith. Allah's Messenger صلى الله عليه وسلم admonished the man and reminded him and informed him that the punishment in this world is milder than the punishment in the hereafter (so that he might not accuse her falsely). Then, he summoned the woman and admonished her and reminded her and informed her that the punishment in this world is milder than the punishment in the hereafter.[1]

COMMENTARY: Man and woman are separated not simply because of li'an (or curses) but the ruler of judge separates them, otherwise there was no point in making three pronouncements of divorce as Uwaymir رضى الله عنه did (see hadith # 3304).
The punishment in the world is the hadd (or the prescribed). It is according to Shari'ah (divine law). If a man accuses a woman (whether his wife or another) of adultery, and is proved to be false, then Shari'ah (divine law) awards him the hadd. He will be awarded

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[1] Bukhari # 5315, Muslim # 8-1494, Tirmidhi # 1203, Abu Dawud # 2259, Nasa'i # 3477, Ibn Majah # 2069, Muwatta Maalik # 35 (Talaq).

eighty stripes for accusing an innocent woman of infidelity. If he is proven true that the woman had committed adultery then she will be awarded the hadd which is

(i) Stoning to death of a married woman, or

(ii) One hundred stripes if she is an unmarried woman.

There is a possibility that the man had misunderstood facts or was driven by emotion at the moment. Later, he was satisfied that his accusation was baseless. However, he could not retract his statement because of fear of worldly punishment, so resorted to li'an.

Or, the woman had committed indecency but did not confess lest she would be punished and preferred to resort to li'an.

This is why the Prophet صلى الله عليه وسلم told each of them what the punishment in this world more bearable than that of the next world. He advised them to speak the truth and preserve themselves from terrible punishment of the hereafter.

RECKONING IN ALLAH'S HANDS

(٣٣٠٦) وَعَنْهُ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لِلْمُتَلَاعِنَيْنِ حِسَابُكُمَا عَلَى اللّٰهِ اَحَدُكُمَا كَاذِبٌ لَا سَبِيْلَ لَكَ عَلَيْهَا قَالَ يَا رَسُوْلَ اللّٰهِ مَالِي قَالَ لَا مَالَ لَكَ اِنْ كُنْتَ صَدَقْتَ عَلَيْهَا فَهُوَ بِمَا اسْتَحْلَلْتَ مِنْ فَرْجِهَا وَاِنْ كُنْتَ كَذَبْتَ عَلَيْهَا فَذَاكَ اَبْعَدُ وَابْعَدُ لَكَ مِنْهَا۔ (متفق عليه)

3306. Sayyiduna Ibn Umar رضى الله عنه narrated that the Prophet صلى الله عليه وسلم said to the two (man and woman) who had observed li'an, "(We can go only by the apparent and that is li'an, but) your reckoning is in Allah's hand, because (given the facts) one of you is lying." (And he said to the man,) "You have no option about the woman (for, now she is forbidden to you, always)." The man submitted, "O Messenger of Allah! My property (what about t: the dowry that I have given her)." He said, "You have no (right to the) property. If you have spoken the truth then it is (hers) against the sexual intercourse you had with her (making it lawful for you). If you have lied against her, then that is more distant (that you claim it back). And, further away from you than she is."[1]

COMMENTARY: In this world, the dispute between them was settled through li'an, but true reckoning will take place in the hereafter. The liar will be known and punished.

If the man who observes li'an did have sexual intercourse with his wife whom he blames for infidelity, then the ulama (Scholars) are agreed that he cannot claim back the dower. However, if they had not had a sexual intercourse then the imam differ on the issue. Imam Abu Hanifah رحمه الله Imam Shafi'I رحمه الله and Imam Maalik رحمه الله hold that in such cases the man will be eligible to get back half of the dower.

BACK GROUND OF VERSE ON LI'AN

(٣٣٠٧) وَعَنِ ابْنِ عَبَّاسٍ قَالَ اِنَّ هِلَالَ بْنَ اُمَيَّةَ قَذَفَ امْرَأَتَهُ عِنْدَ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ بِشَرِيْكِ بْنِ سَحْمَاءَ فَقَالَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ الْبَيِّنَةَ اَوْ حَدٌّ فِيْ ظَهْرِكَ فَقَالَ يَا رَسُوْلَ اللّٰهِ اِذَا رَأَى اَحَدُنَا عَلَى امْرَأَتِهِ رَجُلًا يَنْطَلِقُ يَلْتَمِسُ الْبَيِّنَةَ فَجَعَلَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ الْبَيِّنَةَ وَاِلَّا حَدٌّ فِيْ ظَهْرِكَ

[1] Bukhari # 5350, Muslim # 5-1493, Abu Dawud # 2257, Nasa'i # 3476, Musnad Ahmad 2-11.

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فَقَالَ هِلَالٌ وَالَّذِيْ بَعَثَكَ بِالْحَقِّ إِنِّيْ لَصَادِقٌ فَلَيُنْزِلَنَّ اللّٰهُ مَا يُبَرِّئُ ظَهْرِيْ مِنَ الْحَدِّ فَنَزَلَ جِبْرِيْلُ وَاَنْزَلَ عَلَيْهِ وَالَّذِيْنَ يَرْمُوْنَ اَزْوَاجَهُمْ فَقَرَأَ حَتّٰى بَلَغَ إِنْ كَانَ مِنَ الصَّادِقِيْنَ فَجَاءَ هِلَالٌ فَشَهِدَ وَالنَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ إِنَّ اللّٰهَ يَعْلَمُ اَنَّ اَحَدَكُمَا كَاذِبٌ فَهَلْ مِنْكُمَا تَائِبٌ ثُمَّ قَامَتْ فَشَهِدَتْ فَلَمَّا كَانَتْ عِنْدَ الْخَامِسَةِ وَقَفُوْهَا وَقَالُوْا إِنَّهَا مُوْجِبَةٌ قَالَ ابْنُ عَبَّاسٍ فَتَلَكَّأَتْ وَنَكَصَتْ حَتّٰى ظَنَنَّا اَنَّهَا تَرْجِعُ ثُمَّ قَالَتْ لَا اَفْضَحُ قَوْمِيْ سَائِرَ الْيَوْمِ فَمَضَتْ وَقَالَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَبْصِرُوْهَا فَإِنْ جَاءَتْ بِهٖ اَكْحَلَ الْعَيْنَيْنِ سَابِغَ الْإِلْيَتَيْنِ خَدَلَّجَ السَّاقَيْنِ فَهُوَ لِشَرِيْكِ ابْنِ سَحْمَاءَ فَجَاءَتْ بِهٖ كَذَالِكَ فَقَالَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَوْ لَا مَا مَضٰى مِنْ كِتَابِ اللّٰهِ لَكَانَ لِيْ وَلَهَا شَانٌ۔ (رواه البخاری)

3307. Sayyiduna Ibn Abbas رضی اللہ عنہ narrated that Sayyiduna Hilal ibn Umayyah رضی اللہ عنہ accused his wife of committing adultery with Sharik ibn Sahma رضی اللہ عنہ. Allah's Messenger صلی اللہ علیہ وسلم said, "Produce evidence or get the punishment (hadd) on your back." He submitted, "If one of us sees a man over his wife, shall he go and fetch evidence?" But, the Prophet صلی اللہ علیہ وسلم insisted, "Evidence, or the prescribed punishment on your back." So, Hilal submitted, "By Him who has sent you with the truth, I speak the truth. May Allah reveal (for me) what will free my back reveal (for me) that will free my back from punishment." Then, Jibril علیہ السلام did come down and brought to him:

وَالَّذِيْنَ يَرْمُوْنَ اَزْوَاجَهُمْ۔ الْاٰيَةُ

and he recited up to

إِنْ كَانَ مِنَ الصَّادِقِيْنَ

{And those who accuse their wives and there are no witnesses for them except themselves, the testimony of one of them shall be swearing by Allah four times that he is of the truthful....}

{And a fifth time, that the curse of Allah shall be upon him, if he should be of the liars. And it shall avert from her the chastisement if she testifies by wearing by Allah four times that he is of the liar, and a fifth time, that the wrath of Allah be upon her if he should be of the truthful} (24: 6-9)

Then Hilal stood up and gave testimony. The Prophet صلی اللہ علیہ وسلم said, "Surely, Allah knows that one of you lies. So, is there one of you who will repent?" Then, the woman stood and gave the testimony, but when she was about to give the fifth, the sahabah persuaded her to stop telling her that the punishment would become definite with that.

Ibn Abbas said that she hesitated and withdrew, so they presumed that she would retract her statement. But she said after that, "I shall not fail my people ever," and completed her oath.

The Prophet صلی اللہ علیہ وسلم said to them, "watch her! If she bears a child with (large black) eyes antimony-coloured, fat hips and thick legs then that child's father is Sharik ibn Sahma. Indeed, she gave birth to a child as was described. The Prophet

صلى الله عليه وسلم **said, "If what has been prescribed in Allah's Books was not there (before us) , there would have been something else between us and her."[1]**

COMMENTARY: This hadith tells us that the first person to observe li'an in Islam was Hilal. The foregoing verses of the Qur'an (24: 6-9) were revealed. A detailed commentary has preceded against the hadith of Sahl ibn Sa'd (# 3304).

The Prophet صلى الله عليه وسلم told both of them that indeed, Allah knows the liar. Some scholars say that he spoke these words after they were over with li'an to caution and encourage them to repent and retract their falsehood. Some others say that he spoken these words before they set to observe li'an to warn them of the punishment awaiting the liar.

This hadith instructs the ruler not to judge on his personal whims, but to go by evidences.

FOUR WITNESSES TO ESTABLISH ADULTERY

(٣٣٠٨) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ سَعْدُبْنُ عُبَادَةَ لَوْ وَجَدْتُ مَعَ اَهْلِي رَجُلًا لَمْ اَمَسَّهُ حَتّٰى اٰتِيَ بِاَرْبَعَةِ شُهَدَآءَ؟ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ نَعَمْ قَالَ كَلَّا وَالَّذِيْ بَعَثَكَ بِالْحَقِّ اِنْ كُنْتُ لَاُعَاجِلُهُ بِالسَّيْفِ قَبْلَ ذَالِكَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اسْمَعُوْا اِلٰى مَايَقُوْلُ سَيِّدُكُمْ اِنَّهُ لَغَيُوْرٌ وَّاَنَا اَغْيَرُ مِنْهُ وَاللّٰهُ اَغْيَرُ مِنِّيْ۔ (رواه مسلم)

3308. Sayyiduna Abu Hurayrah رضى الله عنه **narrated that Sayyiduna Sa'd ibn Ubadah** رضى الله عنه **asked (the Prophet)** صلى الله عليه وسلم **, "Were I to find a stranger with my wife is it that I must not touch him till I bring four witnesses? (I should not kill him?) " Allah's Messenger** صلى الله عليه وسلم **said, "Yes." He said, "Certainly not! By him who has sent you with the truth, I shall first hasten to him with the sward, before that." Allah's Messenger** صلى الله عليه وسلم **said, "Listen to what your chief says. He certainly is very conscious of his honour. But, I am more conscious of my honour that he is (of his) and Allah is more conscious of His Honour than I am (of mine)."[2]**

COMMENTARY: Sayyiduna Sa'd رضى الله عنه did not mean to disobey the Prophet صلى الله عليه وسلم when he insisted that he would rather make short work of the intruder than fetch four witnesses. He expressed his sentiments and anger if such a thing were to happen in his house. Shari'ah (divine law), however, commands that one must first fetch four witnesses before tackling the intruder and one's wife.

The Prophet's صلى الله عليه وسلم words, "Listen to what your chief says" actually command Sa'd's رضى الله عنه says" actually commend Sa'd رضى الله عنه sense of honour. Pious people must possess it, though it is necessary to prefer obedience to the command of Shari'ah (divine law).

The Prophet صلى الله عليه وسلم did not praise Sa'd رضى الله عنه but pointed out that he could not help but utter what he had in his mind.

Mazhar رحمه الله said that Sayyiduna Sa'd رضى الله عنه meant that a man with a sense of honour thought that he should be permitted to slay a stranger when he is found with his in a disagreeable manner. But, the prophet صلى الله عليه وسلم denied such permission in a very persuasive manner. Then, Sa'd رضى الله عنه did not say anything.

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[1] Bukhari # 4747, Abu Dawud # 2254, Ibn Majah # 2067, Musnad Ahmad 1-238, 239.

[2] Muslim # 16. 1498.

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The word in the Arabic is (عيوب غيره) (ghayrah). It is a change coming over a person's internal condition on seeing something objectionable in the family. But this meaning cannot be applied to Allah's ghayrah (غيرة). His ghayrah is that He prevents His creatures from committing sin so that they do not distance themselves from His (mercy and) nearness and acceptance.

NO ONE HAS MORE GHAYRAH THAN ALLAH

(٣٣٠٩) وَعَنِ الْمُغِيْرَةِ قَالَ قَالَ سَعْدُ بْنُ عُبَادَةَ لَوْ رَأَيْتُ رَجُلًا مَعَ امْرَأَتِيْ لَضَرَبْتُهُ بِالسَّيْفِ غَيْرَ مُصْفِحٍ فَبَلَغَ ذٰلِكَ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ اَتَعْجَبُوْنَ مِنْ غَيْرَةِ سَعْدٍ وَاللّٰهِ لَاَنَا اَغْيَرُ مِنْهُ وَاللّٰهُ اَغْيَرُ مِنِّيْ وَمِنْ اَجْلِ غَيْرَةِ اللّٰهِ حَرَّمَ اللّٰهُ الْفَوَاحِشَ مَاظَهَرَ مِنْهَا وَمَا بَطَنَ وَلَا اَحَدٌ اَحَبَّ اِلَيْهِ الْعُذْرُ مِنَ اللّٰهِ مِنْ اَجْلِ ذٰلِكَ بَعَثَ الْمُنْذِرِيْنَ وَالْمُبَشِّرِيْنَ وَلَا اَحَدٌ اَحَبَّ اِلَيْهِ الْمِدْحَةُ مِنَ اللّٰهِ وَمِنْ اَجْلِ ذٰلِكَ وَعَدَ اللّٰهُ الْجَنَّةَ۔

(متفق عليه)

3309. Sayyiduna Mughirah رضی اللہ عنہ said that Sayyiduna Sa'd ibn Ubadah رضی اللہ عنہ declared. "Where I to see a stranger with my wife, I would slay him with my sword, not with the flat of it (but with its sharp edge)." This was conveyed to Allah's Messenger صلی اللہ علیہ وسلم and he asked (his sahabah) رضی اللہ عنہ. "Are you surprised at the jealously of Sa'd? By Allah, I am more jealous than he is and Allah is more jealous than I am. It is because of His ghayrah that Allah has forbidden indecencies whether open or secret. No one likes to be asked to be excused then Allah does which is why He sent warners and givers of glad tidings. (They are the Messenger) And, no one likes to be praised more than Allah does which is why Allah has promised paradise."[1]

COMMENTARY: (The word ghayrah has been explained in he commentary on the previous hadith # 3308) Allah prevents and has forbidden sin and indecency and has prescribed punishment to any who perpetrates that.

The real meaning of ghayrah is that a person dislikes and gets angry when another person encroaches on his property or intrudes into his affairs and domain.

The generally understood meaning of ghayrah is that a man gets provoked when another man takes liberties with his wife or ogles at her. So. Allah's ghayrah is that he punishes one who perpetrates sin.

Imam Nawawi رحمہ اللہ said about liking excuses, that it means 'liking to put an end to excuses.' No one other than Allah likes to remove possibilities of excuses being presented. So, He sent prophets and Messengers to the world. Thus, he may have provided every kind of proof and evidence and people may have no plea against Him and no opportunity to present excuses. This is as Allah says:

لِئَلَّا يَكُوْنَ عَلَى اللّٰهِ حُجَّةٌ بَعْدَ الرُّسُلِ

{In order that mankind may have no excuse against Allah after (the coming of) the Messengers} (4: 165)

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[1] Bukhari # 7416, Muslim # 17-1499, Darimi # 2227, Musnad Ahmad 4-248.

No one likes praise to be made as Allah does. This is why Allah has praised himself and also His dear creatures. And He has promised to admit to paradise those who praise Him and obey Him.

ALLAH'S GHAYRAH DEMANDS THAT MANKIND COMMIT NO SIN

(٣٣١٠) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِنَّ اللّٰهَ تَعَالٰى يُغَارُ وَاِنَّ الْمُؤْمِنَ يُغَارُ وَغَيْرَةُ اللّٰهِ اَنْ لَا يَاْتِيَ الْمُؤْمِنُ مَا حَرَّمَ اللّٰهُ۔ (متفق عليه)

3310. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Surely, Allah, the Exalted, has ghayrah and the believers (too) possess ghayrah. (It is Allah's attribute that is also found in the believers.) And, Allah's ghayrah demands that a believer should not do what Allah has forbidden."[1]

DO NOT DISOWN CHILD ON SUPERFICIAL VARIATIONS

(٣٣١١) وَعَنْهُ اَنَّ اَعْرَابِيًّا اَتٰى رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ اِنَّ امْرَاَتِيْ وَلَدَتْ غُلَامًا اَسْوَدَ وَاِنِّيْ اَنْكَرْتُهُ فَقَالَ لَهُ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ هَلْ لَكَ مِنْ اِبِلٍ قَالَ نَعَمْ قَالَ فَمَا اَلْوَانُهَا قَالَ حُمْرٌ قَالَ هَلْ فِيْهَا مِنْ اَوْرَقٍ قَالَ اِنَّ فِيْهَا لَوُرْقًا قَالَ فَاَنّٰى تَرٰى ذٰلِكَ جَاءَ هَا قَالَ عِرْقٌ نَزَعَهَا قَالَ فَلَعَلَّ هٰذَا عِرْقٌ نَزَعَهُ وَلَمْ يُرَخِّصْ لَهُ فِي الْاِنْتِفَاءِ مِنْهُ۔ (متفق عليه)

3311. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that a villager came to Allah's Messenger صلی اللہ علیہ وسلم and said, "My wife has given birth to a son with a black complexion. I disown him." So, Allah's Messenger صلی اللہ علیہ وسلم asked him, "Do you have camels?" He said, "Yes." He asked, "What colour are they?" He said, "Red!" He asked, "Is there among them a leaf coloured one?" He confirmed, "There are indeed among them some leaf coloured." He asked, "What do you say from where have they come?" He explained. "Perhaps a vein resembled (or a strain that had come down)." He said, "Then, here too, there is a resemblance to an ancestor (Or, a strain that had come down)." And, he did not permit him to disown the child.[2]

COMMENTARY: Teebi رحمہ اللہ said that this hadith disallows any father to disown his child on flimsy grounds. To do any such thing, one must have strong evidences, like a man may not have had sexual intercourse wit h his wife, yet she conceived a child, or she delivered child within six months of their having had a sexual intercourse. It is allowed to disown the child in such cases.

CHILD IS NOT ATTRIBUTED TO FORNICATOR

(٣٣١٢) وَعَنْ عَائِشَةَ قَالَتْ كَانَ عُتْبَةُ بْنُ اَبِيْ وَقَّاصٍ عَهِدَ اِلٰى اَخِيْهِ سَعْدِ بْنِ اَبِيْ وَقَّاصٍ اَنَّ ابْنُ وَلِيْدَةِ زَمْعَةَ مِنِّيْ فَاقْبِضْهُ اِلَيْكَ فَلَمَّا كَانَ عَامُ الْفَتْحِ اَخَذَهُ سَعْدٌ فَقَالَ اِنَّهُ ابْنُ اَخِيْ وَقَالَ عَبْدُ بْنُ زَمْعَةَ اَخِيْ فَتَسَاوَقَا اِلٰى

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[1] Bukhari # 5223, Muslim # 36-2761, Tirmidhi # 1168, Musnad Ahmad 2-343.

[2] Bukhari # 7314, Muslim # 18-1500, Tirmidhi # 2135, Abu Dawud # 2260, Nasa'i # 3478, Ibn Majah # 2002, Musnad Ahmad 2-233.

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رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ سَعْدٌ يَا رَسُوْلَ اللّٰهِ اِنَّ اَخِيْ كَانَ عَهِدَ اِلَيَّ فِيْهِ وَقَالَ عَبْدُ ابْنُ زَمْعَةَ اَخِيْ وَابْنُ وَلِيْدَةِ اَبِيْ وُلِدَ عَلٰى فِرَاشِهٖ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ هُوَ لَكَ يَا عَبْدَ ابْنَ زَمْعَةَ اَلْوَلَدُ لِلْفِرَاشِ وَلِلْعَاهِرِ الْحَجَرُ ثُمَّ قَالَ لِسَوْدَةَ بِنْتِ زَمْعَةَ اِحْتَجِبِيْ مِنْهُ لِمَا رَاٰى مِنْ شَبَهِهٖ بِعُتْبَةَ فَمَا رَاٰهَا حَتّٰى لَقِيَ اللّٰهَ وَفِيْ رِوَايَةٍ قَالَ هُوَ اَخُوْكَ يَا عَبْدُ ابْنُ زَمْعَةَ مِنْ اَجْلِ اَنَّهٗ وُلِدَ عَلٰى فِرَاشِ اَبِيْهِ۔ (متفق علیه)

3312. Sayyidah Ayshah رضی اللہ عنہا narrated that Utbah ibn Abu Waqas (a disbeliever) instructed his brother Sayyiduna Sa'd ibn Abu Waqas رضی اللہ عنہ that the son of the slave girl of zamah was his, so he must take care of him. Sa'd رضی اللہ عنہ accordingly took him in the year of conquest, saying that he was his brother's son, but Abd ibn Zamah رضی اللہ عنہ claimed him as his brother. Both of them took their case to Allah's Messenger صلی اللہ علیہ وسلم. Sa'd رضی اللہ عنہ pleaded, "O Messenger of Allah, my brother had instructed me concerning him." And, Abd ibn Zamah رضی اللہ عنہ pleaded, "He is my brother and son of my father's female slave. He was born on his bed." So, Allah's Messenger صلی اللہ علیہ وسلم said, "He belongs to you, O Abd ibn Zam'ah The child is attributed to the (owner of the) bed (on which it is born). And for the fornicator is deprival (or stoning to death)." Then, he said to Sayyidah Sawdah bint Zam'ah, "Veil yourself before him." Because of the resemblance to Utbah that he saw in him. So, he never saw her till he met Allah (meaning till he died).

According to another version, the Prophet صلی اللہ علیہ وسلم said, 'He is your brother, O Abd ibn Zamah," because he was born on his father's bed.[1]

COMMENTARY: We must first introduce some people named in this hadith.

Utbah was the real brother of Sa'd ibn Abu Waqqas رضی اللہ عنہ. While Allah had guided Sa'd رضی اللہ عنہ to Islam and he was a glorious sahabi رضی اللہ عنہ Utbah could not find himself out of labyrinth of disbelief and died an infidel. He was the wretched who had broken the teeth of the Prophet صلی اللہ علیہ وسلم during the battle of Uhud.

Zam'ah رضی اللہ عنہ was the father of Sayyidah Sawdah رضی اللہ عنہا and Abd رضی اللہ عنہ was Zam'ah's son, and real brother of Sayyidah Sawdah رضی اللہ عنہا. She was the wife of the Prophet صلی اللہ علیہ وسلم. She was the wife of the Prophet صلی اللہ علیہ وسلم.

During the pre-Islamic days, the adulterer could claim that a child born through adultery should be attributed to him. Accordingly, Utbah claimed percentage of the child, and instructed his brother Sa'd to raise his son. However, the Prophet صلی اللہ علیہ وسلم ruled that the child was Abd's brother who may raise him up. The fornicator gets nothing but stones. (A comprehensive commentary precedes against hadith # 3073 of Abu Umamah) رضی اللہ عنہ.

The Prophet صلی اللہ علیہ وسلم instructed Sayyidah Sawdah رضی اللہ عنہا the mother of the believers, to observe the veil before the child of the female slave. Though according to Shari'ah (divine law), he was her brother because his lineage is attributed to her father Zam'ah and Shariah does not recognize resemblance, physiognomy and analogy, yet the boy had a similarity to Utbah who had claimed to have sired him, so it was better to be on the safe side that she should not meet him.

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[1] Bukhari # 2745, Muslim # 36-1457.

The words of the second version at the conclusion: 'because he was born on his father's bed' are a narrator's words to explain the reason of the prophet's صلى الله عليه وسلم decision. It means that he was conceived on his father's bed and when he was born the female slave had belonged to Zam'ah. Also the child was born in his house.

IN PHYSIOGNOMY ACCEPTABLE

(٣٣١٣) وَعَنْهَا قَالَتْ دَخَلَ عَلَيَّ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ ذَاتَ يَوْمٍ وَهُوَ مَسْرُوْرٌ فَقَالَ اَيْ عَائِشَةُ اَلَمْ تَرَ اَنَّ مُجَزِّزًا الْمُدْلِجِيَّ دَخَلَ فَلَمَّا رَاٰى اُسَامَةَ وَزَيْدًا وَعَلَيْهِمَا قَطِيْفَةٌ قَدْ غَطَّيَا رُؤُوْسَهُمَا وَبَدَتْ اَقْدَامُهُمَا فَقَالَ اِنَّ هٰذِهِ الْاَقْدَامَ بَعْضُهَا مِنْ بَعْضٍ۔ (متفق عليه)

3313. Sayyidah Ayshah رضى الله عنها narrated that one day Allah's Messenger صلى الله عليه وسلم came home. He looked very pleased and asked. "O Ayshah do you not know that Mujazziz al Mudliyi came (to the Masjid Nabawi). When he saw Usamah and Zayd, who had a rug over them covering their heads but leaving their feet open, he remarked, "These feet are like one another (of related men)."[1]

COMMENTARY: Sayyiduna Zayd ibn Harithan رضى الله عنه who was the prophet's صلى الله عليه وسلم adopted son was very fair and handsome. His son, Sayyiduna Usamah, رضى الله عنه however, was black like his mother, Sayyidah Umm Ayman رضى الله عنها she was a female slave, black complexioned. The hypocrites used to pick fault with Usmah's رضى الله عنه lineage. The prophet صلى الله عليه وسلم was very grieved with this attitude of the hypocrites. Suddenly, this thing happened.

Mujazziz alMudliji was a noted physiognomist. He could tell about a person from his creatures and trace his relationship. The Arabs relied on the readings of physionomists, so that prophet was very pleased when he spoke of Zayd and Usamah giving a lie to the hypocrites. He knew that they would no more dare to question relationship of father and son.

However, it does not follow that Shari'ah (divine law) recognizes physiognomy nor is lineage necessarily confirmed and verified through this art. Imam Abu Hanifah رحمه الله contends according to this but Imam Shafi'I رحمه الله, Imam Maalik رحمه الله and Imam Ahmad رحمه الله place reliance on the judgment and deduction of a physiognomist. They go so for as to say that if a female slave is owned by two men together and bears a child whose parentage both man claim then both of them should consult a physiognomist. They are bound to accept his deduction.

According to Imam Abu Hanifah رحمه الله, the child will belong to both men eyes of Shari'ah (divine law) though practically the child may belong to one of them, and the female slave will be the Umm walad of both of them.

DISOWNING PARENTAGE

(٣٣١٤) وَعَنْ سَعْدِ بْنِ اَبِيْ وَقَّاصٍ وَاَبِيْ بَكْرَةَ قَالَا قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنِ ادَّعٰى اِلٰى غَيْرِ اَبِيْهِ وَهُوَ يَعْلَمُ فَالْجَنَّةُ عَلَيْهِ حَرَامٌ۔ (متفق عليه)

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[1] Bukhari # 6771, Muslim # 38-1459.

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3314. Sayyiduna Sa'd ibn Abu Waqqas رضی اللہ عنہ and Sayyiduna Abu Bakrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "If anyone ascribes his parentage to one other than his father, knowing that he is not his father, then paradise is forbidden to him."[1]

COMMENTARY: If anyone intentionally relates his parentage to a man other than his father to a man other than his father and does not regard it as wrong but believes that such false description of lineage is lawful then he falls in the ambit of disbelief because he makes lawful what is unlawful. If he lies in the limits of disbelief and dies as such then the gates of paradise are shut on him for ever. But, if he does not regard what he is doing as lawful act and knows it to be unlawful, then the gates of paradise will be shut on him till he has gone through the punishment for his sin.

Or these words of the Prophet صلی اللہ علیہ وسلم that paradise is forbidden to him are a reproof meant to keep people away from this wrong.

(٣٣١٥) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا تَرْغَبُوْا عَنْ اٰبَائِكُمْ فَمَنْ رَغِبَ عَنْ اَبِيْهِ فَقَدْ كَفَرَ۔ (متفق علیہ)

3315. Sayyiduna Abu Hurayrah narrated that Allah's Messenger narrated that Allah's Messenger said, "Do not turn against your father's (by ascribing you parentage to other man) , for, he who turns against his father, shows ingratitude for blessings."[2]

COMMENTARY: It was a common ill during the jihiliyah (ignorance period) for people to reject their own fathers and to call other men as their parents.

It is forbidden to do such a thing knowingly and if anyone does it and regards it as lawful then he becomes a disbelievers. In this case concluding words of the hadith will be translated litrally: 'he disbelieves.' If he does not regard what he does as permitted, then the words would mean 'he does what resembles disbelief.' or 'he shows ingratitude...'

وَقَدْ ذُكِرَ حَدِيْثُ عَائِشَةَ مَا مِنْ اَحَدٍ اَغْيَرُ مِنَ اللّٰهِ فِيْ بَابِ صَلٰوةِ الْخُسُوْفِ

Indeed the hadith of Sayyidah Ayshah "No one is more displeased than Allah..." has been mentioned in the chapter on solar eclipse Hadith # 1483.

SECTION II اَلْفَصْلُ الثَّانِيْ

HE WHO DISOWNS HIS CHILD WILL BE DEPRIVED OF ALLAH'S SIGHT

(٣٣١٦) وَعَنْ اَبِيْ هُرَيْرَةَ اَنَّهٗ سَمِعَ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ لَمَّا نَزَلَتْ اٰيَةُ الْمُلَاعَنَةِ اَيُّمَا امْرَأَةٍ اَدْخَلَتْ عَلٰى قَوْمٍ مَنْ لَيْسَ مِنْهُمْ فَلَيْسَتْ مِنَ اللّٰهِ فِيْ شَيْءٍ وَلَنْ يُدْخِلَهَا اللّٰهُ جَنَّتَهٗ وَاَيُّمَا رَجُلٍ جَحَدَ وَلَدَهٗ وَهُوَ يَنْظُرُ اِلَيْهِ احْتَجَبَ اللّٰهُ مِنْهُ وَفَضَحَهٗ عَلٰى رُءُوْسِ الْخَلَائِقِ فِي الْاَوَّلِيْنَ وَالْاٰخِرِيْنَ۔ (رواہ ابوداؤد والنسائی والدارمی)

3316. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that he heard the Prophet صلی اللہ علیہ وسلم say when trhe verse about li'an (or invoking curses) was revealed, "If a woman brings to a people one who does not belong to them (by committing adultery and

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[1] Bukhari # 6766, Muslim # 63-1154, Ibn Majah # 2610, Musnad Ahmad 5-46.

[2] Muslim # 13-62, Abu Dawud # 6768, Musnad Ahmad 2-526.

attributing the child conceived to her husband) then she stands nowhere in Allah's sight and Allah will not admit her to paradise. And, if any man disowns his child (whom his wife bears) while it looks at him (and he knows that it belongs to him), then Allah's will veil Himself from him and disgrace him in the presence of all creatures, the first and the last (exposing his evil deeds to them)."[1]

COMMENTARY: The hadith says clearly that neither should a woman attribute an illicit child to her husband nor should a man accuse her falsely of adultery.

PREFERABLE TO DIVORCE AN INDECENT WOMAN

(٣٣١٧) وَعَنِ ابْنِ عَبَّاسٍ قَالَ جَاءَ رَجُلٌ إِلَى النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ إِنَّ لِيْ اِمْرَأَةً لَا تَرُدُّ يَدَ لَامِسٍ فَقَالَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ طَلِّقْهَا قَالَ إِنِّيْ أُحِبُّهَا قَالَ فَأَمْسِكْهَا إِذًا۔ رَوَاهُ أَبُوْدَاوٗدَ وَالنَّسَائِيُّ وَقَالَ النَّسَائِيُّ رَفَعَهٗ أَحَدُ الرُّوَاةِ إِلَى ابْنِ عَبَّاسٍ وَأَحَدُهُمْ لَمْ يَرْفَعْهُ قَالَ وَهٰذَا الْحَدِيْثُ لَيْسَ بِثَابِتٍ۔

3317. Sayyiduna Ibn Abbas رضی اللہ عنہ narrated that a man come to the Prophet صلی اللہ علیہ وسلم submitted that he had a wife who never rejected a touch (meaning, advances by men to comit evil). So, the Prophet صلی اللہ علیہ وسلم said to him, "Divorce her," but he submitted, "(How can I because) I love her." "Then", he said, "keep her." (And restrain her.") Nasai said: one narrator traced it up to Ibn Abbas رضی اللہ عنہ while another did not, and that this his hadith is not well established.[2]

COMMENTARY: This hadith is evidence that a woman of bad character must be divorce. However, if it is not easy to do that then it is allowed to keep her but she must be restrained from committing evil. If she does not desist, and the husband is unwilling to divorce her then he will be committing a sin.

CONFIRMING SOMEONE AS A FAMILY MEMBER

(٣٣١٨) وَعَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيْهِ عَنْ جَدِّهٖ أَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَضٰى أَنَّ كُلَّ مُسْتَلْحَقٍ اسْتُلْحِقَ بَعْدَ أَبِيْهِ الَّذِيْ يُدْعٰى لَهٗ إِدَّعَاهُ وَرَثَتُهٗ فَقَضٰى أَنَّ كُلَّ مَنْ كَانَ مِنْ أَمَةٍ يَمْلِكُهَا يَوْمَ أَصَابَهَا فَقَدْ لَحِقَ بِمَنِ اسْتَلْحَقَهٗ وَلَيْسَ لَهٗ مِمَّا قُسِمَ قَبْلَهٗ مِنَ الْمِيْرَاثِ شَيْءٌ وَمَا أَدْرَكَ مِنْ مِيْرَاثٍ لَمْ يُقْسَمْ فَلَهٗ نَصِيْبُهٗ وَلَا يُلْحَقُ إِذَا كَانَ أَبُوْهُ الَّذِيْ يُدْعٰى لَهٗ أَنْكَرَهٗ فَإِنْ كَانَ مِنْ أَمَةٍ لَمْ يَمْلِكْهَا أَوْ مِنْ حُرَّةٍ عَاهَرَ بِهَا فَإِنَّهٗ لَا يَلْحَقُ وَلَا يَرِثُ وَإِنْ كَانَ الَّذِيْ يُدْعٰى لَهٗ هُوَ الَّذِيْ اِدَّعَاهُ فَهُوَ وَلَدُ زِنْيَةٍ مِنْ حُرَّةٍ كَانَ أَوْ أَمَةٍ۔ (رواہ ابوداؤد)

3318. Sayyiduna Amr ibn Shu'ayb رحمہ اللہ narrated on the authority of his father from his grandfather that the Prophet صلی اللہ علیہ وسلم said about one whose lineage is confirmed to a family after the death of his (her) father to whom he is attributed and the (father's) heirs confirm him to be one of them, that if he is the child of a female slave who was owned by the father on the day he had had intercourse with her, then he is joined with those who call for his inclusion (and will have right of

[1] Abu Dawud # 2263, Nasa'i # 3481, Ibn Majah # 2743, Darimi # 2238.

[2] Abu Dawud # 2049, Nasa'i # 3464.

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inheritance with those only who include him).[1]
But he will get no share of the inheritance that has been divided beforehand. He will, nevertheless, get his portion of inheritance that has not been divided till then. However, if the father to whom he is attributed had disowned him (in his lifetime) then he is not joined to the heirs (even if they seek to join him and he will not be his heir). Again, if he is the child of a female slave whom the father had not owned (but had committed adultery with someone else's female slave) , or (the child) of a free woman with whom he had committed adultery, then he is not joined to the heirs and will not inherit even if the man (meaning the father) to whom he is attributed had claimed (paternity of) him, because he is a child of adultery whether his mother was a free woman or a slave.[2]

COMMENTARY: Khattabi رحمه الله said that the Prophet صلى الله عليه وسلم had imposed these command in early Islam. The female slave in those days were lewd and salacious. They had illicit sexual relationship with different men and also their master, When they bore a child there were many claimants to it. The prophet صلى الله عليه وسلم imposed these commands to put an end to these bickerings.

The hadith may be explained by a example. Suppose that Zayd died. His heirs joined a boy with him. Their claim would be accepted and the boy would be attributed to Zayd and he will regarded as eligible to his portion of inheritance. However, this will be done only

(i) if the boy was born to a female slave who has been owned by Zayd who must have had a sexual intercourse in a legal manner. Or,

(ii) if the boy was born to a free woman who was Zayd's wife, and,

(iii) Zayd, too, may have confirmed during his life time, "This is my son."

Moreover, as stated in the hadith, the boy will have right of inheritance only with those heirs who have made the claim to include him. If all of them have made this claim then he will have the right of inheritance from all of the heirs. If only some had made the claim then he will have the right from these some heirs.

Furthermore, the boy will have a share of inheritance only in what which has not been distributed. He will have no share in that which has been divided before the claim to include him.

On the contrary, if Zayd had disowned this boy during his life time and had said, "He is not my son." Then even if the heirs agree to include him with them then too he will not be eligible to join them and he will get no share of inheritance.

In the same way, if the boy was born to a female slave whom Zayd did not own (as in the hadith # 3312 of Sayyidah Ayshash رضى الله عنها about the son of Zam'ah), or to a free woman who was not Zayd's wife - meaning, he was born out wedlock because of Zayd's adultery - then too he will not be included with Zayd's heirs and he will not be eligible to get any part of Zayd's inheritance.

In fact, even if Zayd had, in his life, included him among his heirs as his son, then too he will not be regarded as an heir because a child born out of wedlock is not recognized as a fornicator's relative or included in his lineage and he cannot be a fornicator's heirs.

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[1] See commentary on this hadith for this portion.

[2] Abu Dawud # 2265, Ibn Majah # 2746, Musnad Ahmad 2-219, Darimi # 3112.

JEALOUSY & PRIDE

(٣٣١٩) وَعَنْ جَابِرِ بْنِ عَتِيْكٍ اَنَّ نَبِيَّ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ مِنَ الْغَيْرَةِ مَا يُحِبُّ اللّٰهُ وَمِنْهَا مَا يُبْغِضُ اللّٰهُ فَاَمَّا الَّتِيْ يُحِبُّهَا اللّٰهُ فَالْغَيْرَةُ فِي الرِّيْبَةِ وَاَمَّا الَّتِيْ يُبْغِضُهَا اللّٰهُ فَالْغَيْرَةُ فِيْ غَيْرِ رِيْبَةٍ وَاِنَّ مِنَ الْخُيَلَاءِ مَا يُبْغِضُ اللّٰهُ وَمِنْهَا مَا يُحِبُّ اللّٰهُ فَاَمَّا الْخُيَلَاءُ الَّتِيْ يُحِبُّ اللّٰهُ فَاخْتِيَالُ الرَّجُلِ عِنْدَ الْقِتَالِ وَاخْتِيَالُهُ عِنْدَ الصَّدَقَةِ وَاَمَّا الَّتِيْ يُبْغِضُ اللّٰهُ فَاخْتِيَالُهُ فِي الْفَخْرِ وَفِيْ رِوَايَةٍ فِي الْبَغْيِ۔ (رواه احمد وابوداؤد والنسائی)

3319. Sayyiduna Jabir ibn Atik رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم of Allah said, "Of jealously (concerning one's wife and one's female slave) there is what Allah loves and there is what Allah detests. As for the kind that He loves, it rises about a matter of doubt. And, as for the one that Allah detests, it rises without a cause of doubt. (The former is like when a husband sees his wife or female slave with a stranger and the latter is when he does not see such a thing, but lets his imagination run wild.)

Also, there is pride that Allah loves and pride that Ailah detests. As for the pride that Allah loves it is a man's pride when he fights (in jihad against the infidel to demonstrate his strength and courage) and man's pride when giving sadaqah (charity) (for Allah's sake happily). And, as for the pride that Allah detests, it is boasting (on one's lineage)."

According to another version:

(instead of 'boasting) 'it is oppression (and cruelty to others).'[1]

COMMENTARY: If a man goes on boasting on his high pedigree, Allah does not like it. Allah likes excellence and superiority in only religion. He says:

اِنَّ اَكْرَمَكُمْ عِنْدَ اللّٰهِ اَتْقَاكُمْ

{Surely, the most honourable of you in the sight of Allah is the most reverential (pious) of you} (49: 13)

PROUD POOR: In one copy of the Mishkat the words are (فی الفقر) instead of (فی الفخر). The pride that Allah does not like is the arrogance of the poor. He detests that a poor man should be proud over his contentment, patience and trust in Allah. The ulama (Scholars) say that this kind of pride is worse than the arrogance of the rich on his wealth. However, a poor man's pride is disliked by Allah when it is displayed against the poor people. But if it is shown to the rich, or the arrogant, then it is desirable because this kind of pride is called sadaqh.

SECTION III اَلْفَصْلُ الثَّالِثُ

FORNICATOR HAS NO RIGHT TO THE CHILD

(٣٣٢٠) وَعَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ اَبِيْهِ عَنْ جَدِّهٖ قَالَ قَامَ رَجُلٌ فَقَالَ يَا رَسُوْلَ اللّٰهِ اِنَّ فُلَانًا ابْنِيْ عَاهَرْتُ بِاُمِّهٖ فِي الْجَاهِلِيَّةِ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا دِعْوَةَ فِي الْاِسْلَامِ ذَهَبَ اَمْرُ الْجَاهِلِيَّةِ اَلْوَلَدُ لِلْفِرَاشِ وَلِلْعَاهِرِ الْحَجَرُ۔ (رواه ابوداؤد)

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[1] Abu Dawud # 2659, Nasa'i # 2558, Darimi # 2226, Musnad Ahmad 5-445.

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3320. Sayyiduna Amr ibn Shu'ayb reported from his father (Shu'ayb) رحمه‌الله from his grandfather (Abdullah ibn Amr) صلى الله عليه وسلم that a man stood up and said, 'O Messenger of Allah, so and so is my son. I did have illicit intercourse with his mother during the jahiliyan." Allah's Messenger صلى‌الله‌عليه‌وسلم said, "There is no claim in Islam for what has passed during the jahliyah. (That may have been a valid claim in the pre-Islamic period but it is not recognised in Islam.) The child belongs to him on whose bad it is born (or was conceived). And, for the fornicator is deprival or stoning to death."[1]

COMMENTARY: The Sahib ul firash (صاحب‌الفراش) owner of the bed refers to the husband or master of the mother of the illicit child. When she bears a child, it is attributed to her husband or master. If she is not married to anyone and is not anyone's slave, then the child will be attributed to herself. The fornicator has no relation at all with the child.

LI'AN IS NOT OBSERVED WITH FOUR WOMEN

(٣٣٢١) وَعَنْهُ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اَرْبَعٌ مِنَ النِّسَاءِ لَا مُلَاعَنَةَ بَيْنَهُنَّ النَّصْرَانِيَّةُ تَحْتَ الْمُسْلِمِ وَالْيَهُوْدِيَّةُ تَحْتَ الْمُسْلِمِ وَالْحُرَّةُ تَحْتَ الْمَمْلُوْكِ وَالْمَمْلُوْكَةُ تَحْتَ الْحُرِّ۔ (رواه ابن ماجة)

3321. Sayyiduna Amr ibn Shu'ayb رحمه الله reported from his father from his grand father (Abdullah ibn Amr) رضى الله عنه that the prophet صلى الله عليه وسلم said that there are four kinds of women between whom (and their husbands) li'an is not observed. (They are:) a Christian woman who is married to a Muslim, a Jewess who is married to a Muslim, a freewoman who is married to a slave and a slave woman who is married to a freeman."[2]

COMMENTARY: If a husband accuses his wife of having had illicit sexual relationship with another man and she is a Christian woman, a Jewess or a slave woman then li'an cannot be observed between them. Similarly, if he is a slave and his wife is a freewoman, li'an cannot be observed between them. The reason is that li'an is a testimony. So both partners must be such that their testimony is recognized in Shari'ah (divine law). However a male or female slave and a disbeliever are not of this category. Their testimony is not reliable in Shari'ah (divine law).

PROPHET صلى‌الله‌عليه‌وسلم TRIED TO PUT OFF LI'AN

(٣٣٢٢) وَعَنِ ابْنِ عَبَّاسٍ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَمَرَ رَجُلًا حِيْنَ اَمَرَ الْمُتَلَاعِنَيْنِ اَنْ يَتَلَاعَنَا اَنْ يَّضَعَ يَدَهُ عِنْدَ الْخَامِسَةِ عَلٰى فِيْهِ وَقَالَ اِنَّهَا مُوْجِبَةٌ۔ (رواه النسائى)

3322. Sayyiduna Ibn Abbas رضى‌الله‌عنه narrated that the Prophet صلى‌الله‌عليه‌وسلم ordered two people (husband and wife) to invoke curses on one another. Then he instructed a man to put his hand on the mouth of the husband observing the li'an when he would make the fifth testimony. He said, "It is what makes it *wajib (obligatory).*" (He mean that the fifth testimony decides the case.)[3]

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[1] Abu Dawud # 2274.

[2] Ibn Majah # 2076.

[3] Abu Dawud # 2255, Nasa'i # 3472.

COMMENTARY: The aim was to caution the man by placing a hand on his mouth of serious consequences, so the truth might came out. In this way, li'an would not be observed. This, shows that the Prophet صلى الله عليه وسلم wished to keep off from the extreme course of li'an and he wished that husband and wife should come out with the truth and settle for the worldly punishment which is wilder than the severe chastisement of the hereafter. The worldly punishment is the hadd.

DEVIL IS WITH EVERYONE

(٣٣٢٣) وَعَنْ عَائِشَةَ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ خَرَجَ مِنْ عِنْدِهَا لَيْلًا قَالَتْ فَغِرْتُ عَلَيْهِ فَجَاءَ فَرَأٰى مَا اَصْنَعُ فَقَالَ مَالَكِ يَا عَائِشَةُ اَغِرْتِ فَقُلْتُ وَمَالِيَ لَا يَغَارُ مِثْلِيْ عَلٰى مِثْلِكَ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَقَدْ جَاءَكِ شَيْطَانُكِ قَالَتْ يَارَسُوْلَ اللّٰهِ اَمَعِيْ شَيْطَانٌ؟ قَالَ نَعَمْ قُلْتُ وَ مَعَكَ يَا رَسُوْلَ اللّٰهِ قَالَ نَعَمْ وَلٰكِنْ اَعَانَنِي اللّٰهُ عَلَيْهِ حَتّٰى اَسْلَمَ۔ (رواه مسلم)

3323. Sayyidah Ayshah رضى الله عنها narrated that once during the night of (Sha'ban). Allah's Messenger صلى الله عليه وسلم went out from her. She felt jealous concerning him. So, when he returned and observed her condition, he asked, "What is wrong with you, O Ayshah? Are you jealous?" She said "Shall not one like me be jealous about one like you?" He said, "your devil has come to you (and pushed you in doubt)." She asked, "O Messenger of Allah, do I have a devil?" He said, "Yes!" She asked. O Messenger of Allah, is there a devil with you too? He said, "Yes, but Allah helps me against him so that I am safe from him (or, so that he has become a Muslim subservient to me)."

COMMENTARY: On the night of the fifteenth Sha'ban the prophet صلى الله عليه وسلم went out from the house of Sayyidah Ayshah رضى الله عنها to the Jannatul Baqi, the graveyard in Madinah, to consign reward to the dead and pray for their forgiveness.

However, Sayyidah Ayshah رضى الله عنها thought that he had gone to another of his wives. The devil had put this idea into her mind. She turned jealous, got up and followed him till she realized where he was headed. She hurried back home and was panting when the Prophet صلى الله عليه وسلم returned find her gasping for breath. Then he exchange of conversation, as in the hadith, followed.

CHAPTER - XVI

IDDAH

بَابُ الْعِدَّةِ

(*Iddah* is a period after divorce or the death of her husband for which a woman must wait before re-marrying (to ensure that there is no confusion about the paternity of children).] - Muwatta Imam Maalik.

The dictionary meaning of *iddah* is 'to count.' In the terminology of Shariah, *iddah* is a specified period (which will be explained in the following lines) for which a widow or a divorcee must stay in her home. Till such time as this period is over, she must not get any where not meet any (stranger) man, but after the period expires, she may go wherever she likes and remarry at will. This period begins when her husband divorces her or their

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marriage breaks because of Khula, eela or otherwise, or any thing like marriage (e.g. nikkah fasid) breaks, provided the husband and wife must have had sexual intercourse or been alone in the true sense. Or, the period begins when the husband dies.

THE PERIOD OF *IDDAH*: The period of waiting of a freewoman whom her husband has divorced, or whose marriage is annulled (*nikah (wedlock)* fasid) , and she experiences menstruation, is till she gets three menses. She will reside in her husband house where she was divorced, and she will not go out of it nor marry any other man. Similarly, if sexual intercourse is had with a woman in doubt (by mistake) , then her *iddah* too is till she experiences three menstruations. It means that if a man mistakes a woman for his wife and has sexual intercourse with her, then she too will have to observe *iddah* till she experiences three menstruations and will not let her husband have sexual intercourse with her till her *iddah* is over.

The *iddah* of the woman whose invalid marriage is terminated, like a time-defined marriage, and they are separated, or her husband dies before they are separated, is also till she experiences three menstruations. The *iddah* is the same - till three menses are experienced - of an umm walad when she is set free or her master expires.

If a woman does not get menses because she is undergo, or barren, or old, then her *iddah* is three months.

If the husband of a free woman dies, then her *iddah* is four months and ten days. This is irrespective of:

- whether they have had sexual intercourse or not,
- whether she is a Muslim or a Jewess or a Christian woman married to a Muslim,
- whether she is adult or minor,
- or she is in menopause,
- whether her husband is a freeman or a slave,
- or, she experiences menses during her waiting period or not.

The *iddah* of a pregnant woman is till she bears the child, whether her husband has divorced her or has died, whether she is a free woman or a female slave. Her *iddah* expires the moment a child is born to her, even if it is immediately after her husband divorces her or dies. In fact, it is stated in kitab Mabsut that if the husband of a pregnant woman dies and is being given a bath or is being shrouded, and she delivers a child, then her *iddah* is deemed to be over.

A SLAVE WOMAN: If a woman is not a free woman but someone's female slave and her husband divorces her then her *iddah* if she gets her menses is till she get them twice, but if she does not menstruate, then her *iddah* is a month and a half. If her husband dies, then her *iddah* is for two months and five days whether she gets the menses or not.

THE COMMENCEMENT OF *IDDAH*: When a woman is divorced, her *iddah* begins after the divorce. The three menstruations after that will be counted. If any one divorces his wife while she is menstruating, then that menstruation will not be counted, but the three menstruations after that will be reckoned.

When a woman's husband dies, then *iddah* will be reckoned from the death of the husband.

If a woman does not learn of her divorce or her husband's death and the period of *iddah* is over then her *iddah* will be deemed to have been observed. Books of figh may be consulted for further information.

SECTION I اَلْفَصْلُ الْاَوَّلُ

MAINTENANCE DURING *IDDAH*

(٣٣٢٤) عَنْ اَبِيْ سَلَمَةَ عَنْ فَاطِمَةَ بِنْتِ قَيْسٍ اَنَّ اَبَا عَمْرِو بْنَ حَفْصٍ طَلَّقَهَا الْبَتَّةَ وَهُوَ غَائِبٌ فَاَرْسَلَ اِلَيْهَا وَكِيْلُهُ الشَّعِيْرَ فَسَخِطَتْهُ فَقَالَ وَاللّٰهِ مَا لَكِ عَلَيْنَا مِنْ شَيْءٍ فَجَاءَتْ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَذَكَرَتْ ذٰلِكَ لَهُ فَقَالَ لَيْسَ لَكِ نَفَقَةٌ فَاَمَرَهَا اَنْ تَعْتَدَّ فِيْ بَيْتِ اُمِّ شَرِيْكٍ ثُمَّ قَالَ تِلْكَ امْرَاَةٌ يَغْشَاهَا اَصْحَابِيْ اِعْتَدِّيْ عِنْدَ ابْنِ اُمِّ مَكْتُوْمٍ فَاِنَّهُ رَجُلٌ اَعْمٰى تَضَعِيْنَ ثِيَابَكِ فَاِذَا اَحْلَلْتِ فَاٰذِنِيْنِيْ قَالَتْ فَلَمَّا حَلَلْتُ ذَكَرْتُ لَهُ اَنَّ مُعَاوِيَةَ ابْنَ اَبِيْ سُفْيَانَ وَاَبَا جَهْمٍ خَطَبَانِيْ فَقَالَ اَمَّا اَبُو الْجَهْمِ فَلَا يَضَعُ عَصَاهُ عَنْ عَاتِقِهِ وَاَمَّا مُعَاوِيَةُ فَصُعْلُوْكٌ لَا مَالَ لَهُ اِنْكِحِيْ اُسَامَةَ بْنَ زَيْدٍ فَكَرِهْتُهُ ثُمَّ قَالَ اِنْكِحِيْ اُسَامَةَ فَنَكَحْتُهُ فَجَعَلَ اللّٰهُ فِيْهِ خَيْرًا وَّاغْتَبَطْتُ، وَفِيْ رِوَايَةٍ عَنْهَا فَاَمَّا اَبُوْ جَهْمٍ فَرَجُلٌ ضَرَّابٌ لِلنِّسَاءِ رَوَاهُ مُسْلِمٌ وَفِيْ رِوَايَةٍ اَنَّ زَوْجَهَا طَلَّقَهَا ثَلَاثًا فَاَتَتِ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ لَا نَفَقَةَ لَكِ اِلَّا اَنْ تَكُوْنِيْ حَامِلًا۔

3324. Sayyiduna Abu Salamah رضی اللہ عنہ narrated that (Sayyidah) Fatimah bint Qayss رضی اللہ عنہا informed him that (Sayyiduna) Abu Amr ibn Hafs رضی اللہ عنہ divorced her al-Battah (which is an absolute divorce with three pronouncement) while he himself was not present (being away and having conveyed the message at the hands of someone else). Then his agent (or representative) sent her some barley. She was angry at him (because she regarded it as not enough) , but he swore by Allah that she had no right on them (and whatever she was given an act of kindness). She came to Allah's Messenger صلی اللہ علیہ وسلم and related to him all that. He said, "You have no claim to maintenance," and he instructed her to spend her *iddah* at the house of Umm Sharik رضی اللہ عنہ. But, again, he said, "That is a woman at whose house my companions meet (being her relatives and children). So, spend the *iddah* at the house of Ibn Umm Maktum. He is a blind man and you can keep your garments there. When it becomes lawful for you to remarry (on completion of your *iddah*) , inform me."

She added, "when I was out of the *iddah*, I mentioned it to him that Mu'awiyah ibn Abu Sufyan رضی اللہ عنہما and Abu Jahm رضی اللہ عنہ had proposed marriage to me. And, he said, 'Abu Jahm never puts his stick aside from his shoulder and Mu'awiyah is a poor man without any property. So, marry Usmah ibn Zayd. 'But, I expressed my dislike, and he persisted, 'Marry Usamah.' So, I married him." Allah caused blessing in it and she was envied. (The two of them loved one another and were an 'ideal couple, so people envied them).

According to another version she reported: (The Prophet صلی اللہ علیہ وسلم said:) "Abu Jahm is a man who beats woman."

According to another version: Her husband divorced her with three pronouncements of divorce. When she came to the Prophet صلی اللہ علیہ وسلم he said, "There is no maintenance for you unless you are pregnant." (In that case

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maintenance will be *wajib (obligatory)*)[1]

COMMENTARY: The Prophet صلى الله عليه وسلم said to her that she might be able to keep her garments at the house of Sayyiduna Ibn Umm Maktum رضى الله عنه , because he was a blind man. This because he was a blind man. This means that she would not have to be careful about observing the veil. Or, "as long as you observe the *iddah* there, do not don garments of adornment." Or, it is a figurative way of saying. "Do not go out of the house during your *iddah*, for, it is not allowed to do so."

Allamah (The learned Scholar) Imam Nawawi رحمه الله said that some scholars have deduced from this hadith that a woman is permitted to look at strangers (men), provided they do not see her, but, this deduction is weak and the correct thing is what most ulama (Scholars) say, 'it is forbidden both t o men and to women to look at the strangers among each other.' Allah has given the same command to both men and woman:

قُلْ لِّلْمُؤْمِنِيْنَ يَغُضُّوْا مِنْ اَبْصَارِهِمْ (الاية)

{Say to the believing men that they should lower their gaze....} (24: 30)

وَقُلْ لِّلْمُؤْمِنٰتِ يَغْضُضْنَ مِنْ اَبْصَارِ هِنَّ

{And say to the believing woman that they should lower their gaze...} (28: 31)

Moreover, the hadith of Sayyidah Umm Salamah رضى الله عنها concerning Sayyiduna Ibn Umm Maktum رضى الله عنه relative to this subject is a very strong evidence. She narrated that she and Sayyiduan Maymunah رضى الله عنه were both seated with the Prophet صلى الله عليه وسلم when Ibn Umm Maktum رضى الله عنه came towards him. So, he said to both of them, his wives, "veil yourselves." Sayyidah Umm Salamah رضى الله عنها submitted, "He is blind!" She meant that he would not be able to see them. The Prophet صلى الله عليه وسلم asked them:

اَفَعَمْيَا وَانِ اَنْتُمَا اَلَسْتُمَا تُبْصِرَانِهِ

"Are the two of you blind? Do you not see him?"

Given these evidences, certainly, the prophet صلى الله عليه وسلم had never made it lawful for Sayyidah Fatimah رضى الله عنها to look at Ibn Umm Maktum رضى الله عنه. His only aim was that she would be safe there because no one would look at her there. At for her, she knew the command of Allah that a woman must not look at strangers (men). Hence, she would not look at Ibn Umm Maktum رضى الله عنه.

Anyway, as for the contention of some ulama (Scholars) on the basis of the hadith about Sayyidah Fatimah رضى الله عنه that a woman may see unknown men, most of the ulama (Scholars) have given this rejoinder (as in the foregoing lines).

Imam Abu Hanifah رحمه الله holds that a woman may look at a stranger but not at the portion from his navel to his knees, provided she is safe from being t empted sexually. If she is not sae from her sexual desires being aroused then it is forbidden to her to look at the entire body of a stranger man.

The reference to Abu Jahm رضى الله عنه never putting aside his stick means that he was very strict and severe and short tempered. He beat women and it was not possible for Sayyidah

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[1] Muslim # 36-1480, Abu Dawud # 2784, Nasa'i # 3245, Musnad Ahmad 6-413, Muwatta Maalik # 67 (Tallaq).

Fatimah رضی اللہ عنہا to adjust and adopt herself to his temperament. We learn from this that if anyone is aware of a shortcoming or defect in someone then it is proper for him to disclose it to the man or woman who contemplates marriage with him or her so that none of them goes through an ordeal after their marriage.

Sayyidah Fatimah رضی اللہ عنہا first declined to marry Sayyiduna Usamah رضی اللہ عنہ because he was the son of the Prophet's صلی اللہ علیہ وسلم slave and he was black while she was a beautiful Quraysh woman. But, Sayyiduna Usamah رضی اللہ عنہ was dear to the Prophet and was very near to him, so he asked her again to marry him. Thus, she did not think it proper to decline a second time. She obeyed the Prophet صلی اللہ علیہ وسلم and married him. Allah caused their marriage to prosper and she found peace and comfort in their married life.

The ulama (Scholars) differ on whether a woman who has been divorced absolutely (with three pronouncements) is entitled to maintenance and lodging from her husband if she is not pregnant.

Imam Abu Hanifah رحمہ اللہ and some other ulama (Scholars) hold that it is *wajib (obligatory)* for the husband to provide her provision and lodging. Lodging is established from this verse:

اَسْكِنُوْهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِّنْ وُّجْدِكُمْ

{House them where you house yourselves according to your means} (65: 6)

It is wjib to do so, in the sight of fiqh (Islamic jurisprudence), because that woman sits through the *iddah* enduring all restrictions for the sake of her husband.

Sayyiduna Umar رضی اللہ عنہ also held this contention. In fact he said of this hadith, "We cannot neglect the Book of Allah and the Prophet's صلی اللہ علیہ وسلم *sunnah (Prophet's* صلی اللہ علیہ وسلم *practice)* (which assert that maintenance and lodging are *wajib (obligatory)*, on the man divorces, for the divorcee) simply because a woman (Fatimah bint Qays) says so (that the Prophet صلی اللہ علیہ وسلم said to her that her husband was not liable to provide her the maintenance and residence). Perhaps, she may have misunderstood his words or may have forgotten what he had said, Indeed, I have myself heard the Prophet صلی اللہ علیہ وسلم say that the maintenance and lodging of this woman is the responsibility of the husband."

However, Ibn Maalik رحمہ اللہ said this had happened in the knowledge of the sahabah (Prophet's Companions) رضی اللہ عنہم (none of whom renounced her statement). So, it amounts to consensus.

Imam Ahmad رضی اللہ عنہ says that neither is maintenance nor lodging for the woman *wajib (obligatory)* on the husband. He cites this hadith.

Imam Maalik رحمہ اللہ Imam Shafi'I رحمہ اللہ and some ulama (Scholars) rule that on the basis of this verse (65: 6) ... (اسکنوھن) {House them.....}, it is *wajib (obligatory)* to provide residence to the woman, but not *wajib (obligatory)* to provide maintenance.

If the woman is divorced while she was pregnant, then maintenance for her will be *wajib (obligatory)* in the light of this hadith.

(٣٣٢٥) وَعَنْ عَائِشَةَ قَالَتْ اِنَّ فَاطِمَةَ كَانَتْ فِيْ مَكَانٍ وَحْشٍ فَخِيْفَ عَلٰى نَاحِيَتِهَا فَلِذٰلِكَ رَخَّصَ لَهَا النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ تَعْنِيْ فِي النُّقْلَةِ وَفِيْ رِوَايَةٍ قَالَتْ مَالِفَاطِمَةَ اَلَا تَتَّقِي اللّٰهَ تَعْنِيْ فِيْ قَوْلِهَا لَا سُكْنٰى وَلَا نَفَقَةَ۔ (رواه البخاری)

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3325. Sayyidah Ayshash رضى الله عنها narrated that (Sayyidah) Fatimah رضى الله عنها was (lodged) in a desolate place. There always was fear concerning the neighbourhood of her. For that reason the Prophet صلى الله عليه وسلم gave her permission, meaning to move (during her *iddah* to the house of Ibn Umm Maktum) رضى الله عنه.
According to another version: She wondered, "what is wrong with Fatimah? Does she not fear Allah?" neither was lodging *wajib (obligatory)* nor maintenance.[1]

COMMENTARY: Sayyidah Fatimah bint Qays رضى الله عنها lodged after her divorce in the house that was situated in a very lonely place. Since there was a constant fear or prowlers, so the Prophet صلى الله عليه وسلم allowed her to shift to the house of Ibn Umm Maktum رضى الله عنه.
Sayyidah Ayshah رضى الله عنها said about it, "Let no one presume by this that there is no residence for a divorced woman (who is divorced with three pronouncements) and she might spend her *iddah* at any place she liked. Rather, Fatimah had a reason to do so."
The second version quotes Sayyidah, Ayshah رضى الله عنها as saying that Fatimah رضى الله عنه was mistaken in ascribing the words to the Prophet صلى الله عليه وسلم that there is no maintenance and no lodging for a divorced woman.
In other words, Sayyidah Ayshah رضى الله عنها had the same view as Sayyiduna Umar رضى الله عنه had. Imam Abu Hanifah رحمه الله abides by their opinion that a woman who is divorced with talaq ba'in is entitled to residence and maintenance.

(٣٣٢٦) وَعَنْ سَعِيْدِ بْنِ الْمُسَيِّبِ قَالَ اِنَّمَا نُقِلَتْ فَاطِمَةُ لِطُوْلِ لِسَانِهَا عَلٰى اَحْمَائِهَا۔ (رواه فى شرح السنة)

3326. Sayyiduna Sa'eed ibn Al-Musayyib رضى الله عنه said, "Fatimah was moved (from her husband's home during her *iddah*) only because she was sharp tongued against her husband's relatives."[2]

COMMENTARY: This there were two reasons for Sayyidah Fatimah رضى الله عنها to be moved out from from her husband's residence. These are outlined in the hadith (# 3325 and 3226)

WHAT IF THERE IS A PRESSING NEED TO GO OUT DURING *IDDAH*

(٣٣٢٧) وَعَنْ جَابِرٍ قَالَ طُلِّقَتْ خَالَتِيْ ثَلَاثًا فَاَرَادَتْ اَنْ تَجُدَّ نَخْلَهَا فَزَجَرَهَا رَجُلٌ اَنْ تَخْرُجَ فَاَتَتِ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ بَلٰى فَجُدِّيْ نَخْلَكِ فَاِنَّهٗ عَسٰى اَنْ تَصَدَّقِيْ اَوْ تَفْعَلِيْ مَعْرُوْفًا۔ (رواه مسلم)

3327. Sayyiduna Jabir رضى الله عنه narrated that his maternal aunt was divorced with three pronouncements (so she restrained herself in the *iddah*). She intended (one day) to cut down dates from her palm trees. But, one man forbade her to go out. So, she came to the Prophet صلى الله عليه وسلم (and told him about it). He said, "Of course, cut down dates from your palm trees because you may perhaps make a sadaqah (charity) (and give them in charity), or perform a kind deed."[3]

COMMENTARY: The prophet صلى الله عليه وسلم meant to say that if the dates were enough to attract zakah (Annual due charity), then 'you will pay their zakah (Annual due charity). If

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[1] Bukhari # 5323, 5324, 5325 Muslim # 54-1471, Abu Dawud # 2292.
[2] Baghawi in Sharh in *Sunnah (Prophet's صلى الله عليه وسلم practice)* # 2384.
[3] Muslim # 55-1483, Abu Dawud # 2297, Nasa'i # 3550, Ibn Majah # 2034, Darimi # 2288.

they are below the nisab, then 'you will show kindness to your neighbour and the poor by given them optional sadaqah (charity),' or 'you will present them as gifts to them.'
In other words, if she were not to give the sadaqah (charity), then it was not allowed to her to go out of the house.
Imam Nawawi رحمه الله said that a woman who observes *iddah* after being divorced wit h three pronouncements is allowed to go out of the house to attend to any need.
The ruling of the Hanafis in this regard will be mentioned against the hadith of Sayyidah Umm Atiyah رضی الله عنها (hadith # 3331).

PREGNANT WOMAN'S *IDDAH*

(٣٣٢٨) وَعَنِ الْمِسْوَرِ بْنِ مَخْرَمَةَ اَنَّ سُبَيْعَةَ الْاَسْلَمِيَّةَ نُفِسَتْ بَعْدَ وَفَاةِ زَوْجِهَا بِلَيَالٍ فَجَاءَتِ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَاسْتَأْذَنَتْهُ اَنْ تَنْكِحَ فَاَذِنَ لَهَا فَنَكَحَتْ۔ (رواه البخاری)

3328. Sayyiduna Al-Miswar ibn Makhramah رضی الله عنه narrated that some nights after the death of her husband, Sayyidah Sabi'ah Al-Aslamiyah رضی الله عنها gave birth to a child. After that, she went to the Prophet صلی الله علیه وسلم and sought his permission to marry. He gave her permission and she married.[1]

COMMENTARY: Sayyidah Sabi'ah Al-Aslamiyah was pregnant when her husband died. However, a few days thereafter, she gave birth to a child.
The Prophet صلی الله علیه وسلم gave her permission to marry again when she sought his permission.
The ulama (Scholars) say that when a woman is pregnant and her husband dies or divorces her, then the *iddah* is over the moment she gives birth to a child. She is then at liberty to marry, if she so desires. In fact, this may happen shortly after her husband's death or his divorcing her.

COLLYRIUM MUST NOT BE APPLIED DURING *IDDAH*

(٣٣٢٩) وَعَنْ اُمِّ سَلَمَةَ قَالَتْ جَاءَتِ امْرَاَةٌ اِلَى النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَتْ يَا رَسُوْلَ اللّٰهِ اِنَّ بِنْتِيْ تُوُفِّيَ عَنْهَا زَوْجُهَا وَقَدِ اشْتَكَتْ عَيْنُهَا اَفَنَكْحُلُهَا فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا مَرَّتَيْنِ اَوْ ثَلَاثًا كُلُّ ذٰلِكَ يَقُوْلُ لَا ثُمَّ قَالَ اِنَّمَا هِيَ اَرْبَعَةُ اَشْهُرٍ وَعَشْرٌ وَقَدْ كَانَتْ اِحْدَاكُنَّ فِي الْجَاهِلِيَّةِ تَرْمِيْ بِالْبَعْرَةِ عَلَى رَأْسِ الْحَوْلِ۔ (متفق علیه)

3329. Sayyidah Umm Salamah رضی الله عنها narrated that a woman came to the Prophet صلی الله علیه وسلم and said, "O Messenger of Allah, my daughter! Her husband has died (so that she is observing the *iddah*) and her eyes ache. May we apply collyrium to it?" He said, "No!" – twice or thrice (on her repeated asking) , "No" each time. Then he exclaimed, "That is merely for four months and ten days while, indeed, during the jahiliyah (ignorance period). One of you could throw away the piece of dung only after one year had passed."[2]

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[1] Bukhari # 5320, Nasa'i # 3506, Ibn Majah # 2029, Musnad Ahmad 4. 327.

[2] Bukhari # 5336, Muslim # 1488, Abu Dawud # 2299, Nasa'i # 3138, Ibn Majah # 2084, (The Arabic copy of Mishkat has the words at the end (بعدلات زوجها) (After the death of her husband).

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COMMENTARY: Imam Ahmad رحمه‌الله hold that a woman who observes the *iddah* may not apply collyrium, if the *iddah* is after her husband's death – not even if her eyes ache and not for adornment.
Imam Abu Hanifah رحمه‌الله and Imam Maalik رحمه‌الله hold that if there is a compulsion, like an ailment, then it is allowed to apply collyrium.
Imam Shafi'I رحمه‌الله holds that when there is some trouble in the eyes, a woman may apply collyrium in her eyes at night but clean it off during the day.
The Hanafis say about this hadith that this woman had pretended that her eyes pained. Actually, she wished to grace herself with collyrium and the Prophet صلى‌الله‌عليه‌وسلم know the facts, so he disallowed her.
In pre-Islamic days, when a man died, his wife was consigned to a narrow and dark cell. She wore very rough, coarse clothing and could use no kind of make up, not even perfume. When, after one year, the day of her release arrived, a donkey, a goat or any other animal or a bird was brought to her and she scratched her vagina with one of these animals or birds. Then she was brought out of the cell and she was handed over some dung which she had to throw away that marked the end of her *iddah*.
So, considering that, the *iddah* in Islam is meager.

MOURNING DURING *IDDAH*

(٣٣٣٠) وَعَنْ أُمِّ حَبِيْبَةَ وَزَيْنَبَ بِنْتِ جَحْشٍ عَنْ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لَا يَحِلُّ لِامْرَأَةٍ تُؤْمِنُ بِاللّٰهِ وَالْيَوْمِ الْاٰخِرِ اَنْ تُحِدَّ عَلٰى مَيِّتٍ فَوْقَ ثَلَاثِ لَيَالٍ اِلَّا عَلٰى زَوْجٍ اَرْبَعَةَ اَشْهُرٍ وَعَشْرًا۔ (متفق عليه)

3330. Sayyiduna Umm Habibah رضى الله عنها and Sayyidah Zaynab bint Jahsh رضى الله عنها narrated that Allah's Messenger صلى‌الله‌عليه‌وسلم said, "It is not lawful for the woman who believes in Allah and the Last Day that she should mourn for more than three nights over any one who has died, except over husband for four months and ten days."[1]

COMMENTARY: To mourn is to abstain from adorning oneself, applying perfume, collyrium, etc. It is not allowed to mourn for anyone, other than a husband, for more than three days. A woman must, however, mourn for her husband for four months and ten days, that is, during the *iddah (waiting period)*, it being *wajib (obligatory)* on her.
Most scholars say that a woman's *iddah (waiting period)* begins with her husband's death. Sayyiduna Ali رضى الله عنه however, said that *iddah (waiting period)* will commerce when a woman learns of her husband's death.
Accordingly, if a woman's husband dies and she does not know of it so that four months and ten day s go by too, then the majority of the ulama (Scholars) hold that her *iddah (waiting period)* is over. However, according to what Sayyiduna Ali رضى الله عنه says, her *iddah (waiting period)* will not have been observed at all. Rather, when she learns of his death, it will commence and last for four months and ten days from that time.

(٣٣٣١) وَعَنْ أُمِّ عَطِيَّةَ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لَا تُحِدُّ امْرَأَةٌ عَلٰى مَيِّتٍ فَوْقَ ثَلَاثٍ اِلَّا عَلٰى زَوْجٍ اَرْبَعَةَ اَشْهُرٍ وَعَشْرًا وَلَا تَلْبَسُ ثَوْبًا مَصْبُوْغًا اِلَّا ثَوْبَ عَصْبٍ وَلَا تَكْتَحِلُ وَلَا تَمَسُّ طِيْبًا اِلَّا اِذَا

[1] Bukhari # 5334, Muslim # 58-486, Abu Dawud # 2999, Tirmidhi # 1196, Nasa'i # 3537, Darimi # 2284, Muwatta Maalik # 101 (Talaq).

طَهُرَتْ نُبْذَةً مِنْ قُسْطٍ اَوْ اَظْفَارٍ۔ متفق علیه وزاد ابوداؤد وَلَا تَخْتَضِبُ۔

3331. Sayyidah Umm Atiyah رضی الله عنها narrated that Allah's Messenger said, "A woman must not observe mourning for a dead person more than three days, except for a husband for (whom she must mourn for) four months and ten days. And, she must not wear (during these day s of *iddah (waiting period)*) any dyed garment other than 'asb nor apply collyrium not touch perfume, except, when she is purified (from menses). Some qust or azfar." Abu Dawud adds: "And not apply henna."[1]

COMMENTARY: Dyed garments are those that are dyed in bright colours and are very showy - of Saffron, Safflower, r ed-dyed, etc. Those are generally worn to adorn oneself. But, if a woman does not have any other garment then she may wear these colours because she has to over her body anyway At any rate she must not use them to adorn herself 'Asb was a particular kind of clock during those days. It was from Yemen. The cloth was dyed before being woven. It was dyed in Safflower so that it turned red and had white stripes because the portion that was fastened at an end before being dyed turned white. So, this kind of dyed garment is allowed to the woman in her *iddah (waiting period).*

If a cloth is dyed after being woven then it turns into bright red safflower and it is disallowed by Shari'ah (divine law).

Ibn Hammam رحمه الله says that our (Hanafi) Ulama (Scholars) say that for a woman observing the *iddah (waiting period),* it is not proper to wear the asb too.

Imam Shafi'I رحمه الله says that she is allowed to wear it (asb) whether it is thick or fine.

Imam Maalik رحمه الله permits thick asb but not fine asb.

The different opinions of the scholars about applying collyrium have been presented in a commentary against the hadith of Sayyidah Umm Salamah رضی الله عنها (# 3329)

Ibn Hammam رحمه الله that (according to the Hanafis) a woman observing idah may apply collyrium when it is absolutely unavoidable but not otherwise.

Qut, and azfar are perfumes of a kind. Qust is costus or an aromatic wood - awd or aloes wood. Generally, woman and children use it as incense. Kirmani said that qust is awd hindi. Azfar is a perfume.

In those days, women used both these perfumes after purifying themselves from menstruation, to remove the bad odour. Thus, the Prophet صلی الله علیه وسلم allowed such a woman to use it on purifying herself but apart from that a woman observing *iddah (waiting period)* is disallowed to use these perfumes.

MOURNING: This hadith says that it is *wajib (obligatory)* for the woman observing the *iddah (waiting period)* on the death of her husband to keep in mourning. The ulama (Scholars) are unanimous about it, but their opinion differ on the nature of the mourning.

Imam Shafi'I رحمه الله and the majority of the ulama (Scholars) say that it is *wajib (obligatory)* on every woman who is in *iddah (waiting period)* to mourn her husband after his death. This applies to every woman with whom he did have sexual intercourse or did not have it whether she is minor or major, virgin or not, freewoman or slave girl, Muslim or infidel.

Imam Abu Hanifah رحمه الله said that mourning is not *wajib (obligatory)* on seven kinds of women. According to Durr ul Mukhtar, they are:

(i) a disbelieving woman,

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[1] Bukhari # 5341, Muslim # 66-938. Abu Dawud # 2302. Nasa'i # 3536. Musnad Ahmad 5. 85

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(ii) an insane woman,
(iii) a minor,
(iv) an umm walad who is in *iddah (waiting period)* because her master has set her free, or he has died,
(v) a woman whose marriage was invalid (so observes the *iddah (waiting period)*) ,
(vi) a woman with whom a stranger had sexual intercourse out of doubt (or by mistake) taking her to be his wife.
(vii) a woman who observes talq raj'I (revocable divorce).

OTHER THAN HUSBAND: As mentioned in the hadith, a woman is not permitted to mourn any man other than her husband more than three days, Besides, even these many days, it is merely permitted but not *wajib (obligatory)* to mourn him for three days. Moreover, if her husband does not permit her in mourn any man even the three days, then he has a right to do so because a wife's adornment is for her husband only. If she does not abandon mourning and does not adorn herself when he asks her to do that, hen he is allowed to beat her because if she mourns, the husband's right is ignored.

COMMANDS & RULINGS FOR MOURNING: As for a woman who is divorced with a talaq raj'I (revocable divorce) , her *iddah (waiting period)* is merely to confine herself at home for the specified period and not marry any other man. She may adorn and beautify herself.

The woman who is adult and sane and a Muslim must confine herself in her house all through her *iddah (waiting period)*, not contract another marriage and not beautify herself, if she has been divorced by three pronouncements, or one talaq ba'in (irrevocable and final divorce) , or their marriage breaks in some way or other, or her husband dies. All the things mentioned here (for her not to do) are forbidden to her.

Mourning is to not beauty and to don dirty clothing.

These things are forbidden to a woman during her *iddah (waiting period)* till it lasts: applying perfume, wearing jewelery and ornaments and flowers, applying collyrium, eating betel leaves to redden the lips, rubbing red lead to darken the lips, applying oil to hair, combing hair, applying henna, donning nice garment and dyed, silken and bright clothing.

However, when there is a dire need, or it is unavoidable, then there is no harm if any of these things is done. If she has a headache and it is necessary to apply hair oil then she may do so but should not use perfumed hair oil. In the same way, she may apply collyrium when her eyes ache.

If any woman's marriage was not valid and was annulled, or her husband dies, then it is not *wajib (obligatory)* for this woman to go into mourning.

If a woman observed *iddah (waiting period)* on being set free, like an umm walad whose master sets her free so she confines herself in an *iddah (waiting period)*, then it is not *wajib (obligatory)* on her to mourn.

If an woman observes *iddah (waiting period)*, then it is not allowed to send her proposal of marriage. But, it is allowed to make a reference to it, like saying. "I wish to marry her," provided the woman is observing the *iddah (waiting period)* for death of her husband. But, if have *iddah (waiting period)* follows a divorce then it is not allowed to even make a hint of one's desire to marry her.

A woman who observes an *iddah (waiting period)* following a divorce is never permitted to go out of her house, at all. But, she whose *iddah (waiting period)* follows her husband's death may go out of the house during the day and up to same of the night, she must not spend

the night anywhere other than her house.
A female slave is allowed to go out of the house to attend to her master's work.
The woman who observes the *iddah (waiting period)* must spend the days of her *iddah (waiting period)* in the same house where she was residing at the time of annulment (of marriage) , divorce or death of her husband. However, if she is forced to vaccate the house or there is fear losing her property in that house or the house is likely to collapse, or she is unable to pay the rent of the house - then, in these cases, it is allowed to spend the *iddah (waiting period)* in another house.
There is no harm if husband and wife stay in he same house even of she is observing *iddah (waiting period)* after talaq ba'in (irrevocable divorce), provided they are separated by a screen. If the husband is a sinner and an unreliable man or the house is small, then the woman may shift from the house, though it is preferable for the husband to move to another house. If the two of them, when staying in the same house, keep a reliable woman with them who is capable of keeping them apart then it is very good.
If husband and wife are travelling together and he divorces her during the journey (a talaq ba'in or with three pronouncements of divorce) or he dies and her home town is at a distance of less than three days journey which is called a Shari'ah (divine law) journey) , then she may return to her home town. However, if her place is at a distance of three day s journey or more than that, but her destination (where they had intended to go when they began their journey) is at a shorter distance then she must go to the destination instead of going to her home town. In both these options, her guardian may or may not be with her. The better course, in any case, would be for the woman, if she is in a city at the time of divorce or widowhood, not to depart from it without spending her *iddah (waiting period)* there. If she departs then it is imperative that she has a mahram with her.
However, the sahibayn, meaning Imam Abu Yusuf and Imam Muhammad رحمه الله contend that if she has a mahram with her, then she may depart from there even before her *iddah (waiting period).*

SECTION II اَلْفَصْلُ الثَّانِيْ

NOT ALLOWED TO MOVE UNNECESSARILY DURING *IDDAH (WAITING PERIOD)*

(٣٣٣٢) وَعَنْ زَيْنَبَ بِنْتِ كَعْبٍ اَنَّ الْفُرَيْعَةَ بِنْتَ مَالِكِ بْنِ سِنَانٍ وَهِيَ اُخْتُ اَبِيْ سَعِيْدِنِ الْخُدْرِيِّ اَنَّهَا اَخْبَرَتْهَا اَنَّهَا جَاءَتْ اِلٰى رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ تَسْاَلُهُ اَنْ تَرْجِعَ اِلٰى اَهْلِهَا فِيْ بَنِيْ خُدْرَةَ فَاِنَّ زَوْجَهَا خَرَجَ فِيْ طَلَبِ اَعْبُدٍ لَهُ اَبَقُوْا فَقَتَلُوْهُ قَالَتْ فَسَاَلْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَنْ اَرْجِعَ اِلٰى اَهْلِيْ فَاِنَّ زَوْجِيْ لَمْ يَتْرُكْنِيْ فِيْ مَنْزِلٍ يَمْلِكُهُ وَلَا نَفَقَةٍ فَقَالَتْ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ نَعَمْ فَانْصَرَفْتُ حَتّٰى اِذَا كُنْتُ فِي الْحُجْرَةِ اَوْ فِي الْمَسْجِدِ دَعَانِيْ فَقَالَ اُمْكُثِيْ فِيْ بَيْتِكِ حَتّٰى يَبْلُغَ الْكِتَابُ اَجَلَهُ قَالَتْ فَاعْتَدَدْتُ فِيْهِ اَرْبَعَةَ اَشْهُرٍ وَعَشْرًا۔ (رواه مالك والترمذى وابوداؤد والنسائى وابن ماجة والدارمى)

3332. Sayyidah Zaynab bint رضی الله عنها **Ka'b reported that Sayyidah Fari'ah bint Maalik ibn Sinan** رضی الله عنها **the sister of Abu Sa'eed Khudri** رضی الله عنه **informed her: I went to Allah's Messenger** صلی الله علیه وسلم **t o ask him whether I could return to my family, the Banu Khudrah (to spend my *iddah (waiting period)* with them)**

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because my husband had gone to search for his runaway slaves but they had killed him. So, I asked Allah's Messenger صلى الله عليه وسلم if I may return to my folk, for, my husband had not left me in a house belonging to him and he had not left any sustenance. Allah's Messenger صلى الله عليه وسلم said, "Yes," So, I went back but while I was yet in the courtyard of the room or the mosque, he called me back and said, "Stay in your home till the prescribed period (*iddah (waiting period)*) is over." So, I (obey his command and) observed the *iddah (waiting period)* in it for four month and ten days.[1]

COMMENTARY: This hadith emphasizes that a woman observing the *iddah (waiting period)* must not move from one house to another.

Shaykh us *Sunnah (Prophet's صلى الله عليه وسلم practice)* has it that the ulama (Scholars) differ on whether it is necessary *iddah (waiting period)* after her husband's death to stay in the house of her husband, or not.

Imam Shafi'I رحمه الله gave two verdicts, the more correct of which says that it is necessary for her to stay in her husband's house.

Sayyiduna Umar رضى الله عنه Uthman رضى الله عنه , Abdullah ibn Mas'ud رضى الله عنه and Abdullah ibn Umar رضى الله عنه also held this opinion. They cite this very hadith. The Prophet صلى الله عليه وسلم first permitted Sayyidah Fari'ah رضى الله عنها to move to another house, but then he forbade her to do so and commanded her to spend the *iddah (waiting period)* in her husband's house. In other words, he abrogated his first approval.

The second verdict of Imam Shafi رحمه الله is that a woman who observes *iddah (waiting period)* for the death of her husband need stay in the same house. Rather, she may spend the *iddah (waiting period)* wherever she likes. This is also the opinion of Sayyiduna Ali رضى الله عنه. Ibn Abbas رضى الله عنه and Sayyidah Ayshah رضى الله عنها. They rely on the permission that the prophet صلى الله عليه وسلم had first granted to Sayyidah 'Fari'ah رضى الله عنها.The second revised command that he gave was of the kind of recommendation.

The ruling of Imam Abu Hanifah رحمه الله will be presented, insha Allah in the chapter on an-Nafaqat in its Introduction (Chapter XVIII).

NO ADORNMENT DURING *IDDAH (WAITING PERIOD)*

(٣٣٣٣) وَعَنْ أُمِّ سَلَمَةَ قَالَتْ دَخَلَ عَلَيَّ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ حِيْنَ تُوُفِّيَ اَبُوْسَلَمَةَ وَقَدْ جَعَلْتُ عَلَيَّ صَبِرًا فَقَالَ مَا هٰذَا يَا اُمَّ سَلَمَةَ قُلْتُ اِنَّمَا هُوَ صَبِرٌ لَيْسَ فِيْهِ طِيْبٌ فَقَالَ اِنَّهٗ يَشُبُّ الْوَجْهَ فَلَا تَجْعَلِيْهِ اِلَّا بِاللَّيْلِ وَتَنْزِعِيْهِ بِالنَّهَارِ وَلَا تَمْتَشِطِيْ بِالطِّيْبِ وَلَا بِالْحِنَاءِ فَاِنَّهٗ خِضَابٌ قُلْتُ بِاَيِّ شَيْءٍ اَمْتَشِطُ يَا رَسُوْلَ اللّٰهِ؟ قَالَ بِالسِّدْرِ تُغَلِّفِيْنَ بِهٖ رَاْسَكِ۔ (رواه ابوداؤد والنسائی)

3333. Sayyidah Umm Salamah رضى الله عنها narrated: Allah's Messenger صلى الله عليه وسلم paid me a visit when Abu Salamah رضى الله عنه (my first husband) died. (I was observing the *iddah (waiting period)*.) I had applied on my ace (the juice of) aloes. He asked, "O Umm Salamah, what is it?" I submitted, "It is only (juice of) aloes and it has no

[1] Tirmidhi # 1204, Abu Dawud # 2300, Nasa'i # 3532 (or 3537) , Ibn Majah # 2031, Maalik Muwatta # 87 (Talaq) , Darimi # 2287.

scent in it." He said, "But, it brightens the face, so (if you must, then) apply it at night only and wipe it off at day time (because it gives an impression of adornment. Do not comb yourself with scent or with henna, for it is a dye (of red colour)." I submitted, "With what may I comb myself, O Messenger of Allah?" (How may I clean my hair?" He said, "With lote-tree leaves and smear your head with them generously (encasing them as though with a cover)."[1]

COMMENTARY: While the ulama (Scholars) are u nanimous that a woman observing *iddah (waiting period)* is not allowed to use scented hair oil, they differ on the use of plain, un perfumed oil, like olive oil and sesame seed.

Imam Abu Hanifah رحمه الله and Imam Shafi'I رحمه الله disallow oil of all kinds, perfumed or not perfumed. However, they relax the prohibition when it becomes absolutely necessary.

Imam Maalik رحمه الله Imam Ahmad رحمه الله and the Zawahir (or Zuhiris) hold that a woman observing *iddah (waiting period)* is allowed to use un perfumed oil.

(٣٣٣٤) وَعَنْهَا عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ الْمُتَوَفّٰى عَنْهَا زَوْجُهَا لَا تَلْبَسُ الْمُعَصْفَرَ مِنَ الثِّيَابِ وَلَا الْمُمَشَّقَةَ وَلَا الْحُلِيَّ وَلَا تَخْتَضِبُ وَلَا تَكْتَحِلُ۔ (رواه ابوداؤد والنسائی)

3334. Sayyidah Umm Salamah رضی الله عنها narrated that the Prophet صلی الله علیه وسلم said, "She whose husband has died must not wear garments dyed with saffron or red ochre, nor may she wear jewellery, nor may she apply henna (on hand, feet and hair) , and collyrium (in the eyes)."[2]

COMMENTARY: If a woman wears dark black or ash coloured clothing the there is no harm in it. It is also allowed to wear garments dyed with saffron over a long period which leaves no perfume. According to the HIdayah, if this woman (observing the *iddah (waiting period)*) has some problem, like itches, lice, etc. then she is allowed to wear silk too.

SECTION III اَلْفَصْلُ الثَّالِثُ

MORE ABOUT THE *IDDAH (WAITING PERIOD)* OF THE DIVORCED

(٣٣٣٥) عَنْ سُلَيْمَانَ ابْنِ يَسَارٍ اَنَّ الْاَحْوَصَ هَلَكَ بِالشَّامِ حِيْنَ دَخَلَتِ امْرَاَتُهُ فِي الدَّمِ مِنَ الْحَيْضَةِ الثَّالِثَةِ وَقَدْ كَانَ طَلَّقَهَا فَكَتَبَ مُعَاوِيَةُ بْنُ اَبِيْ سُفْيَانَ اِلٰى زَيْدِ بْنِ ثَابِتٍ يَسْاَلُهُ عَنْ ذٰلِكَ فَكَتَبَ اِلَيْهِ زَيْدٌ اَنَّهَا اِذَا دَخَلَتْ فِي الدَّمِ مِنَ الْحَيْضَةِ الثَّالِثَةِ فَقَدْ بَرِئَتْ مِنْهُ وَبَرِئَ مِنْهَا لَا يَرِثُهَا وَلَا تَرِثُهُ۔ (رواه مالك)

3335. Sayyiduna Sulayman ibn Yasar رضی الله عنه narrated that Al-Ahwas رضی الله عنه died in Syria and at (about) that time, his wife had begun her third menstrual discharge after he had divorced her. So, Mu'awiyah ibn Abu Sufyan رضی الله عنه wrote and asked Zayd ibn Thabit رضی الله عنه about that. Zayd رضی الله عنه wrote to him, "When she began her third menstrual bleeding, she became free from him and he became free from her. He will not inherit from her and she will not inherit from him."[3]

COMMENTARY: Sayyiduna Ahwas رضی الله عنه had divorced his wife who was observing her

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[1] Abu Dawud # 2305, Nasa'i # 3537, Muwatta Maalik # 108 (Talaq).

[2] Abu Dawud # 2304, Nasa'i # 3535, Musnad Ahmad 6-302.

[3] Muwatta Maalik # 56 (Talaq) - 29. 21-56.

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iddah (waiting period) after that. When her third menstrual period began, Ahwas رضی اللہ عنہ died and otherwise she ought to have observed the *iddah (waiting period)* for four months and ten days on his death. So, Mu'awiyah رضی اللہ عنہ sought counsel from Zayd ibn Thabit رضی اللہ عنہ on whether she would inherit from her husband or not.

Zayd رضی اللہ عنہ replied that when the third menstruation began, her relationship with him terminated the moment the observed blood of her third period and she was liberated from the restrictions of marriage. She was not liable to observe *iddah (waiting period)* on his death because either her *iddah (waiting period)* on her divorce had been observed for most of its period or the third (and final) menstruation had begun, and so her *iddah (waiting period)* was presumed to be over. Hence, if the man alive, he would not have been her heir when the *iddah (waiting period)* was over, so too when he has died, she cannot inherit him.

Mu'awiyah's رضی اللہ عنہ intention was

(i) either to know if the woman would inherit from Ahwas رضی اللہ عنہ or not,

(ii) or, to know if the woman should finish her *iddah (waiting period)* when her third menses commenced or she was bound to begin her *iddah (waiting period)* for the man's death

Mulla Ali Qari رحمہ اللہ cites Teebi رحمہ اللہ as saying that this hadith establishes the meaning of (قروء) (Quru) in the verses (2: 228).

وَالْمُطَلَّقٰتُ يَتَرَبَّصْنَ بِاَنْفُسِهِنَّ ثَلٰثَةَ قُرُوْءٍ۔ (البقرة ۲: ۲۲۸)

{Divorced woman shall keep themselves waiting for three periods....} (2: 228)

Teebi رحمہ اللہ says that Quru means 'purity' (In other words, he claims that the Shafi'I interpretation is correct that the *iddah (waiting period)* of a divorced woman is not three menstrual periods, but three purifications after menses.

However, the ruling given was by a sahabi, Zayd ibn Thabit رضی اللہ عنہ. Moreover, his opinion differs at another place when he says that the *iddah (waiting period)* of a female slave is two menstruations.

Besides, it is also not known definitely whether Mu'awiyah رضی اللہ عنہ abides by Zayd's رضی اللہ عنہ verdict, or not

The Hanafis say that the ruling (as per the verse) (ثلثہ مرءۃ) is three periods of menstruations). The righteous caliphs and most of the sahabah (Prophet's Companions) رضی اللہ عنہم had the same opinion. Thirteenof the sahabah (Prophet's Companions) رضی اللہ عنہم used to say that unless a woman is not purified from the third menses, the man (her husband) has more right over her. (Hence, the *iddah (waiting period)* is completed only after she purifies from her third menses since she was divorced, and the relationship of the man with her snaps completely.)

This establishes that (قروء) (quru) means menstruation.

Mulla Ali Qari has written about it in detail in his book (Mirqat). He has presented many argument of the Hanafis.

THE *IDDAH (WAITING PERIOD)* OF THE DIVORCED

(۳۳۳۶) وَعَنْ سَعِيْدِ بْنِ الْمُسَيَّبِ قَالَ قَالَ عُمَرُ بْنُ الْخَطَّابِ اَيُّمَا امْرَأَةٍ طُلِّقَتْ فَحَاضَتْ حَيْضَةً اَوْ حَيْضَتَيْنِ ثُمَّ رُفِعَتْهَا حَيْضَتُهَا فَاِنَّهَا تَنْتَظِرُ تِسْعَةَ اَشْهُرٍ فَاِنْ بَانَ بِهَا حَمْلٌ فَذٰلِكَ وَاِلَّا اعْتَدَّتْ بَعْدَ التِّسْعَةِ الْاَشْهُرِ

ثُمَّ حَلَّتْ۔ (رواه مالك)

3336. Sayyiduna Sa'eed ibn al-Musayyib رضی اللہ عنہ narrated that Sayyiduna Umar ibn al-Khattab رضی اللہ عنہ said, "If a woman who is divorced experiences one or two menstrual periods and after that stops menstruating then she must wait nine months. If it is clear that she is pregnant, then the command is obvious (that *iddah (waiting period)* would end with the birth of child). If not, she must observe an *iddah (waiting period)* of three months after the nine months. Thereafter, she is free to marry."[1]

CHAPTER - XVII

ISTIBRA : LETTING A NEW ACQUIRED SLAVE WOMAN PURIFY FROM ONE MENSTRUATION, OR BEAR A CHILD

بَابُ الْاِسْتِبْرَاءِ

In Shari'ah (divine law) istibra is 'the purification of the womb.' When a man receives a female slave by purchasing her or through inheritance or gift, then he is forbidden to have sexual intercourse with her, touch her, kiss her or do any such thing to her. This is observed till her womb is known to be void of pregnancy. And, this is ascertained when she gets one menstruation. Experiencing this menstruation is called istibra of the womb. This definition will apply only when the woman gets menstruation.

If the woman does not experience menses then istibra is to let one month pass, or, if one is pregnant then istibra is when she bears a child.

Istibra is necessary in all conditions. She may be a virgin, on may have bought her from a woman or a man, or he may have received her as an inheritance from minor but intibra is necessary in all these cases. ON the face of it an analogical analysis suggests that istibra should not be necessary in these cases, because the wisdom behind it is that the womb should be free of any one else's sperm so that it may not combine with the other man's sperm and make the parentage doubtful. In all the foregoing cases, there is no possibility of the sperm of any one else being in the womb.

However, analogy must be ignored against text (of hadith). This is done here.

The Prophet صلی اللہ علیہ وسلم had said about the female slave taken captive in the Battle of Awtas. "Beware! Do not have sexual intercourse with a pregnant slave woman till she gives birth to her child. And, do not indulge in a sexual relationship with one who is not pregnant till she gets one menstruation." Clearly, there will have been among the slave women virgins and those like them, not liable to be carrying someone's sperm. This is why analogy is ignored and in there (safe) case too istibra is made *wajib (obligatory)*.

SECTION I

اَلْفَصْلُ الْاَوَّلُ

ACCURSED IS HE WHO FORGOES ISTIBRA & COHABITS WITH SLAVE GIRL

(٣٣٣٧) عَنْ اَبِي الدَّرْدَاءِ قَالَ مَرَّ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ بِامْرَأَةٍ مُجِحٍّ فَسَأَلَ عَنْهَا فَقَالُوْا اَمَةٌ لِفُلَانٍ قَالَ اَيُلِمُّ بِهَا قَالُوْا نَعَمْ قَالَ لَقَدْ هَمَمْتُ اَنْ اَلْعَنَهُ لَعْنًا يَدْخُلُ مَعَهُ فِيْ قَبْرِهٖ كَيْفَ يَسْتَخْدِمُهُ وَهُوَ لَا يَحِلُّ لَهُ اَمْرُ

[1] Muwatta Maalik # 70 (Talaq)

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كَيْفَ يُوَرِّثُهُ وَهُوَ لَا يَحِلُّ لَهُ۔ (رواه مسلم)

3337. Sayyiduna Abu Ad-Darda رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم passed by a woman who was in a very advanced state of pregnancy. He asked about her and they said to him that she was the female slave of a certain man. He asked, "Does he have sexual intercourse with her?" They said, "Yes!" He said, "Indeed, I had resolved to invoke on him a curse that would go with him inside his grave. How will he get the child to serve him when it is not lawful to get him to serve him (or make him a slave) ? Or, how will he make him on their when it is not lawful for him (to make another's son an heir)?"[1]

COMMENTARY: The Prophet صلی اللہ علیہ وسلم had intended to invoke a curse on that man because he had sexual intercourse with a female slave whom he had acquired while she was pregnant. He had dropped istibra though it is *fard (compulsory)*.

When the female slave bears a child, there could be two possibilities.

(i) The child would belong to the previous owner who had cohabited with her and sold her. So he would make another's child his heir if he acknowledge his parenthood. Or

(ii) The child would belong to him and he might not accept him as his own and make his own child his slave.

Making another's child one's heir is unlawful and deserves curse.

So, too, making one's own child a slave deserves curse.

Hence, istibra is very essential.

SECTION II اَلْفَصْلُ الثَّانِیْ

ISTIBRA' SHOULD NOT BE IGNORED BEFORE APPROACHING SLAVEGIRL

(۳۳۳۸) عَنْ اَبِیْ سَعِیْدِنِ الْخُدْرِیِّ رَفَعَهُ اِلَی النَّبِیِّ صَلَّی اللّٰهُ عَلَیْهِ وَسَلَّمَ قَالَ فِیْ سَبَایَا اَوْطَاسٍ لَا تُوْ طَأُ حَامِلٌ حَتّٰی تَضَعَ وَلَا غَیْرُ ذَاتِ حَمْلٍ حَتّٰی تَحِیْضَ حَیْضَةً۔ (رواه احمد وابوداؤد والدارمی)

3338. Sayyiduna Abu Sa'eed al-Khudri رضی اللہ عنہ narrated in a marfu manner that the Prophet صلی اللہ علیہ وسلم said about the (female) captives of (the battle of) Awtas, "Sexual intercourse may not be had with a pregnant woman till she gives birth to a child and not with one who is not pregnant till she has experienced one menstrual period."[2]

COMMENTARY: If a woman is not pregnant and also does not get menstruation, then istibra in her case is to abstain from approaching her for one month.

If a female slave is acquired while she gets menstruation then this discharge will not be counted but the next complete menstruation will be reckoned.

According to this hadith, if a female slave goes to new owners then it makes istibra *Wajib (obligatory)*. All the four imams hold this contention.

Also, if a female captive is brought from enemy land and she is a disbeliever then her previous marriage is annulled. This is an absolute ruling and applies even if their husbands are not with them. This is to what Imam Shafi'I رحمہ اللہ and Imam Maalik رحمہ اللہ subscribe, but

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[1] Muslim # 139-1441, Abu DAwud # 2156, Darimi # 2478, Musnad Ahmad 6-446.

[2] Abu Dawud # 2157, Musnad Ahmad 3-62.

Imam Abu Hanifah رحمه الله says that if both husband and wife are taken captives then their marriage remains intact.

(٣٣٣٩) وَعَنْ رُوَيْفِعِ بْنِ ثَابِتٍ نِ الْاَنْصَارِيِّ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَوْمَ حُنَيْنٍ لَا يَحِلُّ لِاِمْرِئٍ يُؤْمِنُ بِاللّٰهِ وَالْيَوْمِ الْاٰخِرِ اَنْ يَسْقِيَ مَاءَهٗ زَرْعَ غَيْرِهٖ يَعْنِي اِتْيَانَ الْحُبَالٰى وَلَا يَحِلُّ لِاِمْرِئٍ يُؤْمِنُ بِاللّٰهِ وَالْيَوْمِ الْاٰخِرِ اَنْ يَقَعَ عَلَى امْرَأَةٍ مِنَ السَّبْيِ حَتّٰى يَسْتَبْرِءَ هَا وَلَا يَحِلُّ لِاِمْرِئٍ يُؤْمِنُ بِاللّٰهِ وَالْيَوْمِ الْاٰخِرِ اَنْ يَبِيْعَ مَغْنَمًا حَتّٰى يُقْسَمَ۔ رَوَاهُ اَبُوْدَاوٗدَ وَرَوَاهُ التِّرْمِذِيُّ اِلٰى قَوْلِهٖ زَرْعَ غَيْرِهٖ۔

3339. Sayyiduna Ruwayfi ibn Thabit رضی الله عنه narrated that Allah's Messenger صلی الله علیه وسلم said on the day of Hunayn, "It is not lawful for a man who believes in Allah and the Last Day to water another's form (meaning to have sexual intercourse with a woman, who is pregnant with another man's sperm). It is not lawful for a man who believes in Allah and the Last Day to have a sexual intercourse with a captive woman (taken captive in battle with the disbelievers) till she has had one menstruation (or till one month has passed and he has observed the istibra). It is not lawful for a man who believes in Allah and the Last Day to sell the booty till it is divided."[1]
(Tirmidhi has it till 'to water another's form.')

SECTION III اَلْفَصْلُ الثَّالِثُ

ISTIBRA' FOR FEMALE SLAVE WHO IS PREGNANT

(٣٣٤٠) عَنْ مَالِكٍ قَالَ بَلَغَنِي اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ كَانَ يَأْمُرُ بِاسْتِبْرَاءِ الْاِمَاءِ بِحَيْضَةٍ اِنْ كَانَتْ مِمَّنْ تَحِيْضُ وَثَلَاثَةِ اَشْهُرٍ اِنْ كَانَتْ مِمَّنْ لَا تَحِيْضُ وَيَنْهٰى عَنْ سَقْيِ مَآءِ الْغَيْرِ۔

3340. Imam Maalik رحمه الله reported that he learnt that Allah's Messenger صلی الله علیه وسلم often commanded that istibra should be observed for female slaves (refraining from sexual intercourse with them) till they had had a menstrual discharge if they were among those who experienced menstruation, or till three months had passed if they were among those who did not get menses. And, he often forbade that one should water another's water (by mixing with it).[2]

COMMENTARY: The last words imply that istibra should be observed with a pregnant female slave too. If one acquired a female slave who is pregnant, then sexual intercourse should not be had with her till she gives birth to her child so that one's sperm does not adulterate another man's that lies in her womb.
The ulama (Scholars) agree about a female slave who does not get menstruation, her istibra is that sexual intercourse must be had with her not before she had been in one's possession for one month or more. However, some people go by this hadith and say that her istibra is to wait for three months or more before having sexual intercourse with her.

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[1] Tirmidhi # 1131, Abu Dawud # 2158, Musnad Ahmad 4-108.
[2] Razin.

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IS ISTIBRA *WAJIB (OBLIGATORY)* FOR A VIRGIN

(٣٣٤١) وَعَنِ ابْنِ عُمَرَ اَنَّهٗ قَالَ اِذَا وُهِبَتِ الْوَلِيْدَةُ الَّتِي تُوْطَأُ اَوْ بِيْعَتْ اَوْ اُعْتِقَتْ فَلْتَسْتَبْرِأْ رَحِمَهَا بِحَيْضَةٍ وَلَا تَسْتَبْرِءُ الْعَذْرَاءُ رَوَاهُمَا رَزِيْنٌ۔

3341. Sayyiduna Ibn Umar رضی اللہ عنہ said that when a slave girl with whom sexual intercourse was possible, was given as a gift, or sold, or set free, she must observe istibra (by waiting till she experiences one menstruation and clear her womb thereby). However, a virgin need not observe an istibra (to cleanse her womb).[1]

COMMENTARY: Ibn Shurayh رحمہ اللہ goes by this hadith and maintains that istibra is not *wajib (obligatory)* with a virgin female slave. However, the majority of the ulama (Scholars) say that istibra must be observe with her too, as a *wajib (obligatory)*. The command that the Prophet صلی اللہ علیہ وسلم had given at the Battle of Awtas about observing istibra with female captives was absolute. The virgins were not excluded from that command.

***IDDAH (WAITING PERIOD)* OF UMM WALAD:** The compiler of the Hidayah has written that the umm Walad whose master has died or has set her free must observe an *iddah (waiting period)* till she gets three menstruations. If she does not experience menstruation then she must wait for three months.

Ibn Hamman رحمہ اللہ said that this ruling applies if that umm walad is not pregnant, or married to another man, or observes the *iddah (waiting period)* because of some other man. If she is pregnant then her *iddah (waiting period)* is till she gives birth to a child. If she is married to someone else or observes *iddah (waiting period)* because of another man then, in these cases, no question arises of her sexual relationship with her master. So when he sets her free or dies, *iddah (waiting period)* will not be *wajib (obligatory)* for her.

The Hanafis follow this ruling. Imam Shafi'I رحمہ اللہ and Imam Maalik رحمہ اللہ contend that in these cases (when her master sets her free or dies) , the *iddah (waiting period)* of the Umm walad is till she gets one menstrual discharge. Of the Hanafis Imam Muhammad agrees with them.

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[1] Razin.

CHAPTER - XVIII

MAINTENANCE & RIGHTS OF THE SLAVES (MALE OR FEMALE)

بَابُ النَّفَقَاتِ وَحَقُّ الْمَمْلُوْكِ

The word nafaqat (نفقات) is the plural of nafqah (نفقة) Nafqah is that which is spent. In the terminology of Shari'ah (divine law), nafqah includes food, clothing, residence.

The plural form has been used in the caption because there are many kinds of nafqah, like wife's nafqah, children's nafqah, parent's nafqah, and nafqah of r elatives Besides, it cover its general senses, *wajib (obligatory)* or non-*wajib (obligatory)*.

(The second portion of the caption:) 'Rights of the slaves include food and clothing, and not compelling them to do what is beyond their power and courage.

CONCERNING NAFQAH OF WIFE: The nafqah of the wife is *wajib (obligatory)* on the husband. He must provide her food, clothing and residence. It is irrespective of whether he is younger than her or older, whether she is a Muslim or an infidel. Whether she is an adult or a minor with whom sexual intercourse is not possible.

However, nafqah is *wajib (obligatory)* on the husband provided the wife has submitted herself to him in his house, or, though she has not given herself to his charge, yet there is either a right of hers (that he refuses to give) or he himself does not ask her to submit herself (to his charge) to him.

AS FRIENDS: It is proper that the husband must make his wife his intimate e friend. They must live together in close intimacy and content themselves with whatever is easily available to them. They must follow the custom of noble families whereby the husband must work for a living and the wife must take care of the house. The husband must provide the necessities according to his means. Then the wife must employ her skill to put these things to optimum benefit for the family and associated people.

UNFRIENDLY: If the couple do not see eye to eye, the wife may approach the judge or ruler to compel her husband to give her a regular allowance. He will order the husband to provide her maintenance every month, clothing twice a year. These things will be handed over to her respectively every month and every six months.

In the judge fixes a monthly allowance and the husband fails to pay every month and she demands a daily allowance, then she may demand it every evening.

STATUS: As for the standard, it depends on their status. If they are well-off then a high standard of maintenance is *wajib (obligatory)*. If they are hard pressed then the maintenance will be in keeping wit h their status. If one of them is well off and the other is hard-pressed then an average kind of maintenance is payable - such as lesser than that for the well off but more than that for the hard-pressed. However, some authorities maintain that in every case, the husband's status will be the determining factor. Maintenance allowance will be paid according to this status, irrespective of the position of the wife.

If the spouses disagree on the question of the husband's status then the wife may take the case to the judge and present her wit nesses. If he is convinced then he will judge the husband's status as claimed by the wife. If she does not present witnesses, her petition will be rejected.

SERVANT: If the wife has a servant for her and the husband is well-off, then he will

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provide maintenance to his wife and to her servant too. But, if he is not well off, then he is not bound to give allowance to the servant too.

PROSPERS: If, after the judge fixes a maintenance allowance for the wife, the status of the husband improves or worsens, then the judge will review that on a petition filed by either of the spouses, and revise the allowance accordingly.

IDDAH (WAITING PERIOD): If a woman observes *iddah (waiting period)* after her husband's death then she is not entitled to a maintenance.

DISOBEYS: So, too, if a woman disobeys her husband and goes away from his house without his permission and for no reason whatsoever, then her maintenance is not *wajib (obligatory)* on the husband.

OTHER REASONS: Maintenance is not *wajib (obligatory)* on the husband for his wife
if she is in prison for non-payment of a debt, or
if she is so sick after marriage that she has not been sent to her husband's house, or
if she is such a minor that sexual intercourse cannot be had with her, or
if she departs to perform Hajj (pilgrimage) without her husband.

HAJJ (PILGRIMAGE): If a wife is accompanied by her husband for the pilgrimage then her maintenance at home is *wajib (obligatory)* on him. But the expenses of the journey and passage are not *wajib (obligatory)* on him.

ILLNESS: If a man's wife was taken ill at her parent's house and was sent to his home in that (ill) condition after their marriage, then her maintenance is not *wajib (obligatory)* on the husband. However, if a wife falls ill at her husband's house then her maintenance is *wajib (obligatory)* on him.

HOUSE: The husband must provide his wife a house suitable to live in keeping in view the demands of Shari'ah (divine law) and his own means. The house must be for her alone and his own folk or his wife's folk should not live there. If she herself wishes to live alongwith then then he is not bound to get her a separate home.

If a husband house has many rooms and he gives his wife a separate room with its own door and lock then that is enough. She has no right to ask for another room.

WIFE'S RELATIVES VISITING HER: The husband is within his rights to disallow his wife's relatives from visiting her (even her son from a previous marriage). But, he has no right to prevent her mahram relative to meet her and converse with her. He also has no right to disallow her to visit her parents once in a month and to stop them from visiting her once a month. (He may forbid mutual visits beyond once a week). He also has no right to disallow her to visit her paternal relatives or them to visit her. Once a year. (He can prevent their mutual visit beyond once a year.)

DIVORCEE: A divorced woman, in her *iddah (waiting period)* is entitled to claim from her husband maintenance and residence whet ever the kind of divorce (raji, ba'in or mughallazah) whether she is pregnant or not.

SEPARATIONS: Similarly, the husband is responsible for maintenance and lodging of a woman who observes an *iddah (waiting period)* for separation (apart from divorce) brought about because of a right of Shari'ah (divine law), but not because of disobedience, for example, an umm walad or a mudabbarah who was married to a man and was set free, and exercised her option to separate from her husband, or a minor who has been married to someone by her guardian attains majority and exercise her right to separate from her

husband. In such cases, the woman is entitled to receive maintenance and lodging.

DISOBEDIENT: If a woman observes an *iddah (waiting period)* after separation brought about because of sin or disobedience, then her husband is not responsible for her maintenance and lodging. For example, (we seek refuge in Allah) a woman apostates, or commit indecency with her husband's son because of which she stands forbidden to him by law, like having intercourse with him, touching him with lustful desire or kissing him; - these things bring about a separation between husband and wife and she has to seclude herself in *iddah (waiting period)*, and she is not entitled to ask him for maintenance and lodging.

SIN DURING *IDDAH (WAITING PERIOD)*: If a divorced woman who observes *iddah (waiting period)* and duly receives maintenance and lodging appostates while she is in *iddah (waiting period)* then her right to maintenance and lodging ceases. And, if during her *iddah (waiting period)*, she commit indecency with her husband's son or father then she continues to be eligible for maintenance and residence provided she was not divorced with a talaq raj'I (revocable divorce) but with ba'in mughallazah (irrevocable).

MAINTENANCE OF CHILDREN: The expenses of minor children who have no personal property are to be borne by their father even if he is poor. No one else will be liable to share this responsibility with him.

SUCKLING: If a new born who has not been weaned and its mother is married to its father but does not wish to suckle it and it does suckle another woman then its mother should not be compelled to suckle her child. But, if the infant will not take another woman's milk, or there is no other wet nurse, then the mother will be compelled to suckle her child.

MOTHER WILL NOT SUCKLE: If the mother declines to suckle her child and there is a wet nurse willing to suckle the child then the father must hire her to suckle the child in the presence of its mother. The wages of the wet nurse will be paid from the child's property, if any, but if it has nothing of its own then the father will pay the wet nurse her wages

HIRING THE MOTHER: If the father hires the child's mother to suckle it and she is his wife or undergoes *iddah (waiting period)* for a revocable divorce, then this is not allowed. If she has been divorced irrevocably or absolutely then authorities differ on whether she may be hired or not during her *iddah (waiting period)*. However, on expiry of her *iddah (waiting period)*, it is allowed to hire the child's mother to suckle her. Rather, in this case, if she does not demand higher wages than other woman, then she would be stupid.

HIRING WIFE: If a man hires his wife or (divorced wife) who is in her *iddah (waiting period)* to suckle his child from his another wife then this hiring is allowed.

HELPLESS OFFSPRING: If a man' adult daughter is extremely poor and needy or an adult son handicapped and invalid, then their father is responsible for the expenses on them. The edict is given in this way. However, some people say that the father is responsible for two-thirds of their expenses and the mother for one-third of the expenses.

MAINTENANCE OF PARENTS: If one's ancestors (like, father, mother, grandfather, grandmother, so on up the ladder) are poor than the children are responsible to maintain them and bear their expenses provided they are affluent. Affluence stands for children being sufficiently well-off so that they are not eligible to receive sadaqah (charity) and zakah (Annual due charity). If both male and female offspring are well-off then the responsibility rests on both to support their forebears, equally.

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NEARNESS NOT INHERITANCE: In regard to the maintenance of needy being *wajib (obligatory)*, the determining factor is nearness and wholeness but not line of inheritance. For example, if the daughter and grandson (meaning, son's son) of a poor, needy man are both rich, then maintaining him is *wajib (obligatory)* on his daughter though both of them are entitled to inheritance. Or, if the granddaughter (meaning, daughter's daughter) and brother of a needy man are rich, then his grand daughter (on his daughter's side) is bound to maintain him though only his brother is deserving of his inheritance.

MAINTENANCE OF DHAWIL ARHAM:[1] It is *wajib (obligatory)* on every rich man to provide maintenance to all his mahram relatives on his mother's side provided this relative is needy, or a minor, or a poor woman, or handicapped and helpless, or blind, or a student. Or unable to make a living because of ignorance of stupidity. If the rich man does not spend on these relatives then he must be forced to spend on these relatives then he must be forced to spend on them.

The maintenance of these relatives on the mother's side is *wajib (obligatory)* according to the amount of inheritance.

The meaning of these words 'according of amount of inheritance' is explained in this example. If a man deserves to receive maintenance because of his need and poverty from his relatives on his mother's side then he may be presumed to be dead, and his inheritance be thought to have been distributed to these heirs (relatives on mother's side) Now, whatever share of inheritance an heir is eligible to receive, he will contribute that share towards his maintenance as *wajib (obligatory)* on him. For example, Zayd is a hard passed, poor man. He has only three close relatives: one real sister, one stop sister and one half sister. It is *wajib (obligatory)* on the three sisters to provide maintenance to Zayd. They will contribute to it by dividing Zayd's total maintenance into five equal portions. Then three fifths will be the responsibility of the real sister. One fifth will be due from the step sister and one fifth from the half sister. This ratio of distribution of their responsibilities is exactly how Zayd's inheritance would go to each one of them when he dies (and if he leaves a legacy).

However, it is not necessary always to know the amount of inheritance receivable or payable. What is necessary is to be eligible and deserving to receive or pay the inheritance. Suppose that Zayd is poor and needy. He has a maternal uncle and a paternal uncle's son (cousin) both of whom are rich. It will be *wajib (obligatory)* on his maternal uncle to provide him his maintenance, not his cousin.

The maintenance of father's wife is *wajib (obligatory)* on his son. And the maintenance of the daughter in law (son's wife) is *wajib (obligatory)* on her father in law, provided his son is a minor or handicapped.

NOT RESPONSIBLE: A poor and incapacitated man is not responsible for anyone's maintenance, whether parents or uterine relatives. However, it is always *wajib (obligatory)* on him to provide maintenance to his wife and children.

DIFFERENT RELIGIONS: Maintenance is not *wajib (obligatory)* on each other if they are of different religion. However, one's wife, parents ancestors and offspring down the line, male or female, are excepted from this ruling and it is *wajib (obligatory)* to provide them maintenance in spite of different of religion.

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[1] Cognate. Relatives on the mother's side.

SON'S PROPERTY MAY BE SOLD: A handicapped or needy father may sell his son's property to get his maintenance from him, but he is not allowed to sell his immovable property, like land, gardens etc. However, he is not allowed to sell his son's movable property too if the son is in debt.

A mother I not allowed to sell any kind of her son's property, movable or immovable.

Imam Abu Yusuf رحمه الله and Imam Muhammad رحمه الله hold that even a father is not allowed to sell his son's movable property.

MAINTENANCE OF MALE & FEMALE SLAVES: The master is bound to guarantee complete expenses of his slaves. This is so whether his ownership is complete, as over a slave completely subservient, or over a mudabbarah or an Umm walad, whether minor or adults, whether handicapped or sound and healthy.

If a master refuses to bear the maintenance of his slaves then they are at liberty to work and toil for their living. If they do not find a living. If they do not find a living then the judge will order their maser to sell them to others.

If anyone buy some animals but does not feed them, then he cannot be compelled by law to sell them. However, a moral pressure can be built on him to either sell the animals or feed, and look after, them.

SECTION I اَلْفَصْلُ الْاَوَّلُ

MAINTENANCE OF WIFE & CHILDREN

(٣٣٤٢) عَنْ عَائِشَةَ قَالَتْ اِنَّ هِنْدًا بِنْتَ عُتْبَةَ قَالَتْ يَا رَسُوْلَ اللّٰهِ اِنَّ اَبَا سُفْيَانَ رَجُلٌ شَحِيْحٌ وَّلَيْسَ يُعْطِيْنِيْ مَا يَكْفِيْنِيْ وَوَلَدِيْ اِلَّا مَا اَخَذْتُ مِنْهُ وَهُوَ لَا يَعْلَمُ فَقَالَ خُذِيْ مَا يَكْفِيْكِ وَوَلَدَكِ بِالْمَعْرُوْفِ۔

(متفق علیہ)

3342. Sayyidah Ayshah رضی الله عنها narrated that (Sayyidah) Hind bint Utbah رضی الله عنها said, "O Messenger of Allah, (my husband) Abu Sufyan is a miser. He does not give me and my son enough (towards our needs) , except what I take from him without his knowing." (She meant to ask whether she could do that) He said, "You may take from his money) what suffices you and your son and (as much as) is approved by Shari'ah (divine law)."[1]

COMMENTARY: This hadith is evidence that it is *wajib (obligatory)* to provide maintenance to the extent that it necessary.

Imam Nawawi رحمه الله said that this hadith establishes that:

(i) It is *wajib (obligatory)* on man to provide maintenance to his wife and (such) minor children (who have no personal property).

(ii) Maintenance should be to the extent of what is necessary.

(iii) It is allowed to listen to a stranger woman while issuing an edict and enforcing a command of Shari'ah (divine law).

(iv) It is permitted to say something about another person which he may not be pleased to hear, provided it is done to find out a solution or an edict.

(v) If anyone has a monetary demand on another and he does not pay it, then the

[1] Bukhari # 5364, Muslim # 7-1714, Abu Dawud # 2259, Ibn Majah # 2293

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claimant is allowed to take from that person's property as much as equals his demand without his permission.

(vi) A wife is also responsible to spend on her children and support them from her husband's property.

(vii) A wife is allowed to go out of her house for her needs whether her husband has given her express permission or she is aware of his willingness.

(viii) A judge and a ruler may decide a case on the basis of their knowledge or information, as we see that the prophet صلى الله عليه وسلم did not call for witnesses but gave instructions on the basis his information.

SPEND ALLAH'S BOUNTY ON YOURSELF & YOUR FAMILY

(٣٣٤٣) وَعَنْ جَابِرِ بْنِ سَمُرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ إِذَا أَعْطَى اللّٰهُ أَحَدَكُمْ خَيْرًا فَلْيَبْدَأْ بِنَفْسِهِ وَأَهْلِ بَيْتِهِ۔ (رواه مسلم)

3343. Sayyiduna Jabir ibn Samurah رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "When Allah grants any of you the good things (wealthy and property or prosperity), then he should spend it first on himself and his family" (before spending on others according to their standing).[1]

OWNER IS RESPONSIBLE FOR SLAVE'S MAINTENANCE

(٣٣٤٤) وَعَنْ أَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لِلْمَمْلُوْكِ طَعَامُهُ وَكِسْوَتُهُ وَلَا يُكَلَّفُ مِنَ الْعَمَلِ إِلَّا مَا يُطِيْقُ۔ (رواه مسلم)

3344. Sayyiduna Abu Hurayrah رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said about the slave, 'for him is his food and his clothing. And he should be given only such work as is within his capability."[2]

COMMENTARY: This hadith gives two instructions about slaves to their masters:

(i) They should be given food and clothing as per their requirement and custom.

(ii) They should not be burdened with any task that is beyond them and liable to harm them.

It is just as the True Master, Allah, has not burdened His creatures with anything that is beyond their capabilities, so too the worldly master must care for their slave. They are human beings like them.

Sayyiduna Ibn Abbas رضى الله عنه has narrated in a marfu form that the master is responsible for three things concerning his slaves.

(i) When a slave is offering *salah (prayer)*, he should not ask him to hurry up.

(ii) When he is having his meal, he should not assign him any task.

(iii) He should give him enough food to satiate him.

BE KIND TO SLAVES

(٣٣٤٥) وَعَنْ أَبِيْ ذَرٍّ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ إِخْوَانُكُمْ جَعَلَهُمُ اللّٰهُ تَحْتَ أَيْدِيْكُمْ فَمَنْ

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[1] Muslim # 10-1822.

[2] Muslim # 41-1662, Musnad Ahmad 2-247, Muwatta Maalik # 40 (Isti'dhan)

جَعَلَ اللّٰهُ اَخَاهُ تَحْتَ يَدَيْهِ فَلْيُطْعِمْهُ مِمَّا يَأْكُلُ وَلْيُلْبِسْهُ مِمَّا يَلْبَسُ وَلَا يُكَلِّفُهُ مِنَ الْعَمَلِ مَا يَغْلِبُهُ فَاِنْ كَلَّفَهُ مَا يَغْلِبُهُ فَلْيُعِنْهُ عَلَيْهِ۔ (متفق علیه)

3345. Sayyiduna Abu Dharr رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "They (the slaves) are your brothers. Allah has put them under your authority (to try you). So, he whose brother Allah has placed under his authority must feed him from what he himself eats and clothe him from what he wears. And he must not charge him with a work that is beyond his strength, but If he assigns to him a (heavy) task that is out of his capability, then he must help him do it."[1]

COMMENTARY: Imam Nawawi رحمہ اللہ said that the command to the master to feed and clothe his slave as he eats and wears is of the nature of *mustahab (desirable)* not *wajib (obligatory)*. However, it is *wajib (obligatory)* on him to provide these things to him according to custom and usage, whether it matches his own standard, is better than it or is of a lesser degree. If the owner acts miserly himself, he should not cut on his slave's feeding and clothing compared to usage.

As regards tasks that are not within a slave's ability, the master must help him out himself or engage someone else to help him, pious, saintly men are known to have helped out their slave girls or waids with the hand mill.

SIN TO WITHHOLD FOOD OF SLAVES

(٣٣٤٦) وَعَنْ عَبْدِاللّٰهِ بْنِ عَمْرٍو جَاءَهُ قَهْرَمَانٌ لَهُ فَقَالَ لَهُ اَعْطَيْتَ الرَّقِيْقَ قُوْتَهُمْ قَالَ لَا قَالَ فَانْطَلِقْ فَاَعْطِهِمْ فَاِنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ كَفٰى بِالرَّجُلِ اِثْمًا اَنْ يَحْبِسَ عَمَّنْ يَمْلِكُ قُوْتَهُ وَفِيْ رِوَايَةٍ كَفٰى بِالْمَرْءِ اِثْمًا اَنْ يُضَيِّعَ مَنْ يَقُوْتُ۔ (رواه مسلم)

3346. Sayyiduna Abdullah ibn Amr رضی اللہ عنہ narrated that when an overseer of his (property) came to him, he asked him, "Have you given the slaves their food?" He said, "No!" So, he instructed him to go and give it to them, for, Allah' Messenger صلی اللہ علیہ وسلم had emphasized, "Enough sin it is on a man to hold back from his slave his food."

According to another version (he said:) Enough sin it is for a man to destroy the sustenance of those under his care (his family and slaves)."[2]

INVITE YOUR SERVANT TO JOIN YOU

(٣٣٤٧) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِذَا صَنَعَ لِاَحَدِكُمْ خَادِمُهُ طَعَامَهُ ثُمَّ جَاءَهُ بِهِ وَقَدْ وَلِيَ حَرَّهُ وَدُخَانَهُ فَلْيُقْعِدْهُ مَعَهُ فَلْيَأْكُلْ فَاِنْ كَانَ الطَّعَامُ مَشْفُوْهًا قَلِيْلًا فَلْيَضَعْ فِيْ يَدِهِ مِنْهُ اُكْلَةً اَوْ اُكْلَتَيْنِ۔ (رواه مسلم)

3347. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "When the servant of one of you prepares food for him and brings it

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[1] Bukhari # 6050, Muslim # 38-1661, Tirmidhi # 1945, Abu Dawud # 5158, Musnad Ahmad 5-161.

[2] Muslim # 40. 996, Abu Dawud # 1692, Musnad Ahmad 2-193.

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him, enduring its heat and smoke, he must make him sit with him and eat. If the food is little and partakers are many, then he must put one or two mouthfuls of it in his hand."[1]

COMMENTARY: No one must feel shy of eating with his servants. They too are human being like him. There is wisdom in it too. The more the people together at meal, the more the blessing in it, It is what one tradition suggests: "The best meal is one which many hands partake."

The command in the hadith to invite the servant to the meal is of the *mustahab (desirable)* kind.

DUAL REWARD FOR SLAVE

(٣٣٤٨) وَعَنْ عَبْدِاللّٰهِ بْنِ عُمَرَ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اِنَّ الْعَبْدَ اِذَا نَصَحَ لِسَيِّدِهٖ وَاَحْسَنَ عِبَادَةَ اللّٰهِ فَلَهٗ اَجْرُهٗ مَرَّتَيْنِ۔ (متفق علیه)

3348. Sayyiduna Abdullah ibn Umar رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Surely the slave when he work whole heartedly for his master and worships Allah devotedly, for him is a dual reward."[2]

COMMENTARY: The slave gets two reward because he is well-wishing to his master and he worships Allah sincerely.

To work sincerely for ones master is also a form of worship of Allah, because it is being obedient to Allah who has commanded that one must serve one's master.

It is like being obedient to one's parents is a form of worship. This is because Allah has commanded us to obey and serve our parents.

Some authority interpret the hadith to mean that a slave gets a two-fold reward for all his deeds.

THE BEST THING FOR A SLAVE

(٣٣٤٩) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ نِعِمَّا لِلْمَمْلُوْكِ اَنْ يَتَوَفَّاهُ اللّٰهُ بِحُسْنِ عِبَادَةِ رَبِّهٖ وَطَاعَةِ سَيِّدِهٖ نِعِمَّا لَهٗ۔ (متفق علیه)

3349. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "What can be better for a slave than to be taken away by Allah (in death) while worshipping his Lord well and obeying his master! It is excellent for him!"[3]

SALAH (PRAYER) OF RUNAWAY SLAVE IS NOT APPROVED

(٣٣٥٠) وَعَنْ جَرِيْرٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِذَا اَبَقَ الْعَبْدُ لَمْ تُقْبَلْ لَهٗ صَلَاةٌ وَفِيْ رِوَايَةٍ عَنْهُ قَالَ اَيُّمَا عَبْدٍ اَبَقَ فَقَدْ بَرِئَتْ مِنْهُ الذِّمَّةُ وَفِيْ رِوَايَةٍ عَنْهُ قَالَ اَيُّمَا عَبْدٍ اَبَقَ مِنْ مَوَالِيْهِ فَقَدْ كَفَرَ حَتّٰى يَرْجِعَ اِلَيْهِمْ۔ (رواه مسلم)

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[1] Bukhari # 5460, Muslim # 42-1663, Tirmidhi # 1860, Abu Dawud # 3846, Darimi # 2074, Musnad Ahmad 2-409.

[2] Bukhari # 2546, Muslim # 43-1664, Abu Dawud # 5169, Muwatta Maalik # 43 (Ishidhan) Musnad Ahmad 2-102.

[3] Bukhari # 2549, Muslim # 46. 667, Musnad Ahmad 2-270.

3350. Sayyiduna Jarir رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "When a slave absconds, his *salah (prayer)* is not accepted from him."
According to another version from him: He said, "Responsibility is absolved in regard to a run away slave."
Another version from him has; He said, "any slave who escapes from his masters has indeed, disbelieved till he comes back to them."[1]

COMMENTARY: If the slave flees to enemy territory and apostates then he loses the protection of Islam. It is permitted to kill him. But, if he stays in one of the Muslim localities after running away from his masters and does not apostate then it is not allowed to kill him. In this case, Islamic law will not protect him against punishment for fleeing.
As for the final version, he is said to have disbelieved, if he regards that running away is lawful and is not sinful in the real sense. If he does not regard running away lawful, then it means that he has approached do, or he has been ungrateful to his masters.

ACCUSING SLAVE FALSELY OF FORNICATION

(٣٣٥١) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ سَمِعْتُ اَبَا الْقَاسِمِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ مَنْ قَذَفَ مَمْلُوْكَهٗ وَهُوَ بَرِيْءٌ مِمَّا قَالَ جُلِدَ يَوْمَ الْقِيَامَةِ اِلَّا اَنْ يَكُوْنَ كَمَا قَالَ۔ (متفق علیہ)

3351. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that he heard Abu Al-Qasim صلی اللہ علیہ وسلم (the prophet) say, "If anyone accuses his slave of adultery while he is innocent of what he says, them he will be awarded stripes on the day of resurrection, unless he is as he said (in which case he will not be striped)."[2]

COMMENTARY: A slave also deserves as much respect as a free man. Those people are very foolish who unleash abuses on their subordinates and fear not the chastisement of the hereafter.

ATONEMENT FOR BEATING SLAVE UNNECESSARILY

(٣٣٥٢) وَعَنِ ابْنِ عُمَرَ قَالَ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ مَنْ ضَرَبَ غُلَامًا لَهٗ حَدًّا لَمْ يَأْتِهٖ اَوْ لَطَمَهٗ فَاِنَّ كَفَّارَتَهٗ اَنْ يُعْتِقَهٗ۔ (رواہ مسلم)

3352. Sayyiduna Ibn Umar رضی اللہ عنہ narrated that he heard Allah's Messenger صلی اللہ علیہ وسلم say, "If anyone beats a slave for something that he had not done, or slaps him, then the atonement for it is that he should set him free."[3]

COMMENTARY: As it is, to slap any one for no reason is forbidden. This hadith mentions a slave particularly. If he is beaten unnecessarily then he must be set free as an expiation.

(٣٣٥٣) وَعَنْ اَبِيْ مَسْعُوْدٍ الْاَنْصَارِيِّ قَالَ كُنْتُ اَضْرِبُ غُلَامًا لِيْ فَسَمِعْتُ مِنْ خَلْفِيْ صَوْتًا اِعْلَمْ اَبَا مَسْعُوْدٍ لَلّٰهُ اَقْدَرُ عَلَيْكَ مِنْكَ عَلَيْهِ فَالْتَفَتُّ فَاِذَا هُوَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقُلْتُ يَا رَسُوْلَ اللّٰهِ هُوَ حُرٌّ لِوَجْهِ اللّٰهِ فَقَالَ اَمَا لَوْ لَمْ تَفْعَلْ لَلَفَحَتْكَ النَّارُ اَوْ لَمَسَّتْكَ النَّارُ۔ (رواہ مسلم)

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[1] Muslim # 70. 124, Nasa'i # 4049, Musnad Ahmad 4-365.
[2] Bukhari # 6858, Muslim # 37-1660, Abu Dawud # 3165, Tirmidhi # 1947, Musnad Ahmad 2-500.
[3] Muslim # 30. 1657, Musnad Ahmad 2-61.

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3353. Sayyiduna Abu Mas'ud Al-Ansari رضی اللہ عنہ narrated: (One day) I was beating one of my slaves when I heard a voice behind me alerting me, "know, O Abu Mas'ud! Allah has more power over you than you have over him." So, I turned round, and behold! He was Allah's Messenger صلی اللہ علیہ وسلم. I submitted, "O Messenger of Allah, he is free for Allah's sake." He said, "Had you not done it, the fire (of hell) would have burned you." Or, (he said,) "the fire (of hell) would have touched you."[1]

COMMENTARY: The implication is that he was committing a grave sin by beating his slave. If he had not forgiven him (Abu Mas'ud) رضی اللہ عنہ and he had not set him free, then he would have been consigned to hell.

Imam Nawawi رحمہ اللہ said that by his words the Prophet صلی اللہ علیہ وسلم teaches us to be kind to our servants. The ruling is that if a slave is beaten it is not *wajib (obligatory)* to set him free. Rather, it is *mustahab (desirable)* and that too with an expectation that the sin for beating the slave unnecessarily should be atoned.

SECTION II اَلْفَصْلُ الثَّانِیْ

FATHER HAS RIGHT OVER SON'S EARNINGS

(٣٣٥٤) وَعَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ اَبِيْهِ عَنْ جَدِّهٖ اَنَّ رَجُلًا اَتَى النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ اِنَّ لِيْ مَالًا وَاِنَّ وَالِدِيْ يَحْتَاجُ اِلٰى مَالِيْ قَالَ اَنْتَ وَمَا لُكَ لِوَالِدِكَ اِنَّ اَوْلَادَكُمْ مِنْ اَطْيَبِ كَسْبِكُمْ كُلُوْا مِنْ كَسْبِ اَوْلَادِكُمْ۔ (رواه ابوداؤد وابن ماجة)

3354. Sayyiduna Amr ibn Shu'ayb رحمہ اللہ reported from his father who from his grandfather that a man came to the Prophet صلی اللہ علیہ وسلم and submitted, "I have wealth and my father needs (from) my property." He said, "You and your property are for your father. Your offspring are the best of your earnings. So, consume from the earning of your offspring."[2]

COMMENTARY: It is *wajib (obligatory)* on the son to serve and obey his father. So, too, it is *wajib (obligatory)* on him to spend his wealth on his father. A father is allowed to spend his son's wealth.

It is *wajib (obligatory)* for a son to provide maintenance to his father.

It is also deduced from these ruling that if a father steals something from his son's property, or has sexual intercourse with his slave woman, then he will not be awarded the prescribed punishment.

Children are the most lawful earning of their father.

ORPHAN'S PROPERTY FOR GUARDIAN

(٣٣٥٥) وَ عَنْهُ عَنْ اَبِيْهِ عَنْ جَدِّهٖ اَنَّ رَجُلًا اَتَى النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ اِنِّيْ فَقِيْرٌ لَيْسَ لِيْ شَيْءٌ وَلِيَ يَتِيْمٌ فَقَالَ كُلْ مِنْ مَالِ يَتِيْمِكَ غَيْرَ مُسْرِفٍ وَلَا مُبَادِرٍ وَلَا مُتَأَثِّلٍ۔ (رواه ابوداؤد والنسائی وابن ماجة)

3355. Sayyiduna Amr ibn Shu'ayb رحمہ اللہ reported from his father from his

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[1] Muslim # 35-1659, Tirmidhi # 1948, Abu Dawud # 5159.

[2] Abu Dawud # 3530, Ibn Majah # 2292, Musnad Ahmad 2-214.

grandfather that a man came to the Prophet صلى الله عليه وسلم and submitted, "I am poor and have nothing of my own. I have under my care an orphan." (May I use his wealth?) He said, "Eat from the property of your orphan, but do not be a profligate, and do not be hasty in spending (before the need arises) , and do not hoard for yourself (from it)."[1]

COMMENTARY: The prophet صلى الله عليه وسلم gave the man permission to consume an orphan's property on three conditions as outlined in the hadith.
The hadith allows an orphan's guardian, if he is poor, to take from the orphan's property what he needs. But, if he is well-off then he is not allowed to take anything from it.
This subject is also established from the Quran.

EMPHASIS ON RIGHTS OF SLAVES

(٣٣٥٦-٣٣٥٧) وَعَنْ أُمِّ سَلَمَةَ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَنَّهُ كَانَ يَقُوْلُ فِيْ مَرَضِهِ اَلصَّلَاةَ وَمَا مَلَكَتْ اَيْمَانُكُمْ ـ رَوَاهُ الْبَيْهَقِيُّ فِيْ شُعَبِ الْاِيْمَانِ وَرَوٰى اَحْمَدُ وَاَبُوْدَاوٗدَ عَنْ عَلِيٍّ نَحْوَهٗ ـ

3356. Sayyidah Umm Salamah رضى الله عنها narrated that the prophet صلى الله عليه وسلم used to say during his illness (that led to his death), "The *salah (prayer)*!" (stick to it,) "And your slaves!" (Give them their rights.)[2]
3357. Sayyiduna Ali رضى الله عنه narrated that the like of it.[3]

COMMENTARY: The prophet صلى الله عليه وسلم placed stress on *salah (prayer)*. It should not be neglected or missed without a valid reason recognized by Shari'ah (divine law). It should be offered correctly observing every little detail.
The slave should be given their rights. These include feeding and clothing them and being kind to them.
Similarly, animals also must be given their rights.
The ulama (Scholars) say that, on the day of resurrection, the contention of the dhimmis and animals will be more severe than the contention of the Muslims.

WARNING AGAINST MISTREATMENT OF SLAVES

(٣٣٥٨) وَعَنْ اَبِيْ بَكْرِنِ الصِّدِّيْقِ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لَا يَدْخُلُ الْجَنَّةَ سَيِّئُ الْمَلَكَةِ ـ

(رواه الترمذى وابن ماجة)

3358. Sayyiduna Abu Bakr As Siddiq رضى الله عنه narrated that the prophet صلى الله عليه وسلم said, "He who is wicked and unjust to his slaves will not enter paradise." (in the beginning with those who are admitted directly).[4]

KIND TREATMENT TO SLAVES SPELLS PROSPERITY

(٣٣٥٩) وَعَنْ رَافِعِ بْنِ مَكِيْثٍ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ حُسْنُ الْمَلَكَةِ يُمْنٌ وَسُوْءُ الْخُلُقِ شُؤْمٌ ـ رَوَاهُ اَبُوْدَاوٗدَ وَلَمْ اَرَفِيْ غَيْرِ الْمَصَابِيْحِ مَازَادَ عَلَيْهِ فِيْهِ مِنْ قَوْلِهٖ وَالصَّدَقَةُ تَمْنَعُ مِيْتَةَ السُّوْءِ وَالْبِرُّ زِيَادَةٌ فِي الْعُمُرِ ـ

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[1] Abu Dawud # 2872, Nasa'i # 3668, Ibn Majah # 2718.
[2] Bayhaqi in Shu'ab ul Eeman # 8553, Ibn Majah # 1625.
[3] Ibn Majah # 1625, Musnad Ahmad 6-290.
[4] Tirmidhi # 1946, Ibn Majah # 3691, Musnad Ahmad 1-4.

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3359. Sayyiduna Rafi ibn Makith رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, 'kindness to slave spells prosperity. And, (conversely) a wicked nature spells disaster."[1] (The compiler of Mishkat says:) 'I have not seen the additional words to his saying anywhere other than al-Masabih uiz. "And Sadaqah (charity) prevents an evil death and piety lengthens life."

COMMENTARY: When a master is kind and good-natured to his slaves (and subordinates) , mostly they reciprocate the gesture and are very loyal to him. This results in prosperity and blessings.

If it is the other way about and the master is rude and harsh to them, they detest him and, in the end, they do not hesitate to kill him and destroy his property.

An evil death could be a sudden death or a death when the dying person is not aware of monotheism and the true One. He does not get a chance to give the rights of fellow creatures and make amends for violation of rights of the creator by making a repentance.

Anyone's lifespan may be prolonged. Allah may have decreed a person's age to be a certain number of years, but if he is pious then 'so many more years.'

But, apart from the literal meaning, 'lengthens life' could mean that it would bring prosperity and blessing in life. Or, people would continue to remember him after his death.

As for the concluding remarks of the compiler of the Mishkat, Mirak رحمہ اللہ has pointed out that shaykh Jazri رضی اللہ عنہ has also reproduced the hadith as in the Masabih and Imam Ahmad رحمہ اللہ too has transmitted the complete hadith.

SLAVE ADJURING BY ALLAH TO BE SPARED

(٣٣٦٠) وَعَنْ اَبِيْ سَعِيْدٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِذَا ضَرَبَ اَحَدُكُمْ خَادِمَهٗ فَذَكَرَ اللّٰهَ فَارْفَعُوْا اَيْدِيَكُمْ۔ رَوَاهُ التِّرْمِذِيُّ وَالْبَيْهَقِيُّ فِيْ شُعَبِ الْاِيْمَانِ لٰكِنْ عِنْدَهٗ فَلْيُمْسِكْ بَدَلَ فَارْفَعُوْا اَيْدِيَكُمْ۔

3360. Sayyiduna Abu Sa'eed رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "When any of you beats his servant and he remembers Allah, then take away your hand (from him, and stop beating him)."

But, Bayhaqi has : Yamasik instead of farfa'u aydikum (he must hold) instead of (take away your hand) , the sense is identical.[2]

COMMENTARY: Tebi رحمہ اللہ said that 'hold or take away your hand' applies when the master beats him to discipline him. It does not apply when a prescribed punishment is award ed as for consuming wine etc.

DO NOT SEPARATE CHILD FROM MOTHER

(٣٣٦١) وَعَنْ اَبِيْ اَيُّوْبَ قَالَ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ مَنْ فَرَّقَ بَيْنَ وَالِدَةٍ وَوَلَدِهَا فَرَّقَ اللّٰهُ بَيْنَهٗ وَبَيْنَ اَحِبَّتِهٖ يَوْمَ الْقِيَامَةِ۔ (رواه الترمذی والدارمی)

3361. Sayyiduna Abu Ayyub رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "If any separates a mother from her child then Allah will separate him from his dear ones on the day of resurrection."[3]

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[1] Abu Dawud # 5162.

[2] Tirmidhi # 1950, Bayhaqi in Shawbul Eeman.

[3] Tirmidhi # 1253, Ibn Majah # 2479, Musnad Ahmad 5-413.

COMMENTARY: This refers to a female slave and her child. It is not allowed to sell a women slave but retain her child, or sell the child and keep its mother. He who does such a thing will be kept away by Allah on the day of resurrection from his dear ones, like parents or children, etc.

The ulama (Scholars) say that though the hadith mentions a mother, it applies to every near relative like father, grandfather brother, sister, etc. from whom a child is separated. According to the Hanafis, it is allowed to separate two young brothers from one another.

It is allowed to separate an elder child from his relatives. But, what an elder child means? Imam Shafi'I رحمه‌الله says it is seven years, or eight.

Imam Abu Hanifah رحمه‌الله says that an adult is elder.

Imam Abu Hanifah رحمه‌الله and Imam Muhammad رحمه‌الله say that it is *makruh (disapproved)* to separate a child from its mother or other such relatives. But, Imam Abu Yusuf رحمه‌الله says that it is simply not allowed to separate a child from its mother or any other dhurahm relative (Like father, etc.) He says that it applies to all relative of dhurahm mahrams even if not related through parentage.

(٣٣٦٢) وَعَنْ عَلِيٍّ قَالَ وَهَبَ لِيْ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ غُلَامَيْنِ اَخَوَيْنِ فَبِعْتُ اَحَدَهُمَا فَقَالَ لِيْ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَا عَلِيُّ مَا فَعَلَ غُلَامُكَ فَاَخْبَرْتُهُ فَقَالَ رُدَّهُ رُدَّهُ۔ (رواه الترمذی وابن ماجة)

3362. Sayyiduna Ali رضی‌الله‌عنه narrated that Allah's Messenger صلی‌الله‌علیه‌وسلم gave him as gift two slave both brothers. He sold one of them. When Allah's Messenger صلی‌الله‌علیه وسلم asked him "O Ali, what did your slave do?" HE informed him (of what he had done), so he said, "Bring him back! Bring him back!"[1]

COMMENTARY: Sayyiduna Ali رضی‌الله‌عنه was instructed to annul the transaction so that the two brothers may not be separated. The command was repeated to show that it is *wajib (obligatory)* to do so and such a sale is *makruh (disapproved)* tahrimi. The command not to separate the two brothers shows that not merely mother and child butother relatives too must not be put apart.

(٣٣٦٣) وَعَنْهُ اَنَّهُ فَرَّقَ بَيْنَ جَارِيَةٍ وَوَلَدِهَا فَنَهَاهُ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَنْ ذَالِكَ فَرَدَّ الْبَيْعَ۔ رَوَاهُ اَبُوْدَاوٗدَ مُنْقَطِعًا۔

3363. Sayyiduna Ali رضی‌الله‌عنه is reported to have separated a female slave from her child (by selling one and retaining the other). The Prophet صلی‌الله‌علیه‌وسلم forbade him to do that, so he annulled the transaction.[2]

COMMENTARY: Both the foregoing traditions uphold the contention of Imam Abu Yusuf رحمه‌الله that it is not allowed to separate a child slave from its mother or father.

KINDNESS IS REWARDED

(٣٣٦٤) وَعَنْ جَابِرٍ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ ثَلَاثٌ مَنْ كُنَّ فِيْهِ يَسَّرَ اللّٰهُ حَتْفَهُ وَاَدْخَلَهُ جَنَّتَهُ رِفْقٌ بِالضَّعِيْفِ وَشَفَقَةٌ عَلَى الْوَالِدَيْنِ وَاِحْسَانٌ اِلَى الْمَمْلُوْكِ۔ رَوَاهُ التِّرْمِذِيُّ وَقَالَ هٰذَا حَدِيْثٌ غَرِيْبٌ۔

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[1] Tirmidhi # 1284, Ibn Majah # 2249, Musnad Ahmad 1-97.

[2] Abu Dawud # 2696.

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3364. Sayyiduna Jabir رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "He who possesses three characteristics will have Allah giving him an easy death and admitting him to his paradise:

(i) kindness to the weak,
(ii) affection and love towards parents, and
(iii) kindness to slaves."[1]

COMMENTARY: The weak may be weak in physique, financially weak mentally weak. Slaves should be shown kindness by treating them well, better than what is du to them.

DO NOT BEAT WORSHIPPERS

(٣٣٦٥-٣٣٦٦) وَعَنْ اَبِيْ اُمَامَةَ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَهَبَ لِعَلِيٍّ غُلَامًا فَقَالَ لَا تَضْرِبْهُ فَاِنِّيْ نُهِيْتُ عَنْ ضَرْبِ اَهْلِ الصَّلٰوةِ وَقَدْ رَاَيْتُهُ يُصَلِّيْ هٰذَا لَفْظُ الْمَصَابِيْحِ وَفِي الْمُجْتَبٰى لِلدَّارَ قُطْنِيِّ اَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ نَهَانَا رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَنْ ضَرْبِ الْمُصَلِّيْنَ۔

3365. Sayyiduna Abu Umamah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم presented to (Sayyiduna) Ali رضی اللہ عنہ a slave and instructed him, "Do not beat him, for, I have been forbidden to beat those who offer *salah (prayer)*, and, indeed, I did see him offering *salah (prayer)*."[2]

3366. Sayyiduna Umar ibn Khattab رضی اللہ عنہ said, "Allah's Messenger صلی اللہ علیہ وسلم has forbidden us to beat those who offer *salah (prayer)*."[3]

COMMENTARY: The people who offer *salah (prayer)* are noble and meritorious in Allah's sight and are distinct among His creatures.

Teebi رحمہ اللہ has pointed out that since Allah has forbidden the people to beat those who offer *salah (prayer)*, ion this word, so we have high hopes in His mercy that, in the hereafter, he will not punish them, insha Allah.

FORGIVE THE SLAVES

(٣٣٦٧-٣٣٦٨) وَعَنْ عَبْدِاللّٰهِ بْنِ عُمَرَ قَالَ جَاءَ رَجُلٌ اِلَى النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ يَا رَسُوْلَ اللّٰهِ كَمْ نَعْفُوْ عَنِ الْخَادِمِ فَسَكَتَ ثُمَّ اَعَادَ عَلَيْهِ الْكَلَامَ فَصَمَتَ فَلَمَّا كَانَتِ الثَّالِثَةُ قَالَ اُعْفُوْا عَنْهُ كُلَّ يَوْمٍ سَبْعِيْنَ مَرَّةً رَوَاهُ اَبُوْدَاوٗدَ وَرَوَاهُ التِّرْمِذِيُّ عَنْ عَبْدِاللّٰهِ بْنِ عَمْرٍو۔

3367. Sayyiduna Abdullah ibn Umar رضی اللہ عنہ narrated that a man came to the Prophet صلی اللہ علیہ وسلم and asked, "O Messenger of Allah, how often may we forgive (our) servant (and slaves)?" But, he said nothing. Then the man repeated the words to him but he maintained silence. When he asked the third time. When he asked the third time, he said, "Forgive him seventy times every day."[4]

3368. Sayyiduna Abdullah ibn Amr رضی اللہ عنہ narrated...[5] (the same hadith).

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[1] Tirmidhi # 2494.

[2] Musnad Ahmad 5-258.

[3] Daraqutni # 8 (Tashdid fit ark a*salah*)

[4] Abu Dawud # 5164, Musnad Ahmad 2-111.

[5] Tirmidhi # 1949, (By both Ibn Umar & Ibn Amr)

COMMENTARY: The word 'seventy times' do not limit the number to seventy. The Arabs use this figure to denote 'very many.' Hence, the servants must be pardoned very often, innumerable times.

The prophet صلى الله عليه وسلم did not answer the question straightaway because it was an inappropriate enquiry. Forgiving someone is a *mustahab (desirable)* and desirable thing and should not be limited t o any number of times.

Or, perhaps the Prophet صلى الله عليه وسلم awaited a revelation in this regard.

AN ADVICE CONCERNING SLAVES

(٣٣٦٩) وَعَنْ اَبِيْ ذَرٍّ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ لَائَمَكُمْ مِنْ مَمْلُوْكِكُمْ فَاَطْعِمُوْ مِمَّا تَأْكُلُوْنَ وَاكْسُوْهُ مِمَّا تَكْسُوْنَ وَمَنْ لَا يُلَائِمُكُمْ مِنْهُمْ فَبِيْعُوْهُ وَلَا تُعَذِّبُوْا خَلْقَ اللّٰهِ۔ (رواه احمد وابوداؤد)

3369. Sayyiduna Abu Dharr رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, 'Those of your slave who obey and serve you (as you desire, and are suited to your desire, and are suited to your temperament) , feed them from what you eat and clothe them from what you wear. Those of them who do not suit your temperament, sell them and do not punish (and do not hurt) the creatures or Allah."[1]

BE KIND TO ANIMALS

(٣٣٧٠) وَعَنْ سَهْلِ بْنِ الْحَنْظَلِيَّةِ قَالَ مَرَّ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ بِبَعِيْرٍ قَدْ لَحِقَ ظَهْرُهُ بِبَطْنِهٖ فَقَالَ اتَّقُوا اللّٰهَ فِيْ هٰذِهِ الْبَهَائِمِ الْمُعْجَمَةِ فَارْكَبُوْهَا صَالِحَةً وَاتْرُكُوْهَا صَالِحَةً۔ (رواه ابوداؤد)

3370. Sayyiduna Sahl ibn Al-Hanzaliyah narrated that Allah's Messenger صلى الله عليه وسلم passed by a camel that was skin-and-bones. So, he said, "Fear Allah concerning these dumb animals. Ride them when they are strong and capable; (of carrying riders) and let them go about when they are sound (and not tired)."[2]

COMMENTARY: It is *wajib (obligatory)* on the owner to provide enough thay and water to his animals who cannot complain or ask for anything

The animals should be mounted only when they are strong enough to take a rider. Before they get tired, they must be allowed to graze and drink and rest. In that way, they will become strong.

SECTION III اَلْفَصْلُ الثَّالِثُ

ABOUT AN ORPHAN'S PROPERTY

(٣٣٧١) وَعَنِ ابْنِ عَبَّاسٍ قَالَ لَمَّا نَزَلَ قَوْلُهٗ تَعَالٰى وَلَا تَقْرَبُوْا مَالَ الْيَتِيْمِ اِلَّا بِالَّتِيْ هِيَ اَحْسَنُ وَقَوْلُهٗ تَعَالٰى اِنَّ الَّذِيْنَ يَاْكُلُوْنَ اَمْوَالَ الْيَتٰمٰى ظُلْمًا اَلْاٰيَةُ اِنْطَلَقَ مَنْ كَانَ عِنْدَهٗ يَتِيْمٌ فَعَزَلَ طَعَامَهٗ مِنْ طَعَامِهٖ وَشَرَابَهٗ مِنْ شَرَابِهٖ فَاِذَا فَضَلَ مِنْ طَعَامِ الْيَتِيْمِ وَشَرَابِهٖ شَيْءٌ حُبِسَ لَهٗ حَتّٰى يَاْكُلَهٗ اَوْ يَفْسُدَ فَاشْتَدَّ ذَالِكَ عَلَيْهِمْ فَذَكَرُوْا ذٰلِكَ لِرَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَاَنْزَلَ اللّٰهُ تَعَالٰى وَيَسْاَلُوْنَكَ عَنِ الْيَتٰمٰى قُلْ اِصْلَاحٌ

[1] Abu Dawud # 5157, Musnad Ahmad 5-168.

[2] Abu Dawud # 2548, Musnad Ahmad 4-180.

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لَّهُمْ خَيْرٌ، وَإِنْ تُخَالِطُوهُمْ فَإِخْوَانُكُمْ، فَخَلَطُوا طَعَامَهُمْ بِطَعَامِهِمْ وَشَرَابَهُمْ بِشَرَابِهِمْ۔

(رواه ابوداؤد والنسائی)

3371. Sayyiduna Ibn Abbas رضی اللہ عنہ narrated that when Allah's words were revealed.

وَلَا تَقْرَبُوا مَالَ الْيَتِيمِ إِلَّا بِالَّتِي هِيَ أَحْسَنُ(6: 152)

And his words:

إِنَّ الَّذِينَ يَأْكُلُونَ أَمْوَالَ الْيَتَامَىٰ ظُلْمًا الآية(4: 10)

any one who had an orphan in his care (became extremely cautions and) went and separated his food and drink from his. So much so that if any of the food and drink of the orphan was left over, he kept that aside for him until he ate it (the test time) or it rotted (However,) they (these guardians) found this thing very taxing or them and told Allah's Messenger صلی اللہ علیہ وسلم about it and Allah revealed the verse:

وَيَسْأَلُونَكَ عَنِ الْيَتَامَىٰ قُلْ إِصْلَاحٌ لَّهُمْ خَيْرٌ، وَإِنْ تُخَالِطُوهُمْ فَإِخْوَانُكُمْ(۲:۲۲۰)

So they put together their food and their drink with theirs.
The translation of the verse respectively are:

وَلَا تَقْرَبُوا مَالَ الْيَتِيمِ إِلَّا بِالَّتِي هِيَ أَحْسَنُ

{And approach not the wealth of the orphan, save with that which is best...} (6: 152)

إِنَّ الَّذِينَ يَأْكُلُونَ أَمْوَالَ الْيَتَامَىٰ ظُلْمًا إِنَّمَا يَأْكُلُونَ فِي بُطُونِهِمْ نَارًا وَسَيَصْلَوْنَ سَعِيرًا۔ (النساء ۴: ۱۰)

{Surely those who devour the possessions of orphans wrongfully, devour fire in their bellies. And they shall enter a blazing fire} (4: 10)

وَيَسْأَلُونَكَ عَنِ الْيَتَامَىٰ قُلْ إِصْلَاحٌ لَّهُمْ خَيْرٌ وَإِنْ تُخَالِطُوهُمْ فَإِخْوَانُكُمْ وَاللَّهُ يَعْلَمُ الْمُفْسِدَ مِنَ الْمُصْلِحِ

وَلَوْ شَاءَ اللَّهُ لَأَعْنَتَكُمْ۔ (البقرہ ۲: ۲۲۰)

{And they ask your concerning the orphans. Say "To set their (affairs) aright is good." And yet if you intermix with them, they are your brethren. And Allah knows well the mischief maker from the right doer. And had Allah willed, he would have been hard upon you.}[1] (2: 220)

COMMENTARY: The gist of the hadith is that when the verses of the Quran (6: 152 and 4: 10) were revealed, the word of the guardians increase and become difficult. At the same time, the property of the orphans was wasted.

The guardians brought their predicament to the notice of the prophet صلی اللہ علیہ وسلم and Allah alleviated their difficulty but warned them that they must remain honest and well-wishing. Allah knows well the mischief maker from the right doer. If anyone was dishonest then he would be punished severely.

It is reported that a student of Imam Muhammad رحمہ اللہ died. He sold the student's books and paid for his shrouding and burial. Some people asked him, "Your student had not given instructions for this action. Why did you do it?" In answer, he recited this verse up to:

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[1] Abu Dawud # 2548, Musnad Ahmad 4-180.

وَاللّٰهُ يَعْلَمُ الْمُفْسِدَ مِنَ الْمُصْلِحِ

{And Allah knows well the mischief-maker from the right-doer} (2: 220)

DO NOT SEPARATE FATHER & SON

(٣٣٧٢) وَعَنْ اَبِيْ مُوْسٰى قَالَ لَعَنَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ فَرَّقَ بَيْنَ الْوَالِدِ وَوَلَدِهٖ وَ بَيْنَ الْاَخِ وَبَيْنَ اَخِيْهِ۔ (رواه ابن ماجة والدارقطني)

3372. Sayyiduna Abu Musa رضی اللہ عنہ narrated that Allah's Messenger invoked a curse on him who separates father from his son and a brother from his brother.[1]

COMMENTARY: To 'separate the two means to sell one of them or give him as a gift to someone, the son or one of the brothers is a child. This has been explained in the hadith of Abu Ayyub رضی اللہ عنہ (# 2361)

Of course, 'to separate' them could also mean 'to set one against another' so that they sever ties of kinship.

(٣٣٧٣) وَعَنْ عَبْدِاللّٰهِ ابْنِ مَسْعُوْدٍ قَالَ كَانَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِذَا اُتِيَ بِالسَّبْيِ اَعْطٰى اَهْلَ الْبَيْتِ جَمِيْعًا كَرَاهِيَةَ اَنْ يُفَرِّقَ بَيْنَهُمْ۔ (رواه ابن ماجة)

3373. Sayyiduna Abdullah ibn Mas'ud رضی اللہ عنہ narrated that when captives were brought to the prophet صلی اللہ علیہ وسلم (from a battle, for example) , he gave whole families (to anyone) out of dislike for separating them.[2]
(Meaning, he did not separate their members by giving them to different people.)

THE BAD PEOPLE

(٣٣٧٤) وَعَنْ اَبِيْ هُرَيْرَةَ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اَلَا اُنَبِّئُكُمْ بِشِرَارِكُمُ الَّذِيْ يَاْكُلُ وَحْدَهٗ وَيَجْلِدُ عَبْدَهٗ وَيَمْنَعُ رِفْدَهٗ۔ (رواه رزين)

3374. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم asked, "Shall I not tell you who your evil ones are? They are those who eat alone, beat their slaves and deny favours (to others)."[3]

COMMENTARY: This hadith lists some things that are disliked and bad. So, those people who have them as their traits are evil. The bad mannered and the niggardly are evil.

Ibn Asakir has presented a tradition from Mu'awiyah رضی اللہ عنہ in Jami Saghir that the prophet صلی اللہ علیہ وسلم asked, "Shall I not inform of the evil people?" He is bad who eats alone, does not let anyone derive benefit from him, travels alone and beats his slave (unjustly). Shall I not tell you who is worse than him? He is worse who detests people and people dislike him. And, shall I not tell you of one who is worse than him? He is worse than him of whose mischief people are scared and except no good from him. And, Shall I not tell you of one who is worse than him? He is who barters his hereafter for the present world. And

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[1] Ibn Majah # 2250, Daraqutni.

[2] Ibn Majah # 2248.

[3] Razin.

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shall I not tell you who is worse than this man? He is the one who earns the worldly possessions through religion.

TREAT SLAVES AS CHILDREN & BROTHERS

(٣٣٧٥) وَعَنْ اَبِيْ بَكْرِنِ الصِّدِّيْقِ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا يَدْ خُلُ الْجَنَّةَ سَيِّئُ الْمَلَكَةِ قَالُوْا يَا رَسُوْلَ اللّٰهِ اَلَيْسَ اَخْبَرْتَنَا اَنَّ هٰذِهِ الْاُمَّةَ اَكْثَرُ الْاُمَمِ مَمْلُوْكِيْنَ وَيَتَامٰى قَالَ نَعَمْ فَاَكْرِمُوْ هُمْ كَكَرَامَةِ اَوْلَادِ كُمْ وَاَطْعِمُوْ هُمْ مِمَّا تَأْكُلُوْنَ قَالُوْا فَمَا تَنْفَعُنَا الدُّنْيَا قَالَ فَرَسٌ تَرْتَبِطُهُ تُقَاتِلُ عَلَيْهِ فِيْ سَبِيْلِ اللّٰهِ وَمَمْلُوْكٌ يَكْفِيْكَ فَاِذَا صَلّٰى فَهُوَ اَخُوْكَ۔ (رواه ابن ماجة)

3375. Sayyiduna Abu Bakr as Saddiq رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "He shall not enter paradise who treats his slaves badly." They (the sahabah) رضی اللہ عنہ asked, "O Messenger of Allah, did you not tell us that this (your) umah will have more slaves and orphans than other *ummah*?" He said, "Yes, So keep them dear to you as you Have your children dear to you, and feed them out of what you eat." Then they asked, "O Messenger of Allah, what is it that would benefit us in this world?" He said, "A horse that you keep tethered (ad ready) to fight on it in Allah's path, and a slave who suffices (caring for your worldly tasks so that you may find time to devote to tasks of the hereafter). When he offers *salah (prayer)*, he is your brother."[1]

COMMENTARY: Jihad would be waged often, So very many captives would be taken. So, too, Muslims would be martyred and their children will be orphaned.

[1] Ibn Majah # 3691.

CHAPTER - XIX

ADOLESCENCE (OR PUBERTY) & BRINGING UP CHILDREN

بَابُ بُلُوْغِ الصَّغِيْرِ وَحِضَانَتِهٖ فِى الصِّغَرِ

In this chapter we shall mention the signs of puberty in a boy and a girl. We shall also point out who is responsible to train and raise a child.

SIGNS & AGE OF PUBERTY: The sign of boy's adolescence is that he gets nocturnal emissions and becomes capable for reproduction and of ejaculation.

The sign of a girl's maturity is that she experiences menstruation, get nocturnal dreams and can become pregnant.

If these signs are not fund, then they are treated as nature at the age of fifteen years. The edict is according to this and the minimum age of which a boy matures is twelve years, and a girl at nine years.

If they are near attaining puberty and they say that they are mature, then they will be believed. They will be regarded as such in Shari'ah (divine law).

WHO BRINGS UP A CHILD: The mother has the greatest right to bring up her child, irrespective of whether her marriage is intact or she is divorced. But, if she has apostated or is wicked and bad charactered then she does not have the greatest right. If she is divorced and refuses to rear her child, then she will not be compelled because she might be unable and helpless to do it, but if there are no uterine relatives then she must be forced to bring up the child rather than let the child get lost.

If the mother (who is divorced or widowed) marries another man who is not a mahram relative of the child, then she will be have the greatest right to bring up the child. If she marries a mahram (of the child), like its paternal uncle then her right will not be withdrawn.

Again, if the mother marries a man who is not the child's mahram and loses the (greatest) right to rear the child and afterwards is divorced by her second husband or is widowed and marries a man who is the child's mahram then she acquires back the right to raise the child, more than anyone else.

If a child's mother loses her right to raise it, or dies, then the next greatest right to rear the child rests with its maternal grandmother. If she is not alive, then it will go to the maternal great grandmother and so on up the ladder. After them, the right rests with the paternal grand mother and so on.

In their absence, the right to raise the child rest with its sister (real) followed by half sister, step sister, maternal aunt, paternal aunt and sisters daughters and brother's daughters. The daughters of the sister will have a greater right than paternal aunts (father's sister).

The relatives enumerated here as eligible to raise a child must necessarily be free woman. A female slave and an umm walad have no right to raise a child. However, a dhimmi woman has a right to raise a child provided it has not attained an age of understanding religion.

When there is no woman eligible to raise the child, then the right rests with the asbah (male relatives on the father's side) according to the same sequence as their eligibility for inheritance. However, a girl will not be handed over (to be raised) to a paternal relative who is not a mahram, like a paternal cousin, or to an indecent or careless boy.

LIMIT OF RIGHT TO RAISE CHILD: The limit of the right to raise a child is its age of nine or seven years.

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According to Quduri, the right to raise a male child ends when the child can eat and drink by himself, wear his garments and make istinja, or cleanse himself. Thereafter, his father can take the child in his custody forcibly. As for a female child, her mother and maternal grandmother will remains eligible to raise her till she begins to have monthly periods.
Imam Muhammad says that her mother and grandmother remain eligible to raise daughter till she can have sexual intercourse. When that happens, her mother, maternal and paternal grandmothers and other women lose the right to raise her.

SECTION I اَلْفَصْلُ الْاَوَّلُ

ADULTHOOD AT FIFTEEN YEARS

(٣٣٧٦) وَعَنِ ابْنِ عُمَرَ قَالَ عُرِضْتُ عَلَى رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَامَ اُحُدٍ وَاَنَا ابْنُ اَرْبَعَ عَشْرَةَ سَنَةً فَرَدَّنِيْ ثُمَّ عَرَضْتُ عَلَيْهِ عَامَ الْخَنْدَقِ وَاَنَا ابْنُ خَمْسَ عَشْرَةَ سَنَةً فَاَجَازَنِيْ فَقَالَ عُمَرُ ابْنُ عَبْدِالْعَزِيْزِ هٰذَا فَرْقُ مَا بَيْنَ الْمُقَاتِلَةِ وَالذُّرِّيَّةِ۔ (متفق علیه)

3376. Sayyiduna Ibn Umar رضی اللہ عنہ said: I was taken to Allah's Messenger صلی اللہ علیہ وسلم in the year of Uhud (3 AH to participate in jihad) when I was fourteen years old, but he sent me back. Then, I was taken to him in the year of Khundaq (battle of Trenches) when I was fifteen years old and he permitted me (to participated in the battle – the jihad).
Sayyiduna Umar ibn Abdul Aziz رحمہ اللہ said, "This distinguishes the warriors from the children."[1]

COMMENTARY: This is evidence that the age of adult hood is fifteen years.

THE QUESTION OF RAISING DAUGHTER OF HAMZAH رضی اللہ عنہ

(٣٣٧٧) وَعَنِ الْبَرَاءِ ابْنِ عَازِبٍ قَالَ صَالَحَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَوْمَ الْحُدَيْبِيَةِ عَلَى ثَلَاثَةِ اَشْيَاءَ عَلَى اَنَّ مَنْ اَتَاهُ مِنَ الْمُشْرِكِيْنَ رَدَّهُ اِلَيْهِمْ وَمَنْ اَتَاهُمْ مِنَ الْمُسْلِمِيْنَ لَمْ يَرُدُّوْهُ وَعَلَى اَنْ يَدْخُلَهَا مِنْ قَابِلٍ وَيُقِيْمُ بِهَا ثَلَاثَةَ اَيَّامٍ فَلَمَّا دَخَلَهَا وَمَضَى الْاَجَلُ خَرَجَ فَتَبِعَتْهُ اِبْنَةُ حَمْزَةَ تُنَادِيْ يَا عَمِّ يَا عَمِّ فَتَنَاوَلَهَا عَلِيٌّ فَاَخَذَ بِيَدِهَا فَاخْتَصَمَ فِيْهَا عَلِيٌّ وَزَيْدٌ وَجَعْفَرٌ فَقَالَ عَلِيٌّ اَنَا اَخَذْتُهَا وَهِيَ بِنْتُ عَمِّيْ وَقَالَ جَعْفَرٌ بِنْتُ عَمِّيْ وَخَالَتُهَا تَحْتِيْ وَقَالَ زَيْدٌ بِنْتُ اَخِيْ فَقَضٰى بِهَا النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لِخَالَتِهَا وَقَالَ الْخَالَةُ بِمَنْزِلَةِ الْاُمِّ وَقَالَ لِعَلِيٍّ اَنْتَ مِنِّيْ وَاَنَا مِنْكَ وَقَالَ لِجَعْفَرٍ اَشْبَهْتَ خَلْقِيْ وَخُلُقِيْ وَقَالَ لِزَيْدٍ اَنْتَ اَخُوْنَا وَمَوْلَانَا۔ (متفق علیه)

3377. Sayyiduna Al-Bara ibn Aazib رضی اللہ عنہ narrated that on the day of al Hudaybiyah the Prophet صلی اللہ علیہ وسلم made peace (with the infidels of Makkah) on three conditions that:

- **(i) If any of the polytheists came to him, he would send him back to them (the Makkans).**
- **(ii) If any of the Muslim came to them, they would not send him back (to him), and,**

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[1] Bukhari # 2664, Muslim # 91-1868, Tirmidhi # 1366, Ibn Majah 2543.

(iii) He would be allowed to enter Makkah next year and stay in it for (only) three days (and perform the redeeming umrah).

So, when he entered it and the (agreed) period was over and he set out, the daughter of (Sayyiduna) Hamzah رضی اللہ عنہ followed him, calling "Uncle! O Uncle!" Ali رضی اللہ عنہ held her hand (to take her along). Then Abu رضی اللہ عنہ, Zayd رضی اللہ عنہ and Ja'far رضی اللہ عنہ disputed about her (each claiming right to raise her). So, Ali رضی اللہ عنہ said, "I have taken her (already) and she is the daughter of my paternal uncle (and I have a greater night to raise her)." Ja'far رضی اللہ عنہ said, 'She is the daughter of my brother and her maternal aunt is my wife (so I have more right to raise her)." And, Zayd رضی اللہ عنہ said, "She is the daughter of my brother." (And, he too claimed the night to bring her up.) Then, the Prophet صلی اللہ علیہ وسلم decided about her in favour of her maternal aunt (who was the wife of Jafar) رضی اللہ عنہ. He said, "The maternal aunt is like the mother." Then, he said to Ali رضی اللہ عنہ You belong to me are I belong to you." (He meant that both of them were perfectly sincere and of one mind). And, he said to Jafar رضی اللہ عنہ, "you resemble me in appearance and nature." And, to Zayd رضی اللہ عنہ, so said, 'You are our brother and our dear one."[1]

COMMENTARY: Hudaybiyah is about fifteen miles from Makkah towards *jiddah (waiting period)*. In 6 AH, the prophet صلی اللہ علیہ وسلم left Madinah, alongwith his sahabah (Prophet's Companions) رضی اللہ عنہم, to performs umrah at Makkah. However, at Hudaybiyah, the idolaters obstructed his passage.

There, the peace treaty of Hudaybiyah was concluded between the prophet صلی اللہ علیہ وسلم and the idolaters of Makkah as stated in the hadith in brief.

We shall speak on it at length in the Book of jihad, Insha Allah.

Hamza رضی اللہ عنہ was the Prophet's رضی اللہ عنہ paternal uncle and faster brother. Both of them had been suckled by Thawbiyah, the female slave of Abu Lahab. This is why the daughter of Hamzah رضی اللہ عنہ called the prophet صلی اللہ علیہ وسلم uncle.

Jafar رضی اللہ عنہ was the paternal cousin of the prophet صلی اللہ علیہ وسلم. He was the son of Abu Talib and brother of Ali رضی اللہ عنہ, ten years his senior.

Zayd ibn Thabit رضی اللہ عنہ was a slave whom the Prophet صلی اللہ علیہ وسلم has set free, and adopted him as a son. The Prophet صلی اللہ علیہ وسلم loved him very much. The Prophet صلی اللہ علیہ وسلم had established bonds of fraternity between Hamzah رضی اللہ عنہ and Zayd رضی اللہ عنہ. Hence, Zayd رضی اللہ عنہ called the daughter of Hamzah رضی اللہ عنہ his niece.

Ali رضی اللہ عنہ took the daughter of Hamzah رضی اللہ عنہ to Madinah but the three men contended with each other on he question of the custody of the child and her maintenance. The Prophet صلی اللہ علیہ وسلم entrusted her to her maternal aunt who was Ja'far's رضی اللہ عنہ wife and he spoke words of encouragement to each of them.

SECTION II اَلْفَصْلُ الثَّانِیْ

MOTHER HAS MORE RIGHT

(۳۳۷۸) وَعَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ اَبِيْهِ عَنْ جَدِّهٖ عَبْدِاللّٰهِ بْنِ عَمْرٍو اَنَّ امْرَاَةً قَالَتْ يَا رَسُوْلَ اللّٰهِ اِنَّ

[1] Bukhari # 2700, Muslim # 90-1783, Tirmidhi # 1911.

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ابْنِي هٰذَا كَانَ بَطْنِي لَهُ وِعَاءً وَثَدْيِي لَهُ سِقَاءً وَحِجْرِي لَهُ حِوَاءً وَإِنَّ اَبَاهُ طَلَّقَنِي وَاَرَادَ اَنْ يَنْزِعَهُ مِنِّي فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَنْتِ اَحَقُّ بِهٖ مَا لَمْ تَنْكِحِي۔ (رواه احمد وابوداؤد)

3378. Sayyiduna Amr ibn Shu'ayb رحمه الله reported from his father (Shu'ayb) رحمه الله from his grandfather Abdullah ibn Amr رضى الله عنه that a woman submitted, "O Messenger of Allah, this my son! My womb was a vessel for him (for a period of time) , my breasts were a water-skin for him (and I suckled him) and my lap was a cradle for him. His father has (now) divorced me and intends to snatch him from me." Allah's Messenger صلى الله عليه وسلم said, "You have more right to him (than anyone else has) as long as you do not marry."[1]

COMMENTARY: The hadith that follows (# 3379) quotes the Prophet صلى الله عليه وسلم as giving option to the boy of stay with his father or with his mother. Teebi explains that perhaps the son mentioned in this hadith may have been a minor child not of understanding age and the one in the next could have been of a discerning age.

As for the condition 'as long as you do not marry.' The ulama (Scholars) say that it means marriage to a non mahram of the child. If she marries a man who is a mahram relative of the child, like his paternal uncle, then she retains the right to raise her son because this man is expected to b kind to the child.

CHOICE TO CHILD

(٣٣٧٩) وَعَنْ اَبِيْ هُرَيْرَةَ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ خَيَّرَ غُلَامًا بَيْنَ اَبِيْهِ وَاُمِّهٖ۔ (رواه الترمذى)

3379. Sayyiduna Abu Hurayrah رضى الله عنه narrated that Allah's messenger gave choice to a boy (to choose) between his father and his mother (to stay with either of them).[2]

COMMENTARY: This has been explained in the commentary against the previous hadith. In that case, the question was about a child being raised and nurtured. So, the Prophet صلى الله عليه وسلم gave preference to the mother.

Imam Abu Hanifah رحمه الله rules accordingly. He says that during the period of nurturing the child has no choice.

Imam Shafi'I رحمه الله says that the child may exercise the option even during the time he is fostered.

(٣٣٨٠) وَعَنْهُ قَالَ جَاءَتِ امْرَاَةٌ اِلٰى رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَتْ اِنَّ زَوْجِيْ يُرِيْدُ اَنْ يَذْهَبَ بِابْنِيْ وَقَدْ سَقَانِيْ وَنَفَعَنِيْ فَقَالَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ هٰذَا اَبُوْكَ وَهٰذِهٖ اُمُّكَ فَخُذْ بِيَدِ اَيِّهِمَا شِئْتَ فَاَخَذَ بِيَدِ اُمِّهٖ فَانْطَلَقَتْ بِهٖ۔ (رواه ابوداؤد والنسائى)

3380. Sayyiduna Abu Hurayrah رضى الله عنه narrated that a woman came to Allah's Messenger صلى الله عليه وسلم and complained that her husband intended to take away from her their son and, 'indeed, he provided him water and other benefits (having attained such age). The Prophet صلى الله عليه وسلم said, "This is your father and this is your mother. Take the hand of whichever of the too you wish (to go with)." He took the

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[1] Abu Dawud # 2276, Musnad Ahmad 2-182.

[2] Tirmidhi # 1362, Musnad Ahmad 2-246.

hand of his mother. She then went away with him.[1]

SECTION III الفصل الثالث

(٣٣٨١) وَعَنْ هِلَالِ بْنِ أُسَامَةَ عَنْ أَبِي مَيْمُوْنَةَ سُلَيْمَانَ مَوْلًى لِأَهْلِ الْمَدِيْنَةِ قَالَ بَيْنَمَا أَنَا جَالِسٌ مَعَ أَبِي هُرَيْرَةَ جَاءَتْهُ امْرَأَةٌ فَارِسِيَّةٌ مَعَهَا ابْنٌ لَهَا وَقَدْ طَلَّقَهَا زَوْجُهَا فَادَّعَيَاهُ فَرَطَنَتْ لَهُ تَقُوْلُ يَا أَبَاهُرَيْرَةَ زَوْجِيْ يُرِيْدُ أَنْ يَذْهَبَ بِابْنِيْ فَقَالَ أَبُوْهُرَيْرَةَ اسْتَهِمَا عَلَيْهِ رَطَنَ لَهَا بِذَالِكَ فَجَاءَ زَوْجُهَا وَقَالَ مَنْ يُحَاقُّنِيْ فِيْ ابْنِيْ فَقَالَ أَبُوْهُرَيْرَةَ اَللّٰهُمَّ اِنِّيْ لَا أَقُوْلُ هٰذَا اِلَّا اِنِّيْ كُنْتُ قَاعِدًا مَعَ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَأَتَتْهُ امْرَأَةٌ فَقَالَتْ يَا رَسُوْلَ اللّٰهِ اِنَّ زَوْجِيْ يُرِيْدُ أَنْ يَذْهَبَ بِابْنِيْ وَقَدْ نَفَعَنِيْ وَسَقَانِيْ مِنْ بِئْرِ أَبِيْ عَنَبَةَ وَعِنْدَ النَّسَائِيِّ مِنْ عَذْبِ الْمَاءِ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اسْتَهِمَا عَلَيْهِ فَقَالَ زَوْجُهَا مَنْ يُحَاقُّنِيْ فِيْ وَلَدِيْ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ هٰذَا أَبُوْكَ وَهٰذِهِ أُمُّكَ فَخُذْ بِيَدِ أَيِّهِمَا شِئْتَ فَأَخَذَ بِيَدِ أُمِّهِ۔ رَوَاهُ أَبُوْدَاوٗدَ وَالنَّسَائِيُّ لٰكِنَّهُ ذَكَرَ الْمُسْنَدَ وَرَوَاهُ الدَّارِمِيُّ عَنْ هِلَالِ بْنِ أُسَامَةَ۔

3381. Sayyiduna Hilal ibn Usamah رضی الله عنه narrated from Abu Maymunah Sulayman, رضی الله عنه the freedman of (one of) the people of Madinah. He said that while he was seated with Abu Hurayrah رضی الله عنه a Persian woman came to him. She had her son with her. Her husband had divorced her, and both of them claimed (custody of) the child. She spoke to him in Persian that her husband wished to take away their son from her. So, Abu Hurayrah رضی الله عنه advised her to cast lots, speaking in alien language. Then her husband came and protested, "who is disputing with me about my son?" Abu Hurayrah رضی الله عنه said, "O Allah! I do not say so (on my own) , but I was sitting with Allah's Messenger صلی الله علیه وسلم when a woman came to him and pleaded, 'O Allah's Messenger, my husband intends to take away my son who benefits me and draws water for me from the well of Abu 'Inaba' (Here, Nasa'I has 'from sweet water.') Allah's Messenger صلی الله علیه وسلم said (The two of you) cast lots for him. The husband protested, 'who disputes with me about my son?' Allah's Messenger صلی الله علیه وسلم said (the boy). 'This is your father and this is your mother. Take whichever of the two you wish by the hand, He took the hand of his mother."[2]

COMMENTARY: This hadith discloses that some of the sahabah (Prophet's Companions) رضی الله عنهم did know the languages of the non Arabs.

The boy mentioned in this hadith was also an adult so he was given the choice. It is clear that he was an adult because he fetched water from a far off place, outside the city. No mother would send a minor to fetch water from a distant place.

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[1] Abu Dawud # 2277, Nasa'i # 3496, Ibn Majah # 2351, Darimi # 2293.

[2] Abu Dawud # 2277, Nasa'i # 3526, Darimi # 2293.

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بسم الله الرحمٰن الرحيم

BOOK - XIV

(AL-ITQ) EMANCIPATION كِتَابُ العِتْقِ

SETTING A SLAVE FREE

STATUS OF EMANCIPATION IN SHARI'AH (DIVINE LAW): From the point of view of Shari'ah (divine law), freedom is a faculty of wisdom that lets man have his inherent right. He thus becomes eligible to take over as master, leader or one worthy of bearing testimony. If this inherent right of anyone is taken away from him when he is enslaved and then he is set free and the right is restored to him the faculty of wisdom enables him to be eligible to act as a master, leader and witness. Also he gets the ability to dictate others and prevent others from dictating to him. He stands among the independent men.

PREREQUISITE FOR SETTING FREE: To set a slave free, the person who sets him or her free must be reposed with authority, be independent, adult sane and owner of the slave he sets free.

KINDS OF FREEDOM: In some cases it is *wajib (obligatory)* to set a slave free, like when making an expiation.

In some cases it is a sin. Examples are when there is a likelihood of his fleeing to enemy territory, or apostating, or turning into a thief or robber.

In some cases, it is permissible, like a slave is released to consign reward to someone.

In some cases, it is a worship. It is when a slave is set free for Allah's sake, to please him.

SECTION I اَلْفَصْلُ الْاَوَّلُ

REWARD ON EMANCIPATING SLAVE

(٣٣٨٢) عَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ اَعْتَقَ رَقَبَةً مُسْلِمَةً اَعْتَقَ اللّٰهُ بِكُلِّ عُضْوٍ مِنْهُ عُضْوًا مِنَ النَّارِ حَتّٰى فَرْجَهٗ بِفَرْجِهٖ۔ (متفق عليه)

3382. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "If any one set free a Muslim slave, then Allah will set free from hell against every limb of the slave a limb of his, so much so that against his sexual organs his sexual organs."[1]

COMMENTARY: The slave has been defined as Muslim because the reward would increase, for, otherwise there is a reward in releasing from slavery any slave.

The ulama (Scholars) say because of the specific mention of sexual organs that it is better for a man to set free a man slave and for a woman to set free a woman slave.

BETTER TO FREE EXPENSIVE & FAVOURITE SLAVE

(٣٣٨٣) وَعَنْ اَبِيْ ذَرٍ قَالَ سَاَلْتُ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَيُّ الْعَمَلِ اَفْضَلُ؟ قَالَ اِيْمَانٌ بِاللّٰهِ وَجِهَادٌ فِيْ

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[1] Bukhari # 6715, Muslim # 23-1509, Tirmidhi # 1541, Musnad Ahmad 2-447.

سَبِيْلِهٖ۔ قَالَ قُلْتُ فَاَیُّ الرِّقَابِ اَفْضَلُ قَالَ اَغْلَاهَا ثَمَنًا وَاَنْفَسُهَا عِنْدَ اَهْلِهَا قُلْتُ فَاِنْ لَمْ اَفْعَلْ قَالَ تُعِيْنُ صَانِعًا اَوْ تَصْنَعُ لِاَخْرَقَ قُلْتُ فَاِنْ لَمْ اَفْعَلْ قَالَ تَدَعُ النَّاسَ مِنَ الشَّرِّ فَاِنَّهَا صَدَقَةٌ تَصَدَّقُ بِهَا عَلٰى نَفْسِكَ۔ (متفق علیه)

3383. Sayyiduna Abu Dharr رضی اللہ عنہ narrated that he asked the Prophet صلی اللہ علیہ وسلم, "Which deed is best?" He said, "Faith in Allah and waging jihad in his path." He then asked, "Which slave is best (to set free)?" He said, "The most expensive and the dearest to the owner." He asked, "And, if I am unable to do that?" (Because I may not afford such a slave?) He said, "Help one who makes (something), or make (something) or one who cannot make it." He asked, "And, if I cannot do it?" He said, "Spare the people from (Your) mischief. It is a charity that you make to yourself.[1]

COMMENTARY: It is very obvious that faith is the best deed. Without it no deed would be worthwhile.

Jihad gives strength to religion. Muslim become supreme through it.

As for *salah (prayer)* and fasting they are excellent from another angel. This hadith does not mean to compare jihad with them. Jihad could also mean 'to toil heard, 'strive to the utmost, 'effort,' 'exertion.' And it is applied both to jihad in Allah's path, war, and also to other forms of worship. Thus doing what we are commanded to do and obstaining from what we are forbidden entails strenuous effort and this is jihad akbar (the greatest from of jihad).

The meaning of the Prophet's صلی اللہ علیہ وسلم saying, therefore, is that the best action is to have faith and to act on the demands of faith. It is as we are told

قُلْ اٰمَنْتُ بِاللّٰهِ ثُمَّ اسْتَقِمْ

(Say 'I believe in Allah then be steadfast).

Help one who does something: The something done is everything that is a means of a man's livelihood. It can be industry, skilled work, trading or any profession. This looks after needs of his family. If a person cannot do that because of his weakness then he should be helped.

If anyone does not know how to make something necessary for his livelihood then others should make it or do it for him. On that support, he will subsist.

Abstain from causing harm to others: Do not involve them in evil. Do not hurt other with your tongue and hands and do not cause them loss of any kind. Abstaining from these things is also being good and spreading blessings, more so when one abstains from evil in spite of having power to do it.

Instead of saying in the conclusion, 'this is being good to other, the prophet صلی اللہ علیہ وسلم reminded us that this conduct is a charity to ourselves.

SECTION II اَلْفَصْلُ الثَّانِيْ

MERIT OF HELPING A SLAVE GET FREEDOM

(٣٣٨٤) عَنِ الْبَرَاءِ بْنِ عَازِبٍ قَالَ جَاءَ اَعْرَابِيٌّ اِلَى النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ عَلِّمْنِيْ عَمَلًا يُدْخِلُنِي الْجَنَّةَ

[1] Bukhari # 2518, Muslim # 84-136.

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قَالَ لَئِنْ كُنْتَ اَقْصَرْتَ الْخُطْبَةَ لَقَدْ اَعْرَضْتَ الْمَسْئَلَةَ اَعْتِقِ النَّسَمَةَ وَفُكَّ الرَّقَبَةَ قَالَ اَوَلَيْسَا وَاحِدًا قَالَ لَا عِتْقُ النَّسَمَةِ اَنْ تَفَرَّدَ بِعِتْقِهَا وَفَكُّ الرَّقَبَةِ اَنْ تُعِيْنَ فِيْ ثَمَنِهَا وَالْمِنْحَةَ الْوَكُوْفَ وَالْفَيْءُ عَلٰى ذِى الرَّحِمِ الظَّالِمِ فَاِنْ لَمْ تُطِقْ ذٰلِكَ فَاَطْعِمِ الْجَائِعَ وَاسْقِ الظَّمْاٰنَ وَاْمُرْ بِالْمَعْرُوْفِ وَانْهَ عَنِ الْمُنْكَرِ فَاِنْ لَمْ تُطِقْ ذٰلِكَ فَكُفَّ لِسَانَكَ اِلَّا مِنْ خَيْرٍ۔ رَوَاهُ الْبَيْهَقِيُّ فِيْ شُعَبِ الْاِيْمَانِ۔

3384. Sayyiduna al Bara ibn Aazib رضی اللہ عنہ **narrated that a villager came to the prophet** صلی اللہ علیہ وسلم **and submitted. "Teach me a deed that will get me admittance to paradise." He said, Though you have used few words, yet you have presented a significant enquiry. Set free a soul and deliver a slave (from slavery)." He asked, 'Are they not the same thing?" He said, "No. To set a soul face is to do it by yourself while to deliver a slave (from bonds of slavery) is to help him pay the price (for buying freedom). And (more deeds leading to paradise include) you should lend (to a needy person) a milch camel or sheep that has much milk for milking. And, you must be kind to a cruel relative (who does wrong to you). If you are unable to do that, then feed the hungry and give drink to the thirsty. And enjoin piety and forbid evil. And, if you are unable to do that, then hold your tongue (from everything) except from what is good."**[1]

COMMENTARY: One sets his own slave from or help another's slave pay for his freedom when he has contracted with his master to buy it at a certain price. This kind of slave is called a mukatab.

The Arabic word in the text is (المنعة) (alminhah). It stands for a she-camel or sheep that has plenty of milk. The poor person to whom it is lent may use its milk or hair.

As for the final edict 'shut your tongue from everything but good words.' There is another hadith of the same purport:

مَنْ كَانَ يُؤْمِنُ بِاللّٰهِ وَالْيَوْمِ الْاٰخِرِ فَلْيَقُلْ خَيْرًا اَوْلِيَصْمُتْ

"He who believes in Allah and the Last Day must speak what is good or observe silence."

In other words, one must exercise full control over one's tongue. Nothing bad must come on the tongue. Whenever the tongue carps, only good must it utter. If this advice is observed, one can preserve oneself from many kind of less in the word and religion. Misused words generate misleading thoughts.

The ulama (Scholars) say of these too hadith that speaking what is 'good' is that which is contrary to evil and has reward for it. Whatever speech is permitted falls in the category of 'good' (If unnecessary speech is repressed many regret could be averted.)

(۳۳۸۵) وَعَنْ عَمْرِو بْنِ عَبَسَةَ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ مَنْ بَنٰى مَسْجِدًا لِيُذْكَرَ اللّٰهُ فِيْهِ بُنِيَ لَهٗ بَيْتٌ فِي الْجَنَّةِ وَمَنْ اَعْتَقَ نَفْسًا مُسْلِمَةً كَانَتْ فِدْيَتُهٗ مِنْ جَهَنَّمَ وَمَنْ شَابَ شَيْبَةً فِيْ سَبِيْلِ اللّٰهِ كَانَتْ لَهٗ نُوْرًا يَوْمَ الْقِيَامَةِ۔ (رواه فی شرح السنة)

3385. Sayyiduna Amr ibn Abasah رضی اللہ عنہ **narrated that the Prophet** صلی اللہ علیہ وسلم

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[1] Bayhaqi in Shu'ab ul Eeman # 43350, Musnad Ahmad 4-299.

said, "He who build a mosque so that Allah may be remembered therein will have a house built for him in paradise. He who emancipates Muslim slave will have that (action) as his ransom from hell. He who grows old in Allah's path (in jihad, pilgrimage, acquiring knowledge or in Islam) will have that (old age) as a light for him on the day of resurrection. (He will find deliverance with it in the darkness of that day.)[1]

SECTION III اَلْفَصْلُ الثَّالِثُ

(٣٣٨٦) عَنِ الْغَرِيْفِ ابْنِ عَيَّاشٍ الدَّيْلَمِيِّ قَالَ اَتَيْنَا وَاثِلَةَ بْنِ الْاَسْقَعِ فَقُلْنَا حَدِّثْنَا حَدِيْثًا لَيْسَ فِيْهِ زِيَادَةٌ وَّلَا نُقْصَانٌ فَغَضِبَ وَقَالَ اِنَّ اَحَدَكُمْ لَيَقْرَأُ وَمُصْحَفُهُ مُعَلَّقٌ فِيْ بَيْتِهٖ فَيَزِيْدُ وَيَنْقُصُ فَقُلْنَا اِنَّمَا اَرَدْنَا حَدِيْثًا سَمِعْتَهٗ مِنَ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ اَتَيْنَا رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فِيْ صَاحِبٍ لَنَا اَوْجَبَ يَعْنِي النَّارَ بِالْقَتْلِ فَقَالَ اَعْتِقُوْا عَنْهُ يُعْتِقِ اللّٰهُ بِكُلِّ عُضْوٍ مِنْهُ عُضْوًا مِنْهُ مِنَ النَّارِ۔ (رواه ابوداؤد والنسائی)

3386. Sayyiduna al-Gharif ibn Ayyash ad-Daylamy رحمہ اللہ said that they went to (Sayyiduna) Wathilah ibn Al-Asqa رضی اللہ عنہ and requested him to narrate to them a hadith without any addition or deduction. So he got angry and said. "Any one of you does recite the Quran while its copy is hung up in his house, yet he adds and omits (by mistake. So, in spite of immense care, there can be some error in narrating hadith)." They said, "We only intended (to hear) a hadith you may have heard from the Prophet صلی اللہ علیہ وسلم." So, he said, "We had gone to Allah's Messenger صلی اللہ علیہ وسلم concerning a friend of ours who had made hell certain for himself because of a murder (of someone he committed or suicide). He said, 'Set a slave free on his behalf, Allah will deliver from hell a limb of his for every limb of his."[2]

COMMENTARY: Sayyiduna Wathilah رضی اللہ عنہ thought that Gharif رحمہ اللہ had asked him to narrated the exact words of the Prophet صلی اللہ علیہ وسلم. Then Gharif رحمہ اللہ explained that they only wished to know the meaning of the Prophet's صلی اللہ علیہ وسلم words.

This means that it is allowed to narrate the hadith with some changes in its words but the meaning and message must not change.

RECOMMENDING A SLAVE'S RELEASE IS AN EXCELLENT SADAQAH (CHARITY)

(٣٣٨٧) وَعَنْ سُمُرَةَ بْنِ جُنْدُبٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَفْضَلُ الصَّدَقَةِ الشَّفَاعَةُ بِهَا تُفَكُّ الرَّقَبَةُ۔ رَوَاهُ الْبَيْهَقِيُّ فِيْ شُعَبِ الْاِيْمَانِ۔

3387. Sayyiduna Samurah ibn Jundub رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "The best sadaqah (charity) is the recommendation that gets a slave his freedom."[3]

COMMENTARY: The recommendation may lead to the slave's emancipation or deliverance from a punishment.

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[1] Nasa'i # 688 (691) Baghawi in Sharhus *sunnah (Prophet's صلی اللہ علیہ وسلم practice)* # 2420, Musnad Ahmad 4-113.

[2] Abu Dawud # 3964, Musnad Ahmad 3-491, 4-102.

[3] Bayhaqi in Sha'b ul Eeman # 7682

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CHAPTER - II

(I) EMANCIPATING A SLAVE WHO IS OWNED JOINTLY, (II) BUYING A RELATIVE & (III) EMANCIPATING DURING AN ILLNESS

بَابُ اِعْتَاقِ الْعَبْدِ الْمُشْتَرَكِ وَشِرَاءِ الْقَرِيْبِ وَالْعِتْقِ فِى الْمَرَضِ

ABOUT SETTING FREE: Among the ahadith of this chapter, some are on the subject of slaves who are owned jointly by two (or more) masters, If one of them sets free his share of the slave, what should the other do? Is part of slave continuing in ownership allowed or not? There are differing opinions about it and even the Hanafi scholars are not u unanimous on this subject.

Imam Abu Hanifah رحمه الله recognizes part freedom. But, Imam Abu Yusuf رحمه الله and Imam Muhammad رحمه الله do not recognize part freedom. This raises many other questions, commands and ruling also arise. These are mentioned in the lines that follow.

The second portion of this chapter is about buying a slave who is a relative. The ruling in such cases is that merely buying a relative gets him his freedom irrespective of whether the buyer set him free or not. However, here too. Opinions differ on which relatives are covered by this ruling. This issue is also discussed in detail in the lines that follow.

The third portion of this chapter concerns a person who sets a slave free while he is ill. What is the ruling about it? This will be elaborated at appropriate places in the ahadith.

SECTION I — اَلْفَصْلُ الْاَوَّلُ

FREEDOM OF SLAVE OWNED COMMONLY

(٣٣٨٨) عَنِ ابْنِ عُمَرَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ اَعْتَقَ شِرْكًا لَهٗ فِى عَبْدٍ وَكَانَ لَهٗ مَالٌ يَبْلُغُ ثَمَنَ الْعَبْدِ قُوِّمَ الْعَبْدُ عَلَيْهِ قِيْمَةَ عَدْلٍ فَاُعْطِىَ شُرَكَاءُهٗ حِصَصَهُمْ وَعَتَقَ عَلَيْهِ الْعَبْدُ وَاِلَّا فَقَدْ عَتَقَ مِنْهُ مَا عَتَقَ۔

(متفق عليه)

3388. Sayyiduna Ibn Umar رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "If any one sets free his share in a slave (who is owned jointly) and has enough money to pay the full (remaining) price of the slave, then a reasonable price of the slave should be determined and his partners) should be paid their portions, the slave will be set free in this manner. If not, then he will be emancipated only to the extend of his share that he has set free. (The share of the others) will remain in the slave)."[1]

COMMENTARY: If a slave belongs to two owners and one of them frees him to the extent of his share and the other does not, then the first one should buy the share of the second and set the slave free. However, if he is unable to buy the other share then the slave would remain in slavery to that extent and be part free.

This mean that freedom and slavery can be divided in a single person. The second partner cannot be compelled to set the slave free to the extent he owns. Also the slave cannot be made to toil (to earn his freedom). This is also the ruling of imam Shafi'I رحمه الله

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[1] Bukhari # 2522, Muslim # 1-1501, Tirmidhi # 1301, Abu Dawud # 3940, Nasa'i # 4699, Ibn Majah # 2528.

As for Imam Abu Hanifah رحمه الله, he concedes that (slavery and freedom may combine in a single person, and if the partner who releases his share can buy off the other partner he may do so, or the second may make him toil to the extend of his share or set him free to the extent of his share (so he will be completely free). If the first partner who frees the slave his own portion is unable to buy the remaining share he must not turn over his share to the other partner. Rather, this partner must get the price of his share from the slave through making him toil (for his freedom), or he may emancipate his share. In this case the right of wila (ولا) will be available to both the owners (meaning, they would inherit from the slave.) The opinion of Imam Abu Yusuf رحمه الله and Imam Muhammad رحمه الله in this regard is that (if the partner who sets the slave free to the extend of his share can afford to buy off the other partner then he must do that otherwise the other partner must get the slave to toil for his freedom to the extent of his share and thus get his price from the slave. Since freedom cannot be partial, the right of wila (ولا) will rest only with him who sets free.)

TOIL FOR FREEDOM

(٣٣٨٩) وَعَنْ اَبِيْ هُرَيْرَةَ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ مَنْ اَعْتَقَ شِقْصًا فِيْ عَبْدٍ اُعْتِقَ كُلُّهٗ اِنْ كَانَ لَهٗ مَالٌ فَاِنْ لَمْ يَكُنْ لَهٗ مَالٌ اُسْتُسْعِيَ الْعَبْدُ غَيْرَ مَشْقُوْقٍ عَلَيْهِ۔ (متفق عليه)

3389. Sayyiduna Abu Hurayrah رضی الله عنه narrated that the Prophet صلی الله علیه وسلم said, "If a person emancipates one share in a slave (who is jointly owned), the slave is free completely (and he will be credited with his freedom), and if he had the wherewithal (he may buy the other shares too). If he does not possess enough resources, then the slave will be made to toil to pay for his freedom, but he should not be made to overwork."[1]

DO NOT DEPRIVE HEIRS BY EMANCIPATING SLAVE ON DEATH BED

(٣٣٩٠) وَعَنْ عِمْرَانَ بْنِ حُصَيْنٍ اَنَّ رَجُلًا اَعْتَقَ سِتَّةَ مَمْلُوْكِيْنَ لَهٗ عِنْدَ مَوْتِهٖ وَلَمْ يَكُنْ لَهٗ مَالٌ غَيْرُهُمْ فَدَعَا بِهِمْ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَجَزَّأَهُمْ اَثْلَاثًا ثُمَّ اَقْرَعَ بَيْنَهُمْ فَاَعْتَقَ اثْنَيْنِ وَاَرَقَّ اَرْبَعَةً وَقَالَ لَهٗ قَوْلًا شَدِيْدًا رَوَاهُ مُسْلِمٌ وَرَوَاهُ النَّسَائِيُّ عَنْهُ وَذَكَرَ لَقَدْ هَمَمْتُ اَنْ لَا اُصَلِّيَ عَلَيْهِ بَدَلَ وَقَالَ لَهٗ قَوْلًا شَدِيْدًا۔ وَفِيْ رِوَايَةٍ لِاَبِيْ دَاوٗدَ قَالَ لَوْ شَهِدْتُّهٗ قَبْلَ اَنْ يُدْفَنَ لَمْ يُدْفَنْ فِيْ مَقَابِرِ الْمُسْلِمِيْنَ۔

3390. Sayyiduna Imran ibn Husayn رضی الله عنه narrated that a man set free six slaves that he had at the time of his death. He had no property other than them. Allah's Messenger صلی الله علیه وسلم called them and divided them into three batches. Then he drew lots among them and set two (of them) free and retained four in slavery. And he spoke severely of the man.
Another version also from Imran R) in Nasa'i has instead of 'and he spoke severely of the man, (The Prophet صلی الله علیه وسلم said, "Indeed, I had resolved not to offer (the funeral) *salah (prayer)* over him." And he spoke severely of the man.)

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[1] Bukhari # 2504, Muslim # 3-1503, Tirmidhi # 1353, Abu Dawud # 3937, Ibn Majah # 2527, Musnad Ahmad 2. 255.

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Another version in Abu Dawud has: He said, "Where I there before his burial, he would not have been buried in a Muslim graveyard. (These statements are by way of warning and to correct people).[1]

COMMENTARY: The Prophet set free two slaves out of six because the dying man can draw a will his heirs are entitled to inheritanc of the rest of his property. A will may be drawn in the same way for other things like sadaqah (charity), gifts, etc up to one third.

Zayd ul Arab رضی اللہ عنہ said that the Prophet صلی اللہ علیہ وسلم issued this command because generally the slave were Negros and they were of the same value. Nawawi has quoted Imam Abu Hanifah رضی اللہ عنہ as saying that in such a situation (when equal treatment is offered), every slave will be presumed to be free up to one third of his person and he will be made to toil for his emancipation for up to the remaining two-thirds of his person.

The Prophet صلی اللہ علیہ وسلم was displeased with this man because he deprived his heirs of their inheritance. This was a very disliked action. The Prophet صلی اللہ علیہ وسلم showed kindness to the man's heirs by giving them four of the slave and so their right. The hadith discloses that a dead person may be criticized for this cruel action and contravention of Shari'ah (divine law). This does not contradict the Prophet's صلی اللہ علیہ وسلم saying:

اُذْكُرُوا اَمْوَاتَكُمْ بِالْخَيْرِ

(Remember your dead with goodness)

PURCHASING A SLAVE WHO IS ONE'S FATHER

(٣٣٩١) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا يَجْزِيْ وَلَدٌ وَالِدَهٗ اِلَّا اَنْ يَجِدَهٗ مَمْلُوْكًا فَيَشْتَرِيَهٗ فَيُعْتِقَهٗ۔ (رواه مسلم)

3391. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "No son can repay his father (for the things he has done for him) except that if he finds him in slavery, he buys him and sets him free."[2]

COMMENTARY: It seems from this hadith that a father does not become free only on his son purchasing him. Rather, after buying him he must set him free.

The Zawahir abide by this opinion. However, the consensus of the ulama (Scholars) is that when a father comes under his son's ownership, he becomes free. This is stated explicitly in a hadith that follows in section II (#3393), and this hadith too means the same thing as Mazhar explains that the word (فيعتقه) in this hadith under discussion has the latter fa (ف) to denote cause. In this case the concluding portion of this hadith would mean:

(When he finds his father as someone's slave and buys him to get him his freedom.)

Hence, it will not be necessary for him to say after buying him, "I have set you free." He is set free simply on his son's buying him.

MAY A MUDABBAR BE SOLD

(٣٣٩٢) وَعَنْ جَابِرٍ اَنَّ رَجُلًا مِنَ الْاَنْصَارِ دَبَّرَ مَمْلُوْكًا وَلَمْ يَكُنْ لَهٗ مَالٌ غَيْرُهٗ فَبَلَغَ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ

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[1] Muslim # 56. 1668, Tirmidhi # 1369, Nasa'i # 1958, Abu Dawud # 3918, Ibn Majah # 2345, Musnad Ahmad 4-428.

[2] Muslim # 25-1510, Tirmidhi # 1906, Abu Dawud # 5137, Ibn Majah # 3659, Musnad Ahmad 2-230.

فَقَالَ مَنْ يَشْتَرِيْهِ مِنِّيْ فَاشْتَرَاهُ نُعَيْمُ بْنُ النَّحَّامِ بِثَمَانِ مِائَةِ دِرْهَمٍ۔ مُتَّفَقٌ عَلَيْهِ وَفِيْ رِوَايَةٍ لِمُسْلِمٍ فَاشْتَرَاهُ نُعَيْمُ بْنُ عَبْدِاللّٰهِ الْعَدَوِيُّ بِثَمَانِ مِائَةِ دِرْهَمٍ فَجَاءَ بِهَا إِلَى النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَدَفَعَهَا إِلَيْهِ ثُمَّ قَالَ ابْدَأْ بِنَفْسِكَ فَتَصَدَّقْ عَلَيْهَا فَإِنْ فَضَلَ شَيْءٌ فَلِأَهْلِكَ فَإِنْ فَضَلَ عَنْ أَهْلِكَ شَيْءٌ فَلِذِيْ قَرَابَتِكَ فَإِنْ فَضَلَ عَنْ ذِيْ قَرَابَتِكَ شَيْءٌ فَهٰكَذَا وَهٰكَذَا يَقُوْلُ فَبَيْنَ يَدَيْكَ وَعَنْ يَمِيْنِكَ وَعَنْ شِمَالِكَ۔

3392. Sayyiduna Jabir رضی اللہ عنہ narrated that a man of the Ansar made a slave a mudabbar (to be free after his death). He owned no other property. When the prophet صلی اللہ علیہ وسلم heard of it, he asked, "who would buy this slave from me?" Nu'aym ibn an Nahham رضی اللہ عنہ bought him for eight hundred dirhams.

Another version (on Muslim) has that Nu'aym ibn Abdullah al Adawi رضی اللہ عنہ bought him for eight hundred dirhams and he brought that (eight hundred dirhams) to the Prophet صلی اللہ علیہ وسلم who gave them to the man (whose slave it was) and said, "Spend (this money) first on yourself, giving sadaqah (charity) (of it) to your own self. If something is spared, give it to your family. If something is spared after they are given, then provide something to your relatives. If, after they are given, something remains, then do like this and do like that." (the narrator said) meaning that it may be disbursed if front of him, to his right and to his left.[1]

COMMENTARY: To make a slave a mudabbar is saying to one's slave "you are free after my death." The apparent meaning of this hadith is that it is allowed to sell this kind of a slave. Imam Shafi'i رحمہ اللہ and Imam Ahmad رحمہ اللہ hold that it is allowed to sell a mudabbar. Imam Abu Hanifah رحمہ اللہ said that there are two kinds of mudabbar: mudabbar mutlaq and mudabbar muqid. The former is one whose master says to him, "After my death you are free." The latter is he who is told by this master, "If I die of this illness, you are free." The former can only be set free and there is no other way of giving up ownership over him. The owner can emancipate him but cannot sell him or give him as a gift to another, but he can ask him to serve him. If the salve is female, the owner may have sexual intercourse with her and even give the slave in marriage to any, even without the slave's consent. Such a slave is free after the master's death from one third of his (master's) property. If he cannot be ser free from the master's one third property, then he will be released in part to the equivalent of the third of the third of the master's property.

As for mudabbar muqid, he may be sold. It is allowed. If the pre-requisite is met and the owner dies in that illness, then mudabbar muqid will also be free like mutlaq Hence. Imam Abu Hanifah رحمہ اللہ says that the prophet صلی اللہ علیہ وسلم has sold the mudabbar muqid.

The Mishkat has the name as Nu'aym ibn Nahham. But this is an error of the scribe. Actually Nu'ayum and Nahham are names of one and the same person. The reason why he got the name nahham was that the Prophet صلی اللہ علیہ وسلم said, "When I entered paradise, I heard Nu'aym's nahmah (sound). So, he began to be called Nahham.

[1] Bukhari # 6716, Muslim # 58-997, Tirmidhi # 1219.

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SECTION II اَلْفَصْلُ الثَّانِي

MAHRAM RELATIVE IS FREE THE MOMENT HE IS ENSLAVED

(٣٣٩٣) وَعَنِ الْحَسَنِ عَنْ سَمُرَةَ عَنْ رَّسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ مَنْ مَلَكَ ذَا رَحِمٍ مَحْرَمٍ فَهُوَ حُرٌّ۔

(رواه الترمذى وابن ماجة)

3393. Sayyiduna (Al) Hasan رحمه الله (Busri) reported from (Sayyiduna) Samurah رضى الله عنه that Allah's Messenger صلى الله عليه وسلم said, "If anyone happens to own a dhu rahm (relative) who is a mahram then he becomes emancipated" (however he owns him (by buying receiving a gift or through inheritance).[1]

COMMENTARY: Examples are father acquiring son, or son acquiring father, or brother acquiring brother. Even if their intention was to get a slave, because of the relationship the slave will become emancipated.

The word in the Arabic text is dhu rahm. It is applied to a relative through the womb and includes son, father brother, paternal uncle, nephew (brother's son) and such. The word mahram is a relative with whom marriage is never allowed. Thus, the son of paternal uncle and such other relatives are not dhurahm mahram (relatives who are mahram, or mahram is of the prohibited degrees).

The question whether a relative mahram whom one gets to possess becomes free automatically or has to be set free has been discussed against hadith # 3391 of Abu Hurayrah رضى الله عنه.

The majority of the ulama (Scholars) hold that relatives of the kind of usul (ancestors, like father, grandfather and up the line) and furu (descendants, like son, grandson, etc) become free simply on acquiring them. As for the others, the ulama (Scholars) differ. Imam Shifi'I رحمه الله hold that this distinction (of becoming free on being acquired) is available only to the usul and furu (ancestors and descendants). Imam Maalik رحمه الله includes brothers in this distinction but he has also said that all du rahm (relatives through the womb) are included in it. He also has a third ruling that conforms to Imam Shafi's ruling.

Imam Abu Hanifah رحمه الله holds that every such relative mahram becomes free when he is acquired as a slave.

UMM WALAD GAINS FREEDOM ON MASTER'S DEATH

(٣٣٩٤) وَعَنِ ابْنِ عَبَّاسٍ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ إِذَا وَلَدَتْ اَمَةُ الرَّجُلِ مِنْهُ فَهِيَ مُعْتَقَةٌ عَنْ دُبُرٍ مِنْهُ اَوْ بَعْدَهُ۔ (رواه الدارمى)

3394. Sayyiduna Ibn Abbas رضى الله عنه narrated that the Prophet صلى الله عليه وسلم said, "when the female slave of a man bears his child, she becomes free on the heels of his death." Or he said, "After his death."[2]

COMMENTARY: During the life time of her master whose child she bears, the slave woman does not become free, but after his death she is free. During his life time, he cannot sell her, nor give her to someone as a gift. The ulama (Scholars) are unanimous about it.

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[1] Tirmidhi # 1365, Abu Dawud # 3949, Ibn Majah # 2524, Musnad Ahmad 5-20.

[2] Ibn Majah # 2515, Darimi # 2274, Musnad Ahmad # 1-363.

The hadith that contradicts it is abrogated and will be explained against the next hadith (# 3395).

(۳۳۹۵) وَعَنْ جَابِرٍ قَالَ بِعْنَا اُمَّهَاتِ الْاَوْلَادِ عَلٰى عَهْدِ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَاَبِيْ بَكْرٍ فَلَمَّا كَانَ عُمَرُ نَهَانَا عَنْهُ فَانْتَهَيْنَا۔ (رواه ابوداؤد)

3395. Sayyiduna Jabir رضی اللہ عنہ said, "We used to sell the *ummah*at ul walad (slave women who bore their master's children, plural of umm walad) in the time of Allah's Messenger صلی اللہ علیہ وسلم and of Abu Bakr رضی اللہ عنہ. When Umar رضی اللہ عنہ (become Khalifah and) forbade us to do so, we desisted.[1]

COMMENTARY: The question arises: why Umar رضی اللہ عنہ disallowed it when the Prophet صلی اللہ علیہ وسلم and the first caliph Abu Bakr رضی اللہ عنہ had not stopped it? The answer is that the people may not have known that the prophet صلی اللہ علیہ وسلم had forbidden the sale of Umm walad, or they may have been selling before the Prophet صلی اللہ علیہ وسلم forbade them to do so. As for Abu Bakr رضی اللہ عنہ, his Khilafah (caliphate) (caliphate) was short and he was engaged mostly in other important affairs and could not have known of the sale of a Umm Walad otherwise he too would have curbed this activity.

SLAVE'S PROPERTY AFTER HIS RELEASE

(۳۳۹۶) وَعَنِ ابْنِ عُمَرَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ اَعْتَقَ عَبْدًا وَلَهٗ مَالٌ فَمَالُ الْعَبْدِ لَهٗ اِلَّا اَنْ يَشْتَرِطَ السَّيِّدُ۔ (رواه ابوداؤد وابن ماجة)

3396. Sayyiduna Ibn Umar رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "If anyone sets free a slave and he owns property, then the property of the slave belongs to the master unless he stipulates otherwise."[2]
(In that case it will remain with the slave.)

COMMENTARY: Clearly no slave can have any property. Where will he get any property? Whatever he has, he may have earned by doing some work with his master's permission. So that too will belong to the master because the slave and all that he possesses are his master's property. Therefore, when he is set free and his master says, "This property belongs to you," then that property will be deemed to be a charity or gift from his master. Therefore, on being free, he will be its owner.

PART FREEDOM

(۳۳۹۷) وَعَنْ اَبِي الْمَلِيْحِ عَنْ اَبِيْهِ اَنَّ رَجُلًا اَعْتَقَ شِقْصًا مِنْ غُلَامٍ فَذُكِرَ ذٰلِكَ لِلنَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ لَيْسَ لِلّٰهِ شَرِيْكٌ فَاَجَازَ عِتْقَهٗ۔ (رواه ابوداؤد)

3397. Sayyiduna Abu Malih رحمہ اللہ reported from his father (Sayyiduna Usamah ibn Umayr) رضی اللہ عنہ that a man set free a portion of a slave. That was mentioned to the Prophet صلی اللہ علیہ وسلم and he said, "Allah has no partner." Then he instructed him to set him free.

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[1] Abu Dawud # 3954, Ibn Majah # 2517.

[2] Abu Dawud # 3962, Ibn Majah # 2529.

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COMMENTARY: The Prophet's صلى الله عليه وسلم words mean that if any thing is done for Allah's sake and it is a form of worship then one must not divide one's share. Hence, it is not proper to emancipate part of a salve and leave the rest in slavery.
The concluding words of the hadith establish that slavery and freedom cannot be combined in one person. However, since Imam Abu Hanifah رحمه الله contends that slavery and freedom may combine, he explains these words to mean that the prophet صلى الله عليه وسلم commanded the man to set the slave free outright.

AN EXAMPLE OF CONDITIONAL FREEDOM

(٣٣٩٨) وَعَنْ سَفِيْنَةَ قَالَ كُنْتُ مَمْلُوْكًا لِأُمِّ سَلَمَةَ فَقَالَتْ أُعْتِقُكَ وَأَشْتَرِطُ عَلَيْكَ أَنْ تَخْدُمَ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَا عِشْتَ فَقُلْتُ إِنْ لَمْ تَشْتَرِطِيْ عَلَيَّ مَا فَارَقْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَا عِشْتُ فَأَعْتَقَتْنِيْ وَاشْتَرَطَتْ عَلَيَّ۔ (رواه ابوداؤد وابن ماجة)

3398. Sayyiduna Safinah رضى الله عنه said, I was a slave of Sayyidah Umm Salamah, She said (to me one day) 'I shall set you free but with the stipulation that you shall serve Allah's Messenger صلى الله عليه وسلم as long as you live.' I submitted, Even if you had not placed this condition on me, I shall not separate from him as long as I live, (Because serving him is a great honour and happiness for me). She then set me free and retained the condition on me."[1]

COMMENTARY: Safinah رضى الله عنه was the freedman of the Prophet صلى الله عليه وسلم or of Sayyidah Salamah رضى الله عنها.
His name was Mahran or Ruman or Ribah. His kunyah was Abu Abdur Rahman or Abu al-Bakhtari, But he was known as Safinah which was his epithet.
He used to serve the Prophet صلى الله عليه وسلم and his sahabah (Prophet's Companions) رضى الله عنهم. During battles, he carried their luggage on his back and transferred that from place to place. Safinah means ship. So he was called safinah that conveys goods from place to place.
It is reported that once he got lost in a desert from the rest of the caravan. Suddenly, a lion came before him and roared at him. He said to the lion, "O Abu al-Harith! I am Safinah the freedman of Allah's Messenger صلى الله عليه وسلم." The lion wagged its tail and led him to destination.

MUKTABAH IS SLAVE TILL HE PAYS

(٣٣٩٩) وَعَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيْهِ عَنْ جَدِّهٖ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ الْمُكَاتَبُ عَبْدٌ مَا بَقِيَ عَلَيْهِ مِنْ مُكَاتَبَتِهٖ دِرْهَمٌ۔ (رواه ابوداؤد)

3399. Sayyiduna Amr ibn Shu'ayb رحمه الله reported from his father that his grandfather narrated that the Prophet said, 'A mukatab (a slave who has contracted with his master to buy his own freedom) remains a slave as long as even a dirham of the kitabah (agreed price) remains unpaid."[2]

COMMENTARY: Mukatab is a slave whose master writes down to him, "When you will pay so much money you shall be free." When he pays the full amount, leaving nothing due,

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[1] Abu Dawud # 3932, Ibn Majah # 2526, Musnad Ahmad 5-221.
[2] Abu Dawud # 3926.

he becomes free. There will not be any part freedom.

WOMEN MUST OBSERVE VEIL BEFORE THEIR MUKATAB SLAVES

(٣٤٠٠) وَعَنْ أُمِّ سَلَمَةَ قَالَتْ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ إِذَا كَانَ عِنْدَ مُكَاتَبِ إِحْدَاكُنَّ وَفَاءٌ فَلْتَحْتَجِبْ مِنْهُ۔ (رواه الترمذی وابوداؤد وابن ماجة)

3400. Sayyiduna Umm Salamah رضی اللہ عنہا narrated that Allah's Messenger صلی اللہ علیہ وسلم said (to the woman), "When a mukatab of any of you has enough to buy his fr eedom, she must observe the veil before him."[1]

COMMENTARY: As long as a mukatab does not pay the full agreed price for his freedom he remains a slave and is a mahram. It is not necessary for a woman owner to veil herself before him.

The correct thing about this hadith is that the Prophet صلی اللہ علیہ وسلم had said this to his wives because Allah says about them in the Quran that they are not like other woman. Their need to veil themselves was stronger.

ABOUT PART PAYMENT BY MUKATAB

(٣٤٠١) وَعَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيْهِ عَنْ جَدِّهٖ أَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ مَنْ كَاتَبَ عَبْدَهٗ عَلٰى مِائَةِ أُوقِيَّةٍ فَأَدَّاهَا إِلَّا عَشَرَةَ أَوَاقٍ أَوْقَالَ عَشَرَةَ دَنَانِيْرَ ثُمَّ عَجَزَ فَهُوَ رَقِيْقٌ۔ (رواه الترمذی وابوداؤد وابن ماجة)

3401. Sayyiduna Amr ibn Shu'ayb رضی اللہ عنہ reported from his father (Shu'ayub) رحمہ اللہ that his grandfather narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "If any one agrees to set free his slave for one hundred ooqiyah as he pays that except ten ooqiyah, " or he said, "ten dirhams and is helpless, then he continues to be a slave."[2]

COMMENTARY: Ibn Maalik رحمہ اللہ say s that such cases the owner may annul the contract and forfeit the amount paid to him by the slave, for, that has become his property.

(٣٤٠٢) وَعَنِ ابْنِ عَبَّاسٍ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ إِذَا أَصَابَ الْمُكَاتَبُ حَدًّا أَوْ مِيْرَاثًا وَرِثَ بِحِسَابِ مَا عَتَقَ مِنْهُ۔ رَوَاهُ أَبُوْدَاوٗدَ وَالتِّرْمِذِيُّ وَفِيْ رِوَايَةٍ لَهٗ قَالَ يُوْدَى الْمُكَاتَبُ بِحِصَّةِ مَا أَدّٰى دِيَةَ حُرٍّ وَمَا بَقِيَ دِيَةَ عَبْدٍ وَضَعَّفَهٗ۔

3402. Sayyiduna Ibn Abbas رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "When a slave who has bound himself to buy his freedom receives blood money or an inheritance, he will inherit only." To the extent he has been set free."

According to a version, he said, "Blood wit will be paid for a mukatab at the rate that is payable for a free man for so much as he has paid his purchase price but at the rate that is payable for a slave for much as remains to be paid."[3]

COMMENTARY: The slave will get from his inheritance, accordings what he has paid for

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[1] Tirmidhi # 1264, Abu Dawud # 3928, Ibn Majah # 2520.

[2] Tirmidhi # 1264, Abu Dawud # 3927, Ibn Majah # 2519, Musnad Ahmad 2-179.

[3] Tirmidhi # 1263, Abu Dawud # 4582, Nasa'i # 4811.

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his freedom.
As for blood wit his heirs will get when he is killed only the extent he had paid for his freedom. That which he had not paid will represent his slavery. Bloodwit on that portion will be half of what free man's heirs get. So, his master will get that amount at half that of a freeman's rate In other words, the mukatab is deemed to be free to the extend he has paid towards his price. Only Imam Wakh'ee رحمه الله abides by this hadith. Majority of the ulama (Scholars) say that this hadith is weak and contradicts the two sahih ahadith (# 3399, and 3401) narrated by Amr ibn Shu'ayb رحمه الله that a mukatab remains a slave till he pays his full price.

SECTION III اَلْفَصْلُ الثَّالِثُ

REWARD CONSIGNED TO THE DEAD

(٣٤٠٣) عَنْ عَبْدِالرَّحْمٰنِ بْنِ اَبِي عُمْرَةَ الْاَنْصَارِيِّ اَنَّ اُمَّهُ اَرَادَتْ اَنْ تُعْتِقَ فَاَخَّرَتْ ذٰلِكَ اِلَى اَنْ تُصْبِحَ فَمَاتَتْ قَالَ عَبْدُالرَّحْمٰنِ فَقُلْتُ لِلْقَاسِمِ بْنِ مُحَمَّدٍ اَيَنْفَعُهَا اَنْ اُعْتِقَ عَنْهَا فَقَالَ الْقَاسِمُ اَنَّى سَعْدُ بْنُ عُبَادَةَ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ اِنَّ اُمِّي هَلَكَتْ فَهَلْ يَنْفَعُهَا اَنْ اَعْتِقَ عَنْهَا فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ نَعَمْ۔ (رواه مالك)

3403. Sayyiduna Abdur Rahman ibn Amrah al-Ansari رحمه الله said that his mother had wanted to set free a slave but put if off till morning. (Before she could do that) she died.
Abdur Rahman رحمه الله said "I asked al-Qasim ibn Muhamamd رحمه الله, 'will it benefit her if I set free a slave on her behalf?'"
Al-Qasim رحمه الله informed him that Sa'd ibn Ubadah رضى الله عنه had met Allah's Messenger صلى الله عليه وسلم and said, "My mother had died. Will it benefit her if I set free a slave on her behalf?" Allah's Messenger صلى الله عليه وسلم had said, "Yes."[1]

COMMENTARY: Sayyiduna Qasim ibn Muhammad رحمه الله was the grandson of Sayyiduna Abu Bakr رحمه الله.
He was one of seven well. Known jurists of Madinah.
The ulama (Scholars) agree that a dead person may be consigned reward for monetary worship. But they differ on whether reward can be consigned to them for physical worship. The more correct thing, however, is that reward against physical worship may also be consign to the dead.

(٣٤٠٤) وَعَنْ يَحْيَى بْنِ سَعِيْدٍ قَالَ تُوُفِّيَ عَبْدُالرَّحْمٰنِ بْنُ اَبِيْ بَكْرٍ فِيْ نَوْمِهِ نَامَهُ فَاَعْتَقَتْ عَنْهُ عَائِشَةُ اُخْتُهُ رِقَابًا كَثِيْرَةً۔ (رواه مالك)

3404. Sayyiduna Yahya ibn Muhammad رحمه الله said that (Sayyiduna) Abdur Rahman ibn Abu Bakr رضى الله عنه died in his sleep. (Sayyidah) Ayshah رضى الله عنها his sister, set free may slaves on his behalf.[2]

COMMENTARY: Perhaps Sayyidah Ayshah رضى الله عنها knew that Abdur Rahman رضى الله عنه

[1] Muwatta Maalik 38. 8-13.
[2] Muwatta Maalik # 38. 8-14.

could not release some slaves during his life time which ended abruptly, which it may have been *wajib (obligatory)* on him set free.
Another possibility is that his sudden death may have upset her. So the decided to consign reward to him by emancipating many slaves on his behalf.

WHEN SLAVES ARE BOUGHT WITHOUT MY PRE-REQUISITE

(٣٤٠٥) وَعَنْ عَبْدِاللّٰهِ بْنِ عُمَرَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنِ اشْتَرٰى عَبْدًا فَلَمْ يَشْتَرِطْ مَالَهٗ فَلَا شَيْءَ لَهٗ (رواه الدارمى)

3405. Sayyiduna Abdullah ibn Umar رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "He who buy a slave without placing any condition about his property will get nothing of it."[1]

COMMENTARY: If anyone buys a slave and strikes a bargain but omits to include the slave's property then he will get nothing of it because it will not come to him with the slave. Any property of the slave will remain with the person from whom he buys the slave, his previous owner.

CHAPTER - III

OATHS & VOWS بَابُ الْاَيْمَانِ وَالنُّذُوْرِ

KINDS OF OATHS & COMMAND ABOUT THEM: There are three kind of oath:

(i) Ghumus(غموس)
(ii) Laghw(لغو)
(iii) Mun'aqidah(منعقدة)

GHAMUS is a false oath on something past or present like saying, "By Allah's I have done it." But in truth, it was not done. It is also accusing someone on oath, "By Allah Khalid owes me one thousand rupees." Such a person is a sinner but no expiation is due against it though the liar must repent and seek forgiveness of Allah.

LAGHW is an oath about something past or present and the person who swears believes himself to be true but the facts are not as he says, For instance, he may say, "By Allah, I did not do it!" though, in fact, he had done it but presumes to the contrary. Or, he sees someone from a distance and says on oath that he had seen 'zayd.' But, in fact, that man was not 'Zayd' we may hope about this kind of oath that no reckoning will be taken from him.

MUN'AQIDAH is an oath about something in the future, like, to do, or not to do something. It is a promise. If it is not fulfilled then an expiation will be due, as *wajib (obligatory)*. For instance, a man may promise to do something, "I shall give you one hundred rupees, tomorrow, by Allah." If he fails to do so then he will have to make an expiation, as a *wajib (obligatory)* duty on him. Something, it becomes *wajib (obligatory)* to fulfil the mun'aqidah. oath, like promising to perform the *fard (compulsory)* duties or to abstain from sin. One may say, "By Allah, I shall offer the *salah (prayer)* of zuhr," or "by Allah, I shall give up committing adultery." It is *wajib (obligatory)* to fulfil these promises.

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[1] Darimi # 2561.

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WHEN PROMISES MUST NOT BE FULFILLED: In some cases, it is *wajib (obligatory)* not to fulfil promises. Examples are when a foolish person promises to commit a sin, or to neglect a *wajib (obligatory)* deed, then it becomes *wajib (obligatory)* to break the promise.
Similarly, there are some oaths of the mun'aqidah class that though it is not *wajib (obligatory)* to break yet it is better to do so. For example, if anyone says, "By Allah, I shall not meet any Muslim, then it is better not to fulfil the promise.
There are other cases, when in order to honour promises, it is better to fulfil one's oath.
EXPIATION: It must be understood that, under all circumstances, it is *wajib (obligatory)* to make an expiation for breaking an oath of munaqidah type. The oath may have been taken deliberately or under compulsion, or one may have been forced to break an oath.
(A promise made is a debt unpaid. -Robert W Service)
EXPIATION OF OATHS: The expiation for breaking an oath is

(i) to set a slave free or
(ii) to feed ten needy people. In both these options, the conditions and rules will apply that have been mention for zihar by setting free a slave or feeding the poor.
(iii) Or, ten needy people may be provided clothing to wear to each of them, such that most of the body is covered. So, if only trousers are given then that is not enough.
(iv) If a person is unable to follow any of these three options, then he must fast three days in succession.

ADVANCE EXPIATION: It is allowed to make an expiation before breaking the promise.[1]

WHEN NOT *WAJIB (OBLIGATORY)*: Expiation is not *wajib (obligatory)* for a promise made by a disbeliever, even if he breaks it after becoming a Muslim. Also, no expiation is *wajib (obligatory)* for the promise of a child, a sleeping person and a mad man because their oath or promise is not valid.

OTHER RULINGS OF OATH: Three letters are used I Arabic for oath:

(i)(و) (waw), e.g.(والله) (wallah)
(ii)(ب) (ba), e.g(بالله) (billah)
(iii)(ت) (ta), e.g.(تالله) (tallah).

Each of these three means, "By Allah" or "I swear by Allah."
In Arabic parlance, these letters are not always used but, nevertheless are implicit, for example, if anyone says (اللهافعله), he means (واللهافعله) (By Allah, I shall do it)

ON ALLAH: The oath is taken by the personal name of the creator, Allah, or by one of His attributes, like Ar-Rahman, Ar-Rahim, Al-Haq. It is not necessary to form an intention unless those attributes are used as are also applies to others besides Allah, like Aleem, Hakeem and so on, in which case it is necessary to form an intention. In the same way, it is also proper to take oath by those attributes of Allah as is commonly done, like 'By Allah's Might and Glory! Or 'by Allah's Greatness and power!' However, it is not proper to take on oath by such attributes with which it is not normally done, like His mercy, knowledge, pleasure, wrath and punishment.

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[1] However elsewhere it is stated that if expiation is made and then perjury is committed then expiation will have to be made all over again.

NOT ON OTHERS: It is not allowed to swear on anyone besides Allah, like 'By my father.' 'By my granny,' 'By the Quran,' or on the prophets, angel, the Ka'bah *salah (prayer)*, fasting, masjid Haram (sacred Mosque), zamzam and other symbols.

IGNORANT OATHS: It is also disallowed to swear, as some people do out of ignorance "By my youth, By my head, By your life" "By you!" Or, as some swear on their children. All these oaths are forbidden. However, if one swears in any of these forms and then fails to act in it then he will have to atone for breaking his promise.

OTHER FORMS: In Arabic: (عمر الله) (By the Ever Lasting Allah) (عمرک الله) (I adjure you by Allah...), In Hindi (سوگند خدا) so ghand khuda or (خدا کی سوگند) Khuda ki soghand Khata hun - these are forms of oath. More kinds of oath include Abdullah, Mithaqullah, I swear, I take on oath, Ash hadu (even without the word 'Allah'.

In the same way, if any one says, 'I am under a vow' or 'I am under an oath'....(even without saying Allah) these are forms of oath. If anyone says, "If I do such a thing then I will become a disbeliever, or a Jew, or a Christian." Or he says, "If) do that, I am absolved of Allah." These are all forms of oath and if anyone does against what he says then it is breaking an oath, but he does not become a disbeliever, Jew or Christian. The promise he makes or oath he takes may be about the past or the future but he should be aware that such a statement amounts to an oath. However, if he had no mind of swearing but did really have disbelief in mind then because he himself adopted disbelief, he will become a disbeliever.

If anyone says about another, If he does such a thing then may Allah's wrath be on him" - or such words - then this is not classified as on oath. Saying (حقا) (truthfully) or (وحق الله) (wa haqq Allah) are also not oaths. However, Imam Abu Yusuf رحمه الله differs about it.

To say, "May I swear on Allah." or "May I swear on divorce to my wife," are also not oaths.

If anyone says about something that he owns that it is forbidden to him, then that doest not become forbidden to him. However when he uses it, he will be bound to make an expiation.

If anyone says that all lawful things are forbidden to me lawful it will apply to all eatables and drinks. So, if he will eat anything that is lawful then he will have to make an expiation for breaking a promise, as *wajib (obligatory)*. An edict (fatwa) is also given that if he says in this way then his wife will have been divorced even if he had not formed such an intention. The same ruling will apply if he says "Lawful things are forbidden to me." Or "whatever I take in my right hand is forbidden to me."

`If anyone adds to his oath, the words insha Allah[1] then he will not be a perjurer. Because this is not an oath at all, so doing any thing contrary to it will not make an expiation *wajib (obligatory)*.

This far we spoke on oaths to some extent. Now let us discuss about the second portion of the chapter, vows.

VOWS & RELATED COMMANDS

The words (نذر) (nadhar) is a vow. It is to make something *wajib (obligatory)* on oneself though it was not *wajib (obligatory)*. For example, a man may say, "O Allah, if that takes place, then I shall fast five days."

Some ulama (Scholars) say that all the scholars agree that it is correct to vow to do something and *wajib (obligatory)* to fulfil it once made, provided one does not vow to

[1] If Allah will.

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commit a sin. If the vow pertains to something sinful, then Imam Shafi'I رحمه الله and the majority of the ulama (Scholars) hold that the vow is not correct. Imam Abu Hanifah رحمه الله and Imam Ahmad رحمه الله say that not only will the vow not be correct but also he who makes this kinds of a vow will have *wajib (obligatory)* on him the expiation of an oath (perjury), Their contention is based on the saying of the Prophet صلى الله عليه وسلم

لَا نَذْرَ فِيْ مَعْصِيَةٍ وَكَفَّارَتُهُ كَفَّارَةُ يَمِيْنٍ

"There is no vow of disobedience and its expiation is the expiation of an oath."[1]

It is stated in Multaqi that if anyone makes an unspecified vow, meaning without any condition and says only, "I will fast to please Allah," then it is binding on him to fulfil his vow. Or, he vows specifying a condition which he likes to be fulfilled, like saying, "If I regain health, I shall fast." Then, he regains health. So, (in both these situations) he will have to fulfil his vow.

If he specifies his vow with a condition which he is not eager to get fulfilled like, "If I commit adultery then it will *wajib (obligatory)* on me to set a slave free," then he has option either to make an expiation for the oath or fulfil his view, meaning emancipating a slave.

OTHER BOOKS: For a comprehensive study of the subject of vows, books of fiqh (Islamic jurisprudence) may be consulted as also Fatawa Alamgiri. However, it is very necessary to mention a very significant and beneficial ruling about vows. It is that it is not allowed to make a vow to anyone at all other than Allah, not a prophet, an angel, a very pious religions man or anyone else. Examples are to say, "If my wish is granted, I shall held a mawlud. (Mawlud is a gathering organized to celebrate the Prophet's صلى الله عليه وسلم birthday.) Or, 'If my work is done, I shall lay a wreath at the grave of so and so holy man." It is very sinful to do such things. Here, we reproduced the very useful information from matah masa'il of Mawlana Muhammad Ishaq رحمه الله which he has compiled from reliable and authentic sources. He writes:

{It is not correct to make a vow "If Allah grant me my wish, I shall shower 'So much money' or 'so many vessels of food' at the grave of a certain religious man." A vow is correct if made to Allah only when certain conditions are fulfilled. If those conditions are not met then the vow is not correct. These conditions are:

(i) What one vows to do must be of the nature of *wajib (obligatory)* in Shariah (like optional *salah (prayer)*, fasting, and so on). Thus, if one vows to pay a sick visit when his wish is granted then this vow is not correct because it is not *wajib (obligatory)* in Shari'ah (divine law) to pay a sick visit.

(ii) What one vows to do should not be *wajib (obligatory)* at that time or at any other time, like the five times *salah (prayer)* (or fasting in Ramadan or Zakah (Annual due charity), etc).[2]

(iii) What one vows to do should be a form of worship itself that is aimed at, and not a means to achieve that aim. Thus, a vow to make wadu (or ablution) is not correct because wadu is not an aimed (or ultimate form of) worship. It is a means to an ultimate form of worship.

(iv) What one vows to do to get something that 'something' or the wish must not

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[1] Tirmidhi # 1529, Darul Isha'at Karachi. Abu Dawud # 3290.

[2] any prescribed worship.

be a sin.

Keeping these conditions in mind, it is clearly not correct to vow to shower so much money or vessels of food at the grave of a righteous man because this act is not a form of ultimate worship as recognized by Shari'ah (divine law). However, this vow can become correct if one declare 'to feed the servants and poor people at the grave of the righteous man if one's wish is granted.' It will be correct and must be honoured and fulfilled. It is not necessary to distinguish between the servant and the poor at that grave. Rather, any servant or poor may be fed to fulfil the vow.

If on the other hand, anyone vows to feed in the name, or for the sake of, a certain righteous man if his wish is granted, then it is not allowed. This kind of a vow is void and wrong and also it is forbidden to use the offerings of the vow whether food or money.

This issue is elaborated in Bahr ur Ra'iq in these words:

وَاَمَّا النَّذْرُ الَّذِیْ یَنْذُرُہٗ اَکْثَرُ الْعَوَامِ عَلٰی مَا ھُوَ مُشَاھَدٌ کَاَنْ یَکُوْنَ لِلْاِنْسَانِ غَائِبٌ اَوْ مَرِیْضٌ اَوْلَہٗ حَاجَۃٌ ضَرُوْرِیَّۃٌ فَیَاْتِیْ فِیْ بَعْضِ مَزَارَاتِ الصُّلَحَاءِ فَیَجْعَلُ سِتْرَہٗ عَلٰی رَاْسِہٖ وَیَقُوْلُ یَا سَیِّدِیْ فُلَانٌ اِنْ رَدَّ غَائِبِیْ اَوْعُوْفِیَ مَرِیْضِیْ اَوْ قَضَیْتَ حَاجَتِیْ فَلَکَ مِنَ الذَّھَبِ کَذَا اَوْ مِنَ الْفِضَّۃِ کَذَا اَوْ مِنَ الطَّعَامِ کَذَا اَوْ مِنَ الْمَاءِ کَذَا اَوْ مِنَ الْقَمْحِ کَذَا اَوْ مِنَ الزَّیْتِ کَذَا فَھٰذِہِ النُّذُرُ بَاطِلٌ بِالْاِجْمَاعِ لِوُجُوْہٍ مِنْھَا اَنَّہٗ نَذَرٌ لِمَخْلُوْقٍ وَالنَّذْرُ لِلْمَخْلُوْقِ لَا یَجُوْزُ لِاَنَّہٗ عِبَادَۃٌ وَالْعِبَادَۃُ لَا یَکُوْنُ لِمَخْلُوْقٍ وَمِنْھَا اَنَّ الْمَنْذُوْرَ لَہٗ مَیِّتٌ وَالْمَیِّتُ لَا یَمْلِکُ وَمِنْھَا اِنْ ظَنَّ اَنَّ الْمَیِّتَ یَتَصَرَّفُ فِی الْاُمُوْرِ دُوْنَ اللّٰہِ فَاِعْتِقَادُہٗ بِہٖ ذٰلِکَ کُفْرٌ اَلَّھُمَّ اِلَّا اَنْ یُقَالَ یَا اللّٰہُ اِنِّیْ نَذَرْتُ لَکَ اِنْ شَفَیْتَ مَرِیْضِیْ اَوْ رَدَدْتَ غَائِبِیْ اَوْ قَضَیْتَ حَاجَتِیْ اَنْ اُطْعِمَ الْفُقَرَاءَ الَّذِیْنَ بِبَابِ السَّیِّدَۃِ نَفِیْسَۃَ اَوِالْفُقَرَاءَ الَّذِیْنَ بِبَابِ الْاِمَامِ الشَّافِعِیِّ اَوِالْاِمَامِ اَبِی اللَّیْثِ اَوِاشْتَرٰی حَصِیْرًا لِمَسَاجِدِھِمْ اَوْزَیْتًا بِوَقُوْدِھَا اَوْ دَرَاھِمَ لِمَنْ یَقُوْمُ بِشَعَائِرِھَا اِلٰی غَیْرِ ذٰلِکَ مِمَّا یَکُوْنُ فِیْہِ النَّفْعُ لِلْفُقَرَاءِ وَالنَّذْرُ لِلّٰہِ عَزَّوَجَلَّ وَذِکْرُ الشَّیْخِ اِنَّمَا ھُوَ لِبَیَانِ مَحَلِّ تَصَرُّفِ النَّذْرِ لِمُسْتَحِقِّیْہِ الْقَانِطِیْنَ بِرِبَاطِہٖ اَوْ مَسْجِدِہٖ اَوْ جَامِعِہٖ فَیَجُوْزُ بِھٰذَا الْاِعْتِبَارِاِذْ مَصْرَفُ النَّذْرِ الْفُقَرَاءُ وَقَدْ وُجِدَالْمَصْرَفُ وَلَا یَجُوْزُ اَنْ یُصْرَفَ ذٰلِکَ لِغَنِیٍّ غَیْرِ مُحْتَاجٍ وَلَا لِشَرِیْفِ النَّسَبِ لِاَنَّہٗ لَا یَحِلُّ لَہُ الْاَخْذُ مَالَمْ تَکُنْ مُحْتَاجًا وَلَا لِذِیْ مَنْصَبٍ لِاَجْلِ مَنْصَبِہٖ مَا لَمْ یَکُنْ فَقِیْرًا وَلَا لِذِیْ عِلْمٍ لِاَجْلِ عِلْمِہٖ مَا لَمْ یَکُنْ فَقِیْرًا وَلَمْ یَثْبُتْ فِی الشَّرْعِ جَوَازُ التَّصَرُّفِ لِلْاَغْنِیَاءِ لِلْاِجْمَاعِ عَلٰی حُرْمَۃِ النَّذْرِ لِلْمَخْلُوْقِ وَلَا یَنْعَقِدُ وَلَا یَشْتَغِلُ الذِّمَّۃُ بِہٖ وَاِنَّہٗ حَرَامٌ بَلْ سُحْتٌ فَلَا یَجُوْزُ لِخَادِمِ الشَّیْخِ اَخْذُہٗ وَلَا اَکْلُہٗ وَلَا التَّصَرُّفُ فِیْہِ بِوَجْہٍ مِنَ الْوُجُوْہِ اِلَّا اَنْ یَکُوْنَ فَقِیْرًا وَلَہٗ عِیَالٌ فُقَرَاءُ عَاجِزُوْنَ عَنِ الْکَسْبِ وَھُمْ مُضْطَرُّوْنَ فَیَاْخُذُوْنَہٗ عَلٰی سَبِیْلِ الصَّدَقَۃِ الْمُبْتَدَاَۃِ وَاَخْذُہٗ اَیْضًا مَکْرُوْہٌ مَالَمْ یَقْصُدْ بِہِ النَّاذِرُ التَّقَرُّبَ اِلَی اللّٰہِ تَعَالٰی وَصَرْفَہٗ اِلَی الْفُقَرَاءِ وَیَقْطَعُ النَّظَرَ عَنْ نَذْرِ

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الشَّيْخِ فَإِذَا عَلِمْتَ هٰذَا فَمَا يُؤْخَذُ مِنَ الدَّرَاهِمِ وَالشَّمْعِ وَالزَّيْتِ وَغَيْرِهَا وَيُنْقَلُ إِلٰى ضَرَائِحِ الْأَوْلِيَاءِ تَقَرُّبًا إِلَيْهِمْ فَحَرَامٌ بِإِجْمَاعِ الْمُسْلِمِيْنَ مَا لَمْ يُقْصَدْ بِصَرْفِهَا الْفُقَرَاءُ الْأَحْيَاءُ قَوْلًا وَاحِدًا وَكَذَا فِي النَّهْرِ وَالدُّرِّ۔

(As for as vow in concerned, the ignorant people generally make a vow when they face a problem or have a need by visiting the grave or shrine of a pious man and put its covering on their head or hold the wreath (of the grave) and plead:
"O my master (so and so) If my problem (this and that) is solved or my need (such and such) is met, I shall shower on this shrine (so much) gold (or silver, or food, or water, or candles, or oil....)"
This kind of vow is invalid in the sight of all the ulama (Scholars). There are many reasons why it is invalid.
(i) This is a vow invoking someone (other than Allah) who is a creature. It is forbidden to invoke others than Allah because a vow is a form of worship and it is not allowed to worship creatures.
(ii) The vow is made in the name of the grave dweller who is lifeless who is not an owner or master of anything.
(iii) If at the time of making the vow it is believed that the dweller of the grave also has a say in people affairs just as Allah has, then this kind of conviction is disbelief.
Hence, O Allah, instead of making such vows, guide us to make a vow in this manner: 'O Allah I make a vow before you that if you solve my problem (or give me my need), then I shall feed these poor people at the shrine of Sayyidah Nafisah رحمه الله or those at the grave of Imam Shafi'I رحمه الله or Imam Abu al Layth رحمه الله, or I shall provide for their mosques sackcloth (mats, prayer rugs, etc), or for their mosque oil for lamps, or I shall give money to those who serve at the mosques of these righteous men and who maintain the symbols (meaning the mu'adhdhins and the imam).
Or, he may mention some other things which would benefit the poor and the needy. This kind of a vow will be for Allah and before him and he mention of the pious man or of the servants at his grave will be in connection with the spending towards the vow. The spending is on the deserving people who reside at the retreat or mosque of the righteous people.
It is correct to make a vow in this manner because its beneficiaries are the poor people who are found there. It is not allowed to spend that (which is vowed to be spend) on those who are not needy or on those who are of noble descent. It is not proper for anyone who is not poor (and destitute or in need) to accept that which is vowed to be spend. It is also not allowed to use it on anyone holding an office because of his position unless he is needy. It is also forbidden to spend on a learned man because of his knowledge unless he is poor.
Shariah does not condone the spending of that which one has vowed (as an offering) on such people as are well off and not poor or needy.
Further, the ulama (Scholars) agree that it is forbidden to make a vow before any creature or in his name. If any one does so then it is not correct even if that creature whose name the vow is made is righteous and it is not *wajib (obligatory)* to fulfil the vow. Apart from being forbidden, the vow will be regarded as bribery. It is not allowed to the keepers and servant of that righteous person to take what is offered against the vow and eat any food offered or use any other thing offered. However, if

any one of them in desperate and guardian of children who are unable to earn a living for themselves and are in dire need then they are allowed to take from the offering against the vow at the initial stage as a sadaqah (charity), but even in that case it will be makruh (disapproved) to take it till the intention of the person making the vow is not to earn nearness to Allah and he is not motivated to earn the pleasure of the righteous man, but seeks to spend on the deserving.

Having know the facts in detail, you must realize that whatever money and other things are showered on the graves of the awliya (Allah's friends, righteous men) to gain nearness to them are forbidden in the sight of all Muslims. The person making the vow should form an intention to spend on the poor. (Only then will it be correct.)

This piece is from bahr ur Ra'iq and is also found in an Nahrul fa'iq nad ad Dar ul mukhtar}[1]

Apart from the foregoing extract from the sayings of Mawlana Muhamad Ishaq, we reproduce here the answer of Mawlana Rashiduddin Khan رحمه الله.

QUESTION: When people make a vow in the name of righteous people, they make an offering of food. Is it allowed to eat from it and is it allowed to make vows in their names (and to make invocation to them)? Or, is it not allowed? If it is proper, then how?
Besides, some vows are conditional to granting of prayers for need and some are without condition. Is there a difference between the two.

ANSWER: The meaning of nadhar (vow) in the terminology of Shariah is to make something that is not *wajib (obligatory)* as *wajib (obligatory)* on oneself. It is written in Jami ur Rumuz:

اَلنَّذْرُ إِيْجَابٌ عَلَى النَّفْسِ مَا لَيْسَ عَلَيْهَا بِالْقُبُوْلِ

(A nadhar is to make obligatory on oneself that which was not necessary to do before that.)

writes in his Tafseer Kabir against the verse {Whatever vow you make} رحمه الله Imam Razi

اَلنَّذْرُ مَا اَلْزَمَهُ الْإِنْسَانُ عَلَى نَفْسِهِ

that it means:

(Nadhar is what a person makes obligatory on himself).

This is a brief explanation of nadhr (vow). A full explanation may be seen in books of fiqh (Islamic jurisprudence) and usul.
The word niyaz (that is often used wit h nadhar) has many meanings and it is a Persian word. One of its meanings is that which is given to the darwaysh (dervish) or mendicant as a gift. (Al-Burhan al-Qati)
After knowing the literal and technical meaning of these two words nadhar and niyaz, we must obey the command of Shari'ah (divine law) about them: nadhar (or vow) is not allowed for anyone other than Allah. Making a vow for anyone else is not only not correct but also it is contrary to reliable jurists traditions to take or eat anything from it.

ABOUT NIYAZ: This far was our discussion about nadhar. Now let us touch on niyaz. We learnt the meaning of niyaz as a gift to a dervish. It is kindness and joining. Hence, if

[1] Matah Masail (Mawlana Muhammad Ishaq).

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anyone sends to a righteous living person something as a niyaz, meaning gift, then it is allowed. The righteous person is permitted to eat or use it. Also, if niyaz, meaning fatihah (Prayer and recital) is held to consign reward to a deed righteous man, then that too is permitted, but some clarification is necessary, concerning eating and use of this niyaz. If the person who makes the niyaz does it with intention to consign to the dead righteous man reward for sadaqah (charity) of the eatables then only the poor are permitted to eat from that. The well to do are not allowed to eat. If this intention is to consign the reward (of its permissibility to all Muslims) to the righteous man than every hungry person may eat from it, whether rich or poor.

In short, if a nadhar is made for the righteous to gain his pleasure or to get one's need from him then it is not allowed in the light of the foregoing discourse. And it is not allowed to eat or use its offering

If a nadhr (or vow) is not intended to gain nearness to the righteous and has no condition attached to it of gating one's need thereby, but is aimed only to earn Allah's pleasure and then to consign reward to the righteous person then while the rich are not allowed to partake of it or use it the poor are allowed as long as reward of sadaqah (charity) of the offerings is consigned. But, if reward of its permissibity to all Muslim is consigned the everyone rich and poor may eat, or use it.

The ruling for niyaz is also similar. If the niyaz for the righteous is only to consign reward then it is allowed. But, it is not allowed to bind oneself to do something in order to gain nearness to them or their pleasure whether with intention of getting one's needs granted or with no such intention. The reason is that it is a nadhar (vow) which is not allowed for any one but for Allah.

We learn, therefore, that whether one makes the condition of a need being fulfilled or not, it is forbidden to make *wajib (obligatory)* on oneself anything in the name of any one other than Allah.

Niyaz for a righteous person is permitted only when there is intention to gain nearness to him and to get one's desire, but the aim is merely to please Allah and to convey the reward to the righteous man. As for the offering of the niyaz, it is allowed to eat and use according to the foregoing clarification.

It is stated in Dalil ud dallean that nadhar made only for Allah's sake and not for anyone else. Hence, if anyone vows in the name of a prophet or wali (man of Allah), then he is bound to do nothing. Nothing is *wajib (obligatory)* on him, and he is not liable to fulfil the vow. If he gives the thing (or offering) of the nadhar to someone with the same intention, then it is not allowed to that man to take it or to eat it. If that thing is a slaughtered animal then it falls in the category of a dead animal or a carrion. Rather, if people eat it after saying (بسم الله) (Bismillah - In the name of Allah) then all of them will have done an act of disbelief.

If any one makes a nadhar (vow) for Allah's sake and then people eat from the offering and consign its reward to the dead then it is allowed:

SEE ALSO:

(1)Heavenly ornaments (Bahishti Zewer) by Mawlana Muhammad Ashraf Ali Thanawi رحمه الله (English translation) on vows pp 431-434 and on Oaths pp 435-441. (Darul Isha'at Karachi)

(2)The Hidayah commentary on Islamic laws by Al-Murghinani (English translation on vows anyman pp 304 to 352 (Darul Isha'at Karachi)

SECTION I اَلْفَصْلُ الْاَوَّلُ

(٣٤٠٦) عَنِ ابْنِ عُمَرَ قَالَ قَالَ اَكْثَرُ مَا كَانَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَحْلِفُ لَا وَ مُقَلِّبِ الْقُلُوْبِ۔ (رواه البخارى)

3406. Sayyiduna Ibn Umar رضى الله عنه narrated that often the Prophet صلى الله عليه وسلم used the oath

وَ مُقَلِّبِ الْقُلُوْبِ

"Be the Turnur of the hearts!"[1]

COMMENTARY: This hadith is evidence that oath may be taken by any of the attributes of Allah.

NO SWEARING ON OTHERS THAN ALLAH

(٣٤٠٧) وَعَنْهُ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اِنَّ اللّٰهَ يَنْهَاكُمْ اَنْ تَحْلِفُوا بِاٰبَائِكُمْ مَنْ كَانَ حَالِفًا فَلْيَحْلِفْ بِاللّٰهِ اَوْلِيَصْمُتْ۔ (متفق عليه)

3407. Sayyiduna Ibn Umar رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "Allah forbids you that you should swear by your fathers. If anyone must swear then he should swear by Allah (or by this attributes), or he should observe silence."[2]

COMMENTARY: The prohibition to swear by the father is by way of example, for actually, it is disallowed to swear by anyone others than Allah. Only father is named because it is the habit of the people to swear by their fathers.

The reason is that no one should be brought at par with Allah and regarded as comparable to him.

Sayyiduna Ibn Abbas رضى الله عنه said, "If I swear by Allah one hundred times and break the oath each time, then it is better then swearing by anyone else just and honouring that promise."

As for Allah, Mighty and Glorious, is concerned, it is proper for him that he declare His Greatness and Glory, by Swearing on whoever he wishes of His creatures.

There can arise a question on this hadith because once the prophet صلى الله عليه وسلم had sworn on his father (اَفْلَحَ وَاَبِيْهِ) while here he disallows it. We might say that he may have done that before it was forbidden to do so, Or, he may not have taken that oath but he may have uttered the words out of old habit.

(٣٤٠٨) وَعَنْ عَبْدِالرَّحْمٰنِ بْنِ سَمُرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا تَحْلِفُوا بِالطَّوَاغِيْ وَلَا بِاٰبَائِكُمْ۔ (رواه مسلم)

3408. Sayyiduna Abdur Rahman ibn Samurah رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "Do not swear by idols and not by your fathers."[3]

COMMENTARY: During the jahiliah, people generally swore on the idols and fathers. The prophet صلى الله عليه وسلم therefore, advised the people to give up the old custom, after they had

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[1] Bukhari # 7391, Abu Dawud # 3263, Darimi # 2350, Musnad Ahmad 2-26.

[2] Bukhari # 6646, Muslim # 3-1646, Tirmidhi # 1543, Abu Dawud # 3249, Nasa'i # 3767, Ibn Majah # 2094, Darimi # 2341, Muwatta Maalik # 14 (Mudhur vows), Musnad Ahmad 2-7.

[3] Muslim # 6-1648, Nasa'i # 3774, Ibn Majah # 2095, Musnad Ahmad 5-62.

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embraced Islam.

(٣٤٠٩) وَعَنْ اَبِيْ هُرَيْرَةَ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ مَنْ حَلَفَ فَقَالَ فِيْ حَلِفِهٖ بِاللَّاتِ وَالْعُزّٰى فَلْيَقُلْ لَا اِلٰهَ اِلَّا اللّٰهُ وَمَنْ قَالَ لِصَاحِبِهٖ تَعَالَ اُقَامِرْكَ فَلْيَتَصَدَّقْ (متفق عليه)

3409. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "If anyone swears and says his oath, 'By Laat and Uzza, then he must say (لا الٰہ الا اللہ) (There is no God but Allah). And, if any one says to his friend, 'Come, I shall gamble with you!' he must rather give charity."[1]

COMMENTARY: That person who swears by Allah should declare 'There is no God but Allah.' This means that he must make a repentance and seek forgiveness of Allah. This could mean two things.

(i) If a neo Muslims happens to take the names of the two idols then he must atone for that by reciting the kalimah because Allah says

فَاِنَّ الْحَسَنٰتِ يُذْهِبْنَ السَّيِّاٰتِ۔ (ہود ۱۱: ۱۱۴)

{Surely good does will drive away the evil deeds.} (11: 114)

Hence, repentance will correct the negligence.

(ii) If he took the names of Laat and Uzza intentionally to honour them then that clearly is apostasy and disbelief. Hence, he must renew his faith which he must do by reciting the Kalimah. This will mean repentance from sin.

For inviting his friends to gamble, which is a grave sin, he must make an atonement by giving sadaqah (charity) (Which is charity). Thus he will spend some of his wealth in Allah's path. Same people say that he is required to give in charity that which he had intended to use to gamble.

This man merely invited his friend to gamble so he is asked to give charity. What would have been his fate if he had gone ahead and gambled?

FALSE OATH & FALSE CLAIM

(٣٤١٠) وَعَنْ ثَابِتِ بْنِ الضَّحَّاكِ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ حَلَفَ عَلٰى مِلَّةٍ غَيْرِ الْاِسْلَامِ كَاذِبًا فَهُوَ كَمَا قَالَ وَلَيْسَ عَلَى ابْنِ اٰدَمَ نَذْرٌ فِيْمَا لَا يَمْلِكُ وَمَنْ قَتَلَ نَفْسَهٗ بِشَيْءٍ فِي الدُّنْيَا عُذِّبَ بِهٖ يَوْمَ الْقِيَامَةِ وَمَنْ لَعَنَ مُؤْمِنًا فَهُوَ كَقَتْلِهٖ وَمَنْ ادَّعٰى دَعْوٰى كَاذِبَةً لِيَتَكَثَّرَ بِهَا لَمْ يَزِدْهُ اللّٰهُ اِلَّا قِلَّةً (متفق عليه)

3410. Sayyiduna Thabit ibn ad-Dahhak رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "If anyone swears by a religion other than Islam falsely, then he becomes as he says. And, it is not *wajib (obligatory)* on a son of Aadam علیہ السلام to fulfill a vow about something that he does not possess. And, if anyone kills himself (in this world) with something then, on the day of resurrection, he will suffer punishment with that very thing (meaning, if he had thrust a knife in his body, he will continue to do it till Allah delivers him from that). And, if anyone curses a believer, then it is like killing him And, if a person presents a false claim

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[1] Bukhari # 6450, Muslim # 5-1647, Tirmidhi # 1545, Abu Dawud # 1247, Nasa'i # 3775, Musnad Ahmad 2-309.

with which to earn plenty, then Allah will cause his property to diminish."[1]

COMMENTARY: The first portion of the hadith means that if anyone says on oath, "If I do that, I will be an unbeliever," and he does that work, then he becomes an unbeliever. Thus, for an oath to be true, he must not do that. If he does what he promises not to do then he will have made a false promise.

By swearing as he does, he perpetrates an unlawful thing and, to add to it, he belies it and chooses disbelief willingly.

However, the hadith could also mean that he does not become an unbeliever, but it warns that such a person might undergo the same punishment as the unbeliever will face. We find an example of it in the Prophet's صلى الله عليه وسلم words (من ترک الصلوة فقد کفر) (He who neglects *salah (prayer)* has, indeed, disbelieved). They mean that a person who does not offer *salah (prayer)* is liable to receive the same punishment as a disbeliever will face.

Apart from that, the question remains whether it will be *wajib (obligatory)* or not to make an expiation for breaking this kind of an unlawful oath.

Imam Abu Hanifah رحمه الله is among those ulama (Scholars) who say that if anyone breaks the oath then he will have to make an expiation.

Imam Maalik رحمه الله and Imam Shafi'i رحمه الله hold that if anyone speaks in this manner then it is not recognized as an oath by Shariah. So, no expiation is due. But, one who says in this manner commits a sin, whether he does what he says or not.

Durr ul Mukhtar states that if anyone takes an oath in this manner and breaks it then he does not become a disbeliever whether it concerns the past or the future, and he is conscious that he is swearing. But if he is not aware of its being an oath and he knows that if he lies he will certainly become an unbeliever, then it makes no difference whether it concerns the past or the future., immediately with the condition being met, he becomes a disbeliever because he chooses it willingly.

WHAT HE DOES NOT POSSESS: It is not *wajib (obligatory)* for a man to fulfill his vow if he does not possess that about which he vows. If he says "I will emancipate a certain slave if my wish is granted," then he is not obliged to fulfill his vow because he does not possess that slave, even if he gets ownership of the slave later on. But, if he stipulates 'I will emancipate him when I get possession of him,' then he will have to fulfill his vow on owning him.

FLASE CLAIM: Often people make false claims to augment their wealth. Some people relate telltale to give a false impression of their standing. In either case, Allah causes them to fall down in wealth and reputation. This is what the so-called Sufis and peers[2] do to gain fame.

IF IT IS GOOD TO BREAK AN OATH:

(٣٤١١) وَعَنْ اَبِيْ مُوْسٰى قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِنِّيْ وَاللّٰهِ اِنْ شَاءَ اللّٰهُ لَاَحْلِفُ عَلٰى يَمِيْنٍ فَاَرٰى غَيْرَهَا خَيْرًا مِنْهَا اِلَّا كَفَّرْتُ عَنْ يَمِيْنِيْ وَاَتَيْتُ الَّذِيْ هُوَ خَيْرٌ۔ (متفق علیه)

3411. Sayyiduna Abu Musa رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said,

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[1] Bukhari # 6047, Muslim # 176-110, Tirmidhi # 1548, Nasai # 3770, Ibn Majah # 2098, Musnad Ahmad 4-33.

[2] Sufi are mystics and peers are they who as religious elder, a murshid.

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"By Allah, insha Allah, if I take an oath and realize, afterwards, that something other than it is better, then I shall (break the oath and) make an expiation for it and adopt the better thing."[1]

COMMENTARY: If one realizes after swearing that a better course is to forsake what he had intended to do then he must give up the oath and do what he thinks is better.
Examples of this will be presented in the next commentary on hadith # 3412

(٣٤١٢) وَعَنْ عَبْدِالرَّحْمٰنِ بْنِ سَمُرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَا عَبْدَالرَّحْمٰنِ بْنَ سَمُرَةَ لَا تَسْئَالِ الْاِمَارَةَ فَاِنَّكَ اِنْ اُوْتِيْتَهَا عَنْ مَسْئَلَةٍ وُكِلْتَ اِلَيْهَا وَاِنْ اُوْتِيْتَهَا عَنْ غَيْرِ مَسْئَالَةٍ اُعِنْتَ عَلَيْهَا وَاِذَا حَلَفْتَ عَلٰى يَمِيْنٍ فَرَأَيْتَ غَيْرَهَا خَيْرًا مِنْهَا فَكَفِّرْ عَنْ يَمِيْنِكَ وَاْتِ الَّذِىْ هُوَ خَيْرٌ وَفِىْ رِوَايَةٍ فَأْتِ الَّذِىْ هُوَ خَيْرٌ وَكَفِّرْ عَنْ يَمِيْنِكَ۔ (متفق علیه)

3412. Sayyiduna Abdur Rahman ibn Samurah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "O Abdur Rahman ibn Samurah, do not ask for an office of authority, for, if you are given it on your asking, then you will be left to yourself to tackle the affairs. But, if you get it without your asking for it then you will be helped. And, when you take an oath and find something else better than that then make expiation for your oath and opt for that which is better. According to another version: "Do that which is better and make an expiation for your oath."[2]

COMMENTARY: The office of a ruler of chief is not something ordinary but a very difficult proposition. Not everyone is qualified to discharge its responsibilities. Hence, one must not crave for it. If anyone hankers after it then Allah's help will be withdrawn from him with the result that there would be chaos all round and he will be disgraced.
However, if anyone gets this office without yearning for it, then Allah will help him and his affairs will be well done. He will be respected and honoured.

OPT FOR THE BETTER COURSE: If you take an oath to do something wrong, like not offering *salah (prayer)*, severing ties with father, then it is *wajib (obligatory)* to break the oath and make an expiation.
If you take an oath to do something and then realize that you have a better alternative, then it will only be preferable to break your oath, not *wajib (obligatory)*.
These things have been discussed in the introduction to this chapter.
The two versions of this hadith differ in the order of their words and therefore the command to make an expiation before doing the better thing, or to do that and then make an expiation. Three of the imam رحمہ اللہ hold that it is allowed to make an expiation before breaking the oath, but among them, Imam Shafi'i رحمہ اللہ hold that:

(i) if the expiation is made be fasting then it is not allowed to make the expiation before breaking the oath; but,

(ii) if the expiation is made by setting free slaves or feeding or clothing the needy, then it is allowed to make the expiation before breaking the oath.

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[1] Bukhari # 6718, Muslim # 7-1649, Abu Dawud # 3276, Nasai # 3780, Ibn Majah # 2107, Musnad Ahmad # 4-398

[2] Bukhari # 6622, Muslim # 19-1652, Nasai # 3791, Tirmidhi # 1534, Abu Dawud # 3273, Musnad Ahmad 5-62.

Imam Abu Hanifah رحمه الله contends that making an expiation before breaking the oath is not allowed under any circumstances, at all. He says about the ahadith that speak of expiation before perjury that the word (و) (waw - and) is merely a conjunction, joining two phrases and does not imply sequence of the two actions. And, indeed, the ahadith do not suggest any kind of sequence of the two commands.

(٣٤١٣) وَعَنْ اَبِيْ هُرَيْرَةَ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ مَنْ حَلَفَ عَلَى يَمِيْنٍ فَرَاٰى خَيْرًا مِنْهَا فَلْيُكَفِّرْ عَنْ يَمِيْنِهٖ وَلْيَفْعَلْ (رواه مسلم)

3413. Sayyiduna Abu Hurayrah رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "If anyone takes an oath and then finds a better proposition then let him make an expiation for his oath and undertake the better preposition"[1]
(and break the oath)

(٣٤١٤) وَعَنْهُ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَاللّٰهِ لَاَنْ يَلَجَّ اَحَدُكُمْ بِيَمِيْنِهٖ فِيْ اَهْلِهٖ اٰثَمُ لَهٗ عِنْدَ اللّٰهِ مِنْ اَنْ يُعْطِيَ كَفَّارَتَهُ الَّتِيْ افْتَرَضَ اللّٰهُ عَلَيْهِ (متفق عليه)

3414. Sayyiduna Abu Hurayrah رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "By Allah, for any of you to insist on his oath concerning his family is more sinful in Allah's sight than (breaking it and) giving an expiation that Allah has prescribed (for it)."[2]

COMMENTARY: To commit perjury is very bad. But, if there is good in it for the family members, it is better to negate the oath and to make an atonement for it.

ONE WHO ADJURES SHOULD BE BELIEVED

(٣٤١٥) وَعَنْهُ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَمِيْنُكَ عَلٰى مَا يُصَدِّقُكَ عَلَيْهِ صَاحِبُكَ (رواه مسلم)

3415. Sayyiduna Abu Hurayrah رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "Your oath will be correct only when your companion (who adjures you) confirms you to be true."[3]

COMMENTARY: The person who takes the oath is not the central figure but confirmation is required from him who gets him to swear. However, it depends on a right of the latter on the person who takes the oath.

If there is no right likely to be violated then there is no harm if a vague or a symbolic statement is made. This is Prophet Ibrahim عليه السلام meant to say (about his wife). "She is my sister in religion."

(٣٤١٦) وَعَنْهُ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَلْيَمِيْنُ عَلٰى نِيَّةِ الْمُسْتَحْلِفِ (رواه مسلم)

3416. Sayyiduna Abu Hurayrah رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "The oath will be dependant on the intention of him who gets it taken."[4]
(This is according to the Urdu translation, but elsewhere and Muslim have: 'the

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[1] Muslim # 12-1650, Musnad Ahmad 8742, Muwatta Maalik # (Nuzur).

[2] Bukhari #6625, Muslim # 26-1655, Musnad Ahmad 2-317.

[3] Muslim # 20-1653, Tirmidhi # 1359, Abu Dawud # 3255, Ibn Majah # 2121, Musnad Ahmad 2-228.

[4] Muslim # 21-1653, Ibn Majah # 2120.

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intention of one who takes it.')

VAIN OATHS WILL NOT BE RECKONED

(٣٤١٧) وَعَنْ عَائِشَةَ قَالَتْ أُنْزِلَتْ هٰذِهِ الْآيَةُ لَا يُؤَاخِذُكُمُ اللّٰهُ بِاللَّغْوِ فِيْ اَيْمَانِكُمْ فِيْ قَوْلِ الرَّجُلِ لَا وَاللّٰهِ وَبَلٰى وَاللّٰهِ رَوَاهُ الْبُخَارِيُّ وَفِيْ شَرْحِ السُّنَّةِ لَفْظُ الْمَصَابِيْحِ وَقَالَ رَفَعَهُ بَعْضُهُمْ عَنْ عَائِشَةَ۔

3417. Sayyidah Ayshah رضی اللہ عنہا narrated that the verse

لَا يُؤَاخِذُكُمُ اللهُ بِاللَّغْوِ فِيْ اِيْمَانِكُمْ

{Allah will not take you to task for what is vain in your oaths} (2: 225) was revealed concerning the saying of the man:
(بلی واللہ۔لا واللہ) (which are forms of oath).[1]

COMMENTARY: The Arabs often interspersed their conversation with (لا واللہ) (No, by Allah) or (بلی واللہ) (Of course, by Allah). They did not mean to swear but this had come to be accepted by them as a way of emphasizing what they wanted to say. With some, it was their oddity. It was not an oath, but a laghw (meaningless) oath.
Imam Shafi'I رحمہ اللہ said that a laghw oath is uttered by the tongue unintentionally about the past or the future.
Imam Abu Hanifah رحمہ اللہ said that a laghw oath is what the person taking it presumes to be true. In reality it is not true.
Who have spoken on it at length in the introduction to this chapter.

SECTION II اَلْفَصْلُ الثَّانِيْ

DO NOT TAKE OATH ON OTHERS THAN ALLAH

(٣٤١٨) عَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا تَحْلِفُوا بِآبَائِكُمْ وَلَا بِأُمَّهَاتِكُمْ وَلَا بِالْاَنْدَادِ وَلَا تَحْلِفُوا بِاللّٰهِ اِلَّا وَاَنْتُمْ صَادِقُوْنَ۔ (رواه ابوداود والنسائی)

3418. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Do not swear by your fathers, not by your mothers, not by idols, and swear by Allah only while you are truthful."[2]
(Do not take a false oath.)

(٣٤١٩) وَعَنِ ابْنِ عُمَرَ قَالَ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ مَنْ حَلَفَ بِغَيْرِ اللّٰهِ فَقَدْ اَشْرَكَ (رواه الترمذی)

3419. Sayyiduna Ibn Umar رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "If a person swear by anyone other than Allah, then he has associated (Partner with Allah).[3]

COMMENTARY: If anyone takes a oath on anyone other than Allah believing him to be great then he commits polytheism that is conspicuous or if he regards him with greatness

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[1] Bukhari # 6663, Abu Dawud # 3254, Muwatta Maalik 22. 5-9 (Nudhur)
[2] Abu Dawud #3248, Nasai # 3769.
[3] Tirmidhi #1540, Abu Dawud # 3251, Musnad Ahmad 6179(2-86)

and respect as is due only to Allah then he commits polytheism of the Khafi type (concealed type).
Generally, people swear on those who are dear to them, like 'I swear by my son, etc. This is a sin even if it may not amount to polytheism. However, if one does it out of an old habit and utters it unintentionally, then it is neither sin nor polytheism.

(٣٤٢٠) وَعَنْ بُرَيْدَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ حَلَفَ بِالْاَمَانَةِ فَلَيْسَ مِنَّا (رواه ابوداود)

3420. Sayyiduna Buraydah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "One who swears by amanah is not among us." (Amanah is trust or faithfulness.)[1]

COMMENTARY: If anyone does not use this word additionally with Allah's name but swears merely on amanah then he will not be counted among the followers, because this is one of customs of the people of the Book and falls under 'oath by other than Allah.'
Some people say that amanah means the obligatory duties, like *salah (prayer)*, etc. The Prophet صلی اللہ علیہ وسلم forbade that one should swear by these prescribed duties.
In either case, the ulama (Scholars) agree that expiation does not become *wajib (obligatory)* on breaking this oath.
If anyone swears by amanat Allah, then most ulama (Scholars) maintain that even then no expiation is *wajib (obligatory)* on breaking the oath. However, Imam Abu Hanifah رحمہ اللہ holds that in this case expiation will be *wajib (obligatory)* because Amin is a name of Allah and amanah, therefore, an attribute.
We may also say that amantullah refers to the kalimah tawhid.

ABSOLVING ONESELF FROM ISLAM

(٣٤٢١) وَعَنْ بُرَيْدَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ قَالَ اِنِّيْ بَرِيْءٌ مِنَ الْاِسْلَامِ فَاِنْ كَانَ كَاذِبًا فَهُوَ كَمَا قَالَ وَاِنْ كَانَ صَادِقًا فَلَنْ يَرْجِعَ اِلَى الْاِسْلَامِ سَالِمًا۔ (رواه ابوداود والنسائی وابن ماجة)

3421. Sayyiduna Buraydah رضی اللہ عنہ narrated that Allah's Messenger said that if anyone says, "(if I am responsible for it, then) I am free from Islam" and he lies, then he will be as he says. But if he speaks the truth, then he will not return to Islam safely. (or, soundly, or perfectly).[2]

COMMENTARY: The person who says "I am free from Islam" (if I have done or not done such-and such) and he lies in saying 'I have done' or 'not done' then he is absolved of Islam. In other words, it is strongly disallowed to swear in this way.
If that person has spoken the truth and had really done or not done as he says then too he is a sinner because Muslims are forbidden from swearing in this way.
Shaykh Abdul Haq Dahlawi رحمہ اللہ has classified this oath as mun'aqidah. He classifies the hadith (#3410) of Thabit ibn ad-Dahhak رضی اللہ عنہ too as mun'aqidah, But, Mullah Ali Qari رحمہ اللہ classifies it was ghamus. The complier of this book contends that this hadith may be classified in both ways: mun'aqidah and ghamus.
(Definition of these words have been given in the introductory words of this chapter.)

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[1] Abu Dawud # 3253, Musnad Ahmad 5-352.
[2] Abu Dawud #3258, Nasai # 3772, Ibn Maiah # 2100, Musnad Ahmad 5-355.

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SOME FORMS OF THE OATHS THE PROPHET صلی اللہ علیہ وسلم TOOK

(٣٤٢٢) وَعَنْ اَبِيْ سَعِيْدِنِ الْخُدْرِيِّ قَالَ كَانَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِذَا اجْتَهَدَ فِي الْيَمِيْنِ قَالَ وَالَّذِيْ نَفْسُ اَبِي الْقَاسِمِ بِيَدِهٖ(رواه ابوداود)

3422. Sayyiduna Abu Sa'eed al-Khudri رضی اللہ عنہ narrated that when Allah's Messenger صلی اللہ علیہ وسلم wished to emphasize his oath, he would say, "No! By Him in Whose hand is the soul of Abu al-Qasim."[1]

COMMENTARY: Abu al-Qasim is the Kunyah of the Prophet صلی اللہ علیہ وسلم.

(٣٤٢٣) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ كَانَتْ يَمِيْنُ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِذَا حَلَفَ لَا وَاَسْتَغْفِرُ اللّٰهَ۔ (رواه ابوداؤد وابن ماجة)

3423. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that when Allah's Messenger took an oath, he would say, "No, and I seek forgiveness of Allah."[2]

COMMENTARY: These words resemble an oath. They imply, "If this is not the truth then I ask for Allah's forgiveness." This is a form of emphasis.

SAYING "INSHA ALLAH"WITH AN OATH

(٣٤٢٤) وَعَنِ ابْنِ عُمَرَ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ مَنْ حَلَفَ عَلٰى يَمِيْنٍ فَقَالَ اِنْ شَاءَ اللّٰهُ فَلَا حِنْثَ عَلَيْهِ۔ رَوَاهُ التِّرْمِذِيُّ وَاَبُوْدَاوُدَ وَالنَّسَائِيُّ وَابْنُ مَاجَةَ وَالدَّارِمِيُّ وَذَكَرَ التِّرْمِذِيُّ جَمَاعَةً وَقَفُوْهُ عَلٰى ابْنِ عُمَرَ۔

3424. Sayyiduna Ibn Umar رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "He who swears an oath and includes (the words) 'insha Allah' (if Allah will) then he would not commit perjury (if he breaks his oath)."[3]

COMMENTARY: When one says 'insha Allah' then the oath becomes conditional. Hence, no question arises of making an expiation on breaking it.

The same applies to contracts, marriage contracts and dealings. If insha Allah is added with the same breath, when making them, they become conditional. Imam Abu Hanifah رحمہ اللہ and others hold this view, but Ibn Abbas رضی اللہ عنہ said that even with the words 'insha Allah,' they would be final and duly contracted, even if spoken without pause or intervening words.

The word used is (متصل) mutlasil which means 'to say insha Allah, without engaging in any other speech, immediately after the oath.'

If anyone engages himself in any other speech after taking the oath and then says insha Allah, then it is called (منتصل) (muntasil), separated.

Mirqat may be seen for other opinions of muttasil.

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[1] Abu Dawud # 3264, Musnad Ahmad 3-48.

[2] Abu Dawud #3265, Ibn Majah # 2093, Musnad Ahmad # 2-288.

[3] Tirmidhi # 1516, Abu Dawud #3261, Nasai # 3830, Ibn Majah # 2105, Darimi # 2342, Muwatta malik # 10(Nudhur), Musnad Ahmad # 2-10. .

SECTION III اَلْفَصْلُ الثَّالِثُ

BREAK UNREASONABLE OATH & MAKE AN EXPIATION FOR IT

(٣٤٢٥) عَنْ اَبِي الْاَحْوَصِ عَوْفِ بْنِ مَالِكٍ عَنْ اَبِيْهِ قَالَ قُلْتُ يَا رَسُوْلَ اللّٰهِ اَرَاَيْتَ ابْنَ عَمِّ لِي اٰتِيْهِ اَسْاَلُهُ فَلَا يُعْطِيْنِي وَلَا يَصِلُنِيْ ثُمَّ يَحْتَاجُ اِلَيَّ فَيَاْتِيْنِي فَيَسْاَلُنِيْ وَقَدْ حَلَفْتُ اَنْ لَا اُعْطِيَهُ وَلَا اَصِلَهُ فَاَمَرَنِيْ اَنْ اٰتِيَ الَّذِي هُوَ خَيْرٌ وَاُكَفِّرَ عَنْ يَمِيْنِي رَوَاهُ النَّسَائِيُّ وَابْنُ مَاجَةَ وَفِيْ رِوَايَةٍ قَالَ قُلْتُ يَا رَسُوْلَ اللّٰهِ يَاتِيْنِي ابْنُ عَمِّي فَاَحْلِفُ اَنْ لَا اُعْطِيَهُ وَلَا اَصِلَهُ قَالَ كَفِّرْ عَنْ يَمِيْنِكَ۔

3425. Sayyiduna Abu Al-Ahwas ibn Maalik رضی اللہ عنہ narrated on the authority of his father that he said (to the Prophet صلی اللہ علیہ وسلم), "O Messenger of Allah, what do you say about my cousin (paternal) who, when I go to him for something (that I need), does not give me anything, and does not treat me kindly? When he needs (anything from) me, he comes to me and asks me for something. I have sworn not to give him anything and not to treat him kindly."
He commanded him to do that which is better (and help him and treat him kindly) and make an expiation for his oath.
According to the version in Ibn Majah, he said, "O Messenger of Allah, my cousin comes to me but I swear that I shall give him nothing nor treat him kindly." He said, "Make an expiation for your oath."[1]

CHAPTER – IV

(AN-NUDHUR)VOWS بَابُ فِي النُّذُوْرِ

SECTION I اَلْفَصْلُ الْاَوَّلُ

VOWS ARE INEFFECTIVE

(٣٤٢٦) عَنْ اَبِيْ هُرَيْرَةَ وَابْنِ عُمَرَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا تُنْذِرُوْا فَاِنَّ النَّذْرَ لَا يُغْنِيْ مِنَ الْقَدَرِ شَيْئًا وَاِنَّمَا يُسْتَخْرَجُ بِهٖ مِنَ الْبَخِيْلِ۔ (متفق علیہ)

3426. Sayyiduna Abu Hurayrah رضی اللہ عنہ and Sayyiduna Ibn Umar رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Do not make vows, for, a vow removes nothing of the decree. And, it only causes something to be spent from the (property of the) miser."[2]

COMMENTARY: The concluding words of the hadith, define very delicate difference between the generous and the miser in spending in Allah's path. The former does not need a vow to get him to spend while the latter will not part with his money easily, but only make it conditional to having his wish fulfilled. The generous walks on the path of sacrifice and the miser takes the path of selfishness.
Some ulama (Scholars) cite this hadith to say that it is makruh (disapproved) to make a vow. But Qadi رحمہ اللہ has explained that generally people link a vow to getting something

[1] Nasai #3788, Ibn Majah # 2109, Musnad Ahmad 4-136.
[2] Bukhari # 6609, Muslim # 5-1640, Nasai # 3805, Ibn Majah # 2123, Musnad Ahmad # 2-118.

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and fulfilling their need (and they spend in Allah's path with this in mind). The Prophet صلى الله عليه وسلم forbade such kind of spending because it is what the niggardly does. The generous hastens to spend in Allah's path and gains nearness to Him and His pleasure. The miser will not part with his money unless his selfish ends are met, and he makes a vow but decree cannot change because of that.

Some people say that this hadith disallows making a vow so that one may not be lethargic in fulfilling it because to honour it is *wajib (obligatory)*.

Some others say that the disallowance is to prevent the belief that a vow alters Divine decree. It is only from this point of view that vows are disallowed. They are not prohibited absolutely.

DO NOT FULFILL VOW IF IT CALLS FOR SIN

(٣٤٢٧) وَعَنْ عَائِشَةَ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ مَنْ نَذَرَ اَنْ يُطِيْعَ اللّٰهَ فَلْيُطِعْهُ وَمَنْ نَذَرَ اَنْ يَعْصِيَهُ فَلَا يَعْصِهِ۔ (رواه البخارى)

3427. Sayyidah Ayshah رضى الله عنها narrated that Allah's Messenger صلى الله عليه وسلم said, "He who vows to obey Allah (by doing what entails obedience to Him) must obey Him. But, he who vows to disobey Allah must not disobey Him" (meaning that he should not fulfill the vow).

(٣٤٢٨) وَعَنْ عِمْرَانَ بْنِ حُصَيْنٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا وَفَاءَ لِنَذْرٍ فِيْ مَعْصِيَةٍ وَلَا فِيْ مَالَا يَمْلِكُ الْعَبْدُ۔ رَوَاهُ مُسْلِمٌ وَفِيْ رِوَايَةٍ لَا نَذْرَ فِيْ مَعْصِيَةِ اللّٰهِ۔

3428. Sayyiduna Imran ibn Husayn رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "A vow that is a means to disobedience to Allah should not be honoured, and so a vow should not be fulfilled to do what one has not power to do."

According to another version (in Muslim): "No vow must be taken to disobey Allah."[1]

COMMENTARY: If anyone vows to organize a musical function if his prayer is granted, or to please Allah by having a qawwali sung, then it is not allowed to fulfill this vow. Also, no expiation is *wajib (obligatory)* for not fulfilling the vow. This is to what Imam Maalik رحمه الله and Imam Shafi'I رحمه الله subscribe, but according to Imam Abu Hanifah رحمه الله expiation for this oath is *wajib (obligatory)*, nevertheless.

The second portion of the hadith says that it is not allowed to fulfill a vow for something which one does not possess or cannot exercise control over it. For example, if a person makes a vow to set free a slave who belongs to someone else or to give away something that is another's property, then, because the vow is not correct, it is not binding on him to free the slave or give that thing.

EXPIATION FOR A VOW

(٣٤٢٩) وَعَنْ عُقْبَةَ بْنِ عَامِرٍ عَنْ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ كَفَّارَةُ النَّذْرِ كَفَّارَةُ الْيَمِيْنِ۔ (رواه مسلم)

3429. Sayyiduna Uqbah ibn Aamir رضى الله عنه narrated that Allah's Messenger صلى الله عليه

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[1] Muslim # 8-1641, Abu Dawud #3316, Ibn Majah # 2124, Darimi # 2337, Musnad Ahmad 4-430.

ﷺ said, **"The expiation for a vow is like the expiation for an oath."**[1]

COMMENTARY: If anyone does not specify anything when making a vow, saying only. "I make a vow," then an expiation will be *wajib (obligatory)* on him. If he takes a vow to fast without specifying how many, then it will be *wajib (obligatory)* on him to fast three days. If he takes a vow to give sadaqah (charity) but does not say how much, then it will be *wajib (obligatory)* on him to feed ten people as against sadaqat ul fitr.

THE PART OF VOW THAT IS IMPOSSIBLE MAY BE LEFT OUT

(٣٤٣٠) وَعَنِ ابْنِ عَبَّاسٍ قَالَ بَيْنَا النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَخْطُبُ إِذَا هُوَ بِرَجُلٍ قَائِمٍ فَسَأَلَ عَنْهُ فَقَالُوْا اَبُوْ اِسْرَائِيْلَ نَذَرَ اَنْ يَقُوْمَ وَلَا يَقْعُدَ وَلَا يَسْتَظِلَّ وَلَا يَتَكَلَّمَ وَيَصُوْمَ فَقَالَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مُرُوْهُ فَلْيَتَكَلَّمْ وَلْيَسْتَظِلَّ وَلْيَقْعُدْ وَلْيُتِمَّ صَوْمَهٗ۔ (رواه البخارى)

3430. Sayyiduna Ibn Abbas رضی اللہ عنہ **narrated that while the Prophet** صلی اللہ علیہ وسلم **was delivering a sermon, he beheld a man standing. So, he asked about him. They (the sahabah**رضی اللہ عنہم**) said, "He is Abu Israil. He has taken a vow that he would stand and not sit and not go into the shade and not speak, but would fast (perpetually)." The Prophet** صلی اللہ علیہ وسلم **said, "Instruct him to speak, go into the shade, sit and complete his fast."**[2]

COMMENTARY: The prophet commanded the man to complete that part of his vow as was possible for him ,and to give up that which was not possible to do. He was commanded to fast as per his vow always because it is necessary to fulfill a vow to obey and worship. To fast always is a better deed for one who is able to do it, but this excludes the five fasts that are forbidden by shariah. If anyone forms an intention to fast on these five days too then it is *wajib (obligatory)* on him to break these fasts, and according to the hanafis it is *wajib (obligatory)* on him to make an expiation for that. Among the things that it was not possible for him to do at all was 'not to speak.' According to Shari'ah (divine law), it is simply impossible not to speak always because sometimes it is *wajib (obligatory)* to speak. Examples are: recitation of the Qur'an in the *salah (prayer)*, giving a response to the greeting (of salaam), to neglect which is a sin. Similarly, it is not within a man's power to never sit and never go in the shade.

(٣٤٣١-٣٤٣٢) وَعَنْ اَنَسٍ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ رَأٰى شَيْخًا يُهَادٰى بَيْنَ اِبْنَيْهِ فَقَالَ مَابَالُ هٰذَا قَالُوْا نَذَرَ اَنْ يَمْشِيَ اِلٰى بَيْتِ اللّٰهِ قَالَ اِنَّ اللّٰهَ تَعَالٰى عَنْ تَعْذِيْبِ هٰذَا نَفْسَهٗ لَغَنِيٌّ وَاَمَرَهٗ اَنْ يَرْكَبَ۔ مُتَّفَقٌ عَلَيْهِ وَفِيْ رِوَايَةٍ لِمُسْلِمٍ عَنْ اَبِيْ هُرَيْرَةَ قَالَ اِرْكَبْ اَيُّهَا الشَّيْخُ فَاِنَّ اللّٰهَ غَنِيٌّ عَنْكَ وَعَنْ نَذْرِكَ۔

3431. Sayyiduna Anas رضی اللہ عنہ **narrated that the Prophet** صلی اللہ علیہ وسلم **saw an old man being led, supported (on their shoulders) by his two sons. He asked, "What is wrong with him?" They (the sahabah (Prophet's Companions)** رضی اللہ عنہم**) said, "He has taken a vow that he would walk to BaytAllah." He said, "Allah, the Exalted, has**

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[1] Muslim # 13-1645, Tirmidhi # 1528, Nasai # 3832.

[2] Bukhari # 6704, Abu Dawud # 3300, Ibn Majah # 2136

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no need that this man should punish himself," and he instructed him to side.[1]
According to a version in Muslim:
3432. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that he said, "O you shaykh! (old man) Ride, for Allah is not in need of (putting) you (to trouble) and of your vow.[2]

COMMENTARY: That man was unable to walk because he was feeble and old. This is why the Prophet صلی اللہ علیہ وسلم instructed him to ride.

Imam Shafi'I رحمہ اللہ abides by the hadith and says that a person who makes a vow to walk and breaks it, to ride, will not have to make an expiation for breaking the vow.

Imam Abu Hanifah رحمہ اللہ says that he will be bound to slaughter an animal (meaning, like a sheep) because he is unable to fulfill what he had bound himself to do. Imam Shafi'I رحمہ اللہ gave a second verdict similar to it.

Mazhar رحمہ اللہ said that the ulama (Scholars) differ on the edict for a man who vows to go to BaytAllah on foot. Imam Shafi'i رحمہ اللہ says that if he has the strength to undertake the journey then he must walk the distance otherwise he must slaughter an animal towards expiation and ride to it. Imam Abu Hanifah رحمہ اللہ says that whether he is able or unable to walk (throughout), he must ride a beast and slaughter an animal.

PILGRIMAGE *WAJIB (OBLIGATORY)*: According to the Hanafis, if anyone pledges, 'I bind myself to walk to BaytAllah,' then Hajj (pilgrimage) or umrah becomes *wajib (obligatory)* on him. He may perform one of these based on the intention (he had formed). If he pledges, "I bind myself to walk upto the Haram - or up to walk Masjid Haraam," then according to Iman Abu Hanifah رحمہ اللہ pilgrimage is not *wajib (obligatory)* on him, but according to Imam Abu Yusuf رحمہ اللہ and Imam Muhammad رحمہ اللہ Hajj (pilgrimage) or umrah remains *wajib (obligatory)* on him. If he says, "I bind myself to go to BaytAllah," then the unanimous verdict is that he is not clear and nothing is *wajib (obligatory)* on him, neither Hajj (pilgrimage) nor umrah.

If anyone vows to perform Hajj (pilgrimage) on foot, then it is *wajib (obligatory)* on him to walk from his home and use no kind of conveyance till he has performed tawaf ziyarat.

If a person vows to perform umrah on foot, he must not use any kind of conveyance till he has showed his hed (as the final action).

If one who vows to walk uses a conveyance all through or part of the distance, with or without an excuse, then it is *wajib (obligatory)* on him to make a sadaqah (charity) equivalent to the price of a goat.

ARE HEIRS LIABLE TO FULFILL VOW OF PREDECESSOR

(٣٤٣٣) وَعَنِ ابْنِ عَبَّاسٍ أَنَّ سَعْدَ بْنَ عُبَادَةَ اِسْتَفْتَى النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فِي نَذْرٍ كَانَ عَلَى أُمِّهِ فَتُوُفِّيَتْ قَبْلَ أَنْ تَقْضِيَهُ فَأَفْتَاهُ أَنْ يَقْضِيَهُ عَنْهَا۔ (متفق علیہ)

3433. Sayyiduna Ibn Abbas رضی اللہ عنہ narrated that (Sayyiduna) sa'd ibn Ubadah رحمہ اللہ requested the Prophet صلی اللہ علیہ وسلم for an edict about a vow that his mother had taken but had died before fulfilling it. He pronounced the edict for him that he should fulfill the vow on her behalf.[3]

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[1] Bukhari # 1865, Muslim # 9-1642, Nasai # 3854, Musnad Ahmad 3-114.

[2] Muslim # 1-1643, Ibn Majah # 2135

[3] Bukhari # 6698, Muslim # 1-1638, Tirmidhi # 1546, Nasai # 3817, Ibn Majah # 2132, Musnad Ahmad 1-370.

COMMENTARY: The ulama (Scholars) have different views on the nature of the vow taken by the mother of Sayyidiuna Sa'd رضی اللہ عنہ. She may have not specified it, or vowed to fast, or to set a slave free or to make a sadaqah (charity). According to the version in daraqutni, the Prophet صلی اللہ علیہ وسلم instructed Sa'd رضی اللہ عنہ, "Provide water to drink on her behalf."

The majority of the scholars say that if anyone takes a vow but dies before fulfilling it, then his heirs are not bound to honour it on his behalf, if it is for something other than a monetary pledge. Also, if he had vowed to make a monetary contribution but had left nothing behind then too it is not *wajib (obligatory)* on the heirs to fulfill the vow. However, if they honour it, that is *mustahab (desirable).*

The Zawahir say, however, that it is *wajib (obligatory)* on the heirs to fulfill the vow basing their verdict on this hadith. Most of the ulama (Scholars) contend that the heir has not made the vow *wajib (obligatory)* on himself so he is not liable to fulfill it. It will only be *mustahab (desirable)* for him to fulfill it. As for this hadith, it does not make it *wajib (obligatory)*, Secondly, it is possible that the mother or Sayyiduna Sa'd رضی اللہ عنہ may have left a legacy and he could have been commanded by the Prophet's صلی اللہ علیہ وسلم command to do it voluntarily.

DO NOT GIVE AWAY EVERYTHING IN CHARITY

(٣٤٣٤) وَعَنْ كَعْبِ بْنِ مَالِكٍ قَالَ قُلْتُ يَا رَسُولَ اللّٰهِ إِنَّ مِنْ تَوْبَتِيْ اَنْ اَنْخَلِعَ مِنْ مَالِيْ صَدَقَةً إِلَى اللّٰهِ وَإِلٰى رَسُوْلِهٖ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَمْسِكْ بَعْضَ مَالِكَ فَهُوَ خَيْرٌ لَّكَ قُلْتُ فَإِنِّيْ أُمْسِكُ سَهْمِيَ الَّذِيْ بِخَيْبَرَ۔ مُتَّفَقٌ عَلَيْهِ وَهٰذَا طَرَفٌ مِنْ حَدِيْثٍ مُطَوَّلٍ۔

3434. Sayyiduna Ka'b ibn Maalik رضی اللہ عنہ narrated that he submitted, "O Messenger of Allah a perfect repentance from me demands of me that I should give away all my property as sadaqah (charity) for Allah and His Messenger." There upon, Allah's Messenger صلی اللہ علیہ وسلم said, "Keep with you some of your property. That will be better for your." He submitted, "I withhold the share that I had received at Khaybar" (of the booty of war).[1]

COMMENTARY: When the Prophet صلی اللہ علیہ وسلم advanced with his army to the battle of tabuk, three of the sahabah (Prophet's Companions) رضی اللہ عنہم did not accompany him. They were: Ka'b رضی اللہ عنہ, Murarah ibn Rabi رحمہ اللہ and Hilal ibn Umayyah.

When he returned, he was very displeased with them and he instructed everyone to refrain from speaking to them. They were very worried and repentance was accepted after some days and this verse was revealed pardoning them:

وَعَلَى الثَّلٰثَةِ الَّذِيْنَ خُلِّفُوا۔ الآية

{And (He relented) towards the three who were left behind.} (9: 118)

In gratitude thereof and to make his repentance perfect, Ka'b ibn Maalik رضی اللہ عنہ offered all

[1] Bukhari # 6690, Muslim # 53,-2769, Tirmidhi # 3102, Nasai # 3836, Musnad Ahmad 3—454, Abu Dawud # 3317.

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his property towards sadaqah (charity) in Allah's name. He was instructed to retain some of it for himself. The meaning was that he should keep two-thirds of his property with himself and give away one-third towards charity.

The Prophet صلى الله عليه وسلم did not allow him to give away everything because he might need some for himself and then find it difficult to endure. The Prophet صلى الله عليه وسلم always kept the interest of all concerned in mind before giving any command.

Apart from this example of Ka'b رضى الله عنه, there also is the example of Abu Bakr رضى الله عنه. When he too brought all his property and presented it to the Prophet صلى الله عليه وسلم once, he did not forbid him to do that because his nature was entirely different. We cannot even imagine in the least at how high a degree of patience and trust in Allah he was. He was pleased at Allah's pleasure. Howsoever difficult the circumstances, he was a paragon of patience and reliance on Allah.

The complier of Mishkat has placed this hadith in this chapter of his book because Ka'b's رضى الله عنه saying resembles a vow that he had made something *wajib (obligatory)* on himself though it was not binding on him in the peculiar circumstances (when his repentance was accepted).[1]

SECTION II اَلْفَصْلُ الثَّانِي

VOW TO SIN SHOULD NOT BE FULFILLED

(٣٤٣٥) عَنْ عَائِشَةَ قَالَتْ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا نَذْرَ فِيْ مَعْصِيَةٍ وَكَفَّارَتُهُ كَفَّارَةُ الْيَمِيْنِ۔

(رواه ابوداؤد والترمذى والنسائى)

3435. Sayyidah Ayshah رضى الله عنها narrated that Allah's Messenger صلى الله عليه وسلم said, "There is no vow of disobedience (to Allah), and the expiation for it is as the expiation for an oath."[2]

COMMENTARY: See hadith # 2427, 2428. As regards expiation, Imam Abu Hanifah رحمه الله goes by this hadith. Imam Sahfi'I رحمه الله holds that no expiation is liable.

EXPIATION FOR UNSPECIFIED VOW

(٣٤٣٦) وَعَنِ ابْنِ عَبَّاسٍ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ مَنْ نَذَرَ نَذْرًا لَمْ يُسَمِّهِ فَكَفَّارَتُهُ كَفَّارَةُ يَمِيْنٍ وَمَنْ نَذَرَ نَذْرًا فِيْ مَعْصِيَةٍ فَكَفَّارَتُهُ كَفَّارَةُ يَمِيْنٍ وَمَنْ نَذَرَ نَذْرًا لَا يُطِيْقُهُ وَكَفَّارَتُهُ كَفَّارَةُ يَمِيْنٍ وَمَنْ نَذَرَ نَذْرًا اَطَاقَهُ فَلْيَفِ بِهٖ۔ رَوَاهُ اَبُوْدَاوٗدَ وَابْنُ مَاجَةَ وَوَقَّفَهُ بَعْضُهُمْ عَلَى ابْنِ عَبَّاسٍ۔

3436. Sayyiduna Ibn Abbas رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "If anyone takes a vow but does not specify it (whether he will fast or give sadaqah (charity)), then the expiation for it as the expiation for an oath (when it is broken). If anyone takes a vow to be disobedient (or sinful), then (it must not be fulfilled and) the expiation for it is as the expiation for an oath. If anyone takes a vow to do something beyond his power, then the expiation for it is as the expiation for an

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[1] See Tirmidhi V2 P 334 Hadith # 3113for a fuller hadith and Ka'b's account. (Darul Isha'at, Karachi)

[2] Tirmidhi # 1529, Abu Dawud # 3290, 3292, Nasai # 3834, Musnad Ahmad 6-247.

oath. And, if anyone takes a vow which he can fulfill then he must fulfill it."[1] Some narrators make it mawquf at Ibn Abbas رضی اللہ عنہ.

COMMENTARY: The unspecified vow is when he says simply. "I take a vow."

ONLY THE VOW THAT IS LAWFUL

(٣٤٣٧) وَعَنْ ثَابِتِ بْنِ الضَّحَّاكِ قَالَ نَذَرَ رَجُلٌ عَلَى عَهْدِ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَنْ يَنْحَرَ اِبِلًا بِبُوَانَةَ فَاَتٰى رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَاَخْبَرَهٗ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ هَلْ كَانَ فِيْهَا وَثَنٌ مِنْ اَوْثَانِ الْجَاهِلِيَّةِ يُعْبَدُ قَالُوْا لَا قَالَ فَهَلْ كَانَ فِيْهَا عِيْدٌ مِنْ اَعْيَادِهِمْ قَالُوْا لَا فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَوْفِ بِنَذْرِكَ فَاِنَّهٗ لَا وَفَاءَ لِنَذْرٍ فِيْ مَعْصِيَةِ اللّٰهِ وَلَا فِيْمَا لَا يَمْلِكُ ابْنُ اٰدَمَ۔ (رواه ابوداؤد)

3437. Sayyiduna Thabit ibn Dahhak رضی اللہ عنہ narrated that in the time of Allah's Messenger صلی اللہ علیہ وسلم a man took a vow to slaughter camels at Buwanah (a low-lying area in Makkah). He came to Allah's Messenger صلی اللہ علیہ وسلم and informed him (of his vow). Allah's Messenger صلی اللہ علیہ وسلم asked (the Sahabah (Prophet's Companions) رضی اللہ عنہم around him), "Was there an idol there during the jahiliyah (ignorance period) that was being worshipped?" The Sahabah (Prophet's Companions) رضی اللہ عنہم said, "No!" Then he asked, "Was any of their festivals being observed there (then)?" They submitted, "No." So, Allah's Messenger صلی اللہ علیہ وسلم said to the man, "Fulfill your vow. Indeed, a vow calling for disobedience to Allah must not be fulfilled, and so not that over which the son of Aadam has no control."[2]

COMMENTARY: If there had been an idol at the place or any kind of festival was being organized there during the jahiliyah (ignorance period) then the man would not have been given permission to slaughter camels there lest it resemble the offerings of the idol worshippers.

VOW TO BEAT THE DUFF (TAMBOURINE)

(٣٤٣٨) وَعَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ اَبِيْهِ عَنْ جَدِّهٖ اَنَّ اِمْرَاَةً قَالَتْ يَا رَسُوْلَ اللّٰهِ اِنِّيْ نَذَرْتُ اَنْ اَضْرِبَ عَلٰى رَاْسِكَ بِالدُّفِّ قَالَ اَوْفِيْ بِنَذْرِكِ۔ رَوَاهُ اَبُوْدَاوٗدَ وَزَادَ رَزِيْنٌ قَالَتْ وَنَذَرْتُ اَنْ اَذْبَحَ بِمَكَانِ كَذَا وَكَذَا مَكَانٌ يَذْبَحُ فِيْهِ اَهْلُ الْجَاهِلِيَّةِ فَقَالَ هَلْ كَانَ بِذٰلِكَ الْمَكَانِ وَثَنٌ مِنْ اَوْثَانِ الْجَاهِلِيَّةِ يُعْبَدُ قَالَتْ لَا قَالَ هَلْ كَانَ فِيْهِ عِيْدٌ مِنْ اَعْيَادِهِمْ قَالَتْ لَا قَالَ اَوْفِيْ بِنَذْرِكِ۔

3438. Sayyiduna Amr ibn Shu'ayb رحمہ اللہ narrated from his father that his grandfather (Abdullah ibn Amr رضی اللہ عنہ) said that a women submitted. "O Messenger of Allah, I have taken a vow to beat a duff before you (when you return after waging jihad)." He said, "Fulfill your vow."

The version of Razin has that he (Abdullah) said that the woman submitted (also), "And, I have taken a vow to make a sacrifice at such-and-such a place where people used to slaughter during the jahiliyah (ignorance period)." He asked, "Was there at

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[1] Abu Dawud # 3322, Ibn Majah # 2128

[2] Abu Dawud # 3313

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that place any of the idols worshipped during the jahiliyah (ignorance period)?" She said, "No." He asked, "Was there any of their festivals observed?" She said "No." He said, "Fulfill your vow."[1]

COMMENTARY: This hadith informs us that it is permitted to play the tambourine. Those authorities, who say that a vow must be for something relating to obedience, say that this woman expressed her sentiments of belief and love. She awaited the safe return of the Prophet صلى الله عليه وسلم from jihad when she vowed to beat the duff. Hence, that, too, was a kind of obedience.

SADAQAH (CHARITY) OF NOT MORE THAN ONE-THIRD PROPERTY

(٣٤٣٩) وَعَنْ اَبِي لُبَابَةَ اَنَّهٗ قَالَ لِلنَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِنَّ مِنْ تَوْبَتِيْ اَنْ اَهْجُرَ دَارَ قَوْمِيَ الَّتِيْ اَصَبْتُ فِيْهَا الذَّنْبَ وَاَنْ اَنْخَلِعَ مِنْ مَالِيْ كُلِّهٖ صَدَقَةً قَالَ يُجْزِئُ عَنْكَ الثُّلُثُ۔ (رواه رزين)

3439. Sayyiduna Abu Lubabah رضى الله عنه narrated that he submitted to the Prophet صلى الله عليه وسلم. "My repentance I hope to make perfect by abandoning the house of my people where I had committed sin and by giving away all my property towards sadaqah (charity)." He said, "It will be enough for you to give one-third (as sadaqah (charity))."[2]

COMMENTARY: The case of Sayyiduna Abu Lubabah رضى الله عنه was an amazing incident in Islamic history. It is lesson-bearing and unique.

The Prophet صلى الله عليه وسلم had besieged the Banu Qurayzah, a tribe of the Jews. They sent message to him that he should send his companion Abu Lubabah رضى الله عنه to them so that they might consult him.

The Prophet صلى الله عليه وسلم agreed to their request and sent Abu Lubabah رضى الله عنه to them. When they saw him, all their men and women, old and young began to weep and sob before him. Seeing that, Abu Lubabah رضى الله عنه was moved and he felt pity for them. They asked him, "If we obey the command of Muhammad and surrender ourselves him, how will he treat us?" In reply, he put his hand to his throat to suggest that they would be killed.

Abu Lubabah رضى الله عنه said, "I had barely done that and not yet taken a step from there when I felt remorse. I repented saying to myself, 'You have committed treachery with Allah and His Messenger صلى الله عليه وسلم.

Then, this verse was revealed:

يٰٓاَيُّهَا الَّذِيْنَ اٰمَنُوْا لَا تَخُوْنُوا اللّٰهَ وَالرَّسُوْلَ وَتَخُوْنُوْٓا اَمٰنٰتِكُمْ

{O you who believe! Violate not (the promise of) Allah and the Messenger, and violate (not) the trusts (amongst) yourselves...} (8: 27) (the promise of Allah and His Messenger صلى الله عليه وسلم is their message and commands.)

Abu Lubabah رضى الله عنه was terribly upset. It was as though his heart and mind had been struck by a bolt. Completely restless, and as though insane, he came to the Masjid Nabawi and tied himself to a pillar of the mosque. He declared that food and drink was forbidden to him till he made a repentance and Allah accepted it from him. As the time of *salah*

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[1] Abu Dawud # 3312

[2] Razin, Abu Dawud # 1319, Muwatta Maalik # 16(Nudhur) Musnad Ahmad 3-502

(prayer) drew near, his son would come and unite him. When he finished praying, he would again tie his hands. People would advise him to release himself but he would say, "No. Not until Allah's Messenger صلى الله عليه وسلم united me with his hands."

He remained in that condition for seven days when he swooned and fell down. Allah then accepted his repentance and the people informed him of that, but he insisted that he would not undo himself unless Allah's Messenger صلى الله عليه وسلم untied him with his hands. So, the Prophet صلى الله عليه وسلم came and undid the knots to release him.

It was at this moment that Abu Lubabah رضى الله عنه submitted that he felt that he must dispossess himself of all his wealth and property for his repentance to be perfect. He included his ancestral home that was among the Banu Qurayzah. He wished to move far away from the place where the devil had tempted and misled him. He had sympathized with the Banu Qurayzah because his family was among them and he had his properties there.

The hadith does not say what the Prophet صلى الله عليه وسلم said about abandoning his home. Perhaps, he let him do it. As for his property, the Prophet صلى الله عليه وسلم instructed him to give one third as charity. That was enough to get him his ambition. (The account as in the Siratur Rasul by Ibn Kathir is appended as a supplement at the end of this chapter.)

VOW TO OFFER *SALAH (PRAYER)* AT BAYT UL MUQADDAS BUT COULD NOT

(٣٤٤٠) وَعَنْ جَابِرِ بْنِ عَبْدِاللّٰهِ اَنَّ رَجُلًا قَامَ يَوْمَ الْفَتْحِ فَقَالَ يَا رَسُوْلَ اللّٰهِ اِنِّي نَذَرْتُ لِلّٰهِ عَزَّوَجَلَّ اِنْ فَتَحَ اللّٰهُ عَلَيْكَ مَكَّةَ اَنْ اُصَلِّيَ فِيْ بَيْتِ الْمَقْدِسِ رَكْعَتَيْنِ قَالَ صَلِّ هٰهُنَا ثُمَّ اَعَادَ عَلَيْهِ فَقَالَ صَلِّ هٰهُنَا ثُمَّ اَعَادَ عَلَيْهِ فَقَالَ شَأْنُكَ اِذًا۔ (رواه ابوداؤد والدارمى)

3440. Sayyiduna Jabir ibn Abdullah رضى الله عنه narrated that, on the day of the Conquest (of Makkah), a man got up and submitted, "O Messenger of Allah, I had vowed to Allah, Mighty and Glorious, that if Allah grants you victory over Makkah, I shall offer two raka'at *salah (prayer)* in Bayt ul-Muqaddis." He said, "Offer here, at this place." (He meant: the Masjid Haram where it is better to offer *salah (prayer)* and easier than going all the way there.) Then he repeated (the question) to him and he said again, "offer here, at this place!" Then he repeated again (the question) to him and he said, "As you please!"[1]

(If you wish you may go there.)

COMMENTARY: It is stated in Sharah us-*Sunnah (Prophet's* صلى الله عليه وسلم *practice)* that if anyone takes a vow to offer *salah (prayer)* in Masjid Nabawi but offers it in Masjid Haram then his vow will be fulfilled. But, if he offers it in Masjid Haram then his vow will be fulfilled. But, if he offers it in Masjid Aqsa, meaning Bayt ul-Maqdis then his vow will remain unfulfilled. If anyone takes a vow to offer *salah (prayer)* in Masjid Aqsa but offers the *salah (prayer)* in Masjid Haram or Masjid Nabawi then his vow will be fulfilled.

In other words, if a vow is taken to offer *salah (prayer)* at some place and then the *salah (prayer)* is offered at a place more excellent than that then the vow will have been fulfilled. The Hanafis say, however, that even if he offers *salah (prayer)* at a place less excellent than that, his vow will have been fulfilled.

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[1] Abu Dawud # 3305, Darimi # 2339, Musnad Ahmad 3-363.

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IF PART OF VOW IS IMPOSSIBLE

(٣٤٤١) وَعَنِ ابْنِ عَبَّاسٍ اَنَّ اُخْتَ عُقْبَةَ بْنَ عَامِرٍ نَذَرَتْ اَنْ تَحُجَّ مَاشِيَةً وَاَنَّهَا لَا تُطِيْقُ ذٰلِكَ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِنَّ اللّٰهَ لَغَنِيٌّ عَنْ مَشْيِ اُخْتِكَ فَلْتَرْكَبْ وَلْتُهْدِ بَدَنَةً۔ رَوَاهُ اَبُوْدَاوٗدَ وَالدَّارِمِيُّ وَفِيْ رِوَايَةٍ لِاَبِيْ دَاوٗدَ فَاَمَرَهَا النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَنْ تَرْكَبَ وَتُهْدِيَ هَدْيًا وَفِيْ رِوَايَةٍ لَهٗ فَقَالَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِنَّ اللّٰهَ لَا يَصْنَعُ بِشِقَاءِ اُخْتِكَ شَيْئًا فَلْتَرْكَبْ وَلْتَحُجَّ وَتُكَفِّرْ يَمِيْنَهَا۔

3441. Sayyiduna Ibn Abbas narrated that the sister of Uaqbah ibn Aamir رضی اللہ عنہ took a vow to perform Hajj (pilgrimage) on foot but she did not have the strength to do it. So, Allah's Messenger صلی اللہ علیہ وسلم said (to Uqbah رضی اللہ عنہ), "Surely, Allah does not need that your sister walk. So, she must ride (when she cannot walk) and (by way of an expiation) she should sacrifice a badanah." (The Hanafis say that a badanah is a camel or a cow but the Shafi'is say that it is a camel.)
According to another version the Prophet صلی اللہ علیہ وسلم commanded her, "Ride and offer the hady." (sacrificial animals)
And yet another version has that the Prophet صلی اللہ علیہ وسلم said, "Surely, Allah will not reward your sister for the hardship to which she subjects herself. So, let her perform the pilgrimage riding (when she cannot walk) and make an expiation for her oath."[1]

COMMENTARY: Hady is the animal that is sent to Haram to be sacrificed. The smallest of it is a goat and the best of it is a badanah (camel or cow).
The command to sacrifice a badanah is *mustahab (desirable).*
Qadi رحمہ اللہ said that to perform Hajj (pilgrimage) on foot is a form of obedience, so it is *wajib (obligatory)* to fulfill a vow to do that, and this includes every such deed that one is not allowed to neglect, unless one is unable to do it. Hence, a fidyah (or expiation) becomes *wajib (obligatory)* when it is neglected or omitted. However, opinions differ on the animal that it is *wajib (obligatory)* to offer as an expiation. Sayyiduna Ali رضی اللہ عنہ goes by this hadith and says that a badanah is *wajib (obligatory).* Some others say that it is like over crossing the miqat when it is *wajib (obligatory)* to sacrifice a goat, so in this case too a goat becomes *wajib (obligatory),* and they hold that the badanah mentioned in this hadith is *mustahab (desirable)* to sacrifice. Imam Maalik رحمہ اللہ agrees with this opinion and Imam Shafi'i رحمہ اللہ also agrees with it.
The words 'make an expiation for your oath' are more correctly interpreted to mean expiation for jinayah(کفارۃ جنایۃ) meaning 'for an offence.' And, it is a hady, or fasting instead of hady. The expiation is interpreted in this case to reconcile this hadith with the others. In short, in this hadith, 'the expiation for an oath' does not mean the expiation for breaking an oath.

(٣٤٤٢) وَعَنْ عَبْدِاللّٰهِ بْنِ مَالِكٍ اَنَّ عُقْبَةَ بْنَ عَامِرٍ سَأَلَ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَنْ اُخْتٍ لَهٗ نَذَرَتْ اَنْ تَحُجَّ حَافِيَةً غَيْرَ مُخْتَمِرَةٍ فَقَالَ مُرُوْهَا فَلْتَخْتَمِرْ وَلْتَرْكَبْ وَلْتَصُمْ ثَلَاثَةَ اَيَّامٍ۔ (رواه ابوداؤد والترمذی والنسائی وابن ماجة والدارمی)

3442. Sayyiduna Abdullah ibn Maalik رحمہ اللہ narrated that (Sayyiduna) Uqbah ibn

[1] Abu Dawud # 3303, 3304, Darimi # 2335, Musnad Ahmad 1-253

Aamir رضی اللہ عنہ asked the Prophet صلی اللہ علیہ وسلم about a sister of his who had taken a vow to perform Hajj (pilgrimage) on foot, barefooted and bareheaded. He said. "Command her to cover her head and to ride, and to fast three days."[1]

COMMENTARY: A woman's hair on the head are part of her satr (private parts) meaning, the portion of the body that must be covered at all times, it being *wajib (obligatory)* to do so. It is a sin to bare the head.

He also commanded her to ride because she was unable to walk. She had imposed on herself tremendous hardship.

The previous hadith mentions hady so, here, it might imply that if she is unable to offer a hady (meaning, sacrifice an animal) then she must fast three days.

Or, he commanded her to fast because there are many kinds of an expiation and he merely named one of them, so, if anyone is unable to observe the other kinds, he must fast three days.

As for the fasts, if they are by way of expiation then it is *wajib (obligatory)* to fast on three successive days. In other cases, one may fast as one chooses.

WAJIB (OBLIGATORY) TO MAKE EXPIATION FOR UNLAWFUL VOW

(٣٤٤٣) وَعَنْ سَعِيْدِ بْنِ الْمُسَيَّبِ اَنَّ اَخَوَيْنِ مِنَ الْاَنْصَارِ كَانَ بَيْنَهُمَا مِيْرَاثٌ فَسَأَلَ اَحَدُهُمَا صَاحِبَهُ الْقِسْمَةَ فَقَالَ اِنْ عُدْتَ تَسْئَالُنِي الْقِسْمَةَ فَكُلُّ مَالِي فِيْ رِتَاجِ الْكَعْبَةِ فَقَالَ لَهُ عُمَرُ اِنَّ الْكَعْبَةَ غَنِيَّةٌ عَنْ مَالِكَ كَفِّرْ عَنْ يَمِيْنِكَ وَكَلِّمْ اَخَاكَ فَاِنِّيْ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ لَا يَمِيْنَ عَلَيْكَ وَلَا نَذْرَ فِيْ مَعْصِيَةِ الرَّبِّ وَلَا فِيْ قَطِيْعَةِ الرَّحِمِ وَلَا فِيْمَا لَا يَمْلِكُ۔ (رواه ابوداؤد)

3443. Sa'eed ibn Musayyib رضی اللہ عنہ narrated that two brothers who were of the ansars inherited from someone (but had not divided the inheritance). One of them asked the other for his portion from it. He said, "If you repeat and ask me again for your portion, (I take a vow that) all my property will be spent on the Ka'bah is in no need of your property that you take a vow for it). Make an expiation for your oath (which you made *wajib (obligatory)* on yourself through the vow) and speak to your brother (concerning) the sharing of the inheritance and meet his demand), for, I had heard Allah's Messenger say, "It is not *wajib (obligatory)* on you to fulfill this oath (or vow), nor to take a vow to disobey the Lord, or to sever ties of kinship, or about something over which one has no control." (It is *wajib (obligatory)* to make an expiation for a vow that is not fulfilled for such reasons.)[2]

COMMENTARY: The words in the Arabic text are (رتاج الكعبة) (ritaj ul Ka'bah). The literal meaning of these words is 'the door of the Ka'bah.' Ritaj is used for a main or large gate. Here, however, to phrase stands for the Ka'bah itself.

SECTION III الْفَصْلُ الثَّالِثُ

VOWS - THE LAWFUL & THE UNLAWFUL

(٣٤٤٤) عَنْ عِمْرَانَ بْنِ حُصَيْنٍ قَالَ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ النَّذْرُ نَذْرَانِ فَمَنْ

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[1] Tirmidhi # 1549, Abu Dawud # 3293, Nasai # 3815, Ibn Majah # 2124, Darimi # 2334, Musnad Ahmad 4-149.

[2] Abu Dawud # 3272

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كَانَ نَذَرَ فِيْ طَاعَةٍ فَذٰلِكَ لِلّٰهِ فِيْهِ الْوَفَاءُ وَمَنْ كَانَ نَذَرَ فِيْ مَعْصِيَةٍ فَذٰلِكَ لِلشَّيْطَانِ وَلَا وَفَاءَ فِيْهِ وَيُكَفِّرُهُ مَا يُكَفِّرُ الْيَمِيْنَ۔ (رواه النسائی)

3444. Sayyiduna Imran ibn Husayn رضی اللہ عنہ narrated: I heard Allah's Messenger صلی اللہ علیہ وسلم say, "Vows are of two kinds. (They are:) If a person vows to obey (and worship Allah) then it is purely for Allah, so it (is *wajib (obligatory)* and) must be fulfilled. And if a person vows to do an act of disobedience then it is for the devil and it must not be fulfilled, but atonement must be made for it like an atonement for breaking the oath."[1]

ABOUT VOW TO SACRIFE ONESELF

(٣٤٤٥) وَعَنْ مُحَمَّدِ بْنِ الْمُنْتَشِرِ قَالَ اِنَّ رَجُلًا نَذَرَ اَنْ يَنْحَرَ نَفْسَهٗ اِنْ نَجَّاهُ اللّٰهُ مِنْ عَدُوٍّ فَسَئَلَ ابْنَ عَبَّاسٍ فَقَالَ لَهٗ سَلْ مَسْرُوْقًا فَسَئَالَهٗ فَقَالَ لَهٗ لَا تَنْحَرْ نَفْسَكَ فَاِنَّكَ اِنْ كُنْتَ مُؤْمِنًا قَتَلْتَ نَفْسًا مُؤْمِنَةً وَاِنْ كُنْتَ كَافِرًا تَعَجَّلْتَ اِلَى النَّارِ وَاشْتَرِ كَبْشًا فَاذْبَحْهُ لِلْمَسَاكِيْنِ فَاِنَّ اِسْحَاقَ خَيْرٌ مِنْكَ وَفُدِيَ بِكَبْشٍ فَاَخْبَرَا ابْنَ عَبَّاسٍ فَقَالَ هٰكَذَا كُنْتُ اَرَدْتُ اَنْ اُفْتِيَكَ۔ (رواه رزين)

3445. Sayyiduna Muhammad ibn al-Muntashir رحمہ اللہ narrated that a man vowed that he would slaughter himself if Allah saved him from his enemy. (when he was delivered from them,) he asked Ibn Abbas رضی اللہ عنہ and he advised him to ask Masruq رحمہ اللہ (who was a tabi'i). So, he asked him and he said, "Do not slaughter yourself, for, if you are a believer, you will be slaying a believing soul, and if you are a disbeliever, you will be hastening yourself to hell. (The ruling is that you) buy a ram and slaughter it (for the poor). Indeed, (Sayyiduna) Ishaq علیہ السلام was better than you and he was replaced (ransomed) with a ram." Then he (the man) in formed Ibn Abbas رضی اللہ عنہ (about it) and he said, "This is how I had intended to enlighten you."[2]

COMMENTARY: Masruq رحمہ اللہ ibn Ajda was a top-ranking tabi'i. He was a great scholar and a jurist. Murrah ibn Sharahbil رحمہ اللہ said that no Hamdani woman ever gave birth to a dutiful son like Masruq رحمہ اللہ. He had embraced Islam before the death of the Prophet صلی اللہ علیہ وسلم but was unable to come to his presence. But, he acquired knowledge from the four caliphs and from Sayyidah Ayshah رضی اللہ عنہا. This is why Ibn Abbas رضی اللہ عنہ directed that man to consult Masruq رحمہ اللہ though he himself was a great scholar.

In this way, not only is the excellence of Masruq رحمہ اللہ known but also the carefulness, patience and honesty of Ibn Abbas رضی اللہ عنہ is highlighted.

The man mentioned in the hadith would have been disgraced if he had succumbed to an enemy and that would have been terrible for him. He was not afraid of death, so he beseeched Allah to relieve him of the enemy's threat. However, he was not aware that killing oneself was worse than that and unlawful too.

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[1] Nasai # 3845

[2] Razin.

Masruq رحمه الله made him realize that if he killed himself, he would be killing a believer. The Quran says about it:

وَلَا تَقْتُلُوْا اَنْفُسَكُمْ .....

{And kill not yourselves...} (4: 29)

وَمَنْ يَّقْتُلْ مُؤْمِنًا مُتَعَمِّدًا الخ

{Whose slays a believer of set purpose...} (4: 93)

And those who kill believers are warned of hell.

As for a disbeliever, his death would take him to hell. So, if he survives, there is a possibility of his being guided to Islam.

In either case, his killing himself was illegal and senseless.

The hadith speaks of a ram being slaughtered to ransom sayyiduna Ishaq عليه السلام. Some ulama (Scholars) say that Prophet Ibrahim عليه السلام had dreamt of Prophet Ishaq عليه السلام as the son he was sacrificing. But, the better known and correct opinion is that Prophet Ibrahim عليه السلام had dreamt that he should sacrifice Prophet Isma'il عليه السلام.

Jalaluddin Suyuti رحمه الله has explained that the peoples of the Book have made grave changes about this event and have lied. The earlier heavenly Books had the name Isma'il and they have removed it and introduced Ishaq.

Durr Mukhtar writes that if anyone takes a vow to sacrifice his son then he will have to follow the event of Prophet Ibrahim عليه السلام and it will be *wajib (obligatory)* on him to slaughter a goat. But, Imam Abu Yusuf رحمه الله and Imam Shafi'i رحمه الله say that this kind of a vow is absurd. Similarly, a vow to kill oneself or one's own slave is absurd. On the other hand, Imam Muhammad رحمه الله hold that it will be *wajib (obligatory)* to slaughter a goat in such cases.

If anyone takes a vow to slaughter one's father, grand-father or mother, then the ulama (Scholars) say unanimously that the vow is laghw (absurd or thoughtless).

The following is an extract from siratun Nabi صلى الله عليه وسلم (Life of Prophet Muhammad صلى الله عليه وسلم) by Ibn Kathir (published by Darul Isha'at Karachi pp 408-409 and 581.) It is about Abu Lubabah رضى الله عنه

ABU LUBABAH

When they (the Banu Qurayzah) found the siege unbearable they called Abu Lubabah ibn Abdul Munzir who was their ally. He said, "Only when Allah's Messenger صلى الله عليه وسلم permits me will I meet you"' and he gave him permission to go. When he went there they wept before him and asked him. "What do you suggest? We are not even able to fight Allah's Messenger صلى الله عليه وسلم. "He pointed with his hand to his throat to say that they would be executed. Then he was very sorry for having said that. He realized that he was involved in a trail. He said, "By Allah will not go to Allah's Messenger صلى الله عليه وسلم till I make a sincere repentance." He came straight to a pillar there. He remained in that state for about twenty days. Here Allah's Messenger صلى الله عليه وسلم enquired about him and was informed what he had done. He said. "After having gone he put to trail. If he had come to me straightaway then I would have sought forgiveness for him, but since he has decided for himself. I will not release him till Allah gives the judgment for him.

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KA'B'S FAILURE

According to Ibn Ishaq, Allah's Messenger صلى الله عليه وسلم encamped it the well Ana and besieged them for twenty five days. They were tired after all. Hence, Ka'b ibn Asad their chief proposed to them that they should adopt one of three options:

1. We should obey this Prophet and confirm his religion. Indeed, he is a Prophet whose characteristics are found in our books. Then we will save our life and property. The people said that they would not give up Torah or change the religion.
2. Let us kill our women and children and thus have no anxiety behind so that we can take the swords and attack Muhammad and his Companions. If we are killed there is nothing for us to worry about, but if we succeed then, indeed we will get other wives and children. They said that they would not kill the innocent people to enjoy life afterwards.
3. Then, today is Saturday night. Perhaps, Muhammad صلى الله عليه وسلم and his companions رضى الله عنه are off-guard. Come, let us attack them. We might take them unaware and win the battle. However, they were unwilling to violate the Sabbath.

They knew that whoever had done that before them was transfigured. Ka'b said, "You are very foolish and none of you has spent even one night in intelligence."

It was then that they had requested that Abu Lubabah رضى الله عنه should be sent to them. They had to consult him. We have seen easier what happened after that Ibn Hisham said that Allah revealed concerning him:

يَاَيُّهَا الَّذِيْنَ اٰمَنُوا لَا تخونوا اللّٰه والرسول وتخونوا امنتكم وَاَنْتُمْ تَعْلَمُوْنَ

{O you who believe betray not Allah and the Messenger, nor betray your trusts, while you know.} (8: 27)

Ibn Hisham said that he was tied to the pillar for six nights. His wife would come and untie him for prayers after which he was re-tied to the pillar. Finally his repentance was accepted and this verse was revealed:

وَاٰخَرُوْنَ مُرْجَوْنَ لِاَمْرِ اللّٰهِ اِمَّا يُعَذِّبَهُمْ وَاِمَّا يَتُوْبُ عَلَيْهِمْ وَاللّٰه عَلِيْمٌ حَكِيْمٌ

{And (there are) others who await Allah's commandment, whether He chastises them or He relents towards them. And Allah's knower, Wise.} (9: 106)

However, Musa Ibn Uqbah said that he was bound there for twenty nights.

IN UMM SALMAH'S رضى الله عنه HOME

While the Prophet صلى الله عليه وسلم was in Sayyidah Umm Salamah's رضى الله عنها home, he learnt that Allah had accepted Abu Lubabah's رضى الله عنه repentance. He smiled and told her why he had smiled. She requested to be allowed to convey the tidings to him and he consented. So, she gave him the glad tidings and all people rushed to congratulate him and give him freedom but he said, "By Allah! His Messenger will untie me with his hands." So, when he came for the *salah (prayer)* of Fajr, he set him free.

Another extract:

ABU LUBABAH رضى الله عنه

Sa'eed ibn Musayyab, Mujahid and Ibn Ishaq have mentioned in the account of Banu

Qurayzah that Abu Lubabah رضی اللہ عنہ had bound himself to a pillar till is repentance was accepted. Again, he stayed behind in the Battle of Tabuk and tied himself again to a pillar. Allah accepted his repentance and he decided to give away all his wealth in charity. The Prophet صلی اللہ علیہ وسلم advised him to give only one-third of that. The verse 9: 102 was revealed about him. I hereafter, he only acted sincerely.

I believe that the named-authorities have not mentioned other people because Abu Lubabah رضی اللہ عنہ may have been their chief. This is inferred from Ibn Abbas' رضی اللہ عنہ account.

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بسم الله الرحمٰن الرحيم

BOOK - XV

QISAS كِتَابُ القِصَاصِ

RETALIATION

In the terminology of Shari'ah (divine law), qisas implies: 'taking the life of the murderer.' If anyone has killed someone unjustly, then qisas is to kill him against the murdered.
The word is derived from (قص) and (قصص)(qis and qisas), the literal meaning of which is 'to follow someone.'(1) To track, to trace. The guardian of the murdered person follows the murderer to kill him in retaliation for the murdered. This is why to take the life of the murderer is called qisas.
(قصاصات)(qisasat) means 'equlaity.' It is in the sense that when the murderer is killed in revenge for the murdered then the guardian gets even with the murderer, or the murdered and the murderer are quits with one another.
In qisas the murderer is treated in the same way as the murderer had treated the murdered.

SECTION I اَلْفَصْلُ الْاَوَّلُ

BLOOD OF MUSLIM IS SACRED

(٣٤٤٦) عَنْ عَبْدِاللّٰهِ بْنِ مَسْعُوْدٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا يَحِلُّ دَمُ امْرِئٍ مُسْلِمٍ يَشْهَدُ اَنْ لَا اِلٰهَ اِلَّا اللّٰهُ وَاَنِّيْ رَسُوْلُ اللّٰهِ اِلَّا بِاِحْدٰى ثَلَاثٍ النَّفْسُ بِالنَّفْسِ وَالثَّيِّبُ الزَّانِي وَالْمَارِقُ لِدِيْنِهِ التَّارِكُ لِلْجَمَاعَةِ۔ (متفق عليه)

3446. Sayyiduna Abdullah ibn Mas'ud رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "It is not lawful to shed the blood of a Muslim who testifies that there is no God but Allah and that I am Allah's Messenger, except for one of three things: (i) life for life (which is retaliation but according to the laws of Shari'ah (divine law)), (ii) a married man (responsible and free) who commits fornication, and (iii) a person who abandons his religion and deserts the community."[1]

COMMENTARY: The Muslim is defined as one who testifies to Allah's unity and to Prophet Muhammad's صلی اللہ علیہ وسلم messengership. Anyone who simply recites the Kalimah shahadah (the words of testimony) is one whose blood is sacred and so unlawful to shed.
If anyone who is not a Muslim, or who was not known to be a Muslim, merely gives a verbal testimony of Allah's unity and the messengership of Prophet Muhammad صلی اللہ علیہ وسلم, then it is unlawful to shed his blood unjustly in the same way as of any known Muslim.
The gist of the hadith is that it is never allowed to shed blood of a Muslim unless one of these three reasons is found.

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[1] Bukhari # 6878, Muslim # 25-1676.

(i) If a Muslim kills his Muslim brother unjustly then the principle of 'life for life' will apply.
(ii) If a married Muslim who is responsible and free commits fornication then he is stoned to death. And,
(iii) If a Muslim apostates then he is killed.

The words in the hadith 'and deserts the community' emphasize the preceding words. If anyone apostates verbally, by deeds and by belief and so abandons Islam because of which he separates from the body of the Muslims then it is *wajib (obligatory)* to kill him unless he repents from his apostasy. The hadith mentions him as a Muslim because of his orginal outward appearance. It must be known that if a woman apostates then according to the Hanafis, she must not be killed.

MURDERER DEPRIVES HIMSELF OF DIVINE MERCY

(٣٤٤٧) وَعَنِ ابْنِ عُمَرَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَنْ يَزَالَ الْمُؤْمِنُ فِي فُسْحَةٍ مِنْ دِيْنِهٖ مَالَمْ يُصِبْ دَمًا حَرَامًا۔ (رواه البخاری)

3447. Sayyiduna Ibn Umar رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "A believer does not cease to remain in the wide confines of his religion till he sheds anyone's blood unjustly."[1]

COMMENTARY: While every kind of sin and evil heads to a man's downfall in religion and manners and earns him Allah wrath, this hadith emphasizes that when he kills anyone unjustly, he comes out of the sphere of Allah's mercy. He then joins those who have no hope of the mercy of Allah.

RECKONING WILL BEGIN WITH BLOOD SHED

(٣٤٤٨) وَعَنْ عَبْدِاللّٰهِ بْنِ مَسْعُوْدٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَوَّلُ مَا يُقْضٰى بَيْنَ النَّاسِ يَوْمَ الْقِيَامَةِ فِي الدِّمَاءِ۔ (متفق علیه)

3448. Sayyiduna Abdullah ibn Mas'ud رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "The first thing for which reckoning will take place of the people on the day of resurrection will be blood shed.[2]

COMMENTARY: Of the rights of fellow men, the first thing that will be taken into account and brought for judgment will be killing others. And, of the rights of Allah, the first thing to be judged will be *salah (prayer)*. The more correct way to say this is that the first of the forbidden things to be judged on the day of resurrection will be bloodshed and of the prescribed things to be done will be *salah (prayer)*.

RECITER OF KALIMAH MAY NOT BE KILLED

(٣٤٤٩) وَعَنِ الْمِقْدَادِ بْنِ الْاَسْوَدِ اَنَّهٗ قَالَ يَا رَسُوْلَ اللّٰهِ اَرَاَيْتَ اِنْ لَقِيْتُ رَجُلًا مِنَ الْكُفَّارِ فَاقْتَتَلْنَا فَضَرَبَ اِحْدٰى يَدَيَّ بِالسَّيْفِ فَقَطَعَهَا ثُمَّ لَاذَ مِنِّيْ بِشَجَرَةٍ فَقَالَ اَسْلَمْتُ لِلّٰهِ وَفِيْ رِوَايَةٍ فَلَمَّا اَهْوَيْتُ لِاَقْتُلَهٗ

[1] Bukhari # 6862.
[2] Bukhari # 6864, Muslim # 28-1678.

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قَالَ لَا إِلٰهَ إِلَّا اللّٰهُ أَقْتُلُهُ بَعْدَ أَنْ قَالَهَا قَالَ لَا تَقْتُلْهُ فَقَالَ يَا رَسُوْلَ اللّٰهِ إِنَّهُ قَطَعَ إِحْدٰى يَدَيَّ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا تَقْتُلْهُ فَإِنْ قَتَلْتَهُ فَإِنَّهُ بِمَنْزِلَتِكَ قَبْلَ أَنْ تَقْتُلَهُ وَإِنَّكَ بِمَنْزِلَتِهِ قَبْلَ أَنْ يَقُوْلَ كَلِمَتَهُ الَّتِيْ قَالَ۔ (متفق علیه)

3449. Sayyiduna Miqdad ibn Al-Aswad رضی اللہ عنہ narrated that he asked, "O Messenger of Allah, what do you say: if I meet a disbeliever and we being to grapple one another and he strikes a hand of mine with his sword severing it, then he retreats to a tree for refuge from me and says, 'I have submitted myself to Allah' (or, 'I am a Muslim for Allah's sake')" - and, according to another version: "Just as I intend to kill him, he utters 'there is no God but Allah' (لا الہ الا اللہ) - shall I kill him after he utters these words?" He said, "Do not kill him.' But, he pleaded, "O Messenger of Allah, he did sever one of my hands." Allah's Messenger صلی اللہ علیہ وسلم said, "Do not kill him. If you kill him, then he will gain the place which you were occupying before killing him, and you will go down to the place which he was occupying before he spoke the Kalimah (or the testimony that he made)."[1]

COMMENTARY: The Prophet's صلی اللہ علیہ وسلم words meant: "If you kill him after he recites the Kalimah (لا الہ الا اللہ محمد رسول اللہ) - there is no God but Allah) then just as you were innocent of killing before killing him, he becomes innocent of bloodshed after embracing Islam. And, you would take his place and would become 'not innocent of blood.'" Or, formerly, it was allowed to kill him, but not now. And it would be correct to kill you!

(٣٤٥٠-٣٤٥١) وَعَنْ أُسَامَةَ بْنِ زَيْدٍ قَالَ بَعَثَنَا رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ إِلٰى أُنَاسٍ مِنْ جُهَيْنَةَ فَأَتَيْتُ عَلٰى رَجُلٍ مِنْهُمْ فَذَهَبْتُ أَطْعَنُهُ فَقَالَ لَا إِلٰهَ إِلَّا اللّٰهُ فَطَعَنْتُهُ فَقَتَلْتُهُ فَجِئْتُ إِلَى النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَأَخْبَرْتُهُ فَقَالَ أَقَتَلْتَهُ وَقَدْ شَهِدَ أَنْ لَا إِلٰهَ إِلَّا اللّٰهُ؟ قُلْتُ يَا رَسُوْلَ اللّٰهِ إِنَّمَا فَعَلَ ذٰلِكَ تَعَوُّذًا قَالَ فَهَلَّا شَقَقْتَ عَنْ قَلْبِهٖ۔ مُتَّفَقٌ عَلَيْهِ وَفِيْ رِوَايَةٍ جُنْدُبِ بْنِ عَبْدِ اللّٰهِ الْبَجَلِيِّ أَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ كَيْفَ تَصْنَعُ بِلَا إِلٰهَ إِلَّا اللّٰهُ إِذَا جَاءَتْ يَوْمَ الْقِيَامَةِ قَالَهُ مِرَارًا۔ (رواه مسلم)

3450. Sayyiduna Usamah ibn Zayd رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم sent them to some people of (the tribe) Juhaynah (to fight them). (And, Usamah رضی اللہ عنہ said:) I came upon one of them and was about to strike him with the spear when he declared (لا الہ الا اللہ) there is no God but Allah). But, I pierced him with the spear and killed him. Then when I came to the Prophet صلی اللہ علیہ وسلم, I informed him (about it) and he asked, "Did you kill him after he did testify that there is no God but Allah?" I said, "O Messenger of Allah, he did that as an excuse to protect himself." He asked, "Then why did you not split his heart?" (and see).[2]

3451. The version of Jundub ibn Abdullah Bajali رضی اللہ عنہ is that Allah's Messenger صلی اللہ علیہ وسلم asked, "How will you cope with (لا الہ الا اللہ) (the testimony) when it comes

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[1] Bukhari # 6865, Muslim # 95-155.

[2] Bukhari # 6872, Muslim # 96-158.

(to you) on the day of resurrection?" (on behalf of him to contend with you?) He spoke these words very often.[1]

COMMENTARY: When Sayyiduna Usamah رضی اللہ عنہ said that the man had recited the kalimah to save his skin, the Prophet صلی اللہ علیہ وسلم asked him, "Why did you not find out what he had in his heart? You ought to have seen what his intentions were? You could not do that, so you should have gone by the apparent. The man's reciting the Kalimah was enough. However, bloodwit was not binding on Usamah because he had erred in ijtihad (extracting rulling of Islamic law).

DO NOT KILL ONE WHO IS PROTECTED

(٣٤٥٢) وَعَنْ عَبْدِاللّٰهِ بْنِ عَمْرٍو قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ قَتَلَ مُعَاهِدًا لَمْ يَرِحْ رَائِحَةَ الْجَنَّةِ وَإِنَّ رِيْحَهَا تُوْجَدُ مِنْ مَسِيْرَةِ اَرْبَعِيْنَ خَرِيْفًا۔ (رواه البخاری)

3452. Sayyiduna Abdullah ibn Amr رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "He who kills anyone under a treaty of protection will not perceive the fragrance of paradise though its odour may be perceived at a distance of forty years journey."[2]

COMMENTARY: The Arabic text has the word muahid. He is disbeliever who has covenanted with the ruler of the Islamic territory not to engage in hostilities. He may be a dhimmi or otherwise.

This hadith says of the fragrance of paradise that it is perceived to a distance of forty years. But, there are other ahadith that give different years: seventy, one hundred, five hundred and one thousand years. It seems that they depend on people, deeds and ranks. Thus, in the place of gathering, some people will get the odour from a distance of one thousand years, some five hundred years, some one hundred years some seventy years and some forty years.

Moreover, these numbers do not mean to restrict the limit. They simply show the length to which the smell will reach. Besides, if anyone does not perceive its fragrance then it does not follow that the person will never sense it. Only in the beginning, he will not get it but after the ones near and dear to Allah and the scholars get it, he will perceive it.

This hadith severely condemns the killing of a person who is under a treaty of protection.

SUICIDE SEVERELY PUNISHABLE ACT

(٣٤٥٣) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ تَرَدّٰى مِنْ جَبَلٍ فَقَتَلَ نَفْسَهٗ فَهُوَ فِيْ نَارِ جَهَنَّمَ يَتَرَدّٰى فِيْهَا خَالِدًا مُخَلَّدًا فِيْهَا اَبَدًا وَمَنْ تَحَسّٰى سُمًّا فَقَتَلَ نَفْسَهٗ فَسُمُّهٗ فِيْ يَدِهٖ يَتَحَسَّاهُ فِيْ نَارِ جَهَنَّمَ خَالِدًا مُخَلَّدًا فِيْهَا اَبَدًا وَمَنْ قَتَلَ نَفْسَهٗ بِحَدِيْدَةٍ فَحَدِيْدَتُهٗ فِيْ يَدِهٖ يَتَوَجَّأُ بِهَا فِيْ بَطْنِهٖ فِيْ نَارِ جَهَنَّمَ خَالِدًا مُخَلَّدًا فِيْهَا اَبَدًا۔ (متفق علیه)

3453. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "He who flings himself down from a mountain and so kills himself will continue to be flung down in hell-fire and will abide therein for ever and ever. He

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[1] Muslim # 97-160.

[2] Bukhari # 3166, Ibn Majah # 2686.

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who sips poison and so commits suicide will have his poison in his hand and will sip it for ever and ever in the fire of hell. He who slays himself with a piece of iron (like a knife) will have that weapon in his hand and with it he will stab himself in the belly in the fire of hell for ever and ever. (He will abide therein forever.)[1]

COMMENTARY: The words (خلدا) and (ابدا) and (مخلد) are synonyms used for emphasis, meaning forever, always.

The hadith says that if a person commits suicide in this world with anything then he will be punished with the same thing in the hereafter forever. Of course, this applies to those who do it with the conviction that suicide is lawful. So, they will be punished for ever and ever. Or, it could mean that they who commit suicide will suffer punishment for a long time.

(٣٤٥٤) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَلَّذِيْ يَخْنِقُ نَفْسَهٗ يَخْنِقُهَا فِي النَّارِ وَالَّذِيْ يَطْعَنُهَا يَطْعَنُهَا فِي النَّارِ۔ (رواه البخاری)

3454. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "He who strangles himself (to commit suicide) will strangle himself in hell too. He who stabs himself with a spear will spear himself in hell too."[2]

(٣٤٥٥) وَعَنْ جُنْدُبِ بْنِ عَبْدِاللّٰهِ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ كَانَ فِيْ مَنْ كَانَ قَبْلَكُمْ رَجُلٌ بِهٖ جُرْحٌ فَجَزِعَ فَاَخَذَ سِكِّيْنًا فَحَزَّ بِهَا يَدَهٗ فَمَا رَقَأَ الدَّمُ حَتّٰى مَاتَ قَالَ اللّٰهُ تَعَالٰى بَادَرَنِيْ عَبْدِيْ بِنَفْسِهٖ فَحَرَّمْتُ عَلَيْهِ الْجَنَّةَ۔ (متفق علیه)

3455. Sayyiduna Jundub ibn Abdullah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Among those who were before you was a man who suffered a wound (some how) by he had little patience to endure it (the pain seemingly unbearable to him). He took a knife and cut off the (wounded) hand. The blood did not stop flowing out till he died. Allah, the Exalted, said, 'My slave strove to be first ahead of me in taking his life (and killed himself). So, I have forbidden to him paradise."[3]

COMMENTARY: Allah will forbid him entry into paradise if he had believed that suicide is lawful. In that case, he considered an unlawful thing to be lawful which amounts to disbelief and so admittance to paradise is forbidden to him. Or, he will first undergo punishment in hell and will be deprived of the company of the successful in paradise till he has gone through his punishment.

SUICIDE IS UNLAWFUL & FORBIDDEN: Suicide is not permissible in any civilized society. For, is man the owner of himself, his visible and invisible self? Or, somebody else owns these things?

It is a confirmed fact that man is not his own master. His existence in this world is a trust for himself and for the people of the world. His Master is the Being who created him and brought him into this world. Then, is it not treachery that man hurts his own existence? It

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[1] Bukhari # 5778, Muslim # 175-109, Tirmidhi # 2044, Nasai # 1965, Darimi # 2362, Musnad Ahmad 2-254.

[2] Bukhari # 1365, Musnad Ahmad 2-435.

[3] Bukhari # 3463, Muslim # 18-113

is a great crime, and a grave sin. No creature has a right to misuse the Lord's property.

This is why Shari'ah (divine law) has forbidden suicide and termed it as a grave sin. It says that one who perpetrates it will undergo a painful chastisement.

A DIDACTIC EVENT ABOUT SUICIDE

(٣٤٥٦) وَعَنْ جَابِرٍ اَنَّ الطُّفَيْلَ بْنَ عَمْرٍو الدَّوْسِيَّ لَمَّا هَاجَرَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِلَى الْمَدِيْنَةِ هَاجَرَ اِلَيْهِ وَهَاجَرَ مَعَهُ رَجُلٌ مِنْ قَوْمِهِ فَمَرِضَ فَجَزِعَ فَاَخَذَ مَشَاقِصَ لَهُ فَقَطَعَ بِهَا بَرَاجِمَهُ فَشَخَبَتْ يَدَاهُ حَتّٰى مَاتَ فَرَاٰهُ الطُّفَيْلُ بْنُ عَمْرٍو فِيْ مَنَامِهِ وَهَيْئَتُهُ حَسَنَةٌ وَرَاٰهُ مُغَطِّيًا يَدَيْهِ فَقَالَ لَهُ مَا صَنَعَ بِكَ رَبُّكَ فَقَالَ غَفَرَ لِيْ بِهِجْرَتِيْ اِلٰى نَبِيِّهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ مَا لِيْ اَرَاكَ مُغَطِّيًا يَدَيْكَ قَالَ قِيْلَ لِيْ لَنْ نُصْلِحَ مِنْكَ مَا اَفْسَدْتَّ فَقَصَّهَا الطُّفَيْلُ عَلٰى رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَللّٰهُمَّ وَلِيَدَيْهِ فَاغْفِرْ۔ (رواه مسلم)

3456. Sayyiduna Jabir رضی اللہ عنہ narrated that when the Prophet صلی اللہ علیہ وسلم emigrated to Madinah, Tufayl ibn Amir Dawsi رضی اللہ عنہ also emigrated to it. With him a man of his tribe also emigrated but (by a coincidence) he fell ill and became impatient and taking some of his arrowheads, he cut his knuckles. Because of that both of his hands bled profusely till he died. Later, Tufayl ibn Amir رضی اللہ عنہ saw him in a dream. He had a good outlook, but he saw him concealing his hands. He asked him, "How did your Lord treat you?" He said, "He forgave me because of my hijrah (emigration) to His Prophet صلی اللہ علیہ وسلم." Then, he asked, "Why do I see you concealing your hands?" He said, "I was told, 'We shall not set right what you had spoilt yourself."

Tufayl رضی اللہ عنہ narrated it to Allah's Messenger صلی اللہ علیہ وسلم. And, Allah's Messenger صلی اللہ علیہ وسلم prayed, "O Allah, and his hands too, do forgive."[1]

COMMENTARY: There is great blessing in emigrating to Madinah. Allah forgives the person emigrating. If he has committed sin, he is forgiven that too because of the Prophet's صلی اللہ علیہ وسلم seeking forgiveness for him.

It is established through authentic ahadith that if anyone visits his grave then it is tantamount to having seen him physically during his life-time. Therefore, the blessing and mercy of Allah that were bestowed on those who visited him when he was alive should be expected also by those who visit his grave.

This hadith also discloses that perpetrating a grave sin neither classifies one as a disbeliever nor consigns one to the perpetual punishment of hell. It is the conviction of the ahl us-*sunnah (Prophet's صلی اللہ علیہ وسلم practice)* wa al-jama'ah that, after serving punishment for his major sin, a person is admitted to paradise.

QISAS OR DIYAH FOR HEIRS OF MURDERED

(٣٤٥٧-٣٤٥٨) وَعَنْ اَبِيْ شُرَيْحٍ الْكَعْبِيِّ عَنْ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ ثُمَّ اَنْتُمْ يَاخُزَاعَةُ قَدْ قَتَلْتُمْ هٰذَا الْقَتِيْلَ مِنْ هُذَيْلٍ وَاَنَاوَاللّٰهِ عَاقِلُهُ مَنْ قَتَلَ بَعْدَهُ قَتِيْلًا فَاَهْلُهُ بَيْنَ خِيَرَتَيْنِ اِنْ اَحَبُّوا قَتَلُوا

[1] Muslim # 184-116.

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وَإِنْ اَحَبُّوا اَخَذُوا الْعَقْلَ۔ رَوَاهُ التِّرْمِذِيُّ وَالشَّافِعِيُّ وَفِيْ شَرْحِ السُّنَّةِ بِإِسْنَادِهٖ وَصَرَّحَ بِاَنَّهٗ لَيْسَ فِي الصَّحِيْحَيْنِ عَنْ اَبِيْ شُرَيْحٍ وَقَالَ وَاَخْرَجَاهُ مِنْ رِوَايَةِ اَبِيْ هُرَيْرَةَ يَعْنِيْ بِمَعْنَاهُ۔

3457. Sayyiduna Abu Shurayh al-Ka'bi رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said (during the sermon on the day of the conquest of Makkah and its initial portion has been presented in the chapter on the Haram of Makkah and its concluding words, "O Khuza'ah, you have killed this man of Hudhayl. By Allah, I shall pay his blood wit. But, henceforth, if anyone kills a man, his people (meaning, his heirs) will have a choice (between two things):
(i)to kill him, if they wish (in retaliation, or
(ii)to accept blood wit, if they wish."[1]
(Sharh us *sunnah (Prophet's صلی اللہ علیہ وسلم practice)* states that it does not occur in Bukhari and Muslim from Abu Shurayh رضی اللہ عنہ)

3458. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated something similar.[2]

COMMENTARY: During the pre-Islamic days, the tribe Hudhayl had killed a man of the tribe khuza'ah. In retaliation, they killed a man of the Hudhayl. To prevent further trouble between the two tribes, the Prophet صلی اللہ علیہ وسلم paid the blood wit for this murdered man as he said (and is quoted in the hadith). Then he mentioned the Sahri'ah law for this kind of thing, which is to choose one of two things: retaliation or blood wit. Imam Shafi'I رحمہ اللہ and Imam Ahmad رحمہ اللہ abide by this hadith. Imam Abu Hanifah رحمہ اللہ and Imam Maalik رحمہ اللہ say that the heirs of the dead person will have a right to claim blood wit from the murderer, only if he is willing to pay it. But, should he refuse to pay it, then they have no choice other than killing him. It is said that Imam Shafi'I رحمہ اللہ also holds this opinion.
In the end the compiler of Mishkat objects to Imam Baghavi رحمہ اللہ, the comiler of the Masabih for presenting this hadith in section I though it is not found in Bukhari or Muslim. Only ahadith of these two, or one of them, are reproduced in Section I.

MALE MURDERER OF WOMAN MAY BE KILLED

(٣٤٥٩) وَعَنْ اَنَسٍ اَنَّ يَهُوْدِيًّا رَضَّ رَاْسَ جَارِيَةٍ بَيْنَ حَجَرَيْنِ فَقِيْلَ لَهَا مَنْ فَعَلَ بِكِ هٰذَا اَفُلَانٌ؟ اَفُلَانٌ؟ حَتّٰى سُمِّيَ الْيَهُوْدِيُّ فَاَوْمَاَتْ بِرَاْسِهَا فَجِيْءَ بِالْيَهُوْدِيِّ فَاعْتَرَفَ فَاَمَرَ بِهٖ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَرُضَّ رَاْسُهٗ بِالْحِجَارَةِ۔ (متفق علیہ)

3459. Sayyiduna Anas رضی اللہ عنہ narrated that a Jew crushed a girl's head between two stones. She was asked (for her dying testimony), "Who did it to you?" Some names (of the suspects) were taken and when the Jew was named, she beckoned confirmation with her head. The Jew was brought and he confessed to it. Allah's Messenger صلی اللہ علیہ وسلم commanded that his head should be crushed with stones.[3]

COMMENTARY: If a woman murders a man, she may be killed in retaliation and if a man

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[1] Tirmidhi # 1411, Abu Dawud # 4504,Shafia in his musnad p 343 (diyat, qisas) Musnad Ahmad 4-23.
[2] Bukhari # 112, Muslim # 446-1355
[3] Bukhari # 6884, Muslim # 15-1672, Tirmidhi # 1394, Abu Dawud # 4527, Nasai # 2742, Ibn Majah # 2665, Darimi # 2355, Musnad Ahmad 3-193.

slays a woman, he may be put to death in retaliation. Killing someone with a heavy stone makes retaliation liable. Imam Abu Hanifa رحمه الله does not agree with the three other imams and says that here qisas does not become liable. He says about the Jew that his case had some transient reasons behind it.

PUNISHMENT COMMENSURATE WITH WRONG DONE

(٣٤٦٠) وَعَنْ اَنَسٍ قَالَ كَسَرَتِ الرُّبَيِّعُ وَهِيَ عَمَّةُ اَنَسِ بْنِ مَالِكٍ ثَنِيَّةَ جَارِيَةٍ مِنَ الْاَنْصَارِ فَاَتَوُا النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَاَمَرَ بِالْقِصَاصِ فَقَالَ اَنَسُ بْنُ النَّضْرِ عَمُّ اَنَسِ بْنِ مَالِكٍ لَا وَاللّٰهِ لَا تُكْسَرُ ثَنِيَّتُهَا يَا رَسُوْلَ اللّٰهِ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَا اَنَسُ كِتَابُ اللّٰهِ الْقِصَاصُ فَرَضِيَ الْقَوْمُ وَقَبِلُوا الْاَرْشَ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِنَّ مِنْ عِبَادِ اللّٰهِ مَنْ لَوْ اَقْسَمَ عَلَى اللّٰهِ لَاَبَرَّهٗ۔ (متفق علیه)

3460. Sayyiduna Anas رضی الله عنه narrated that (Sayyidah) Rubaiyi رضی الله عنها, the paternal aunt of (Sayyiduna) Anas ibn Maalik رضی الله عنه broke the front tooth of a girl of the ansar. They (her family) went to the Prophet صلی الله علیه وسلم (with the complaint). He ordered that retaliation must be taken. Anas ibn Nadr رضی الله عنه the paternal uncle of Anas ibn Maalik رضی الله عنه said, "O Messenger of Allah! No, by Allah, her tooth will not be broken." He said, "O Anas, the Book of Allah prescribes qisas (retaliation)." But, (Allah decreed that) the family (or the girl) were willing to accept the diyah (Monetary compensation). So, Allah's Messenger صلی الله علیه وسلم said, "Surely, there are among the slaves of Allah, they who adjure Allah and He agrees to it."[1]

COMMENTARY: Rubaiyi رضی الله عنها, Anas رضی الله عنه and Maalik رضی الله عنه were three brothers and sisters. Their father was Nadr. The son of Maalik رضی الله عنه was also named Anas.

Anas ibn Nadr رضی الله عنه hoped for Allah's mercy and favour that He would put into the hearts, of the girl's family to accept monetary compensation. Indeed, that is what happened. So, the Prophet صلی الله علیه وسلم said of him that he was among those whose prayers Allah accepts.

The reference to Allah's Book about retaliation is about this verse:

وَكَتَبْنَا عَلَيْهِمْ فِيْهَا اَنَّ النَّفْسَ بِالنَّفْسِ۔ تا۔ وَالسِّنَّ بِالسِّنِّ

{And therein we prescribed for them: a life for a life, an eye for an eye, a nose for a nose, an ear for a ear, a tooth for a tooth...} (5: 45)

This hadith says that it is allowed to take an oath for such things as one is hopeful would come true.

It also says that it is allowed to praise anyone in his presence, provided he is not likely to get it into his head.

This hadith teaches us also that it is *mustahab (desirable)* to for give qisas.

MUSLIM WHO KILLS A DISBELIEVR - MAY OR MAY NOT BE KILLED

(٣٤٦١) وَعَنْ اَبِيْ جُحَيْفَةَ قَالَ سَاَلْتُ عَلِيًّا هَلْ عِنْدَكُمْ شَيْءٌ لَيْسَ فِي الْقُرْاٰنِ فَقَالَ وَالَّذِيْ فَلَقَ الْحَبَّةَ وَبَرَاَ

[1] Bukhari # 1806, 2703, Muslim # 24-1675, Abu Dawud # 4595, Nasai # 4757, Musnad Ahmad # 3-128.

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النَّسَمَةَ مَا عِنْدَنَا إِلَّا مَا فِي الْقُرْاٰنِ إِلَّا فَهْمًا يُعْطٰى رَجُلٌ فِيْ كِتَابِهٖ وَمَا فِي الصَّحِيْفَةِ قُلْتُ وَمَا فِي الصَّحِيْفَةِ قَالَ الْعَقْلُ وَفِكَاكُ الْاَسِيْرِ وَاَنْ لَا يُقْتَلُ مُسْلِمٌ بِكَافِرٍ۔ (رواه البخارى)

3461. Sayyiduna Abu Juhayfah رضی اللہ عنہ narrated that he asked (Sayyiduna) Ali رضی اللہ عنہ, "Do you have anything that is not found in the Quran?" He said, "By Him Who split the seed and created the soul, I have noting that is not found in the Qur'an, beyond an understanding of His Book that a man is given (and which I am given) and that which is (written) on sheets of paper (which we have)" He (Abu Juhayfah رضی اللہ عنہ) asked, "And what is (written) on the sheets of paper?" He said, "Blood wit (for unjust killing), setting free of a prisoner and not killing a Muslim for a disbeliever (who is a dhimmi - these things are written on the sheets of paper).[1]

COMMENTARY: Sayyiduna Ali رضی اللہ عنہ said that he had an understanding of the Qur'an and could fathom its deep mystic meanings. He could deduce from it commands and rulings such as learned ulama (Scholars) could uncover.

He had written down about blood wit and other things and kept the parchment in the sheath of his sword. Many commands and rulings were recorded on those sheets of paper. Not all are mentioned here.

MUSLIM KILLER: It is the contention of many of the sahabah (Prophet's Companions) رضی اللہ عنہم, the tabi'un رحمہ اللہ, the tabi tabi'un[2] رحمہ اللہ And three of the imams رحمہ اللہ that if a Muslim kills an infidel then he will not be killed in retaliation for the slain infidel, whether he is dhimmi or an enemy at war. But, Imam Abu Hanifah رحمہ اللہ and most of the ulama (Scholars) contend that if the slain infidel was a dhimmi then the murderer Muslim may be killed. The hadith which they cite is mentioned in the Mirqat.

WHY DID HE ASK: The reason Sayyiduna Abu Juhayfah رضی اللہ عنہ asked Sayyiduna Ali رضی اللہ عنہ was that the shiah who were found in those times in different forms used to allege that the Prophet صلی اللہ علیہ وسلم had disclosed to his ahlul bayt (people of the house), particularly Ali, certain secrets and details of the science of revelation that have not been disclosed to anyone else.

Another possibility why he put that question was that in those days of Sayyiduna Ali رضی اللہ عنہ there was no one who could match him in learning and knowledge.

Anyway, Sayyiduna Ali رضی اللہ عنہ said on oath that there was no such thing as they imagined. The prophet صلی اللہ علیہ وسلم had not taught him anything at the exclusion of others and had not preached to him more than he had preached anyone else. He said that he had the same Qur'an which everyone read and he had those written down instructions. Apart from that, he had a power of understanding that Allah had bestowed on him. With that he could get to the inner meaning of the Qur'an. This was not his own achievement but Allah enabled him and gave him wisdom to fathom that.

In short, the base of all sciences and meanings is the Qur'an. So if anyone is bestowed

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[1] Bukhari # 6903, Tirmidhi # 1417, Nasai # 4744, Darimi # 2356, Musnad Ahmad # 1-79, Muslim # 967-1370, Abu Dawud # 4530

[2] Respectively, the companions, their successors and their successors

power to understand it them the gates of all sciences and wisdom are opened to him. But, Allah bestows this blessing on very few people.

Sayyiduna Ibn Abbas رضی اللہ عنہ used to say that all the sciences are found in the Qur'an, but people generally do not reach to that level of understanding.

وَذُكِرَ حَدِيثُ ابْنِ مَسْعُودٍ لَا تُقْتَلُ نَفْسٌ ظُلْمًا فِي كِتَابِ الْعِلْمِ

And the hadith of Ibn Mas'ud رضی اللہ عنہ on no life may be taken unjustly may be found in the Book of knowledge (#211)

SECTION II اَلْفَصْلُ الثَّانِي

BLOOD OF MUSLIM IS SACRED

(٣٤٦٢-٣٤٦٣) عَنْ عَبْدِ اللّٰهِ بْنِ عَمْرٍو اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لَزَوَالُ الدُّنْيَا اَهْوَنُ عَلَى اللّٰهِ مِنْ قَتْلِ رَجُلٍ مُسْلِمٍ۔ رَوَاهُ التِّرْمِذِيُّ وَالنَّسَائِيُّ وَوَقْفَهُ بَعْضُهُمْ وَهُوَ الْاَصَحُّ وَرَوَاهُ ابْنُ مَاجَةَ عَنِ الْبَرَاءِ بْنِ عَازِبٍ۔

3462. Sayyiduna Abdullah ibn Amr رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said. "The end of the world is less serious in the sight of Allah than the killing of a Muslim man."[1]

3463. Sayyiduna Bara ibn Aazib رضی اللہ عنہ narrated it.[2]

COMMENTARY: Allah has created everything of the world, the earth, the heaven and the entire universe for the Muslims. They may, therefore, worship their Lord and believe in His Omnipotence.

In the light of this, if anyone kills a Muslim for whom this universe is created then he is like one who consigns the entire world to destruction. It is to this that a verse of the Qur'an points out:

وَمَنْ قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ اَوْ فَسَادٍ فِي الْاَرْضِ فَكَاَنَّمَا قَتَلَ النَّاسَ جَمِيْعًا

{And whoever slays a human being for other than manslaughter, or for (spreading) corruption in the land, it shall be as if he had slain all mankind.} (5: 32)

(٣٤٦٤) وَعَنْ اَبِي سَعِيْدٍ وَاَبِي هُرَيْرَةَ عَنْ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لَوْ اَنَّ اَهْلَ السَّمَاءِ وَالْاَرْضِ اشْتَرَكُوْا فِي دَمِ مُؤْمِنٍ لَاَكَبَّهُمُ اللّٰهُ فِي النَّارِ۔ رَوَاهُ التِّرْمِذِيُّ وَقَالَ هٰذَا حَدِيْثٌ غَرِيْبٌ۔

3464. Sayyiduna Abu Sa'eed رضی اللہ عنہ and Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "If (it is confirmed that) the inhabitants of the heaven and earth have combined to shed blood of a believer, then Allah would cast them face down in hell."[3]

COMMENTARY: Some exponents suggest that the word in the Arabic text (لکبھم) should have been (لکبھم) but, Mulla Ali Qari رحمہ اللہ says that it is correct. The words in Jami Saghir are:

لَكَبَّهُمُ اللّٰهُ عَزَّوَجَلَّ فِي النَّارِ

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[1] Tirmidhi # 1395, Nasai # 3986

[2] Ibn Majah # 2619.

[3] Tirmidhi # 1398

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COMPLAINT OF THE MURDERED ON THE DAY OF RESURRECTION

(٣٤٦٥) وَعَنِ ابْنِ عَبَّاسٍ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ يَجِيءُ الْمَقْتُولُ بِالْقَاتِلِ يَوْمَ الْقِيَامَةِ نَاصِيَتُهُ وَرَأْسُهُ بِيَدِهِ وَأَوْدَاجُهُ تَشْخُبُ دَمًا تَقُولُ يَا رَبِّ قَتَلَنِي حَتّٰى يُدْنِيَهُ مِنَ الْعَرْشِ۔ (رواه الترمذی والنسائی وابن ماجة)

3465. Sayyiduna Ibn Abbas رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "On the day of resurrection the murdered person will bring the murderer with his forelock and his head in his hand, blood dripping from his own jugular vein. He will complain, "O my Lord, he killed me." (Get me justice.) He will bring him (draggim him like that) till he is near the throne."[1]

COMMENTARY: On the day of resurrection, the slain person will claim his right and Allah will please him.

UTHMAN'S رضی اللہ عنہ SPEECH ON THE DAY HE WAS OPPRESSED

(٣٤٦٦) وَعَنْ أَبِي أُمَامَةَ بْنِ سَهْلِ بْنِ حُنَيْفٍ أَنَّ عُثْمَانَ بْنَ عَفَّانَ أَشْرَفَ يَوْمَ الدَّارِ فَقَالَ أَنْشُدُكُمْ بِاللّٰهِ أَتَعْلَمُونَ أَنَّ رَسُولَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لَا يَحِلُّ دَمُ امْرِئٍ مُسْلِمٍ إِلَّا بِإِحْدٰى ثَلَاثٍ زِنًى بَعْدَ إِحْصَانٍ أَوْ كُفْرٍ بَعْدَ إِسْلَامٍ أَوْ قَتْلِ نَفْسٍ بِغَيْرِ حَقٍّ فَقُتِلَ بِهِ فَوَاللّٰهِ مَا زَنَيْتُ فِي جَاهِلِيَّةٍ وَلَا إِسْلَامٍ وَلَا إِرْتَدَدْتُ مُنْذُ بَايَعْتُ رَسُولَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَلَا قَتَلْتُ النَّفْسَ الَّتِي حَرَّمَ اللّٰهُ فَبِمَ تَقْتُلُونَنِي۔ رَوَاهُ التِّرْمِذِيُّ وَالنَّسَائِيُّ وَابْنُ مَاجَةَ وَلِلدَّارِمِيِّ لَفْظُ الْحَدِيثِ۔

3466. Sayyiduna Abu Umamah رضی اللہ عنہ ibn Sahl ibn Hunayf narrated that (Sayyiduna) Uthman ibn Affan رضی اللہ عنہ climbed up the roof top of his house on the day of ad-dar (when he was besieged by those who wrought mischief). He asked (the besiegers), "I adjure you by Allah, do you know that Allah's Messenger صلی اللہ علیہ وسلم said, "The blood of a Muslim is forbidden except for one of three reasons:

(i) Fornication committed by a married man,
(ii) apostatising after embracing Islam,
(iii) slaying someone without just cause,

he may be killed for one of these reasons?' By Allah, I have not committed fornication either during jahiliyah (ignorance period) or after the coming of Islam. I have not apostatised since having sworn allegiance to Allah's Messenger صلی اللہ علیہ وسلم. And, I have not slain any soul whom Allah has declared sacred."[2]

COMMENTARY: The day of (or yawn) ad-dar means the day of the house. It refers to the days on which the rebels had besieged the house of the third caliph Sayyiduna Uthman ibn Affan رضی اللہ عنہ. One of those days, he went up the roof of his house and spoke the foregoing words to the rebels.

As for committing fornication after marriage, if a married person commits adultery then Shari'ah (divine law) prescribes that he should be stoned to death. The Arabic word for a married person'

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[1] Tirmidhi # 3040, 3029, Nasai # 3999, Ibn Majah # 2621, Musnad Ahmad 1-240

[2] Tirmidhi # 2165, Abu Dawud # 4502, Ibn Majah # 2533, Nasai # 4024, Darimi # 2497, Musnad Ahmad 1-61.

as used in the hadith is (احصان) (ihsan and (محصن) - (Muhsin) stands for a Muslim, freeman, responsible who has married legally and consummated marriage with his wife.
The actual words of the hadith meaning what Allah's Messenger صلى الله عليه وسلم said ... (لايحل دم) (The blood of a Muslim ... one of these reasons) are the only ones in Darimi, but not Uthman's رضى الله عنه words in the beginning or the end.[1]

KILLER IS DEPRIVED OF GOOD

(٣٤٦٧) وَعَنْ اَبِي الدَّرْدَاءِ عَنْ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لَا يَزَالُ الْمُؤْمِنُ مُعْنِقًا صَالِحًا مَالَمْ يُصِبْ دَمًا حَرَامًا فَإِذَا اَصَابَ دَمًا حَرَامًا بَلَّحَ۔ (رواه ابوداؤد)

3467. Sayyiduna Abu darda رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "The believer does not cease to go ahead reapidly towards piety (engaged in giving the rights of Allah and of His slaves) till he does not shed blood unjustly. But, when he sheds blood unjustly he is fatigued."[2]

COMMENTARY: As long as a believer does not stain his hands with blood of someone, Allah keeps him engaged in piety and goodness, outstripping other. If he kills anyone then he loses the ability to do pious work. The heart of the murderer becomes dark with black stains. While all sins are punishable, this sin is more grave.

UNJUST KILLING IS UNFORGIVABLE

(٣٤٦٨-٣٤٦٩) وَعَنْهُ عَنْ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ كُلُّ ذَنْبٍ عَسَى اللّٰهُ اَنْ يَغْفِرَهُ اِلَّا مَنْ مَاتَ مُشْرِكًا اَوْ مَنْ يَقْتُلُ مُؤْمِنًا مُتَعَمِّدًا۔ رَوَاهُ اَبُوْ دَاوٗدَ وَرَوَاهُ النَّسَائِيُّ عَنْ مُعَاوِيَةَ۔

3468. Sayyiduna Abu Darda رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "It may be hoped that Allah will forgive every sin, except (the sin of) one who dies a polytheist, or one who kills a Muslim deliberately."[3]

3469. Sayyiduna Muawiyah رضى الله عنه also narrated this hadith.[4]

COMMENTARY: According to this hadith just as polytheism is unforgivable, so too wilful killing is unforgivable. However, the ahlus-*sunnah (Prophet's* صلى الله عليه وسلم *practice)* wa al-jama'ah say that a killer would undergo severe punishment for a long time before being forgiven. They cite this verse:

اِنَّ اللّٰهَ لَا يَغْفِرُ اَنْ يُّشْرَكَ بِهٖ وَيَغْفِرُ مَا دُوْنَ ذٰلِكَ لِمَنْ يَّشَآءُ

{Surely Allah forgives not the setting up of peers for Him; for anything less than this, He forgives whomsoever He pleases.} (4: 48)

As for this hadith, it means to emphasize how serious a crime it is to kill someone and what a severe chastisement it invites. It could also mean that if anyone kills a Muslim believing it to be lawful, then he will not be pardoned. Besides, the word (متعمدا) (deliberately) could also imply killing a believer because he is a believer. If anyone does that then he will not be forgiven.

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[1] See the lives of the Noble Caliphs, Ibn Kathir Dimishiqi, (Darul Ish'at, Karachi) PP 260 to 283.
[2] Abu Dawud # 4270 (This and the next are come together in Abu Dawud)
[3] Abu Dawud # 4270 (This previous are one in Abu Dawud)
[4] Nasai # 3984, Musnad Ahmad 4-99.

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RETALIATION MAY NOT BE SOUGHT FROM FATHER FOR HIS CHILDREN

(٣٤٧٠) وَعَنِ ابْنِ عَبَّاسٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا تُقَامُ الْحُدُوْدُ فِي الْمَسَاجِدِ وَلَا يُقَادُ بِالْوَلَدِ الْوَالِدُ۔ (رواه الترمذی والدارمی)

3470. Sayyiduna Ibn abbas رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said. "The prescribed punishment must not be imposed in mosques and a father must not be killed for (killing) a son."[1]

(Rather, diyah may be imposed on him. It is a monetary penalty.)

COMMENTARY: No punishment for adultery, theft, etc may be enforced in the mosques. The same applies to qisas or retaliation for murder. The reason is that mosques are meant to offer *salah (prayer)* or to make dhikr or acquire or impart religious knowledge.

If a father kills his son then he should not be killed in retaliation.

The juristic verdict is that if a son kills his parents then he maybe killed in retaliation. This is the unanimous verdict of all the ulama (Scholars).

But, if any of the parents kill their son then the ulama (Scholars) differ on the verdict. Imam Abu Hanifah رحمہ اللہ, Imam Shafi'I رحمہ اللہ and Imam Ahmad رحمہ اللہ hold that a father must not be killed in retaliation. But, Imam Maalik رحمہ اللہ holds that if a father slaughters his son then he may be killed in retaliation, and if he kills him with a sword then retaliation must not be seized from him. It must be remembered that the same command applies to a mother as to a father. Grand parents whether paternal or maternal attract the same command as father and mother do.

NEITHER FATHER NOR SON WILL BE PUNISHED FOR OTHER'S WRONG

(٣٤٧١) وَعَنْ اَبِي رِمْثَةَ قَالَ اَتَيْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَعَ اَبِيْ فَقَالَ مَنْ هٰذَا الَّذِيْ مَعَكَ قَالَ ابْنِيْ اِشْهَدْ بِهٖ قَالَ اَمَا اِنَّهٗ لَا يَجْنِيْ عَلَيْكَ وَلَا تَجْنِيْ عَلَيْهِ۔ رَوَاهُ اَبُوْدَاوٗدَ وَالنَّسَائِيُّ وَزَادَ فِيْ شَرْحِ السُّنَّةِ فِيْ اَوَّلِهٖ قَالَ دَخَلْتُ مَعَ اَبِيْ عَلٰى رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَرَاٰى اَبِي الَّذِيْ بِظَهْرِ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ دَعْنِيْ اُعَالِجُ الَّذِيْ بِظَهْرِكَ فَاِنِّيْ طَبِيْبٌ فَقَالَ اَنْتَ رَفِيْقٌ وَاللّٰهُ الطَّبِيْبُ۔

3471. Sayyiduna Abu Rimthah رضی اللہ عنہ narrated: I came to Allah's Messenger صلی اللہ علیہ وسلم with my father. He asked, "Who is he with you?" He said, "My son! Be witness to it." He said, "Know! He will not involve you (in punishment) because of his sins, nor will you involve him because of your sins."

The version in Sharh us-*sunnah (Prophet's* صلی اللہ علیہ وسلم *practice)* has these words too in the beginning: Abu Rimthah رضی اللہ عنہ narrated: I went in with my father to meet Allah's Messenger صلی اللہ علیہ وسلم. When my father observed what was on the back of Allah's Messenger صلی اللہ علیہ وسلم, (he did not realize that it was the seal of Prophet hood, so) he said, "Let me treat what is on your back, because I am a physician." He said, "You are but a rafiq. The Physician is only Allah."[2]

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[1] Tirmidhi # 1401, Ibn Majah # 2661, Darimi # 2357, Musnad Ahmad 1-16.

[2] Abu Dawud # 4495, Nasai # 4832, Darimi # 2388, Musnad Ahmad 4-163, Sharh *Sunnah (Prophet's* صلی اللہ علیہ وسلم *practice)*

COMMENTARY: Ibn Rimthah رضى الله عنه asked the Prophet صلى الله عليه وسلم to bear witness that the boy was his son. His purpose was to say that if he committed a wrong then his son could be taken to task as was the custom during the jahiliyah (ignorance period). Father and son could be called to account for one another's wrongs. But, Allah's Messenger صلى الله عليه وسلم made it clear to him that neither of them will have to answer for the other's wrongs. That was an unjust custom during the jahiliyah (ignorance period).

Abu Rimthah's رضى الله عنه father claimed to be a physician and a wise man. His words smacked of poor intelligence and bad manners. The Prophet صلى الله عليه وسلم corrected him, "You are only a rafiq," meaning, 'you only give a prescription on the outward condition and are mild the patient and suggest what he should do and from what he should abstain. But you have nothing in your power. Only Allah is the True Physician. He heals and knows the inner condition. No one else, howsoever great, can give cure.'

SON LIABLE FOR FATHER'S QISAS

(٣٤٧٢) وَعَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ اَبِيْهِ عَنْ جَدِّهٖ عَنْ سُرَاقَةَ بْنِ مَالِكٍ قَالَ حَضَرْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يُقِيْدُ الْاَبَ مِنِ ابْنِهٖ وَلَا يُقِيْدُ الْاِبْنَ مِنْ اَبِيْهِ۔ رَوَاهُ التِّرْمِذِيُّ وَضَعَّفَهٗ۔

3472. Sayyiduna Amr ibn Shuayb رحمه الله narrated from his father, from his grand father that suraqah ibn Maalik رضى الله عنه narrated that he was present when Allah's Messenger صلى الله عليه وسلم would take retaliation from a son for his father, but he did not take retaliation from a father for his son.[1]

COMMENTARY: If a son killed his father, then in retaliation the son was killed. But, if a father killed his son, then he was not killed in retaliation but blood wit (or monetary penalty) was taken from him.

IS THERE QISAS FROM FREEMAN FOR SLAVE

(٣٤٧٣) وَعَنِ الْحَسَنِ عَنْ سَمُرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ قَتَلَ عَبْدَهٗ قَتَلْنَاهُ وَمَنْ جَدَعَ عَبْدَهٗ جَدَعْنَاهُ۔ رَوَاهُ التِّرْمِذِيُّ وَاَبُوْدَاوٗدَ وَابْنُ مَاجَةَ وَالدَّارِمِيُّ وَزَادَ النَّسَائِيُّ فِيْ رِوَايَةٍ اُخْرٰى وَمَنْ خَصٰى عَبْدَهٗ خَصَيْنَاهُ۔

3473. Sayyiduna Hasan (Busri)رحمه الله reported that (Sayyiduna) Samurah رحمه الله narrated that Allah's Messenger صلى الله عليه وسلم said. "If anyone kills his slave, then we shall kill him (in retaliation) and if anyone maims his slave then we shall maim him.[2]

COMMENTARY: The prophet صلى الله عليه وسلم said this by way of a severe warning so that people may desist from killing their slaves. It is like when a man did not give up wine in spite of severe warning, so the Prophet صلى الله عليه وسلم said, "Kill him!" But when he was brought to him, he did not kill him.

Some people say that the slave mentioned in this hadith is the one who was set free after slavery. He is no more called a slave, but, here, reference is to his previous life.

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[1] Tirmidhi # 1405

[2] Tirmidhi # 1419, Abu Dawud # 4516, Ibn Majah # 2664, Nasai # 4736, Darimi # 4736, Musnad Ahmad 5-10.

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Some others say that this hadith stands abrogated by the verse:

اَلْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ الخ

{...the free man for the free man and the slave for the slave...}(2: 178)

Imam Abu Hanifah رحمه الله said that if anyone kills someone else's slave than he will be killed in retaliation. But, he will not be killed in retaliation if he kills his own slave. The other three imams hold that no free man will be killed in retalian for a slave whether his own or another's. They cite the verse (2: 178) mention in the preceding lines.

Ibrahim Nakha'I رحمه الله and Sufyan Thawri رحمه الله contend that a free man will be executed for killing a slave belonging to him or to anyone else.

As for maiming, it is stated in Sharh us-*sunnah (Prophet's* صلى الله عليه وسلم *practice)* that all the ulama (Scholars) agree that if a free man maims a slave then the free man will not be maimed in retaliation.

This means that the words of the Prophet صلى الله عليه وسلم in this hadith were either by way of a serious warning or are abrogated.

MURDERER BE GIVEN IN THE CUSTODY OF HEIRS

(٣٤٧٤) وَعَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ اَبِيْهِ عَنْ جَدِّهٖ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ مَنْ قَتَلَ مُتَعَمِّدًا دُفِعَ اِلٰى اَوْلِيَاءِ الْمَقْتُوْلِ فَاِنْ شَاءُوْا قَتَلُوْا وَاِنْ شَاءُوْا اَخَذُوا الدِّيَةَ وَهِيَ ثَلَاثُوْنَ حِقَّةً وَثَلَاثُوْنَ جَذَعَةً وَاَرْبَعُوْنَ خَلِفَةً وَمَا صَالَحُوْا عَلَيْهِ فَهُوَ لَهُمْ۔ (رواه الترمذى)

3474. Sayyiduna Amr ibn Shuayb رحمه الله narrated from his father who from his grand father that Allah's Messenger صلى الله عليه وسلم said, "If anyone slays a believer willfully then he must be handed over to the heirs of the slain. They may kill him (in retaliation) or take blood money (from him). It (blood money) is thirty she-camels in their fourth year, thirty she-camels in their fifth year and forty pregnant camels, and that which the heirs have decided with him. (The right of the heirs is as mentioned but if they consent to a smaller amount then only that will be *wajib (obligatory)* on the murderer.)[1]

COMMENTARY: Diyah, or blood wit is the compensation paid to the heirs for killing their relative. Imam Shafi'I رحمه الله and Imam Ahmad رحمه الله go by this hadith. Imam Abu Hanifah رحمه الله and Imam Abu Yusuf رحمه الله say that the one hundred camels of diyah should be made up in this manner:

- Twenty five bint makhad,
- Twenty five bint labun
- Twenty five bint hiqqah, and
- Twenty five bint jaza'ah.

They go by the hadith of Sayyiduna Sa'ib ibn Yazid رضى الله عنه that the Prophet صلى الله عليه وسلم had commanded that four kinds of camels should be given (against blood money). If this hadith was sound, the sahabah (Prophet's Companions) رضى الله عنهم would have acted on it unanimously.

(The terms used in this commentary are explained here under:)

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[1] Tirmidhi # 1392, Abu Dawud # 4506, Ibn Majah # 2626, Musnad Ahmad 2-193.

Bint makhad: she-camel in 2nd year.
Bint labun: she-camel in 3rd year
Hiqqah: She-camel in 4th year.
Jaza'ah: She-camel in 5th year
Ibn makhad: (he) camel in 3nd year
Khalifah: pregnant camel.

ALL MUSLIMS ARE EQUAL AS REGARDS QISAS & DIYAH

(٣٤٧٥-٣٤٧٦) وَعَنْ عَلِيٍّ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ الْمُسْلِمُونَ تَتَكَافَأُ دِمَاءُ هُمْ وَيَسْعٰى بِذِمَّتِهِمْ اَدْنَاهُمْ وَيَرُدُّ عَلَيْهِمْ اَقْصَاهُمْ وَهُمْ يَدٌ عَلٰى مَنْ سِوَاهُمْ اَلَا لَا يُقْتَلُ مُسْلِمٌ بِكَافِرٍ وَلَا ذُوْ عَهْدٍ فِيْ عَهْدِهٖ رَوَاهُ اَبُوْدَاوٗدَ وَالنَّسَائِيُّ وَرَوَاهُ ابْنُ مَاجَةَ عَنِ ابْنِ عَبَّاسٍ۔

3475. Sayyiduna Ali رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "All Muslims are equal in (the application of) qisas and diyah (retaliation and blood money). The humblest of them may offer protection and the most distant holds a right, and all Muslims are like one hand. (This means that all Muslims are helpers of each other against non-Muslims. They must remain united against others as though parts of one hand that work together.) And, beware! A Muslim must not be killed for an unbeliever, and one who is under a covenant (meaning, a dhimmi) must not be killed as long as he is under the covenant (and protection).:[1]

3476. Sayyiduna Ibn Abbas رضی اللہ عنہ narrated the same hadith.[2]

COMMENTARY: In seizing retaliation or paying blood money, all the Muslims are equal: the noble and the humble, the young and the old, the learned and the ignorant, the rich and the poor, and the male or female. There is no distinction in applying qisas and diyah. It is not as was done during the jahiliyah (ignorance period) when an influential person could not be executed in retaliation if he had killed a humble man, but a few men of his tribe who were subordinate to him were put to death instead of him.

As for giving protection, even a humble Muslim may give protection to an infidel. This humble Muslim may be a slave or a woman. When he extends protection to a non-Muslim, all other Muslims are bound to honour it and protect the life and property of the non-Muslim. They must not break the protection.

THE MOST DISTANT....: The next sentence about the most distant holding a right could be interpreted in two ways.

(i) If a Muslim who resides far away from enemy territory has given protection to an infidel, then it is not allowed to the Muslims who reside near the enemy territory to violate this man's (covenant of) protection.

(ii) When an army of the Muslims enters enemy territory and their amir(Commander) dispatches one unit to another side and they (win and collect some booty then that booty will not belong only to this unit but will be shared by the entire army.

TILL UNDER COVENANT: The concluding words are 'as long as he is under the

[1] Abu Dawud # 4530, Nasai # 4746, Musnad Ahmad 1-122.
[2] Ibn Majah # 2683

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covenant' mean that till the infidel goes on paying the jizyah and remains a faithful citizen of the Islamic state, he will be protected. No Muslim should kill him but must regard it as a responsibility to protect him. This shows that in Islamic law a dhimmi's blood is as precious as a Muslims. Hence, if a Muslim kills a dhimmi unjustly then the murderer Muslim must be killed in retaliation. This is the contention of Imam Abu Hanifah رحمه الله.

The words of the hadith that a Muslim may not be killed for an unbeliever refer to the unbeliever at war not a dhimmi.

Thus, according to Imam Abu Hanifah رحمه الله, a Muslim must not be killed in retaliation for a disbeliever at war (an enemy disbeliever), but a Muslim may be executed for a dhimmi (in retaliation).

Imam Shafi'i رحمه الله said that a Muslim may not be killed in retaliation for any disbeliever, enemy at war or dhimmi.

RIGHT OF HEIRS OF THE SLAIN OR THE WOUNDED.

(٣٤٧٧) وَعَنْ اَبِي شُرَيْحٍ الْخُزَاعِيِّ قَالَ سَمِعَتْ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ مَنْ اُصِيْبَ بِدَمٍ اَوْ خَبْلٍ وَالْخَبْلُ الْجُرْحُ فَهُوَ بِالْخِيَارِ بَيْنَ اِحْدٰى ثَلَاثٍ فَاِنْ اَرَادَ الرَّابِعَةَ فَخُذُوْا عَلٰى يَدَيْهِ بَيْنَ اَنْ يَقْتَصَّ اَوْيَعْفُوَا اَوْ يَاخُذَ الْعَقْلَ فَاِنْ اَخَذَ مِنْ ذٰلِكَ شَيْئًا ثُمَّ عَدَا بَعْدَ ذٰلِكَ فَلَهُ النَّارُ خَالِدًا فِيْهَا مُخَلَّدًا اَبَدًا۔

(رواه الدارمی)

3477. Sayyiduna Abu Shurayh al-Khuza'I رضی الله عنه narrated that he heard Allah's Messenger صلی الله علیه وسلم say, "If anyone is afflicted with a (relative's) killing (unjustly) or a wound (by severing a limb, for instance), then he may choose one of three things but if he demands (apart from these) a fourth thing, then hold him by his hand (and prevent him from demanding the fourth thing. The three things are:) (i) he may seize retaliation, (ii) he may forgive, or (iii) he may accept (monetary) compensation. If he chooses one of these and afterwards asks for more (like having forgiven, he then demands retaliation or compensation), he will go to hell to abide therein for ever, never to be taken out."[1]

COMMENTARY: The concluding words in the Arabic text are (خَالِدًا فِيْهَا مُخَلَّدًا). They convey a strong emphasis: for ever, abiding, never to come out. The emphasis is to warm strongly. The same words were used in an earlier hadith (#3453).

ACCIDENTAL KILLING

(٣٤٧٨) وَعَنْ طَاؤُسٍ عَنِ ابْنِ عَبَّاسٍ عَنْ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ مَنْ قُتِلَ فِيْ عِمِّيَّةٍ فِيْ رَمْيٍ يَكُوْنُ بَيْنَهُمْ بِالْحِجَارَةِ اَوْجَلْدٍ بِالسِّيَاطِ اَوْ ضَرْبٍ بِعَصًا فَهُوَ خَطَأٌ وَعَقْلُهُ عَقْلُ الْخَطَأِ وَمَنْ قَتَلَ عَمْدًا فَهُوَ قَوَدٌ وَمَنْ حَالَ دُوْنَهُ فَعَلَيْهِ لَعْنَةُ اللّٰهِ غَضَبُهُ لَا يُقْبَلُ مِنْهُ صَرْفٌ وَلَا عَدْلٌ۔ (رواه ابوداؤد والنسائی)

3478. Sayyiduna Tawus رحمه الله reported that Ibn Abbas رضی الله عنه said that Allah's Messenger صلی الله علیه وسلم said, "If anyone is killed by mistake when people throw stones, or beat with whips, or strike with a stick (and the killer cannot be

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[1] Abu Dawud # 4496, Ibn Majah # 2623, Darimi # 2351

identified), then this is an accidental death (and there is no sin committed because it is not intentional). The diyah for it is as for an accidental killing.
And, if anyone kills deliberately, then retaliation becomes *wajib (obligatory).* If anyone hinders the seizing of retaliation, then on him is Allah's curse and wrath and neither his supererogatory acts nor his prescribed acts will be accepted from him.[1]

COMMENTARY: If anyone is surrounded by two warring groups or is a passerby, for instance, and happens to be killed by a stone thrown by the disputants then no retaliation is due but diyah as for accident will be payable. Here, stoning is mentioned as an example. It could be anything else that causes death. The jurists call it (شبہ عمد)(shibh amd) or a quasi-deliberate intent. Imam Abu Hanifah رحمہ اللہ defines it thus; 'The killing that occurs with something that is not sharp and such as normally death does not result from it.'
The two disciples.[2]
(of his) and Imam Shafi'I رحمہ اللہ, however, define shibh amd as a killing that results with intent with such a thing which does not normally cause death. If death occurs with such a thing that is used to kill generally then that is (قتل عمد)(intentional killing - qatl amd).
Imam Abu Hanifah رحمہ اللہ says of the things mentioned in the hadith, (stone, stick) that they are mentioned in their literal sense and maybe light weight or heavy. The two disciples and Imam Shafi'I رحمہ اللہ maintain that these things mentioned in the hadith stand for lightweight objects (not heavy).
In other words, if anyone is killed with something that is heavy, then according too:

(i) Imam Abu Hanifah رحمہ اللہ qisas (or retaliation) is not *wajib (obligatory),* but & according to
(ii) The two disciples and Imam Shafi'i رحمہ اللہ the forgoing explanation is valid.

If anyone obstructs the heirs of the slain person from demanding retaliation then he is warned seriously that he calls for Allah's anger.

KINDS OF MURDER: The jurists say that there are five kinds of murder:

(i) Qatl amd or willful killing.
(ii) Qatl shibh amd or quasi-deliberate intent or murder that resembles intentioned murder.
(iii) Qatl Khata or accidental murder.
(iv) Qatl jari mujri khata or accidental murder unknowingly.
(v) Qatl bisabab or indirect murder.

These are elaborated here:

(I)WILLFUL OR DELIBERATE KILLING: A person is murdered with something that snaps off the limbs. It may be a weapon or a stone, stick or a sharp-edged weapon with a spark. The two disciples define willful killing thus: A person is slain intentionally with such a thing with which a person is generally killed. One who commits wilful murder is a great sinner. The punishment of this murder is qisas (which is to execute the murderer in retaliation of the murdered) unless the heirs of the murdered person forgive him, or agree to take the diyah (or monetary compensation). In this expiation does not become *wajib (obligatory).*

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[1] Abu Dawud # 4540, Ibn Majah # 2635, Nasai # 4789
[2] Imam Abu Yusuf رحمہ اللہ and Imam Muhammad رحمہ اللہ

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(II)QUASI-DELIBERATE INTENT OR MURDER THAT RESEMBLES INTENTIONAL MURDER: It is to deliberately strike someone with something other than the aforementioned things (like a weapon or a sharp-edged thing, etc.). Even this kind of killing (because of neglecting the best course and lack of prudence) is sinful. In this, there is no retaliation but it is *wajib (obligatory)* on the tribe of the slayer to pay diyah mughallazah (which is paying one hundred camels of four kinds.). However, if no one is killed, but the person concerned is wounded then qisas is *wajib (obligatory)* in the sense that if any limb of that person is severed then a corresponding limb of the person striking him will be cut off.

(III)ACCIDENTAL MURDER: It is of two kinds.

(a) Accident is related to intention. For example, a hunter aimed at a game but that turned out to be a man, or he aimed at an enemy but he was his own co-religionist, a Muslim.

(b) Accident is related to a (wrong) action. For instance, a man aims at a target, but misses and hits a man.

(IV)ACCIDENTAL MURDER UNKNOWINGLY: For example, a man might fall in his sleep over another man who dies because of the crash. Expiation is binding in both cases: (iii) accidental murder and (iv) accidental murder unknowingly. Also, diyah is *wajib (obligatory)* on the tribe of the (accidental) murderer in both cases. Moreover, in these cases (because of negligence) sin also is committed.

(V)INDIRECT MURDER: An example of this kind is that man has a well dug on another person's land without his permission, or places a stone thereon. A passerby falls in the well or stumbles on the stone and happens to die. In this case, diyah becomes *wajib (obligatory)* on the tribe (of the man responsible for the accident). However, no expiation is payable.

INHERITANCE: It must be known that in the first four cases, namely amd, shibh amd, khata and jari mujri khata, the murderer is deprived of the inheritance of the murdered (if he is an heir).

In the fifth kind, qatl bisabab, the murderer will not be deprived of inheritance of the murdered.

KILLING THE MURDERER AFTER RECEIVING DIYAH IS UNPARDONABLE SIN

(٣٤٧٩) وَعَنْ جَابِرٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا أُعْفِيْ مَنْ قَتَلَ بَعْدَ أَخْذِ الدِّيَةِ۔ (رواه ابوداؤد)

3479. Sayyiduna Jabir رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said. "I shall not forgive anyone (of the slain person's guardians or heirs) who kills (the murderer) after receiving (from him) the diyah (blood money)." (Rather I shall kill him in retaliation.)[1]

REWARD FOR FORGIVING ONE WHO WOUNDS

(٣٤٨٠) وَعَنْ أَبِي الدَّرْدَاءِ قَالَ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ مَا مِنْ رَجُلٍ يُصَابُ بِشَيْءٍ فِيْ جَسَدِهٖ فَتَصَدَّقَ بِهٖ إِلَّا رَفَعَهُ اللّٰهُ بِهٖ دَرَجَةً وَحَطَّ عَنْهُ خَطِيْئَةً۔ (رواه الترمذی وابن ماجة)

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[1] Abu Dawud # 4507, Musnad Ahmad 3-363

3480. Sayyiduna Abu Ad-Darda رضی اللہ عنہ narrated that he heard Allah's Messenger صلی اللہ علیہ وسلم say, "If anyone is wounded on his body and pardons it, then Allah raises him a degree for it and removes from him a sin.[1]
(Tirmidhi part of lengthy hadith)

SECTION III اَلْفَصْلُ الثَّالِثُ

IT MUCH KILL RETRIBUTION WILL BE IMPOSED ON ALL

(٣٤٨١-٣٤٨٢) عَنْ سَعِيْدِ بْنِ الْمُسَيَّبِ اَنَّ عُمَرَ بْنَ الْخَطَّابِ قَتَلَ نَفَرًا خَمْسَةً اَوْ سَبْعَةً بِرَجُلٍ وَاحِدٍ قَتَلُوْهُ قَتْلَ غِيْلَةٍ وَقَالَ عُمَرُ لَوْ تَمَالَأَ عَلَيْهِ اَهْلُ صَنْعَاءَ لَقَتَلْتُهُمْ جَمِيْعًا۔ رَوَاهُ مَالِكٌ وَرَوَى الْبُخَارِيُّ عَنِ ابْنِ عُمَرَ نَحْوَهٗ۔

3481. Sayyiduna Sa'eed ibn Musayyib narrated that (Sayyiduna)Umar ibn Khattab رضی اللہ عنہ executed five or seven men who had killed one man treacherously. And he said, "If the people of San'a had colluded to kill him, surely I would have killed them all."[2]

3482. Sayyiduna Ibn Umar رضی اللہ عنہ narrated the like of it.[3]

COMMENTARY: Perhaps those killers belonged to San'a the present capital of Yemen. Besides, the Arabs were used to name it to express a large number. This hadith is evidence that all killers of one man will be subject to retribution.

THE MURDERED WILL NAB THE MURDERER & COMPLAIN TO ALLAH

(٣٤٨٣) وَعَنْ جُنْدُبٍ قَالَ حَدَّثَنِيْ فُلَانٌ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ يَجِيْءُ الْمَقْتُوْلُ بِقَاتِلِهٖ يَوْمَ الْقِيَامَةِ فَيَقُوْلُ سَلْ هٰذَا فِيْمَ قَتَلَنِيْ فَيَقُوْلُ قَتَلْتُهٗ عَلٰى مُلْكِ فُلَانٍ قَالَ جُنْدُبٌ فَاتَّقُوْهَا۔ (رواه النسائی)

3483. Sayyiduna Junbub رضی اللہ عنہ narrated tht a certain sahabi رضی اللہ عنہ narrated to him that Allah's Messenger صلی اللہ علیہ وسلم said, "On the day of resurrection, the slain man will bring the one who had slain him and say (to Allah), 'Ask him why he had slain me?' He (the slayer) will say, 'I had killed him for the property of so-and-so.'" Jundub رضی اللہ عنہ said, "Keep away from it!"[4]

COMMENTARY: The slayer's words could also mean 'I had killed him in the territory of so-and-so, but then the answer is not according to the question.
Jundub رضی اللہ عنہ advised people to refrain from killing Teebi رضی اللہ عنہ said that Jundub رضی اللہ عنہ had narrated this hadith to a king and had advised him to refrain from killing or abetting in that.

WARNING AGAINST ASSISTING SLAYER

(٣٤٨٤) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ اَعَانَ عَلٰى قَتْلِ مُؤْمِنٍ شَطْرَ كَلِمَةٍ لَقِيَ اللّٰهَ مَكْتُوْبٌ بَيْنَ عَيْنَيْهِ اٰيِسٌ مِنْ رَحْمَةِ اللّٰهِ۔ (رواه ابن ماجة)

3484. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم

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[1] Tirmidhi # 1398, Ibn Majah # 2693, Musnad Ahmad # 6899.
[2] Mawatta Maalik # 13 (Uqul)
[3] Bukhari # 6896
[4] Nasai # 3998 (See commentary for alternative meaning

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said, "He who helps in killing a believer even by exhorting (the killer) by half a word (saying only ki instead of kill), will meet Allah with the inscription on his forehead, 'Despairs of Allah's mercy.'"[1]

COMMENTARY: Killing a Muslim is like disbelief in the gravity of sin it invites. The words, 'despairs of Allah's mercy' suggest it, because of the verse:

لَا يَيْئَسُ مِنْ رَّوْحِ اللّٰهِ اِلَّا الْقَوْمُ الْكَافِرُوْنَ

{...none but the unbelieving despair of the mercy of Allah.}(12: 37)

This man will be disgraced with this symbol among the people on the day of resurrection. We must bear in mind that either these words spell a severe warning against such action or they apply to one who abets in this crime and regards his doing as lawful.

HELPER OF KILLER BE ARRESTED

(٣٤٨٥) وَعَنِ ابْنِ عُمَرَ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اِذَا اَمْسَكَ الرَّجُلُ الرَّجُلَ وَقَتَلَهُ الْاٰخَرُ يُقْتَلُ الَّذِيْ قَتَلَ وَيُحْبَسُ الَّذِيْ اَمْسَكَ۔ (رواه الدار قطنی)

3485. Sayyiduna Ibn Umar رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "When a man clutches another man and yet another kills him, he who kills will be killed and he who clutches him will be imprisoned."[2]

COMMENTARY: If a man holds a woman and another man rapes her, then the prescribed punishment will not be imposed on the man who grabs her. In the same way, one who clutches a person being killed is not awarded the punishment of qisas but he will be awarded a discretionary punishment and put in prison for a length of time decided by the judge or ruler. This is as some exponents say. But, to hold a man so that he may be killed is in fact abetting and helping in the crime and, in the light of another hadith, the punishment for helping a killer is also qisas (retaliation). So, we might say that this hadith(# 3485) is abrogated.

Shamni رضی اللہ عنہ has written in Multaqa: If anyone throws a man before a lion or another wild beast who kills him then neither qisas, nor diyah will be binding on the person who throws him, but he will be imprisoned till he repents and will be beaten till his body aches.

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[1] Ibn Majah # 2620

[2] Daraqytrin # 176

CHAPTER - II

AD-DIYAAT(BLOOD WIT) بَابُ الدِّيَاتِ

MEANING & KINDS OF DIYAH: The word diyaat is the plural form of diyah. It means 'monetary compensation.' Hence, diyah is the money that is paid in compensation for ending someone's life or for wounding him physically, cutting off his limb (s). The caption has the plural form diyaat to cover the many kinds of diyah.

There is a diyah to compensate for killing someone, or diyah nafs.

There is another diyah to compensate for wounding someone's limbs, or diyah a'da.

They are further classified as:

(1) diyah mughallazah, and

(2) diyah mukhaffafah.

(1)DIYAH MUGHALLAZAH: It is as described here.

They are one hundred she-camels as in this chart:

(i) Bint Makhad (she-camel) of one year, begins her second year) - 25.

(ii) Bint Labun (she-camel two years old in her third year) - 25.

(iii) Hiqqah (she-camel three years old in her fourth year) - 25.

(iv) Jadha'ah (she-camel four years old in her fifth year) - 25.

This is as Imam Abu Hanifah رحمه الله and Imam Abu Yusuf رحمه الله say.

However, Imam Shafi'i رحمه الله and Imam Muhammad رحمه الله describe the diyah mughallazah in this way:

(i) Hiqqah - 30 (she-camels in 4th year)

(ii) Jadha'ah - 30 (she-camels in 5th year)

(iii) Muthannah - 40 (she camels who have completed 5 years and are in their 6th year).

They must all be pregnant.

Diyah mughallazah is *wajib (obligatory)* on the person who has perpetrated qatl shibh 'and or quasi deliberate intent or murder that resemble intentional murder.

(2)DIYAH MUKHAFFAFAH: is that if it is paid in gold then it is one thousand dinars. It is paid in silver, then ten thousand dinars are paid. If camels are paid for it, then five kinds of camels are paid to a total of one hundred, as in this chart:

(i)Ibn Makhad (He-camel in second year) - 20.

(ii)Bint Makhad (she-camel in 2nd year) - 20

(iv) Bint Labun (she camel in 3rd year) - 20

(v) Hiqqah (she camel in 4th year) - 20

(vi) Jadha'ah (she camel in 5th year) - 20

Diyah mukhaffafah is *wajib (obligatory)* on a person who commits qatl khata or accidental murder, or qatl jari mujri khata (accidental murder unknowingly) or qatl bisabab(indirect murder).

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SECTION I اَلْفَصْلُ الْاَوَّلُ

DIYAH FOR CUTTING OFF FINGER

(٣٤٨٦) عَنِ ابْنِ عَبَّاسٍ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ هٰذِهٖ وَهٰذِهٖ سَوَاءٌ يَعْنِي الْخِنْصَرَ وَالْاِبْهَامَ۔ (رواه البخاری)

3486. Sayyiduna Ibn Abbas رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "This and this (meaning the little finger and the thumb to which he pointed) are equal," (as for as diyah is concerned.[1]

COMMENTARY: If anyone cuts off all the fingers or all the toes of a person, it will be *wajib (obligatory)* on him to pay the entire diyah (one hundred camels). It comes to one-tenth for each finger. There is no difference between thumb and little finger though it has three pores against two of the thumb. There also is no difference in diyah of the right and left hands. The diyah for each pore will be one-third of one-tenth, (for each finger) and the diyah for each pore of a thumb will be half of one-tenth.

DIYAH FOR CHILD IN WOMB

(٣٤٨٧) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَضٰى رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فِيْ جَنِيْنِ امْرَأَةٍ مِنْ بَنِيْ لِحْيَانَ سَقَطَ مَيِّتًا بِغُرَّةٍ عَبْدٍ اَوْ اَمَةٍ ثُمَّ اِنَّ الْمَرْاَةَ الَّتِيْ قَضٰى عَلَيْهَا بِالْغُرَّةِ تُوُفِّيَتْ فَقَضٰى رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ بِاَنَّ مِيْرَاثَهَا لِبَنِيْهَا وَزَوْجِهَا وَالْعَقْلَ عَلٰى عَصَبَتِهَا۔ (متفق علیه)

3487. Sayyiduna Aby Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم passed judgment when the child of a woman of Banu lihyan wa miscarried (or was born dead) that it is *wajib (obligatory)* (on the tribe) to set free a ghurrah (which is a slave, male or female of the best kind). Then, the woman on whom he had made it binding (through her tribe) to emancipate a ghurrah died. So, he decreed that her sons and husband should inherit from her but the diyah should be paid by her asabah (paternal relatives).[2]

COMMENTARY: Two women quarrelled bitterly. One of them threw a stone at the other who was pregnant. The stone hit her on her belly and should had a miscarriage.

As a consequence, diyah was imposed on the striker's aaqilah (tribe or family). If the child was born alive and then died, or was born alive and she had struck the stone afterwards and it had hit the child, killing him, then the entire diyah would have been *wajib (obligatory)*.

Ghurrah is the whiteness on a horse's forehead. This word is applied also to a slave male or female of white colour. In this hadith, it means simply a male or female slave. The jurists say that ghurrah is one-twentieth of a diyah, or five hundred dirhams.

The word asabah in the hadith refers to aaqilah. They did not qualify for an inheritance on account of that because if anyone is responsible to pay the diyah of a person it does not entitle him to his legacy. Only the legal heir will get that.

Only the woman's sons and husband are named as her heirs. It is perhaps only they were her surviving heirs, otherwise all living heirs are entitled to the inheritance as explicit in the next hadith.

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[1] Bukhari # 6895, Tirmidhi # 1396, Abu Dawud # 4558, Ibn Majah # 2652, Nasai # 4837, Darimi # 2370.

[2] Bukhari # 6909, Tirmidhi # 1410, Abu Dawud # 2597 Nasai # 4817.

DIYAH (BLOOD WIT) IS *WAJIB (OBLIGATORY)* IF KILLED BY STONING

(٣٤٨٨) وَعَنْهُ قَالَ اِقْتَتَلَتْ اِمْرَأَتَانِ مِنْ هُذَيْلٍ فَرَمَتْ اِحْدٰهُمَا الْاُخْرٰى بِحَجَرٍ فَقَتَلَتْهَا وَمَا فِيْ بَطْنِهَا فَقَضٰى رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَنَّ دِيَةَ جَنِيْنِهَا غُرَّةٌ عَبْدٌ اَوْ وَلِيْدَةٌ وَقَضٰى بِدِيَةِ الْمَرْاَةِ عَلٰى عَاقِلَتِهَا وَوَرَّثَهَا وَلَدَهَا وَمَنْ مَعَهُمْ۔ (متفق عليه)

3488. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that two women of Hudhayl quarrelled one with the other. One of them threw a stone at the other killing her and what was in her womb. Allah's Messenger صلی اللہ علیہ وسلم judged that the bloodwit for the child miscarried by her should be a ghurrah (male or female slave). He also judged that the woman who was bound to pay the bloodwit should pay it and that her suns and those with them would inherit her.[1]

COMMENTARY: Perhaps the previous hadith (# 3487) and this one speak of two different events.

If anyone is killed on throwing a stone then diyah (bloodwit) becomes *wajib (obligatory)* not qisas (retaliation). This killing was of the kind shibh amd (one that resembles intentional murder). This is what Imam Abu Hanifah رضی اللہ عنہ said. He believes that the stone was a small stone. The other imams disagree with him.

(٣٤٨٩) وَعَنِ الْمُغِيْرَةِ بْنِ شُعْبَةَ اَنَّ امْرَاَتَيْنِ كَانَتَا ضَرَّتَيْنِ فَرَمَتْ اِحْدٰهُمَا الْاُخْرٰى بِحَجَرٍ اَوْ عَمُوْدِ فُسْطَاطٍ فَاَلْقَتْ جَنِيْنَهَا فَقَضٰى رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فِي الْجَنِيْنِ غُرَّةً عَبْدًا اَوْ اَمَةً وَجَعَلَهُ عَلٰى عَصَبَةِ الْمَرْاَةِ۔ هٰذِهٖ رِوَايَةُ التِّرْمِذِيِّ وَفِيْ رِوَايَةِ مُسْلِمٍ قَالَ ضَرَبَتِ امْرَاَةٌ ضَرَّتَهَا بِعَمُوْدِ فُسْطَاطٍ وَهِيَ حُبْلٰى فَقَتَلَتْهَا قَالَ وَاِحْدٰهُمَا لِحْيَانِيَّةٌ قَالَ فَجَعَلَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ دِيَةَ الْمَقْتُوْلَةِ عَلٰى عَصَبَةِ الْقَاتِلَةِ وَغُرَّةً لِمَا فِيْ بَطْنِهَا۔

3489. Sayyiduna Mughirah رضی اللہ عنہ ibn Shubah رضی اللہ عنہ narrated that two women were co-wives (of the same man). One of them threw a stone or a tent-pole on the other (who was pregnant). She suffered a miscarriage. So, Allah's Messenger صلی اللہ علیہ وسلم judged that diyah be paid for the miscarried child: a ghurrah (which is a female or a male slave), making it *wajib (obligatory)* on the asabah (relatives on the father's side) of the woman (who had struck the stone or tent pole).

According to another version: He (Mughirah رضی اللہ عنہ) narrated that a woman struck her fellow-wife who was pregnant with a tent-pole causing her death (and her unborn child too). He said that one of the two women belonged to the Libyan (a branch of the tribe Hudhayl). He (Mughirab رضی اللہ عنہ) said that Allah's Messenger صلی اللہ علیہ وسلم made the diyah for the slain woman *wajib (obligatory)* on the paternal relatives of the woman who had killed and made the diyah of the child who was in the womb of the woman (who was killed) a ghurrah (a male of female slave).[2]

COMMENTARY: This hadith also supports the contention of Imam Abu Hanifah رحمہ اللہ. The killing was not classified as intentional, but one resembling intentional.

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[1] Bukhari # 6910, Muslim # 26-1681, Abu Dawud # 4576, Nasai # 4818, Musnad Ahmad 2-535, Darimi # 2382, Duwatta Maalik # 5 uqul

[2] Bukhari # 6905, Tirmidhi # 1411, Muslim # 28-1682 (second version)

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Imam Shafi'i رحمه الله said that the stone mentioned here was a small stone, and normally one does not decide to kill anyone with a tent pole.

SECTION II اَلْفَصْلُ الثَّانِي

THE DIYAH PAYABLE AGAINST QATL KHATA & SHIBH AMD

(٣٤٩٠-٣٤٩١) عَنْ عَبْدِاللّٰهِ ابْنِ عَمْرٍو اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اَلَا اِنَّ دِيَةَ الْخَطَأِ شِبْهِ الْعَمْدِ مَا كَانَ بِالسَّوْطِ وَالْعَصَا مِائَةٌ مِنَ الْاِبِلِ مِنْهَا اَرْبَعُوْنَ فِيْ بُطُوْنِهَا اَوْلَادُهَا۔ رَوَاهُ النَّسَائِيُّ وَابْنُ مَاجَةَ وَالدَّارِمِيُّ وَرَوَاهُ اَبُوْدَاوٗدَ عَنْهُ وَعَنِ ابْنِ عُمَرَ وَفِيْ شَرْحِ السُّنَّةِ لَفْظُ الْمَصَابِيْحِ عَنِ ابْنِ عُمَرَ۔

3490. Sayyiduna Abdullah رضى الله عنه ibn Amr رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "Know! The bloodwit for murder that resembles intentional, as is committed with a whip or a stick, is one hundred camels, of which forty must be pregnant."[1]

3491. Sayyiduna Ibn Umar رضى الله عنه (the same hadith.)[2]

COMMENTARY: This hadith in the masabih has these words:

اَلَا اِنَّ فِيْ قَتْلِ الْعَمْدِ الْخَطَأِ بِالسَّوْطِ وَالْعَصَاءِ مِائَةٌ مِنَ الْاِبِلِ مُغَلَّظَةٌ مِنْهَا اَرْبَعُوْنَ خَلِفَةً فِيْ بُطُوْنِهَا اَوْلَادُهَا

[Know! The accidental murder resembling the intentional that was perpetrated by a whip or a stick has a blood wit of one hundred camels – diyah mughallazah. Forty of the she-camels among them must be pregnant.]

In other words, the qatl 'amd khata' mentioned here means qatl khata' shibh 'aml as in the foregoing version.

Murder is perpetrated deliberately, or by accident resembling intentionally.

(i) Deliberate murder is by intention with a weapon or a sharp-edged tool severing a limb, or collapsing.

(ii) That which 'resembles the intentional' means to kill someone knowingly with something that is not sharp-edged and not a weapon, whether it is used generally to kill man or not.

(iii) The accidental murder is to kill someone without intention or aim. These three have found mention in the previous pages. This is to which the opinion of Imam Abu Hanifah رحمه الله conforms. He says that the stick mentioned in the hadith is any kind of stick. It could be light-weight or heavy-weight.

Other imams say that it is a light-weight stick with which generally a person does not commit murder. This is because they hold that to kill anyone with a heavy object with which one can be killed is intentional killing.

In some versions, as in the foregoing one of Masabih, the word diyah is qualified by mughallazah. Therefore, the-diyah of shibh amd (resembling deliberate) killing is (mughallazah) severe: of four kinds of one hundred camels as *wajib (obligatory)*. Their detail is mentioned in the introductory portion of this chapter and it is the opinion of Ibn

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[1] Nasai # 4799, Ibn Majah # 2628, Daraqutai # 8(Diyat) Musnad Ahmad 2-١١

[2] Abu Dawud # 4547, (Ibn Amir), # 4548(Ibn Umar).

Masud رضی اللہ عنہ, Imam Abu Hanifah رحمہ اللہ, Imam Abu Yusuf رحمہ اللہ and Imam Ahmad. But, Imam Shafi'I رحمہ اللہ and Imam Muhammad رحمہ اللہ hold that mughallazah is one hundred camels of three kinds as *wajib (obligatory)*, details of which too have been mentioned in the introductory portion of this chapter.

However, it is agreed that diyah mughallazah is not *wajib (obligatory)* in qatl khata (accidental killing). Rather, the *wajib (obligatory)* is one hundred camels of five kinds:

(i) Ibn Makhad - 20
(ii) Bint Makhad - 20
(iii) Bint Labun - 20
(iv) Hiqqah - 20
(v) Jadha'ah - 20

This hadith uphold the view of Imam Shafi'I رحمہ اللہ and Imam Muhammad رحمہ اللہ concerning diyah mughallazah.

The Hanafis point out that this hadith is contrary to the one reported by Ibn Masud رضی اللہ عنہ and Sa'ib رضی اللہ عنہ ibn Yazid.

(٣٤٩٢) وَعَنْ اَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ اَبِيْهِ عَنْ جَدِّهٖ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ كَتَبَ اِلٰى اَهْلِ الْيَمَنِ وَكَانَ فِيْ كِتَابِهٖ اَنَّ مَنِ اعْتَبَطَ مُؤْمِنًا قَتْلًا فَاِنَّهٗ قَوَدٌ يَدِهٖ اِلَّا اَنْ يَّرْضَى اَوْلِيَاءُ الْمَقْتُوْلِ وَفِيْهِ اَنَّ الرَّجُلَ يُقْتَلُ بِالْمَرْاَةِ وَفِيْهِ فِي النَّفْسِ الدِّيَةُ مِائَةٌ مِّنَ الْاِبِلِ وَعَلٰى اَهْلِ الذَّهَبِ اَلْفُ دِيْنَارٍ وَفِي الْاَنْفِ اِذَا اُوْعِبَ جَدْعُهُ الدِّيَةُ مِائَةٌ مِّنَ الْاِبِلِ وَفِي الْاَسْنَانِ الدِّيَةُ وَفِي الشَّفَتَيْنِ الدِّيَةُ وَفِي الْبَيْضَتَيْنِ الدِّيَةُ وَفِي الذَّكَرِ الدِّيَةُ وَفِي الصُّلْبِ اَلدِّيَةُ وَفِي الْعَيْنَيْنِ الدِّيَةُ وَفِي الرِّجْلِ الواحِدَةِ نِصْفُ الدِّيَةِ وَفِي الْمَأْمُوْمَةِ ثُلُثُ الدِّيَةِ وَفِي الْجَائِفَةِ ثُلُثُ الدِّيَةِ وَفِي الْمُنَقِّلَةِ خَمْسَ عَشَرَةَ مِنَ الْاِبِلِ وَفِيْ كُلِّ اِصْبَعٍ مِّنْ اَصَابِعِ الْيَدِ وَالرِّجْلِ عَشْرٌ مِنَ الْاِبِلِ وَفِي السِّنِّ خَمْسٌ مِّنَ الْاِبِلِ۔ رَوَاهُ النَّسَائِيُّ وَالدَّارِمِيُّ وَفِيْ رِوَايَةِ مَالِكٍ وَفِي الْعَيْنِ خَمْسُوْنَ وَفِي الْيَدِ خَمْسُوْنَ وَفِي الرِّجْلِ خَمْسُوْنَ وَفِي الْمُوْضِحَةِ خَمْسٌ۔

3492. Sayyiduna Abu Bakr ibn Muhammad ibn Amr ibn Hazm رحمہ اللہ reported on the authority of his father (Muhammad ibn Amr رحمہ اللہ) that his grandfather (Amr ibn Hazm رضی اللہ عنہ) narrated that Allah's Messenger صلی اللہ علیہ وسلم wrote to the people of Yemen. His letter had these (instructions): [He who deliberately kills a Muslim for no reason at all (which is qatl amd) must bear retaliation for what his hands have wrought (and he will be killed for the doing of his hands) unless the heirs of the person killed are willing (to pardon him or to accept pecuniary compensation).]

The letter also said: [A man (who has killed her) may be killed in retaliation for a woman (he killed).]

And it had: [the bloodwit for life is one hundred camels (so he who has them may give them as per guidelines mentioned previously).

And whoso has gold, may give one thousand dinars.

The bloodwit for the complete cutting off of a nose is nose hundred camels that must be paid.

A full bloodwit is payable for the teeth.

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And so full bloodwit for the lips (when they are completely sundered).
And a full bloodwit for both the testicles
And a full bloodwit for the penis. And a full bloodwit for the backbone
And a full blood wit for the eyes. And a half bloodwit is payable for one foot.
And one-third of the bloodwit for wounding the scalp.
And one-third of the bloodwit for a stab wound that pierces the body.
And fifteen camels are paid for a wound in the head that displaces the bone.
And ten camels for each finger and each toe.
And five camels for a tooth.]
A version in (Muwatta of) Maalik رحمه الله, the words are: [for an eye, (the bloodwit is) fifty (camels),
for a hand, fifty (camels),
for a foot, fifty (camels),
and, for a wound that lays bare (or dislodges) a bone, (the bloodwit is) five (camels).][1]

COMMENTARY: If anyone commits deliberate murder and the heirs of the person who he kills do not kill him in retaliation and, if they are willing, bloodwit will be *wajib (obligatory)*. As for the perpetrator of accidental murder or murder resembling deliberate murder, he is never punishable by retaliation, but only bloodwit is *wajib (obligatory)* on him.

Diyah or bloodwit may be paid by camels, or in gold at one thousand dinars, or in silver at ten thousand dirhams. However, here silver is not mentioned, sufficing on conjecture, so it does not imply that payment of bloodwit in silver is not allowed. Rather, whatever the heirs of the murdered person and the killer decide between themselves should be the unit of bloodwit.

As for the jurists, they differ on the validity of dirhams and dinars. Imam Abu Hanifah رحمه الله and Imam Ahmad رحمه الله rule that if the giver has camels but wishes to pay the diyah in monetary units, then it is allowed to receive that from him, Imam Shafi'i رحمه الله, however, rules that if he has camels then monetary compensation should not be made, unless both sides agree to it.

The hadith prescribes a full bloodwit for both eyes (when they are blinded). The basic rule concerning bloodwit for cutting off a limb is that a full boodwit becomes *wajib (obligatory)* when the usefulness of the limb is lost completely or its look and beauty is impaired fully. The reason is that it is a kind of killing or making someone's life useless. More than that, Allah's Messenger has commanded that a full bloodwit may be paid for these limbs.

Further, from this base, other related rules are deduced. It is reported that Sayyiduna Umar رضى الله عنه had made four bloodwits *wajib (obligatory)* on a man who had struck another man with a single blow that had deprived him of his brain-power, hearing, sight and speech, all four things.

Moreover, if a person shaves off a man's beard and it does not grow again then diyah or blood wit will be binding on him who has deprived him of his beard because he impaired the beauty of a human face. The same rule applies to the hair on one's head.[2]

(٣٤٩٣) وَعَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ قَالَ قَضَى رَسُولُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فِي الْمَوَاضِحِ خَمْسًا

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[1] Nasai # 4853, Darimi # 2366, Bayhaqi 4-89, 90, Ibn Hibban # 793,Muwat5ta Maalik # 1 (uqul)..

[2] See also the Hidaya-Commentary on the Islamic Laws v2 p 595 (beard & Scalp) and 5946 (Darul Isha'at Karachi)

خَمْسًا مِنَ الْإِبِلِ وَفِي الْأَسْنَانِ خَمْسًا خَمْسًا مِنَ الْإِبِلِ۔ رَوَاهُ أَبُوْدَاوُدَ وَالنَّسَائِيُّ وَالدَّارِمِيُّ وَرَوَى التِّرْمِذِيُّ وَابْنُ مَاجَةَ الْفَصْلَ الْأَوَّلَ۔

3493. Sayyiduna Amr ibn Shu'aub رحمه‌الله narrated from his father from his grand father that Allah's Messenger صلى‌الله‌عليه‌وسلم decided that (as blood wit) five camels should be paid for every such wound that bares a bone, and (also) five camels for every tooth.[1]

COMMENTARY: The diyah of all teeth is one hundred camels but of one tooth is five, so this does not seem correct mathematically. The fact is that it is not necessary that our reasoning should encompass all the commands and directions given to us by the noble Prophet صلى‌الله‌عليه‌وسلم. Many commands there are that belie reasoning. It is enough for him to give a command and for us to obey it.

BLOOD WIT FOR DIGITS IS AT PAR

(٣٤٩٤) وَعَنِ ابْنِ عَبَّاسٍ قَالَ جَعَلَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ أَصَابِعَ الْيَدَيْنِ وَالرِّجْلَيْنِ سَوَاءً۔

(رواه الترمذى)

3494. Sayyiduna Ibn Abbas رضى‌الله‌عنه narrated that Allah's Messenger صلى‌الله‌عليه‌وسلم made the fingers and toes equal (in respect of blood wit, even thumb and little finger).[2]

(٣٤٩٥) وَعَنْهُ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ أَلْأَصَابِعُ سَوَاءٌ وَالْأَسْنَانُ سَوَاءٌ الثَّنِيَّةُ وَالضِّرْسُ سَوَاءٌ هٰذِهٖ وَهٰذِهٖ سَوَاءٌ۔ (رواه ابوداؤد)

3495. Sayyiduna Ibn Abbas رضى‌الله‌عنه narrated that Allah's Messenger صلى‌الله‌عليه‌وسلم said, "(In respect of blood wit,) the digits are equal, the teeth are equal, the front tooth and the molar tooth are equal, this and this (little finger and thumb) are equal."[3]

BLOOD WIT FOR DHIMMI INFIDEL IS HALF THAT FOR MUSLIM

(٣٤٩٦) وَعَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيْهِ عَنْ جَدِّهٖ قَالَ خَطَبَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَامَ الْفَتْحِ ثُمَّ قَالَ أَيُّهَا النَّاسُ إِنَّهٗ لَا حِلْفَ فِي الْإِسْلَامِ وَمَا كَانَ مِنْ حِلْفٍ فِي الْجَاهِلِيَّةِ فَإِنَّ الْإِسْلَامَ لَا يَزِيْدُهٗ إِلَّا شِدَّةً الْمُؤْمِنُوْنَ يَدٌ عَلٰى مَنْ سِوَاهُمْ يُجِيْرُ عَلَيْهِمْ أَدْنَاهُمْ وَيَرُدُّ عَلَيْهِمْ أَقْصَاهُمْ يَرُدُّ سَرَايَا هُمْ عَلٰى قَعِيْدَتِهِمْ لَا يُقْتَلُ مُؤْمِنٌ بِكَافِرٍ، دِيَةُ الْكَافِرِ نِصْفُ دِيَةِ الْمُسْلِمِ لَا جَلَبَ وَلَا جَنَبَ وَلَا تُؤْخَذُ صَدَقَاتُهُمْ إِلَّا فِيْ دُوْرِهِمْ وَفِيْ رِوَايَةٍ قَالَ دِيَةُ الْمُعَاهِدِ نِصْفُ دِيَةِ الْحُرِّ۔ (رواه ابوداؤد)

3496. Sayyiduna Amr ibn Shuayb رحمه‌الله narrated from his father (Shuayb رحمه‌الله) from his grand father that in the year of the conquest (of Makkah), Allah's Messenger صلى

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[1] Tirmidhi # (only first part) # 1390, Abu Dawud # 4566, Ibn Majah (only first part), Nasai #, Darimi # 2372, Musnad Ahmad 2-215

[2] Tirmidhi # 1391, Abu Dawud # 4561

[3] Abu Dawud # 4459, Ibn Majah # 2650

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ﷺ delivered a sermon and (after praise and glory of Allah) said, "O you people! There is no confederacy in Islam but the ones that existed during the jahiliyah (ignorance period), surely Islam makes it stronger. The believers are like one hand against those besides them (in spreading good and helping each other). The humblest of them extends protection and the must distant of them has (as much) right. Their army regards also as rightful (to who spoils as are not with it, but) who are at home.

No believer may be killed for an (enemy) infidel. The blood wit for an infidel (dhimmi) is half that for a Muslim.

(The collectors of zakah (Annual due charity) may pay heed!) Animals are not to be brought to be valued for zakah (Annual due charity). (And, the assesses for zakah (Annual due charity) may also pay heed!) Animals must not be taken away (far off) to their pastures. But, Zakah (Annual due charity) will be collected only in their residences."

And according to a version, he said, "The blood wit for the covenant holder is half that for a freeman."[1]

COMMENTARY: The Arabic word in the text is (حلف)(hilf). It means to make an agreement, to bind into a contract. In pre-Islamic times, people used to bind each other with covenants, like agreeing to inherit one from the other, helping each other in disputes and fighting and if one of them was penalized, the other would help pay the penalty.

Allah's Messenger ﷺ forbade the making of such contracts because it was an unjust custom and has no place in Islam. Apart from that, the people of the jahiliyah (ignorance period) also agreed to help the oppressed, treat relatives with kindness and uphold human rights. This was an excellent form of mutual love and co-operation, so the Prophet ﷺ permitted this kind of covenants in Islam, too.

The words 'most distant of them has right and their army regards as rightful (to spoils) who are at home' This portion has been elaborated in the commentary on hadith (#3475) of Sayyiduna Aliرضی اللہ عنہ. Also, the words that a believer will not be killed for an infidel have been explained there.

As for the blood wit for an infidel being half of the for a believer, this is what Imam Maalikرحمہ اللہ follows. Imam Shafi'Iرحمہ اللہ (according to one opinion) and Imam Ahmadرحمہ اللہ say that the blood wit for an infidel is one-third the blood wit for a Muslim. Imam Abu Hanifahرحمہ اللہ holds that the blood wit for an infidel is equal to that of a Muslim. It must be remembered that this entire discussion is about a disbelieving dhimmi. The enemy disbeliever is not entitled to a blood wit. According to a haidth quoted in the Hidayah, "Every dhimmi who has a covenant with the Islamic state is entitled to a blood wit of one thousand dinars as long as the covenant is valid." After that it is stated that Abu Bakr رضی اللہ عنہ, Umar رضی اللہ عنہ and Uthman رضی اللہ عنہ abided by this hadith but when Muawiyah رضی اللہ عنہ came he made it half.

The Hidayah has also quoted Sayyiduna Aliرضی اللہ عنہ as saying, "The dhimmis pay the jizyah to us so that their blood and their properties may be safe and protected like our own are."

In other words, the compiler of the Hidayah wishes to establish that the blood wit for a dhimmi is like that for a Muslim. He writes that whatever is ascribed to the other sahabahرضی

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[1] Abu Dawud # 4583, Ibn Majah # 2652, Nasai # 4837, Darimi # 2370.

رضی اللہ عنہم against this cannot contradict these well-known and authentic aathar and sayings.

The instructions to the collectors of zakah (Annual due charity) and payers of zakah (Annual due charity) have been treated very exhaustively in the Book of zakah (Annual due charity). We suffice here with a brief explanation. Jalab (جلب) is the zakah (Annual due charity)-collector who halts at a place distant from the owners of the animals and instructs them to bring their animals to him. And janab (جنب) is the owner of the animals who takes his animals to a place very far away from the zakah (Annual due charity). Collector and asks him to come to the animals land assess them.

The Prophet صلی اللہ علیہ وسلم forbade both of them to behave in such way. Thus, by following his directions, neither of them would face inconvenience. The zakah (Annual due charity) would be received at the residences of the owners.

BLOOD WIT ON ACCIDENTAL KILLING

(٣٤٩٧) وَعَنْ خِشْفِ بْنِ مَالِكٍ عَنِ بْنِ مَسْعُوْدٍ قَالَ قَضٰى رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فِيْ دِيَةِ الْخَطَأِ عِشْرِيْنَ بِنْتَ مَخَاضٍ وَعِشْرِيْنَ ابْنَ مَخَاضٍ ذُكُوْرٍ وَعِشْرِيْنَ بِنْتَ لَبُوْنٍ وَعِشْرِيْنَ جِذْعَةً وَعِشْرِيْنَ حِقَّةً۔ رَوَاهُ اَبُوْدَاوٗدَ وَالتِّرْمِذِيُّ وَالنَّسَائِيُّ وَالصَّحِيْحُ اَنَّهٗ مَوْقُوْفٌ عَلَى ابْنِ مَسْعُوْدٍ وَخِشْفٌ مَجْهُوْلٌ لَا يُعْرَفُ اِلَّا بِهٰذَا الْحَدِيْثِ وَرَوٰى فِيْ شَرْحِ السُّنَّةِ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَدٰى قَتِيْلَ خَيْبَرَ بِمِائَةٍ مِنْ اِبِلِ الصَّدَقَةِ وَلَيْسَ فِيْ اَسْنَانِ اِبِلِ الصَّدَقَةِ ابْنُ مَخَاضٍ اِنَّمَا فِيْهَا ابْنُ لَبُوْنٍ۔

3497. Sayyiduna Khishf ibn Maalik رحمہ اللہ reported that (Sayyiduna) Ibn mas'ud رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم gave his decision in case of accidental killing that blood money should be paid thus: twenty she-camels and twenty male in their second year, twenty she-camels in their third year, twenty she-camels in their fifth year and twenty she-camels in their fourth year.

The sound opinion is that this hadith is mawquf at Ibn Mas'ud رضی اللہ عنہ and not traced to the Prophet صلی اللہ علیہ وسلم).

It is reported in Sharh us-*sunnah* (*Prophet's* صلی اللہ علیہ وسلم *practice)* that the Prophet صلی اللہ علیہ وسلم paid blood money for a man who was slain at Khaybar from the camels received for zakah (Annual due charity), one hundred camels, none of them being ibn Makhad (or lin its second year). Rather, there only were ibn Labun (in their third year), and they were all of them males.[1]

(Detailed account will follow in the chapter al-Qasamat, about the blood money payment at Khaybar)

COMMENTARY: The hundred camels of blood wit of accidental killing should be of five kinds. There is no disagreement about it but the scholars differ on how they are to be made up. Imam Abu Hanifah رحمہ اللہ abides by this hadith in their composition but Imam Shafi'I رحمہ اللہ includes Ibn Labun (Camels of two years complete) instead of Ibn Makhad (of one year complete).

Mulla Ali Qari's book Mirqat maybe seen on this question of disagreement on the

[1] Tirmidhi # 1387, 1391, Abu Dawud # 4545, Nasai # 4802 (4816), Ibn Majah # 2631, Musnad Ahmad 1-486.

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composition of the one hundred camels. In considering this, it must be remembered that the Prophet صلى الله عليه وسلم had paid the blood money to that man only as a gesture of good-will, not because of an obligation.

The other version (of Sharh us-*sunnah (Prophet's* صلى الله عليه وسلم *practice)*) is contradictory to the first in that it replaces Ibn Makhad with Ibn Labun, and so upholds the view of Imam Shafi'i رحمه الله. This too, has been covered by Mulla Ali Qari رحمه الله in Mirqat.

BLOOD WIT IS BASED ON CAMELS

(٣٤٩٨) وَعَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ اَبِيْهِ عَنْ جَدِّهٖ قَالَ كَانَتْ قِيْمَةُ الدِّيَةِ عَلٰى عَهْدِ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ ثَمَانَ مِائَةِ دِيْنَارٍ اَوْ ثَمَانِيَةَ اٰلَافِ دِرْهَمٍ وَدِيَةُ اَهْلِ الْكِتَابِ يَوْمَئِذٍ نِصْفُ مِنْ دِيَةِ الْمُسْلِمِيْنَ قَالَ فَكَانَ كَذٰلِكَ حَتّٰى اُسْتُخْلِفَ عُمَرُ فَقَامَ خَطِيْبًا فَقَالَ اِنَّ الْاِبِلَ قَدْ غَلَتْ قَالَ فَفَرَضَهَا عُمَرُ عَلٰى اَهْلِ الذَّهَبِ اَلْفَ دِيْنَارٍ وَعَلٰى اَهْلِ الْوَرِقِ اِثْنَى عَشَرَ اَلْفًا وَعَلٰى اَهْلِ الْبَقَرِ مِائَتَىْ بَقَرَةٍ وَعَلٰى اَهْلِ الشَّاءِ اَلْفَى شَاةٍ وَّعَلٰى اَهْلِ الْحُلَلِ مِائَتَىْ حُلَّةٍ قَالَ وَتَرَكَ دِيَةَ اَهْلِ الذِّمَّةِ لَمْ يَرْفَعْهَا فِيْمَا رَفَعَ مِنَ الدِّيَةِ۔ (رواه ابوداؤد)

3498. Sayyiduna Amr ibn Shuayb رحمه الله narrated from his father from his grandfather that the time of Allah's Messenger صلى الله عليه وسلم the value of the (one hundred camels of) blood wit was eight hundred dinars or eight thousand dirhams. And, those days, the blood wit for the people of the Book (the Christians and Jews) was half the blood wit for the Muslims.

He said (further) that it continued (to be practiced) in this way till Umar رضى الله عنه became Khalifah and delivered a sermon in which he said, "The camels have become dear!"

The narrator went on to say: Umar رضى الله عنه fixed the value for those who had gold at one thousand dinars, for those who had silver at twelve thousand (dirhams), for those who had cows at two hundred cows, for those who had sheep at two thousand sheep, and for those who had suits of clothing (as trade merchandise) at two hundred pairs of clothing.

The narrator added: He left the blood wit for the dhimmi unchanged (at four thousand dirhams as during the time of the Prophet صلى الله عليه وسلم without raising it in proportion to the increase he made in the (other) blood wit.[1]

COMMENTARY: Some people say that this hadith is evidence that the measure of blood wit is camels. The amounts of gold and of silver were calculates relative to one hundred camels. Hence, Imam Shafi'I رحمه الله opines that the value of these two metals can differ relative to appreciation (or depreciation) of the price (of camel).

Ibn Maalik رحمه الله said that pairs (or suits) of clothing mean a lower wrapper and a sheet of cloth (for the upper torso).

Teebi رضى الله عنه said that the blood wit for a Muslim was fixed at twelve thousand dirhams but that for a dhimmi was unchanged at four thousand dirhams, so it became one-third of the blood wit for a Muslim. So, the Shafi'is رحمه الله and their like-minded hold that the blood wit for the dhimmis is one-third that of Muslims, but the Hanafis رحمه الله say that both are at

[1] Abu Dawud # 4542

par. Shamni رحمه الله gives (the juristic ruling that is in practice as) value of blood wit in: Gold at one thousand dinars, silver at ten thousand dirhams, and camels at one hundred camels. However, Imam Shafi'i رحمه الله contends that blood wit in silver is at twelve thousand dirhams.

(٣٤٩٩) وَعَنِ ابْنِ عَبَّاسٍ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَنَّهٗ جَعَلَ الدِّيَةَ اِثْنَى عَشَرَ اَلْفًا۔ (رواه الترمذی وابوداؤد والنسائی والدارمی)

3499. Sayyiduna Ibn Abbas رضی الله عنه said that the Prophet صلی الله علیه وسلم fixed the blood wit at twelve thousand (dirhams).[1]

BLOOD WIT BELONGS TO HEIRS OF THE MURDERED

(٣٥٠٠) وَعَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ اَبِيْهِ عَنْ جَدِّهٖ قَالَ كَانَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يُقَوِّمُ دِيَةَ الْخَطَاِ عَلٰى اَهْلِ الْقُرٰى اَرْبَعَ مِائَةِ دِيْنَارٍ اَوْ عَدْلَهَا مِنَ الْوَرِقِ وَيُقَوِّمُهَا عَلٰى اَثْمَانِ الْاِبِلِ فَاِذَا غَلَتْ رَفَعَ فِيْ قِيْمَتِهَا وَاِذَا هَاجَتْ رُخُصٌ نَقَصَ مِنْ قِيْمَتِهَا وَبَلَغَتْ عَلٰى عَهْدِ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَا بَيْنَ اَرْبَعَ مِائَةِ دِيْنَارٍ اِلٰى ثَمَانِ مِائَةِ دِيْنَارٍ وَعِدْلُهَا مِنَ الْوَرِقِ ثَمَانِيَةُ اٰلَافِ دِرْهَمٍ قَالَ وَقَضٰى رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَلٰى اَهْلِ الْبَقَرِ مِائَتَيْ بَقَرَةٍ وَعَلٰى اَهْلِ الشَّاءِ اَلْفَيْ شَاةٍ وَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِنَّ الْعَقْلَ مِيْرَاثٌ بَيْنَ وَرَثَةِ الْقَتِيْلِ وَقَضٰى رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَنَّ عَقْلَ الْمَرْاَةِ بَيْنَ عَصَبَتِهَا وَلَا يَرِثُ الْقَاتِلُ شَيْئًا۔ (رواه ابوداؤد والنسائی)

3500. Sayyiduna Amr ibn Shuayb رضی الله عنه narrated from his father from his grand father that Allah's Messenger صلی الله علیه وسلم used to fix the blood wit against accidental death at four hundred dinars or their value in silver (which was four thousand dirhams) for villagers (or urban dwellers) and he based it on the price of camels. Thus, when the camels became costly, he raised the amount (of blood wit) to be paid, but when they became cheaper, he reduced the amount (of blood wit) payable. (This is why) in the time of Allah's Messenger صلی الله علیه وسلم, the amount (of blood wit) was between four hundred and eight hundred dinars whose value in silver was eight thousand dirhams.

The narrator added: Allah's Messenger صلی الله علیه وسلم decided that those who had cow should pay two hundred cows and those who had sheep should pay two thousand sheep. Allah's Messenger صلی الله علیه وسلم (also) said that the amount of blood wit is the right of the heirs of the person who is killed.

And, Allah's Messenger صلی الله علیه وسلم decided (also) that the blood wit payable by a woman is to be divided among her paternal relatives and the killer should be deprived of ;inheritance (if he has killed one from whom he is eligible to inherit and will get neither from his blood wit nor from his legacy).[2]

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[1] Tirmidhi # 1388, Abu Dawud # 4546, Nasai # 4803, Ibn Majah # 2632, Darimi # 2363.

[2] Abu Dawud # 4564, Nasai # 4801, Ibn Majah # 2630, Musnad Ahmad # 2-224

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COMMENTARY: Teebi رحمه الله said that this hadith too is evidence that the measure of blood wit is camels. It is fixed on the basis of camels and is *wajib (obligatory)* to pay at the number of camels fixed. This is the opinion of Imam Shafi'i رحمه الله.

The blood wit on a woman who commits a murder will be paid by her asabat, meaning, her helpers and family. This is as the command for a man.

A woman will not be responsible as a slave is, for, while it is *wajib (obligatory)* on a slave to pay the blood wit imposed on him on his own and is not payable by his asabat, the bloodwit imposed on a woman is not *wajib (obligatory)* on her to pay but payable by her asabat.

PERPETRATOR OF MURDER RESEMBLING DELIBERATE MURDER IS NOT EXECUTED

(٣٥٠١) وَعَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ اَبِيْهِ عَنْ جَدِّهٖ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ عَقْلُ شِبْهِ الْعَمْدِ مُغَلَّظٌ مِثْلُ عَقْلِ الْعَمْدِ وَلَا يُقْتَلُ صَاحِبُهٗ۔ (رواه ابوداؤد)

3501. Sayyiduna Amr ibn Shuayb رحمه الله narrated fromhis father from his grandfather that the Prophet صلى الله عليه وسلم said, "Blood wit for murder that resembles deliberate murder is as severe as blood wit for deliberate murder, but the perpetrator of murder resembling deliberate murder is not be killed."[1]

COMMENTARY: While diyah or blood wit against deliberate murder and against murder resembling deliberate murder resemble, qisas is liable on the former but not on murder that seems like deliberate. There should be no confusion that qisas (or retaliation) is also imposed on the perpetrator of murder that looks like deliberate, but it is imposed only on the former.

BLOOD WIT FOR LOSS OF SIGHT

(٣٥٠٢) وَعَنْهُ عَنْ اَبِيْهِ عَنْ جَدِّهٖ قَالَ قَضٰى رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فِي الْعَيْنِ الْقَائِمَةِ السَّادَّةِ لِمَكَانِهَا بِثُلُثِ الدِّيَةِ۔ (رواه ابوداؤد والنسائی)

3502. Sayyiduna Amr ibn Shuayb رحمه الله narrated from his father from his grandfather that Allah's Messenger صلى الله عليه وسلم gave verdict for an eye that (is wounded but) is in its place yet has lost sight that one-third of blood wit is payable.[2]

COMMENTARY: If a person strikes another so that he loses his eyesight though the eye stands in its socket and the face retains its character then one-third blood wit will be *wajib (obligatory)* on the man responsible for the damage. It has been mentioned previously that if both eyes are lost the full blood wit is payable (one hundred camels), and if one is lost then half blood wit is payable.

Some Ulama (Scholars) say that the usefulness is not taken away completely in this case. So the blood wit for it should be as for a man who is beaten (but he loses no limb and suffers no wound) but he only gets a black body. The blood wit for it should be a proportionate hukhumah(حكومة).

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[1] Abu Dawud # 4565, Musnad Ahmad 2-224

[2] Abu Dawud # 4567, Nasai # 4840

The word hukumah is a terminology concerning blood wit, the valuation is called arbitration. It supposes the man to be a slave and calculates the depreciation in his value because of the wound. The amount of this decrease is the blood wit that is *wajib (obligatory)* of the man responsible to wound him. They maintain that the Prophet's صلى الله عليه وسلم verdict of one-third blood wit means not the regular blood wit but that deduced through hukumah.
Toorpushti رحمه الله has concluded in a discussion on this hadith that it is questionable.

BLOOD WIT FOR THE UNBORN CHILD

(٣٥٠٣) وَعَنْ مُحَمَّدِ بْنِ عَمْرٍو عَنْ اَبِيْ سَلَمَةَ عَنْ اَبِيْ هُرَيْرَةَ قَالَ قَضٰى رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فِي الْجَنِيْنِ بِغُرَّةٍ عَبْدٍ اَوْ اَمَةٍ اَوْ فَرَسٍ اَوْ بَغْلٍ۔ رَوَاهُ اَبُوْدَاوٗدَ وَقَالَ رَوٰى هٰذَا الْحَدِيْثَ حَمَّادُ بْنُ سَلَمَةَ وَخَالِدٌ الْوَاسِطِيُّ عَنْ مُحَمَّدِ بْنِ عَمْرٍو وَلَمْ يَذْكُرْ اَوْ فَرَسٍ اَوْ بَغْلٍ۔

3503. Sayyiduna Muhammad ibn Amr رحمه الله reported from Abu salmah who said that Abu Hurayrah رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم decided that the blood wit for miscarriage is a ghurrah. And a ghurrah is a male or a female slave, or a horse, or a mule.
Abu Dawud who transmitted it pointed out that Hammad ibn Salamah and Khalid Wasti transmitted this hadith from Muhammad ibn Amr but neither mentioned 'horse or mule'.[1]

COMMENTARY: Allamah Nawawi رحمه الله said that the ghurrah is something very exquisite. It is applied to man in the sense that Allah created him in the best of forms.
Some scholars say that a narrator included horse and mule in ghurrah in this hadith on his own. Ghurrah is applied only to a human being who belongs to someone.

QUACK IS LIABLE TO PAY FOR PATIENT'S DEATH

(٣٥٠٤) وَعَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ اَبِيْهِ عَنْ جَدِّهٖ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ مَنْ تَطَبَّبَ وَلَمْ يُعْلَمْ مِنْهُ طِبٌّ فَهُوَ ضَامِنٌ۔ (رواه ابوداؤد والنسائى)

3504. Sayyiduna Amr ibn Shuayb رحمه الله narrated from his father from his grandfather that Allah's Messenger صلى الله عليه وسلم said, "He who practices medicine but is not known as a physician (and someone dies at his hands) will be held responsible."[2]

COMMENTARY: If anyone who is not a physician pretends to be one and treats patients one of whom dies, then all the ulama (Scholars) agree that blood wit will be *wajib (obligatory)* on his paternal relatives. However, he will not be killed in retaliation because he had the patient's permission to treat him.

BLOOD WIT WAS FORGIVEN TO THE POOR

(٣٥٠٥) وَعَنْ عِمْرَانَ بْنِ حُصَيْنٍ اَنَّ غُلَامًا لِاُنَاسٍ فُقَرَاءَ قَطَعَ اُذُنَ غُلَامٍ لِاُنَاسٍ اَغْنِيَاءَ فَاَتٰى اَهْلُهُ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالُوْا اِنَّا اُنَاسٌ فُقَرَاءُ فَلَمْ يَجْعَلْ عَلَيْهِمْ شَيْئًا۔ (رواه ابوداؤد والنسائى)

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[1] Abu Dawud # 4579, Tirmidhi # 1410, Musnad Ahmad 2-498
[2] Abu Dawud # 4586, Ibn Majah # 3466, Nasai # 4830

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3505. Sayyiduna Imran ibn Husayn رضی اللہ عنہ narrated that a boy who belonged to a poor family cut off the ear of a boy belonging to a rich family. His family members came to the Prophet صلی اللہ علیہ وسلم and pleaded, "We are, indeed, poor people (so we may not be asked to pay the blood wit)." So, he did not impose anything on them.[1]

COMMENTARY: If a boy happens to cause loss or damage to anyone then because of neglect of a correct way, he will be classified as perpetrator of accidental wrong. The penalty for it will be imposed on his relatives as *wajib (obligatory)*. If a boy kills someone, then retaliation shall not be liable on him.

In this, case penalty was *wajib (obligatory)* on the boy's parents. However, the Prophet صلی اللہ علیہ وسلم condoned that because of their poverty and made no blood wit *wajib (obligatory)* on them. The boy who cut off the ear of the rich boy was not a slave but a freeman. If he was a slave then he would have had to pay the blood wit himself and the poverty of his masters would not have absolved him of the fine.

SECTION III اَلْفَصْلُ الثَّالِثُ

KILLING RESEMBLING DELIBERATE & ACCIDENTAL KILLING

(٣٥٠٦) عَنْ عَلِيٍّ اَنَّهٗ قَالَ دِيَةُ شِبْهِ الْعَمَدِ اَثْلَاثًا ثَلَاثٌ وَّثَلَاثُوْنَ حِقَّةٌ وَّثَلَاثٌ وَّثَلَاثُوْنَ جَذَعَةٌ وَّاَرْبَعٌ وَّثَلَاثُوْنَ ثَنِيَّةٌ اِلٰى بَازِلِ عَامِهَا كُلُّهَا خَلِفَاتٌ وَفِيْ رِوَايَةٍ قَالَ فِي الْخَطَاِ اَرْبَاعًا خَمْسٌ وَّعِشْرُوْنَ حِقَّةٌ وَخَمْسٌ وَّعِشْرُوْنَ جَذَعَةٌ وَخَمْسٌ وَعِشْرُوْنَ بِنَاتِ لَبُوْنٍ وَخَمْسٌ وَعِشْرُوْنَ بَنَاتِ مَخَاضٍ۔ (رواہ ابوداؤد)

3506. Sayyiduna Ali رضی اللہ عنہ said that the blood-wit for murder that resembles deliberate murder is (one hundred she-camels as *wajib (obligatory)*) of three kinds: thirty-three she-camels in their fourth year, thirty-three she-camels in their fifth year and thirty-four she-camels in their sixth year. All of them must be pregnant. According to another version, he said that blood-wit for accidental murder is four kinds of (one hundred she-camels as *wajib (obligatory)*): twenty-five she-camels in their fourth year, twenty-five she-camels in their third year, and twenty-five she camels in their second year.[2]

(٣٥٠٧) وَعَنْ مُجَاهِدٍ قَالَ قَضٰى عُمَرُ فِيْ شِبْهِ الْعَمَدِ ثَلَاثِيْنَ حِقَّةً وَثَلَاثِيْنَ جَذَعَةً وَاَرْبَعِيْنَ خِلْفَةً مَا بَيْنَ ثَنِيَّةٍ اِلٰى بَازِلِ عَامِهَا۔ (رواہ ابوداؤد)

3507. Sayyiduna Mujahid رحمہ اللہ said that Umar رضی اللہ عنہ decided that the blood wit for murder that resembles deliberate murder is thirty she-camels in their fourth year, thirty she-camels in their fifth year and forty pregnant she-camels in their sixth year.[3]
(This hadith # 3507 upholds the contention of Imam Shafi'i رحمہ اللہ)

BLOOD WIT FOR THE UNBORN

(٣٥٠٨-٣٥٠٩) وَعَنْ سَعِيْدِ بْنِ الْمُسَيَّبِ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَضٰى فِي الْجَنِيْنِ يُقْتَلُ فِيْ بَطْنِ

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[1] Abu Dawud # 4590, Nasai #4751.

[2] Abu Dawud # 4551

[3] Abu Dawud # 4550,Musnad Ahmad 1-49.

أُمِّهِ بِغُرَّةٍ عَبْدٍ اَوْ وَلِيْدَةٍ فَقَالَ الَّذِىْ قُضِىَ عَلَيْهِ كَيْفَ اَغْرَمُ مَنْ لَا شَرِبَ وَلَا اَكَلَ وَلَا نَطَقَ وَلَا اسْتَهَلَّ وَمِثْلَ ذٰلِكَ يُطَلُّ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِنَّمَا هٰذَا مِنْ اَخْوَانِ الْكُهَّانِ۔ رَوَاهُ مَالِكٌ وَالنَّسَائِىُّ مُرْسَلًا وَرَوَاهُ اَبُوْدَاوٗدَ عَنْهُ عَنْ اَبِىْ هُرَيْرَةَ مُتَّصِلًا۔

3508. Sayyiduna Sa'eed ibn Musayyib رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم decided that a ghurrah be paid as blood wit for a child that is killed in its mother's womb. (Ghurrah is a male or female slave.) The man who was the recipient of this decision asked, "why should I be penalized for one who has not eaten or drunk, or spoken, or cried? The like of it is dropped." Allah's Messenger صلی اللہ علیہ وسلم said, "This man belongs merely to the kahin (soothsayers)."[1]

3509. Sa'eed رضی اللہ عنہ reported like it from Abu Hurayrah رضی اللہ عنہ [2]

COMMENTARY: The kahin is a soothsayer. He speaks in rhyming verse to chant his listeners. However, it is eloquence and fluency that appeals to the listeners. The Prophet's صلی اللہ علیہ وسلم speech was such, more particularly his supplications. For example, this prayer:

اَللّٰهُمَّ اِنِّىْ اَعُوْذُ بِكَ مِنْ عِلْمٍ لَا يَنْفَعُ وَمِنْ قَلْبٍ لَا يَخْشَعُ الخ

O Allah, I seek refuge in You from the learning that is of no profit, and a heart that is not fearful.....

Shamni رحمہ اللہ said that if anyone strikes a pregnant woman and she suffers a miscarriage, then the blood wit is a ghurrah, meaning five hundred dirhams payable by the tribe of the person striking the woman. He said that ghurrah is five hundred dirhams according to the ulama (Scholars).

If a pregnant woman is struck on her belly and a living child emerges from her womb and after that dies, then a full blood wit becomes *wajib (obligatory)*.

[1] Nasai # 5820, Muwatla 6 (equal).

[2] Abu Dawud # 4576, Muslim # 36-168, Musnad Ahmad # 2-274.

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CHAPTER - III

OFFENCES THAT DO NOT MAKE PENALTY LIABLE بَابُ مَا لَا يُضْمَنُ مِنَ الْجِنَايَاتِ

The word (جنايات) (Jinayat)[1] is the plural of (جنايه)(jinayah). The word jinayah means 'offences committed against persons such as murder, wounding, drowning,' 'felony.'
The preceding chapter mentioned the punishments, blood wit, retaliation etc. that are imposed on jinayah. In this chapter such kinds of jinayah are mentioned for which no punishment becomes *wajib (obligatory).*

SECTION I اَلْفَصْلُ الْاَوَّلُ

NO RESPONSIBILITY FOR AN ANIMAL'S ACTION

(٣٥١٠) عَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَلْعُجْمَاءُ جُرْحُهَا جُبَارٌ وَالْمَعْدِنُ جُبَارٌ وَالْبِئْرُ جُبَارٌ۔ (متفق عليه)

3510. Sayyiduna Abu Hurayrah رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "The dumb animals! A wound caused by them is forgiven. (Falling in) a mine is forgiven. (Falling down) a well is forgiven."[2]

COMMENTARY: If an animal tramples, gores its horns, slaps with its tail or bites someone wounding or killing him, or it damages property then no compensation is payable, provided its keeper is not with it. If someone drives it, rides it or leads it, then that person will be liable for whatever damage to life or property the animal causes. This is what Imam Abu Hanifah رحمه الله says.
Imam Shafi'i رحمه الله contends that if the animal causes these things during day then nothing is payable or *wajib (obligatory)* on its owner. However, if any damage is caused by the animal at night then its owner is responsible and it is *wajib (obligatory)* on him to pay damages. It is the responsibility of the owners to lock or tether their animals in the night. By day, the fields, gardens and other things must be taken care of by their owners.

FORELEGS & HIND LEGS: It is stated in the Hidayah that one who drives the animal will be responsible for any damage that may be occasioned by its fore or hind legs. But, a person who leads the an animal behind him will be responsible for any damage caused by its fore legs only, not by its hind legs. The rider of an animal is answerable for anything the animal destroys by treading it down, striking it with its head, forelegs or body, But not its hind legs or tail.
If there is a rider on an animal and also one who drives it then damages will be *wajib (obligatory)* on both.[3]

MINE: If anyone falls into a mine or is buried in it then no damages are *wajib (obligatory)* on

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[1] Both 'a's are prolonged in the plural and only the first in the singular

[2] Bukhari # 6913, Muslim # 45-1710, Tirmidhi # 1377, Abu Dawud # 4593, Nasai # 2496, Ibn Majah # 2673, Darimi # 1668, Muwalto Maalik # 12 (Ugul), Musnad Ahmad # 2-728.

[3] Hidayah (English translation) v2 pp 619-620. The Urdu text (of Mazahir Haq) has that the rider is responsible for its hind legs also. (Dar ul-Isha'at Karachi.)

one who has dug the mine. If a person hires a labourer to dig a mine and he is buried when the mine collapses on him then no responsibility rests on the owner of the mine. This second possibility is not restricted hiring anyone to dig mines only but this rule applies also to other forms of hiring. The first possibility applies also to digging wells. If anyone digs a well on his own land or on a place where it is permitted then he is not responsible for damages when a passer-by falls into it.[1]

NO DAMAGES PAYABLE WHEN DEFENDING ONESELF

(٣٥١١) وَعَنْ يَعْلَى بْنِ أُمَيَّةَ قَالَ غَزَوْتُ مَعَ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ جَيْشَ الْعُسْرَةِ وَكَانَ لِي أَجِيْرٌ فَقَاتَلَ إِنْسَانًا فَعَضَّ أَحَدُهُمَا يَدَ الْآخِرِ فَانْتَزَعَ الْمَعْضُوْضُ يَدَهُ مِنْ فِي الْعَاضِ فَأَنْدَرَ ثَنِيَّتَهُ فَسَقَطَتْ فَانْطَلَقَ إِلَى النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَاهْدَرَ ثَنِيَّتَهُ وَقَالَ أَيَدَعُ يَدَهُ فِيْ فِيْكَ تَقْضِمُهَا كَالْفَحْلِ۔ (متفق عليه)

3511. Sayyiduna Ya'la ibn Umayyah رضی اللہ عنہ narrated that he had participatedwith Allah's Messenger صلی اللہ علیہ وسلم in the battle of the jaysh ul-usrah (army of distress which was the Battle of Tabuk in 9AH) and he had a servant (with him). He (the servant) had a dispute with another man and they fought one another (over something). One of them bit another's hand, and he pulled out his hand from the mouth of the other who bit him. This (action) dislodged his front tooth which fell out and he went to the Prophet صلی اللہ علیہ وسلم (to complain) but He did not impose any damage for the front tooth, saying "Should he leave his hand in your mouth while you munched it like a male camel?"[2]

COMMENTARY: The Prophet صلی اللہ علیہ وسلم did not agree to get the man who bit another's hand and lost his tooth in the process any compensation because the other man was defending himself. He had no option but to pull out his hand from the other's mouth.
It is stated in sharh us-*sunnah (Prophet's صلی اللہ علیہ وسلم practice)* that it a man tries to assault a woman and she attacks him to save herself and he dies, then nothing will be *wajib (obligatory)* on the woman who was engaged in self-defence.

PRESERVING CHASTITY: Sayyiduna Umar رضی اللہ عنہ was asked to decide about a girl who was collecting wood in a desolate place when a man followed her to molest her. She picked up a stone and flung it at the rascal who died on being hit by it. Umar رضی اللہ عنہ gave judgment, "This killing is from Allah (who punished him to preserve the chastity of an innocent girl). By Allah, no blood wit will be imposed because of it." Imam Shafi'i رحمہ اللہ held the same opinion.
Similarly, it is also allowed to defend oneself and protect one's property against bandits and miscreants. One must first try to make them see reason. If they do not desist and one has to kill them to protect oneself (or one's property) then their blood is forgiven to him. (There will be no retaliation.)

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[1] The word in the hadith is (جبار) Jubar. According to the LEXICON of Lanes (vz p 374) it mean: 'a thing of which no account, or for which no retaliation is taken.'

[2] Bukhari # 2265, Muslim # 23-1674, Nasa'i # 4764, Ibn Majah # 2656, Musnad Ahmad 4-223.

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DEFENDER IS MARTYR IF KILLED IN THE PROCESS

(٣٥١٢) وَعَنْ عَبْدِاللّٰهِ بْنِ عَمْرٍو وقَالَ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ مَنْ قُتِلَ دُوْنَ مَالِهٖ فَهُوَ شَهِيْدٌ۔ (متفق علیه)

3512. Sayyiduna Abdullah ibn Amr رضی اللہ عنہ narrated that he heard Allah's Messenger صلی اللہ علیہ وسلم say, "He who is killed for his property (protecting it) is a martyr."[1]

COMMENTARY: If anyone guards his property and someone kills him then he is a martyr. The same ruling applies to one who is killed while protecting his family members.

(٣٥١٣) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ جَاءَ رَجُلٌ فَقَالَ يَا رَسُوْلَ اللّٰهِ اَرَأَيْتَ اِنْ جَآءَ رَجُلٌ يُرِيْدُ اَخْذَ مَالِيْ قَالَ فَلَا تُعْطِهٖ مَالَكَ قَالَ اَرَأَيْتَ اِنْ قَاتَلَنِيْ قَالَ قَاتِلْهُ قَالَ اَرَأَيْتَ اِنْ قَتَلَنِيْ قَالَ فَاَنْتَ شَهِيْدٌ قَالَ اَرَأَيْتَ اِنْ قَتَلْتُهٗ قَالَ هُوَ فِي النَّارِ۔ (رواه مسلم)

3513. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that a man (came to the Prophet صلی اللہ علیہ وسلم and) submitted, "O Messenger of Allah, do tell me what (should I do) if a man comes to snatch my property?" He said, "Do not give him your property." He asked, "Tell me, what if he fights with me?." He said, "Fight with him." He asked, "Tell me, what if he kills me?" He said, "Then you become a martyr." He asked, "Tell me,, what if I kill him?" He said, "He will go to hell." (And you will not be responsible for anything.)[2]

COMMENTARY: This hadith urges the Muslims to resist strongly anyone who tries to hert them or cause them damage. This hadith arouses in the believers the spirit of courage. They should not show cowardice against anyone who tries to deprive them of their property and destroy them. A Muslim who has the strength of faith and trust in Allah is expected to face boldly the attacker, miscreant and mugger. He should prefer a death in an honourable manner than a disgraced life, and earn martyrdom. Or, he should get rid of the evil man consigning him to hell.

This hadith is evidence that even if the evil man is a Muslim then it is allowed to resist him and to kill him if that becomes necessary.

PEEPING EYES MAY BE PUT OUT

(٣٥١٤) وَعَنْهُ اَنَّهٗ سَمِعَ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ لَوِاطَّلَعَ فِيْ بَيْتِكَ اَحَدٌ وَلَمْ تَأْذَنْ لَهٗ فَخَذَفْتَهٗ بِحَصَاةٍ فَفَقَأْتَ عَيْنَهٗ مَا كَانَ عَلَيْكَ مِنْ جُنَاحٍ۔ (متفق علیه)

3514. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that he heard Allah's Messenger صلی اللہ علیہ وسلم say, "If anyone peeps into your house (through a hole while the door is shut) and you have not given him permission (to enter) and you throw a pebble at him blinding his eyes thereby, then there will be no sin on you."[3]

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[1] Bukhari # 2480, Muslim # 226-141, Abu Dawud # 4771, Tirmidhi # 1419, Nasai # 4087, Musnad Ahmad 2-163 (Abu Dawud is similar to it.)

[2] Muslim # 225-140

[3] Bukhari # 6888, Muslim # 44-2158, Nasai # 4861, Musnad Ahmad 2-243.

COMMENTARY: Imam Shafi'i رحمه الله abides by the haidth in toto. Imam Abu Hanifah رحمه الله says that it is a strong warning against peeping into any house and says that anyone who incapacitates an eye will have to pay damages.

(٣٥١٥) وَعَنْ سَهْلِ بْنِ سَعْدٍ اَنَّ رَجُلًا اطَّلَعَ فِيْ جُحْرٍ فِيْ بَابِ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَمَعَ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مِدْرًى يَحُكُّ بِهٖ رَأْسَهٗ فَقَالَ لَوْ اَعْلَمُ اَنَّكَ تَنْظُرُنِيْ لَطَعَنْتُ بِهٖ فِيْ عَيْنَيْكَ اِنَّمَا جُعِلَ الْاِسْتِئْذَانُ مِنْ اَجْلِ الْبَصَرِ۔ (متفق علیه)

3515. Sayyiduna sahl ibn Sa'd رضی الله عنه narrated that a man peeped through a hole in the door of (the house of) Allah's Messenger صلی الله علیه وسلم and Allah's Messenger صلی الله علیه وسلم had a spike (in his hand) with which he scratched his head. He (saw him peeping (into his house and) said, "If I had known that you were looking at me (deliberately) then I would have poked your eyes with it" (pointing to the spike). Seeking permission has been prescribed only because of the sight (that might not fall on non-mahrams)."[1]

COMMENTARY: It is as bad to peep into another's house as it is to enter it without permission. Teebi رضی الله عنه said that this hadith suggests that if anyone glances into someone's house unintentionally while passing before it, then he is not to be blamed.

THROWING PEBBLES UNNECESSARILY

(٣٥١٦) وَعَنْ عَبْدِاللّٰهِ بْنِ مُغَفَّلٍ اَنَّهٗ رَاٰى رَجُلًا يَخْذِفُ فَقَالَ لَا تَخْذِفْ فَاِنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ نَهٰى عَنِ الْخَذْفِ وَقَالَ اَنَّهٗ لَا يُصَادُ بِهٖ صَيْدٌ وَّلَا يُنْكَأُ بِهٖ عَدُوٌّ وَلٰكِنَّهَا قَدْ تَكْسِرُ السِّنَّ وَتَفْقَأُ الْعَيْنَ۔

(متفق علیه)

3516. Sayyiduna Abdullah ibn Mughaffal رضی الله عنه said that he saw a man throw pebbles holding (and aiming) them between his thumb and (fore) finger. So he said, "Do not throw pebbles because Allah's Messenger صلی الله علیه وسلم has forbidden that pebbles be thrown in this manner, saying, 'Game cannot be caught by this thing nor may an enemy be wounded. Rather (it is a vain pursuit whereby) you might break a tooth or slash an eye.'"[2]

COMMENTARY: The Prophet صلی الله علیه وسلم disallowed this pursuit because nothing is gained from it but disputes may arise. People may quarrel unnecessarily. The same ruling applies to every such vain, meaningless thing.

DO NOT DISPLAY WEAPONS IN PUBLIC

(٣٥١٧) وَعَنْ اَبِيْ مُوْسٰى قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِذَا مَرَّ اَحَدُكُمْ فِيْ مَسْجِدِنَا وَفِيْ سُوْقِنَا وَمَعَهٗ نَبْلٌ فَلْيُمْسِكْ عَلٰى نِصَالِهَا اَنْ يُّصِيْبَ اَحَدًا مِّنَ الْمُسْلِمِيْنَ مِنْهَا بِشَيْءٍ۔ (متفق علیه)

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[1] Bukhari # 6901, Muslim # 4-2156, Tirmidhi # 2709, Nasai # 4859, Darimi # 2384, Musnad Ahmad 5-330.

[2] Bukhari # 5479, Muslim # 54-1924, Abu Dawud # 5270, Nasai # 4815, Ibn Majah # 3226, Darimi # 44, Musnad Ahmad 4-86.

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3517. Sayyiduna Abu Musa رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "When any of you comes to our mosque or our market, or passes along, and has with him arrows, he must keep them covered (in their quiver, or hold them in his hand) lest he cause injury to any Muslim by them."[1]

COMMENTARY: Not only in the mosques and markets but in every such place as there is a gathering of Muslims, one must carry his weapons carefully. They could be arrows, swords, guns, or whatever kind. A slight negligence could wound a Muslim.

DO NOT POINT A WEAPON AT A MUSLIM

(٣٥١٨) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا يُشِيْرُ اَحَدُكُمْ عَلٰى اَخِيْهِ بِالسِّلَاحِ فَاِنَّهٗ لَا يَدْرِيْ لَعَلَّ الشَّيْطَانَ يَنْزِعُ فِيْ يَدِهٖ فَيَقَعُ فِيْ حُفْرَةٍ مِّنَ النَّارِ۔ (متفق علیہ)

3518. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Let not any of point a weapon at his (Muslim) brother, for, he cannot say perhaps the devil might take it away from his hand and (because of it,) he might land in a pit in hell."[2]

COMMENTARY: The devil is always on the qui vive. If a person make a mistake, the devil tempts him to commit sin. If he points a weapon at his Muslim brother, he might be careless and hurt him. That might mean hell.

(٣٥١٩) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ اَشَارَ اِلٰى اَخِيْهِ بِحَدِيْدَةٍ فَاِنَّ الْمَلٰئِكَةَ تَلْعَنُهٗ حَتّٰى يَضَعَهَا وَاِنْ كَانَ اَخَاهُ لِاَبِيْهِ وَاُمِّهٖ۔ (رواہ البخاری)

3519. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "If anyone points (a weapon or something of) iron at his (Muslim) brother then the angels curse him till he puts it aside, even if he is his brother having the same father and mother.[3]

COMMENTARY: If anyone points at his brother a piece of iron, clearly he may not be meaning to threaten him. He might be jesting. But, even then the angels curse him. Thus it is emphasized that anything of iron or a weapon must not be pointed at a Muslim.

(٣٥٢٠) وَعَنِ ابْنِ عُمَرَ وَاَبِيْ هُرَيْرَةَ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ مَنْ حَمَلَ عَلَيْنَا السَّلَاحَ فَلَيْسَ مِنَّا۔ رَوَاهُ الْبُخَارِيُّ وَزَادَ مُسْلِمٌ وَمَنْ غَشَّنَا فَلَيْسَ مِنَّا۔

3520. Sayyiduna Ibn Umar رضی اللہ عنہ and Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "He who picks up a weapon against us (even in jest) does not belong to us." (Meaning, 'he does not follow our ways.')
The version (of Muslim) adds: "He who cheats us (by not disclosing defect of what he sells) does not belong to us."[4]

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[1] Bukhari # 7075, Muslim # 124-2615,Abu Dawud # 2587, Ibn Majah # 2778, Musnad Ahmad 4-418.

[2] Bukhari # 7072, Muslim # 126-2617, Musnad Ahmad 2-317.

[3] Muslim # 125-2616, Tirmidhi # 2162, Musnad Ahmad 2-256.

[4] Bukhari # 7070, Muslim # 164-101, Nasai'i # 4100, Ibn Majah # 2575 and 2576, Musnad Ahmad 2-417 & 2-3.

(٣٥٢١) وَعَنْ سَلَمَةَ بْنِ الْاَكْوَعِ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ سَلَّ عَلَيْنَا السَّيْفَ فَلَيْسَ مِنَّا۔ (رواه مسلم)

3521. Sayyiduna Salamah ibn Al-Akwa رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "He who draws a sword against us (even in jest) does not belong to us."[1]

DO NOT PUNISH ANYONE

(٣٥٢٢) وَعَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ اَبِيْهِ اَنَّ هِشَامَ بْنَ حَكِيْمٍ مَرَّ بِالشَّامِ عَلٰى اُنَاسٍ مِنَ الْاَنْبَاطِ وَقَدْ اُقِيْمُوْا فِي الشَّمْسِ وَصُبَّ عَلٰى رُءُوْسِهِمُ الزَّيْتُ فَقَالَ مَا هٰذَا قِيْلَ يُعَذَّبُوْنَ فِي الْخَرَاجِ فَقَالَ هِشَامٌ اَشْهَدُ لَسَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ اِنَّ اللّٰهَ يُعَذِّبُ الَّذِيْنَ يُعَذِّبُوْنَ النَّاسَ فِي الدُّنْيَا۔ (رواه مسلم)

3522. Hisham ibn Urwah رحمہ اللہ said that his father narrated that Hisham ibn Hakim passed by certain people in Syria from the Anbath (Nabateans) who were made to stand in the sun and olive oil was poured on their heads. He asked, "What is this?" He was told, "They are being punished for (not paying) the kharaj (homage revenue)" (land tax). Hisham said, "I bear witness that I had heard Allah's Messenger صلی اللہ علیہ وسلم say. "Surely, Allah will punish in the hereafter, those who punish the people, in this world."[2]

ALLAH'S WRATH ON THE OPPRESSORS

(٣٥٢٣) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يُوْشِكُ اِنْ طَالَتْ بِكَ مُدَّةٌ اَنْ تَرٰى قَوْمًا فِيْ اَيْدِيْهِمْ مِثْلُ اَذْنَابِ الْبَقَرِ يَغْدُوْنَ فِيْ غَضَبِ اللّٰهِ وَيَرُوْحُوْنَ فِيْ سَخَطِ اللّٰهِ وَفِيْ رِوَايَةٍ يَرُوْحُوْنَ فِيْ لَعْنَةِ اللّٰهِ۔ (رواه مسلم)

3523. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "If you live long, you shall see soon people holding in their hands something like oxtails (meaning, whips). They will begin the morning and the wrath of Allah will be on them and in the evening Allah's severe anger will be on them."
Another version has: 'in the evening Allah's curse is on them.'[3]

COMMENTARY: The 'people you will see' will be the stooges of the oppressors or cruel rulers.

CLOTHED BUT NAKED

(٣٥٢٤) وَعَنْهُ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ صِنْفَانِ مِنْ اَهْلِ النَّارِ لَمْ اَرَهُمَا قَوْمٌ مَّعَهُمْ سِيَاطٌ كَاَذْنَابِ الْبَقَرِ يَضْرِبُوْنَ بِهَا النَّاسَ وَنِسَاءٌ كَاسِيَاتٌ عَارِيَاتٌ مُمِيْلَاتٌ مَائِلَاتٌ رُءُوْسُهُنَّ كَاَسْنِمَةِ الْبُخْتِ الْمَائِلَةِ لَا يَدْخُلْنَ الْجَنَّةَ وَلَا يَجِدْنَ رِيْحَهَا وَاِنَّ رِيْحَهَا لَتُوْجَدُ مِنْ مَسِيْرَةِ كَذَا وَكَذَا۔ (رواه مسلم)

3524. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم

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[1] Muslim # 112-99, Tirmidhi # 2520, Musnad Ahmad 4-46.
[2] Muslim # 118-2613, Musnad Ahmad 4-403
[3] Muslim # 53-2856, Musnad Ahmad 2-323

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said, "Two kinds of the inmates of hell there are whom I have not seen: (i) A people who have with them whips resembling ox-tails with which they will strike people (unjustly). And (ii) women (who will be) clothed but (be nearly) naked. They will incite men and be disposed to them. Their heads will sway like the humps of bukht camels. These inciting women will not enter paradise and will not experience its fragrance though its fragrance can be perceived at a distance this-far-and-that-far."[1]

COMMENTARY: The women mentioned will wear very fine see-through garments. Or, they will leave part of their body bare. Or, they will not put their scarf on their chest and belly but put it round their necks.

This could also refer to women who don different kinds of costly garments in this world but neglect the garment of taqwa (piety) (righteousness). It is only the garment of taqwa (piety) that will entitle them to paradise.

These women will incline men to themselves by their adornment, behaviour and walk and will lean toward men.

The bukht camels are the camels of khurasan with two humps (also known as Bactrian camels). The women arrange their hair in the manner of humps.

The women described in this hadith did not exist in the time of the Prophet صلى الله عليه وسلم. He did, however, forewarn of this kind of women. It is one of his miracles.

The hadith says that these women will not enter paradise but there are such men too who have not been mentioned here. Qari Iyad رحمه الله said that they will be admitted to paradise after going through their punishment, but not those women who perpetrate these things and maintain that whatever they do is lawful and not wrong at all.

DO NOT STRIKE AT THE FACE

(٣٥٢٥) وَعَنْهُ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ إِذَا قَاتَلَ اَحَدُكُمْ فَلْيَجْتَنِبِ الْوَجْهَ فَإِنَّ اللّٰهَ خَلَقَ اٰدَمَ عَلٰى صُوْرَتِهٖ۔ (متفق عليه)

3525. Sayyiduna Abu Hurayrah رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "When one of you fights (and beats another), he must spare the face because Allah created Aadam in His own likeness."

COMMENTARY: Creating Aadam عليه السلام in His likeness means bestowing on him His attributes of majesty and beauty. Or, it could mean a form that Allah has given only to human beings and described it as 'His' to bestow honour on Aadam عليه السلام. It is as He says (نفخت فيه من روحى) {blow into him My spirit}(15: 29) and ascribes the spirit to Himself to honour and show the excellence of mankind.

Some scholars say that the pronominal suffix in (صورته)(Surathi, his likeness or his form) stands for Aadam's form. This form is distinct from the forms of all other creatures. It is full of excellence and beauty.

It will mean that Allah created mankind nobler lthan all creatures. Of all man's limbs, his face is the noblest and most honourable. It is the index of his form and perfection. Hence,

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[1] Muslim # 52-2128.

one must refrain from striking it. The ulama (Scholars) say that this command is by way of *mustahab (desirable)*.

SECTION II اَلْفَصْلُ الثَّانِيْ

FORBIDDEN TO LOOK INTO HOUSES

(٣٥٢٦) عَنْ اَبِيْ ذَرٍّ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ كَشَفَ سِتْرًا فَاَدْخَلَ بَصَرَهٗ فِي الْبَيْتِ قَبْلَ اَنْ يُّؤْذَنَ لَهٗ فَرَاٰى عَوْرَةَ اَهْلِهٖ فَقَدْ اَتٰى حَدًّا لَا يَحِلُّ لَهٗ اَنْ يَّاْتِيَهٗ وَلَوْ اَنَّهٗ حِيْنَ اَدْخَلَ بَصَرَهٗ فَاسْتَقْبَلَهٗ رَجُلٌ فَفَقَأَ عَيْنَهٗ مَا عَيَّرْتُ عَلَيْهِ وَاِنْ مَرَّ الرَّجُلُ عَلٰى بَابٍ لَا سِتْرَ لَهٗ غَيْرُ مُغْلَقٍ فَنَظَرَ فَلَا خَطِيْئَةَ عَلَيْهِ اِنَّمَا الْخَطِيْئَةُ عَلٰى اَهْلِ الْبَيْتِ۔ رَوَاهُ التِّرْمِذِيُّ وَقَالَ هٰذَا حَدِيْثٌ غَرِيْبٌ۔

3526. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "If anyone slides a curtain and peeps into a house before receiving permission (to enter) and sees that which ought not to be seen of his family, then he touches the limit that is not lawful for him to touch. If a man (from the house) challenges him when he looks in and puts out his eye, I will not hold him responsible. (And, I will not impose any penalty on him.) However, if a man goes by a door that has not curtain and is not shut and he looks in, then he has not committed a sin. Rather, sin is committed by the people of the house.[1]

(They ought to have shut the door and drawn the curtain)

COMMENTARY: It is *wajib (obligatory)* for the family to keep the door of their house shuts or draw a curtain over it.

DO NOT HAND OVER OR TAKE UNSHEATHED SWORD

(٣٥٢٧) وَعَنْ جَابِرٍ قَالَ نَهٰى رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَنْ يَّتَعَاطَى السَّيْفُ مَسْلُوْلًا۔ (رواه الترمذی وابوداؤد)

3527. Sayyiduna Jabir رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم forbade the handling of an unsheathed sword.[2]

THONG OF SANDAL MUST NOT BE SNAPPED BETWEEN TOES

(٣٥٢٨) وَعَنِ الْحَسَنِ عَنْ سَمُرَةَ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ نَهٰى اَنْ يُّقَدَّ السَّيْرُ بَيْنَ اِصْبَعَيْنِ۔

(رواه ابوداؤد)

3528. Al-Hasan (رحمہ اللہ) reported that Samurah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم disallowed the snapping of the strap of a sandal between two toes.[3]

COMMENTARY: These two hadith forbid the two things by way of compassion.

BEING KILLED WHILE PROTECTING RELIGION, LIFE & PROPERTY

(٣٥٢٩) وَعَنْ سَعِيْدِ بْنِ زَيْدٍ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ مَنْ قُتِلَ دُوْنَ دِيْنِهٖ فَهُوَ شَهِيْدٌ وَمَنْ

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[1] Tirmidhi # 2709, Musnad Ahmad 5-81.

[2] Tirmidhi # 2163(2170), Abu Dawud # 2588

[3] Abu Dawud # 2589

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قُتِلَ دُوْنَ دَمِهٖ فَهُوَ شَهِيْدٌ وَمَنْ قُتِلَ دُوْنَ مَالِهٖ فَهُوَ شَهِيْدٌ وَمَنْ قُتِلَ دُوْنَ اَهْلِهٖ فَهُوَ شَهِيْدٌ۔

(رواه الترمذی وابوداؤد والنسائی)

3529. Sayyiduna Sa'eed ibn Zayd رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "He who is killed while defending his religion is a martyr. He who is killed while defending himself is a martyr. He who is killed while protecting his property is a martyr. And, he who is killed while protecting his family is a martyr.[1]

COMMENTARY: If a disbeliever or an innovator ridicules Islam on the face of Muslim who contends with him over that but is slain then in this case the Muslim attains martyrdom.

The ulama (Scholars) say generally that if anyone has evil intentions against a person's life, property or family, then he must first try to convince him out of it. If he does not see sense, then, he may use force and if he kills the evil man then no penalty is due from him. But, if he himself is slain then that is martyrdom for him.

DO NOT RAISE SWORD AGAINST A MUSLIM

(۳۵۳۰) وَعَنِ ابْنِ عُمَرَ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لِجَهَنَّمَ سَبْعَةُ اَبْوَابٍ بَابٌ مِنْهَا لِمَنْ سَلَّ السَّيْفَ عَلٰى اُمَّتِيْ اَوْقَالَ عَلٰى اُمَّةِ مُحَمَّدٍ۔ رَوَاهُ التِّرْمِذِيُّ وَقَالَ هٰذَا حَدِيْثٌ غَرِيْبٌ۔

3530. Sayyiduna Ibn Umar رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "There are seven gates of hell. One of these gates is for him who draws a sword against my *ummah*," or, he said, "against Muhammad's *ummah*."[2]

وَحَدِيْثُ اَبِيْ هُرَيْرَةَ الرَّجُلُ جُبَارٌ ذُكِرَ فِيْ بَابِ الْغَصْبِ

And the hadith of Abu Hurayrah رضی اللہ عنہ: "The treading of the foot is forgiven..." is mentioned in the chapter on al-ghasab (wrongful appropriation) hadith # 2952.

And this chapter has no section-III

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[1] Tirmidhi # 1431, Abu Dawud # 4772, Nasa'i # 4090, Ibn Majah # 2580, Musnad Ahmad 1-190.

[2] Tirmidhi # 3123, Musnad Ahmad 2-94.

CHAPTER - IV

AL-QASAMAH - OATHS

بَابُ الْقَسَامَةِ

The Arabic word is al-Qasamah (القسامة). It is to take an oath. In Sari'ah, it refers to a murder in a village or neighbourhood, or anywhere near to it, when the murderer is not traced, then the state or government should investigate. If the murderer is traced, then the law will take its course against him. If not, then fifty men of that place (selected by the next of kin of the slain man) will be put to oath. Each of them shall depose in this way, "By Allah (or, I swear by Allah), neither have I killed him nor do I know who has slain." This is as Imam Abu Hanifah رحمه الله contends and it is based on the well-known hadith.

اَلْبَيِّنَةُ عَلَى الْمُدَّعِيِّ وَالْيَمِيْنُ عَلٰى مَنْ اَنْكَرَ

(The plaintiff should present a witness while the defendant must take an oath.)[1]

It is suggested also by the haidth # 3531.

The contention of Imam Shafi'i رحمه الله and Imam Ahmad رحمه الله is that if there was animosity between the inhabitants of the village or locality, or of its surroundings. (Where the body is found and the murdered man, or some strong pointers are found suggesting that someone there could have been the murderer, then the next of kin of the murdered man will be put to oath. They will depose, "We swear by Allah, you have killed him." If they refuse to take the oath, then the accused will be made to swear. This is indicated by the first hadith of this chapter (#3532)

Qisas, or retaliation is not *wajib (obligatory)* when resorting to qasamah, even if the accusation is of deliberate murder. But, diyah or blood wit is *wajib (obligatory)* in this case (oath-taking) whether the accusation is of deliberate murder or of accidental murder.

However, Imam Maalik رحمه الله said that if it is an accusation of deliberate killing then qisas should be imposed. Imam Shafi'i رحمه الله also said the same thing in his ancient ruling.

It must be known that this form of qasamah was prevalent during the jahiliyah (ignorance period) too. The Prophet صلى الله عليه وسلم retained it. He passed judgment according to it for the slain Ansar whose murder the ansars had blamed on the Jews of the Khaybar.

SECTION I — اَلْفَصْلُ الْاَوَّلُ

WHO WILL BE PUT TO OATH

(٣٥٣١) وَعَنْ رَافِعِ بْنِ خَدِيْجٍ وَسَهْلِ بْنِ اَبِيْ حَثْمَةَ اَنَّهُمَا حَدَّثَا اَنَّ عَبْدَاللّٰهِ بْنَ سَهْلٍ وَمُحَيِّصَةَ بْنَ مَسْعُوْدٍ اَتَيَا خَيْبَرَ فَتَفَرَّقَا فِيْ النَّخْلِ فَقُتِلَ عَبْدُاللّٰهِ بْنُ سَهْلٍ فَجَاءَ عَبْدُالرَّحْمٰنِ بْنُ سَهْلٍ وَحُوَيِّصَةُ وَمُحَيِّصَةُ ابْنَا مَسْعُوْدٍ اِلَى النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَتَكَلَّمُوْا فِيْ اَمْرِ صَاحِبِهِمْ فَبَدَأَ عَبْدُالرَّحْمٰنِ وَكَانَ اَصْغَرَ الْقَوْمِ فَقَالَ لَهُ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ كَبِّرِ الْكُبْرَ قَالَ يَحْيٰى بْنُ سَعِيْدٍ يَعْنِيْ لِيَلِيَ الْكَلَامَ اَلْاَكْبَرُ فَتَكَلَّمُوْا فَقَالَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَتَسْتَحِقُّوْا قَتِيْلَكُمْ اَوْقَالَ صَاحِبَكُمْ بِاَيْمَانِ خَمْسِيْنَ مِنْكُمْ قَالُوْا يَا رَسُوْلَ

[1] Tirmidhi # 1341(1346)

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اللّٰهِ اَمْرٌ لَمْ نَرَهُ قَالَ فَتُبَرِّئُكُمْ يَهُوْدُ فِيْ اَيْمَانِ خَمْسِيْنَ مِنْهُمْ قَالُوْا يَا رَسُوْلَ اللّٰهِ قَوْمٌ كُفَّارٌ فَفَدَاهُمْ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مِنْ قِبَلِهٖ وَفِيْ رِوَايَةٍ تَحْلِفُوْنَ خَمْسِيْنَ يَمِيْنًا وَتَسْتَحِقُّوْنَ قَاتِلَكُمْ اَوْصَاحِبَكُمْ فَوَدَاهُ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مِنْ عِنْدِهٖ بِمِائَةِ نَاقَةٍ۔ (متفق علیه)

3531. Sayyiduna Rafi ibn Khadij رضی اللہ عنہ and Sayyiduna Sahl ibn Abu hathmah رضی اللہ عنہ narrated that Abdullah ibn sahl (رضی اللہ عنہ and Muhayyisah ibn Mas'ud رضی اللہ عنہ came to Khaybar. When they separated from one another (one day) among the palm trees and (finding him alone) someone killed Abddullah ibn Sahl رضی اللہ عنہ. (Thereafter) Abdur Rahman ibn Sahl رضی اللہ عنہ (the real brother of the slain Abdullah) and the (two) sons of Mas'ud, Huwayyisah and Muhayyisah (paternal cousins of the slain man) came to the Prophet صلی اللہ علیہ وسلم and informed him of what had happened to their relative. Abdur Rahman رضی اللہ عنہ (the brother of the slain man) who was the youngest of the lot was the first to speak. The Prophet صلی اللہ علیہ وسلم said to him, "Kabbir al-Kubr" (Respect the eldest of you. Let him speak.) Yahya ibn Sa'eed رحمہ اللہ (a narrator of this hadith) said that the Prophet's صلی اللہ علیہ وسلم words meant, 'Let the eldest take charge of speaking.' Then, they spoke (meaning the eldest of them). The Prophet صلی اللہ علیہ وسلم said, "If fifty of you take oaths then you will be eligible to seek blood wit or retaliation for your man who is murdered." Or, he said, "your companion." They submitted, "O Messenger of Allah, it is something that we had not seen. (We cannot say definitely who had killed.)" He said, "fifty of the Jews will take oaths and acquit themselves." (Their oaths will prove them innocent.) They said, "O Messenger of Allah, they are disbelievers. (Their oaths are meaningless and unreliable.)" So (to bury the mischief) Allah's Messenger صلی اللہ علیہ وسلم paid the blood wit himself (to the heirs of the slain man).

According to another version: he said, "Swear fifty oaths and be entitled to the blood wit of your man who is murdered," or, he said, "Your companion." Then Allah's Messenger صلی اللہ علیہ وسلم himself paid his blood wit amounting to one hundred she-camels.[1]

COMMENTARY: The person who is the eldest must be honoured. He should initiate conversation.

This hadith is evidence that it is allowed to plead in matters of hudud or prescribed punishments, even for those who are present the guardian of the deceased was his real brother, Abdur Rahman ibn Sahl رضی اللہ عنہ, while Huwayyisah and Muhayyisah were his paternial cousins.

Ths hadith says that the plaintiff should be put to oath first. But, the Hanafis say that the defendant is to be made to swear initially.

وَهٰذَا الْبَابُ خَالٍ عَنِ الْفَصْلِ الثَّانِيْ

And this chapter is without section-II

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[1] Bukhari # 6142, 6143, Muslim # 2-1669, Tirmidhi # 1422, Nasa'i # 4712, Musnad Ahmad 4-142

SECTION III اَلْفَصْلُ الثَّالِثُ

DEFENDANT SHOULD BE PUT TO OATH FIRST

(٣٥٣٢) عَنْ رَافِعِ بْنِ خَدِيْجٍ قَالَ اَصْبَحَ رَجُلٌ مِّنَ الْاَنْصَارِ مَقْتُوْلًا بِخَيْبَرَ فَانْطَلَقَ اَوْلِيَاءُهٗ اِلَى النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَذَكَرُوْا ذٰلِكَ لَهٗ فَقَالَ اَلَكُمْ شَاهِدَانِ يَشْهَدَانِ عَلٰى قَاتِلِ صَاحِبِكُمْ قَالُوْا يَا رَسُوْلَ اللّٰهِ لَمْ يَكُنْ ثَمَّ اَحَدٌ مِنَ الْمُسْلِمِيْنَ وَاِنَّمَا هُمْ يَهُوْدُ وَقَدْ يَجْتَرِؤُنَ عَلٰى اَعْظَمَ مِنْ هٰذَا قَالَ فَاخْتَارُوْا مِنْهُمْ خَمْسِيْنَ فَاسْتَحْلِفُوْهُمْ فَاَبَوْا فَوَدَاهُ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مِنْ عِنْدِهٖ۔ (رواه ابوداؤد)

3532. Sayyiduna Rafi ibn Khadij رضی اللہ عنہ narrated that a man of the Ansar was killed (and he was Abdullah ibn Sahl رضی اللہ عنہ). His relatives went to the Prophet صلی اللہ علیہ وسلم and mentioned to him what had happened. He asked them, "Do you have two witnesses who might testify to the murderer of your man?" They submitted, "O Messenger of Allah, no Muslim was there at the time. Only Jews were there (and they are known to create mischief) and they are impudent enough to perpetrate things more grave than that." He said, "Then select fifty of them and put them to oath." But, they did not agree (to put the Jews to oath knowing that they would not hesitate to take false oath). So, Allah's Messenger صلی اللہ علیہ وسلم paid his blood wit himself.[1]

COMMENTARY: Mulla Ali Qari رحمہ اللہ points out that the defendants are called upon to swear first. The Hanafis observe this practice. He has mentioned all arguments of different imams and concluded that the Hanafi practice is correct.

CHAPTER - V

KILLING APOSTATES & THOSE WHO STRIVE TO CAUSE CORRUPTION بَابُ قَتْلِ اَهْلِ الرِّدَّةِ وَالسُّعَاةِ بِالْفَسَادِ

WHO IS A MURTAD: Murtad is an apostate. He turns away from the folds of the religion of Islam. He exits from the light of faith and Islam and enters the dark recesses of disbelief and polytheism.

COMMAND ABOUT AN APOSTATE: (We seek refuge in Allah from such thought). If a Muslim apostates, then, first, he must be invited to Islam and if he has some confusion and queries then they must be clarified for him. This is not, however, *wajib (obligatory)* but merely *mustahab (desirable)* because he already has received the invitation to Islam and it is not necessary to renew it. However, such a person should be put in prison for three days. If he repents and returns to the fold of Islam in three days, that is good for him, otherwise Islam prescribes a death penalty for an apostate. Some ulama (Scholars) hold that respite should be given to him if he requests for a deferment otherwise there is no need to defer the punishment, but ImamShafi'i رحمہ اللہ holds that it is *wajib (obligatory)* that the ruler grant him a three day breather. But, the Quran says:

[1] Abu Dawud # 4524

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أُقْتُلُوا الْمُشْرِكِيْنَ

{kill the polytheists}(9. 5)

And, the Prophet صلى الله عليه وسلم said'

مَنْ بَدَّلَ دِيْنَهُ فَاقْتُلُوْهُ

(He who changes his religion Islam, kill him.)

This means that it is not *wajib (obligatory)* to give an opportunity to the apostate to think over.

WHO STRIVES TO CAUSE CORRUPTION: The second portion of the caption concerns those who strive to create mischief. Generally, this refers to those who make mischief on land, commit robbery and indulge in killing and man-salughter, and disturb the peace and comfort of the people. However, here reference is made specifically to robbery, and to highway robbery. The prescribed punishment for these crimes too is killing. The Quran says:

إِنَّمَا جَزَآءُ الَّذِيْنَ يُحَارِبُوْنَ اللّٰهَ وَرَسُوْلَهٗ وَيَسْعَوْنَ فِي الْاَرْضِ فَسَادًا اَنْ يُّقَتَّلُوْا

{The only recompense of those who wage war against Allah and His Messenger and strive to do corruption in the land is that they should be slain....} (5 : 33)

MORE COMMANDS ABOUT APOSTACY & APOSTATES: Our lives these days are very unbridled. We speak carelessly and we do not conform to our beliefs and ideologies. Our deeds belie our faith. The result is that we often utter with our tongues such things as we consider insignificant but they cast us nearer to the borders of disbelief. We do many such deeds which we give no thought but they lead us to the brink of disaster and cause us loss in the hereafter. Hence, some explanation follows in the next lines.

FATAWA ALAMGIRI: The Fatawa Alamgiri has set aside a complete chapter on the commands and rules concerning apostates. Except for some part of it treating rare issues, we reproduce the entire chapter here. It is essential for every Muslim to know them so that he is careful in his speech and does not utter what might lead him to infidelity, and he does not do that which smacks of disbelief.

APOSTATE: In general parlance, a murtad is one who turns away from the religion of Islam. Its essence is to utter with the tongue words of disbelief after possessing faith and the term apostate may be applied to anyone correctly if he is sane.

INSANE: Hence, it is not proper to apply the commands of apostasy to a mad person and an insensible child. If anyone gets fits of madness then he will be termed an apostate only when he is in a sane condition and does acts of apostasy. But, if he performs deeds of apostasy only when he is out of his senses then he will not be termed an apostate.

INTOXICATED: Similarly, if anyone is always intoxicated and his mind and senses do not function the command of apostasy does not apply to him.

MINOR: For a command of apostasy to apply, it is not necessary that the person should be an adult. Anyone, adult or minor, who commits an act of apostasy, would be subject to the commands of apostasy.

WOMEN TOO: It is not necessary that only men can be apostates, even women, if they perform such acts, will be termed apostates.

NOT FORCED: The command will apply only when a person apostates willingly of his own accord. If anyone is compelled to apostate then he will not come under the purview of

the command of apostasy.

ILL: If anyone suffers from pleurisy and is fed something that impairs his mind and he speaks incoherently and turns apostate in this condition, then the command of apostasy will not be applied to him.

WEAK MINDED: If anyone is insane or given to suspicion or of unsound mind of any reason whatsoever then he too will not be subject to the commands of apostasy.

PREACHING: It has been stated earlier in this chapter that if anyone apostates, Islam should be presented to him and if he has any doubts or confusion they should be removed. If he wishes to enter the folds of Islam, then he must recite the kalimah shahadah (the expression of testimony)[1] and he must declare that he has nothing to do with every religion other than Islam. But, if he names merely the religion that he had adopted on giving up Islam and declares that he has nothing to do with it, then that too will suffice.

THREE CHANCES: If anyone apostates and returns to Islam and again apostates, doing that three times, and each time the ruler gives him respite of three days to repent and return, then the ruler may give him an opportunity three times of three days each but if he apostates a fourth time and asks for another respite of three days, the ruler must not allow him an opportunity the fourth time. If he does not return to the folds of Islam finally, he must be killed.

BOY: If a sensible boy turns apostate then according to Imam Abu Hanifah رحمه‌الله and Imam Ahmad رحمه‌الله the commands (of apostasy) will apply to him. He should be compelled to return to the folds of Islam, but he should not be killed. The same command applies to the boy who approaches adulthood. A boy is said to be sensible when he knows that Islam is a means of deliverance and can differentiate between good and bad, and sweet and sour. Some scholars say that it is a boy of age of seven years.

WOMAN NOT KILLED: If a woman apostates, then she should not be killed but she should be imprisoned till she relents and becomes a Muslim. Every third day she should be beaten by way of a warning to get her to repent her apostasy and revrrt to Islam. If, however, anyone kills a woman who has apostated then nothing is *wajib (obligatory)* on the killer. (He is not responsible for anything.)

FEMALE SLAVE: If a female slave apostates, then her owner must restrict her to his house to compel her to accept Islam. He should impose on her additional work (to what is her regular duty) as a punishment. And, he must not have sexual intercourse with her.

GIRL: The same command applies to a sensible girl as to an adult woman.

EUNUCH: The same command applies to an eunuch as to a woman.

FREE WOMAN: If a free woman apostates, she cannot be enslaved as a female slave as long as she is in the Islamic territory. If she goes away to an enemy territory and is then brought as a prisoner (or captive of the Muslim army) then she may be enslaved.

ENSLAVE HER: However, Imam Abu Hanifah رحمه‌الله says in one of his rare sayings that an apostate woman may be enslaved even in an Islamic state. Some ulama (Scholars) say that an edict should be issued about this woman on this opinion. If she is married then there is

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[1] It is (اشهد ان لا اله الا الله واشهد ان محمدا رسول الله) (I bear testimony that there is not God but Allah and I bear testimony that Muhammad is Allah's Messenger صلى‌الله‌عليه‌وسلم)

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no harm. Rather her husband should preferably request the ruler to let him make her a female slave. If he is responsible for the livelihood (a Muslim) then the ruler may give her to him as a gift in which case he will be responsible to restrict her movement and beat her as a punishment to get her to embrace Islam.

DENIAL OF APOSTACY: If an apostate denies that he has apostated then he must declare the unity of Allah, the Messenger ship of Muhammad صلى الله عليه وسلم and the truth of the religion of Islam. This will be deemed to be repentance from him and he will be counted among the Muslims.

PROPERTY: When anyone apostates he loses right of ownership over his property, but this loss of ownership is held in abeyance. If he is motivated to repent and becomes a Muslim again then his ownership is restored to him. But, if he dies as an apostate or is killed, then the property that he had collected as a Muslim will be inherited by his heirs and relatives who are professors of Islam. They will get their share after deducting the debts that he had incurred while he was a Muslim. And, whatever property that he may have earned during his apostacy from that his debts incurred while he was an apostate would be paid and the balance of that property disregarded. This is the ruling of Imam Abu Hanifah رحمه الله, but his two students Imam Abu Yusuf رحمه الله and Imam Muhammad رحمه الله hold that the property of an apostate is not unutilized.

INHERITORS: Imam Abu Hanifah رحمه الله has given different views about the inheritors of an apostate. The most correct of these views is what Imam Muhammad رحمه الله has attributed to him. If an apostate dies or is killed or he flees to the enemy land, then his Muslim heir will get his legacy. Similarly, when he dies or is killed or flees to the enemy land then his Muslim wife will also become the heir of his property, provided at that time (when he dies or is killed or flees), she observes the iddah. The reason is that the apostate means by his apostacy to deprive his wife (of her right to inheritance), so his apostacy is like illness before death. (When a man who is on his death bed divorces his wife with the talaq mughallazah, Shari'ah (divine law) looks at it as his conspiracy to deprive her of her inheritance, so it retains her right to his legacy. So it is with the apostate, he conspires to deprive his wife of his legacy through his apostacy. Hence, in spite of his intentions, Shari'ah (divine law) recognizes her as eligible for inheritance from his legacy.

HUSBAND NOT HEIR: If a woman apostates, then her husband is not eligible to her legacy (after her death). But, if she apostates when she is ill (and dies), then her husband will get her legacy, as also all her relatives. In fact, whatever property she collects during her apostacy will also go to these heirs.

SLAVES ARE FREE: If anyone apostates and goes away to enemy territory, or the ruler decides that he should go to enemy land then his mudabbar slave will become free. And his umm walad (as many as there are) will also become free. His deferred[1] debts will be payable promptly. The property that he had earned while he was a Muslim will be turned over to his Muslim heirs. If an apostate had drawn a will while he was an adherent of Islam then, according to the apparent versions of Mabsut and others, that will be invalid. It will not be executed whether it was in favour of a relative or a stranger. However, as long as an apostate is found moving about in the Islamic state, the judge must not impose any of

[1] elsewhere it is mature debts (معجل) instead of (مؤجل)

these directives about him a have been mentioned in these lines.

DEALINGS & CONTRACTS: An apostate's apostacy calls for actions on his deals in four ways:

(i) That which is enforced in toto as per unanimous ruling. Examples are:
- when he is given a gift and he accepts it,
- he makes his female slave an umm walad,
- he claims parentage of a child born to his female slave then the child would be attributed to him and will become entitled to his legacy along with his other heirs, that particular female slave will be his umm walad,
- his acceptance of Shuf'ah (pre-emption) will be approved and enforced and
- His imposition of an interdiction on his permitted slave will be valid.

(ii) That which is unanimously in valid. Shari'ah (divine law) does not recognize it at all. Examples are:
- to marry him is absolutely disallowed to all women. The woman may be a Muslim, an apostate, a dhimmi, a slave;
- his slaughtered animal is unlawful; and
- his game is unlawful whether hunted with dogs or hawks, or shot with a gun.

(iii) That which is held in abeyance (neither revoked nor imposed), like a general partnership (shirkah mufawadah). If an apostate concludes it with a Muslim then it remains suspended till he reverts to Islam when that partnership will be effective. However, if he dies an apostate, or he is killed or he goes away to enemy territory and the judge or ruler issues directives about it, then the shirkah mufawadah will be turned right from its inception to shirkah inan (partnership of equal or unequal contribution of wealth or labour). This is what Imam Abu Yusuf رحمه الله and Imam Muhammad رحمه الله say but Imam Abu Hanifah رحمه الله holds that shirkah mufawadah is not invalidated at all.

(iv) That about which the ulama (Scholars) are divided: whether its operation is suspended or not. Examples are: buying and selling, hiring, emancipating a slave, making a slave a mudabbar or a mukatab, making a will, repaying debts, etc. Imam Abu Hanifah رحمه الله contends that operation of all these things of an apostate are held in abeyance and if he accepts Islam then they are enforced but if he dies or is killed or the judge or ruler declares him an absconder to enemy territory then their operations become invalid.

- During apostacy, all the actions of a mukatab are enforced.
- If anyone sells his apostate male or female slave then this sale is allowed.

REPENTANCE: If an apostate repents and returns to Islamic territory before the command of the ruler is enforced that he has gone away to enemy territory then the command concerning his property and his apostacy becomes invalid and he is treated as though he has been a Muslim all through. None of his umm walad or mudabbar is set free.

If he returns after the command of the ruler and judge is enforced that he has gone to enemy land, then he may take back from his heirs whatever of his property he finds but he has no right to demand that part of his property which his heirs have disposed of, gifted, etc and have no right over their ownership. He cannot even demand a compensation for that.

BORN MUSLIMS: If a man was a Muslim emulating his parents (meaning, he was a child who followed the precedence of his parents or was bracketed with them in general

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consideration) but attained maturity as an apostate then though reasoning demands that he should be slain, yet the command concerning him, out of kindness, is that he should not be killed (because before he matured he was not a Muslim directly by himself but was regarded as one because of his parents).

MUSLIM AT YOUNG AGE: The same command as the foregoing applies to a man who became a Muslim at a young age but apostated when he matured.

COMPELLED TO SUBMIT: Also, if anyone is forced to embrace Islam and he turns away from it afterwards then he too will not be killed out of kindness.

However, in each of the foregoing cases, the command is that the man should be pressurized to accept Islam. If anyone kills him before he embraces Islam then the killer will not be questioned, nothing is *wajib (obligatory)* on him.

LAQIT: (The child who is found unclaimed somewhere.) If he is in an Islamic state then the command of his being a Muslim should be applied. If he attains adulthood as a disbeliever then he should be compelled to embrace Islam, but he should not be killed.

Thus far, some commands and rules were mentioned about apostates. It is now deemed necessary to disclose those things whose perpetrator becomes a disbeliever.

DIFFERENT REASONS: There can be various reasons for anyone to be considered a disbeliever. There could be related

- to faith and Islam,
- to the Being of Allah and His attributes, etc,
- to the prescribed acts in Islam, like *salah (prayer)*, fasting, zakah (Annual due charity),
- to learning and the ulama (Scholars) (Scholars),
- to the lawful and the forbidden,
- to the Last Hour, etc., and,
- to encouraging disbelief.

This is a lengthy discourse. So these things – the motives of disbelief – are enumerated in sequence under their relative captions.

(I)THE MEANS TO DISBELIEF CONCERNING FAITH & ISLAM:

The disrespect that turns a man into a disbeliever as are related to faith and Islam are these:

- If anyone says, "I do not know whether I have faith or not," then this is a grave sin unless he intends by that to reject his uncertainty
- If anyone doubts his faith and says, "I am a believer, insha Allah," then he is a disbeliever. But, if he means to say, "I do not know if I shall depart from this world as a believer or not," then he is not a disbeliever.
- If anyone says, "The Qur'an is a creation," or "faith is a creation," then he becomes a disbeliever.
- He who believes that faith and infidelity are one then he is a disbeliever.
- He who is not pleased and content with faith is a disbeliever.
- He who is content with the infidelity of his soul is a disbeliever.
- The ulama (Scholars) differ on one who is pleased with another's disbelief and their edict is: if he is pleased at another's disbelief because he (the disbeliever) will be involved in punishment perpetually then he is not a disbeliever. But, it he is pleased with his infidelity that the other man may say about Allah that which is not worthy of His attributes then he is a disbeliever.

- He who says that he does not know the attributes (or description) of Islam is a disbeliever. Shamsul ulama (Scholars), Tawa'i رحمه الله, has used strong words about this issue. He said, "One who says so has no religion, no *salah (prayer)*, no fasting, no obedience, no worship and no marriage. His children are born out of wedlock in adultery."
- A Muslim man married a Christian girl whose parents were also Christian. She grew up not recognizing any religion. She did not know what religion is in her mind and could not describe it by word of mouth, and she was not insane. In this case, she and her husband will be separated.
- Someone married a Muslim girl child. When she matured as a sane young woman, she did not know in her mind what Islam is and could not describe it orally, and she was not insane. In this case, too, she and her husband will be separated.
- If a woman is asked what tawheed (monotheism) is and she says. "I do not know" and she means that she does not know the Kalimah tawheed that is taught to children in madrasahs (religious schools) then there is not harm in that. But, if she means that she does not know Allah's unity then she is not a believer any more and her marriage becomes void.
- If a man dies in such a way that he did not know that there was his Creator, there is another house with Allah for him and that wrong-doing and oppression are forbidden, then he was not a believer.
- If anyone commits sin and asserts that Islam must be demonstrated (through sin) then he is a disbeliever.
- A man tells another that he is a Muslim. The other says, "Curse be on you and on your being a Muslim." Then, this other man becomes a disbeliever.
- A Christian embraced Islam. After some time his father died and he lamented, "Would that I had not become a Muslim! In that case I would have acquired my father's property!" He becomes a disbeliever on having such ideas.
- A Christian man met a Muslim and asked him to preach to him that he might embrace Islam at his hands. The Muslim advised him to go to a certain scholar who would present to him Islam and he might embrace Islam at his hands. The ulama (Scholars) differ on one who gives such advice instead of himself presenting Islam to the non-Muslim. Abu Ja'far رحمه الله, however, says that this man does not become a disbeliever.
- An infidel embraced Islam. One of the Muslims asked him "what was wrong with your religion?" (Why did you have to embrace Islam?) The Muslim who says so becomes a disbeliever.

(II)THE MEANS TO DISBELIEF THAT CONCERN ALLAH'S BEING & ATTRIBUTES

These things make one who is disrespectful to Allah and His attributes a disbeliever:

- Ascribing to Allah an attribute that is not worthy of Him makes one who does it a disbeliever,
- Or attributing to Him a partner or a son, or a wife,
- Or describing Him with some kind of ignorance or helplessness or shortcoming.
- One who says, "It is proper that Allah do something that has no wisdom in it," is a disbeliever.
- If a person believes that Allah is pleased with disbelief then he is a disbeliever.

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- He who says, "Even if Allah will command me to do this piece of work, I shall not do it," is a disbeliever.
- The noble Qur'an speaks of Allah's hand and face, but they are not limbs. The question arises whether these things may be translated as they are in other languages? Some ulama (Scholars) say that it is allowed to do so, provided they are not understood (in the literal sense) as limbs. Most ulama (Scholars), however, insist that it is not allowed and this is the authentic opinion.
- If anyone ridicules Allah's attributes or His commands or rejects His promises and warnings, then he is a disbeliever.[1]
- If a man says abut someone, "In my sight he is as a Jew is in Allah's sight," then the majority of the scholars say that he is a disbeliever. (The reason is that he refers to Allah's sight in the real sense of an eye, meaning a human limb.) But, some authorities say that if the speaker's intention was to bring out that certain person's bad qualities, then he is not a disbeliever.
- A man died. Another man lamented, "Allah should not have done that." On this the second man (the speaker) becomes a disbeliever.
- A man said to his enemy, "By the command of Allah, I shall do that to you." His enemy said, "I do not recoquise Allah's command" Or, he said, "Here Allah's command is not respected." Or, he said, "Here, no command works." On, he said, "Allah does not deserve to command." Or, he said, "Here the command of David only is obeyed." All these words smack of disbelief
- Haakim Abdur Rahman رحمه الله was asked about a man who says, "I do a certain work because of custom, not in obedience of Allah's command." Is he a disbeliever? Haakim رحمه الله said, "If he only means corruption of truth, abandoning of Shari'ah (divine law) and following custom, but does not mean to reject Allah's command then he is not a disbeliever."
- If a man says about one who never falls ill, "Allah has forgotten him," or "He is one of those whom Allah has forgotten," then this is disbelief.
- If a man says to another, "Even Allah cannot be safe from your tongue. How will be safe?" Or, "How will I confront you?" then he is a disbeliever.
- If a man tells his wife, "You are dearer to me than Allah," then he becomes a disbeliever.
- To say about someone that he is trapped badly(or miserably) in destiny is a grave sin.
- To say that Allah has a place (to reside) is disbelief. He who says, "No place is without Allah," is a disbeliever.
- If anyone says that Allah is in the heaven then it depends on what prompted him to say so. If he means to repeat what is apparently stated (in the Qur'an or *sunnah (Prophet's* صلى الله عليه وسلم *practice)*) then he will not be a disbeliever. But, if he means to describe the place as Allah's then he will become a disbeliever, and most of the ulama (Scholars) say that if he did not have any intention then too he will become a disbeliever.
- He will become a disbeliever who says, "Allah is sitting (or standing) to pass judgment because this necessitates something above and below Allah.

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[1] This ought to have come earlier but is overlooked in the urdu

- It is disbelief to say, "(My Helper) in the heaven is Allah and on the earth is so-and-so."
- Most ulama (Scholars) say that it is disbelief to say, "Allah looks down from the heaven," or "Allah looks from the heaven," or "Allah looks from the throne."
- He is a disbeliever who attributes injustice to Allah.
- If anyone says, "O Allah do not approve this injustice," then some ulama (Scholars) say that he is a disbeliever.
- If anyone tells another, "If Allah dispenses justice on the day of resurrection then I shall get my right from you," then he is a disbeliever. But, he will not be an infidel on saying, "When Allah dispenses justice..." instead of "If..."
- A person will become a disbeliever on telling another, "If Allah decides in truth and justice then I will get my right from you."
- If anyone says, "O Allah, when a cruel person oppresses, do not accept his oppression. If you accept his oppression, I shall not accept it, "then it is disbelief because he seems to say, "O Allah, if you are pleased with his oppression then I shall not be pleased."
- A man says to another, "Do not lie!" The other says, "Why is falsehood there? It is that one may lie." This is disbelief.
- Someone is advised to seek Allah's pleasure. He says, "I do not want it,"
- or, he says, "If Allah admits me to paradise, I shall ravage it,"
- or, when someone is told not to disobey Allah lest He consign him to hell, he says, "I am not afraid of hell,"
- or, someone boasts on being told that Allah does not befriend one who overeats, "I shall eat whether he antagonizes me or befriends me," - all these words make the speaker a disbeliever.
- If anyone is advised not to laugh much or sleep much and he says, "I shall eat as much, sleep as much, and laugh as much as I like," then it is disbelief.
- If someone is warned not to commit sin lest Allah punish him and he says, "I shall carry punishment in one hand," then this is disbelief.
- When someone is advised not to upset his parents and he says, "They have no right over me," though this is not disbelief yet it is a grave sin.
- If anyone says to Iblis (the devil), "O Iblis, get my work done so that I might obey you and grieve my father and keep away, from that which you forbid me, "then he disbelieves.
- If a man tells another, "If Allah had not created these two worlds then I would have taken my right from you," then this is disbelief.
- Someone tells a lie. His listener says, "May my God make your lie true!" Or, he says, "May Allah bless you with this lie!" This is near disbelief.
- If anyone lies and a listener says, "May Allah bless you in your lie!" then this is disbelief.
- Someone points out to a man about another person, "He does not behave well with you." He replies, "Even Allah will not behave well with him." The speaker becomes a disbeliever.
- If someone says, "Allah loves riches. This is why He has not given me riches," - then he is a disbeliever, provided he means to attribute miserliness to Allah. But if he says merely, "Allah does not like riches" then it does not make him a disbeliever.

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- A man says to another, "Insha Allah, do this work." The other says, "I shall do this task without insha Allah. This is disbelief.
- An oppressed man sighed. "This (whatever happens to me) is as decreed by Allah." The oppressor boasts on hearing him, whatever I am doing is not part of Divine decree." This is disbelief.
- If someone says, "O Allah, do not refrain from having mercy on me," then these are words of disbelief.
- A husband and wife were conversing with one another. When their conversation became lengthy, the husband said, "Fear Allah and observe taqwa (piety) "(which is righteousness). She retorted, "I do not fear Allah." On saying this, she becomes an apostate, and they stand separated provided the husband had reprimanded her on a dear sin (and she had said so in response). But, if he had rebuked her without there being any need for it (and she had done nothing wrong) then she does not become a disbeliever yet if she meant to belittle fear of Allah and ataqwa (piety) then both of them stand separated.
- A man decided to beat another man, saying, "You are not afraid of Allah." The man confirmed, "Yes," This is not disbelief because he has a right to say, "The question on fearing Allah arises when I was the doer."
- A man was committing a sin when someone rebuked him, "Do you not fear Allah?" He answered, "No!" Then he becomes a disbeliever because there is no doubt in what he meant.
- Similarly, if a man is asked, "Do you not fear Allah?" and he retorts angrily, "No!" then he becomes a disbeliever.
- If someone dislikes a command of Allah or of the Shari'ah (divine law) of his Messenger صلى الله عليه وسلم like, his saying that he does not like the making lawful to a man to have for wives, then it is disbelief.
- If anyone suggests, "Only Allah should exist and nothing else should exist," then he is a disbeliever.
- If anyone says, "Allah has created all pieties for me. And I am the creator of evil." Then he becomes a disbeliever.
- A man was told 'You fail to come to the expectation of your wife." He said, "Even Allah does not meet the expectations of women. How may I achieve that?" This is disbelief.
- If a man pleads to another, "I look to Allah and I look to you," (meaning what I have got is from Allah and from you) or, he says, "I have hope in Allah and I have hope in you," then this is bad. But, if he says, "I look to Allah and regard you as the outward means of it," then it is a good thing to say.
- A man asked his adversary to take an oath over something. He swore by Allah, but his adversary said, "I do not want you take the oath on Allah. I ask you to take an oath on divorce or release." Some ulama (Scholars) say that he becomes a disbeliever (on making this demand), but most say that it is not so and this opinion is more correct.
- If a man says to another, "Allah knows that I remember you always with prayer," then the ulama (Scholars) give different opinions about his disbelief.
- If any one jests and says in Persian (من خدایم) while he was supposed to say (خدا آنیم)

then he will be disbeliever.[1]

- A man asked his wife, "Do you have no care for right of your neighbours?" She said. "No!" then he asked, "Do you not care for rights of your husband?" Again, she replied in the negative. Next, he asked, "Don't you have care for Allah's rights?" She repeated, "No." She becomes a disbeliever.
- If a man is fed up with his illness or his straitened circumstances and exclaims, "why did Allah create me? I am deprived of the pleasures and comforts of this world." Then some ulama (Scholars) say that he will not be a disbeliever but what he says is a grave sin.
- A man warned another, "Because of the sins that you have committed, Allah will inflict punishment on you!" He asked, "Have you appointed Him as God that He will do as you say?" Then he becomes a disbeliever.
- If anyone asks, "what can Allah do besides creating hell?" then he becomes a disbeliever.
- If on seeing an ugly animal or an ugly man, someone asks "Has Allah no designer that He made this kind of animal (or man)?" – then he become a disbeliever.
- A poor man got fed up with his poverty and said, "So and so is Allah's creature whom He has showered with blessings. I too am His creature but I am involved in grief and pain. Is this just?" He becomes a disbeliever on saying this.
- Someone was advised to fear Allah. He asked in retort, "Where is Allah?" So, he becomes a disbeliever.
- If anyone asserts the Messenger صلى الله عليه وسلم is not in his grave, or he says, "Allah knowledge is not ancient," or "Allah has no knowledge of what does not exist," then he is a disbeliever.
- If anyone's name is Abdullah and someone calls by adding a Kaaf (ک) (ka) before Allah, and he is a learned man, then he becomes a disbeliever.
- So, too, if a learned man mispronounces the word Khaliq (خالق) intentionally as Khaleeq (خليق)[2] then he becomes a disbeliever.
- If anyone says to another, "May Allah have mercy on your heart, not on mine heart," then he becomes a disbeliever provided he says that in a sense of dispensability of Allah's mercy. But, if he means that his heart is not wavering but perfect with faith in Allah then he is not a disbeliever.
- If anyone takes an oath, "by Allah and by the dust of your feet," then he becomes a disbeliever. But if he says, "By Allah and by your head and your live," then the u lama differ about it.

(III)THE MEANS TO DISBELIEF THAT CONCERN THE PROPHETS عليه السلام

- If anyone does not confirm any of the prophets, عليه السلام
- Or shows displeasure, or lack of belief, and satisfaction over, any of the *sunnah (Prophet's* صلى الله عليه وسلم *practice)* of any of the Messengers, - then he is a disbeliever.
- Ibn Muqatil was asked about a man who denies the prophethood of Sayyiduna Khidr عليه السلام or Sayyiduna Dhul Kifl عليه السلام. He said, "Denial of the prophethood of a prophet members of whose *ummah* had not confirmed his prophethood

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[1] meaning 'I will come myself' but saying. (God preserve us from evil) 'I am God'.

[2] Khaleeq instead of Khaaliq (creature instead of creator)

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unanimously is (condoned) not harmful.

- If anyone says, "If so and so was a prophet then I would have believed him," then he becomes a disbeliever.
- And, Ja'far رحمه الله said that if anyone professes belief in all the Prophets عليه السلام of Allah but says, "I do not know whether Aadam عليه السلام was a Prophet or not," then he becomes a disbeliever.
- Ja'far رحمه الله was asked about one who blames the Prophet عليه السلام of indecency. For instance, some accuse a prophet عليه السلام of resolve to commit adultery, or any such evil; as the Hashwiyah (an evil, condemned sect) say such things about Prophet Yusuf عليه السلام. He said, "Such a person is a disbeliever because it is an evil suggestion about the Prophets عليه السلام and is tantamount to insulting them.
- Abu Dharr رضى الله عنه said that if anyone says, "Every disobedience is disbelief" and then accuses the Prophet عليه السلام of disobedience, then he is a disbeliever because he spoke ill of the Prophets عليه السلام. And he said that
- If he says that the Prophet عليه السلام never disobeyed neither during prophethood not before being commissioned, then too he is a disbeliever because by saying this he rejects the texts (the verse of the Quran!

وَعَصٰٓى اٰدَمُ رَبَّهٗ

{And Aadam disobeyed his Lord....} (20: 121)

- Some ulama (Scholars) say that if a person does not believe that Muhammad is the last (and seal) of the Prophets عليه السلام then he is not a Muslim.
- He who harbous a grudge against a Prophet عليه السلام is a disbeliever.
- If anyone says about a person that if he were Allah's Messenger صلى الله عليه وسلم then he would never believe him, then he is a disbeliever. So, too,
- One who says, "If Allah Himself commands me to do that work, even so I would never do it," is a disbeliever.
- If anyone says, "If whatever the Prophets صلى الله عليه وسلم have said was true and based on facts, then he is a disbeliever, and,
- If anyone says I am Allah's Messenger, or he says in Persian من پیغمبرم to mean the same thing, then he is a disbliever and,
- If another person demands of him that he show a miracle, then some ulama (Scholars) say that he too is a disbeliever who demands a miracle, but the latter day ulama (Scholars) say that if means to disgrace him and fail him then he is not a disbeliever.
- If anyone says of the blessed hair of the Prophet صلى الله عليه وسلم that it is a little strand of hair, then some ulama (Scholars) say that he becomes a disbeliever. But some others say that he will not be a disbeliever; yet if he means to belittle that then he will be a disbeliever according to them, too.
- If anyone says, "I do not know whether Muhammad صلى الله عليه وسلم was a human being or a jinn," then he becomes an unbeliever.
- He is not a disbeliever who says, "If so and so is a Messenger, then I shall get my right from him."
- If anyone says (in Persian) (محمددروشک بود) (Muhammad was a small mendicant), or that
- The garment of the Messenger is bad-smelling and dirty, or, that

- The nails of the Prophet صلى الله عليه وسلم were growing, then - some ulama (Scholars) say that he becomes a disbeliever without any reservation, but some others say that if he says these things out of contempt only then will he become a disbeliever.
- If a man abuses another whose name is Muhammad or Ahmad, or whose kunyah is Abu al-Qasim, saying, "O son of an adulteress!" then he becomes a disbeliever provided he meant to abuse everyone of the name of Muhammad or Ahmad or of the kunya Abu al-Qasim, having in mind the noble Prophet عليه السلام too.
- One does not become a disbeliever on saying, "Every sin is Kabirah (grave) but the sins of the Prophet are saghirah (minor)."
- If anyone says, "Every bad thing done intentionally is a major or grave sin and the doer is fasiq (a sinner)" and he adds, "the disobedience of the Prophet عليه السلام was deliberate," then he is a disbeliever because he spoke ill of the Prophets عليه السلام. But, if he says, "The disobedience of the Prophet عليه السلام was not intentional," then he is not a disbeliever.

(IV)THE MEANS OF DISBELIEF CONCERNING THE SAHABAH (PROPHET'S COMPANIONS) رضى الله عنهم

- A rafidi who speaks ill of Abu Bakr رضى الله عنه and Umar رضى الله عنه and (we seek refuge in Allah from it) curses them, is a disbeliever. But,
- If he says that Ali رضى الله عنه is more excellent then Abu Bakr رضى الله عنه then he will not be a disbeliever, yet he will be called a mubtada,' And,
- a mu'tazalllah is also a mubtada' (an innovator). But,
- if anyone says that the vision of Allah is not possible, then he becomes a disbeliever.
- Anyone who accuses Sayyidah Ayshah رضى الله عنها of adultery comits infidelity with Allah, but
- Anyone who accesses any of the other noble wives رضى الله عنه of the Prophet صلى الله عليه وسلم of adultery is not an infidel, but is deserving of cure, and so
- anyone who says that Umar رضى الله عنه Uthman رضى الله عنه and Ali رضى الله عنه are not the sahabah of the Prophet صلى الله عليه وسلم is not a disbeliever but deserves to be cursed.
- One who rejects the imamah and Khalifah (leadership and caliphate) of Abu Bakr رضى الله عنه is a disbeliever according to some ulama (Scholars), but a mubtada according to others (who do not classify him as a disbeliever). The correct opinion, however, is that he is a disbeliever.
- One who rejects the Khilafah (caliphate) of Uamr رضى الله عنه also becomes a disbeliever according to the correct opinion.
- Those who call Uthman رضى الله عنه, Ali رضى الله عنه, Talhah رضى الله عنه, Zubayr رضى الله عنه and (Sayyidah) Ayshah رضى الله عنها disbelievers (we seek refuge in Allah from such thought) are themselves disbelievers. And, so too:
- It is *wajib (cbligatory)* to classify as infidels all the People of the sect Zaydiyah because they contend that (may Allah preserve us from such thought) a prophet would arise in a non-Arabic land who will replace our prophet's صلى الله عليه وسلم religion and annul the Messenger ship of our chief. (Sayyiduna) Muhammad صلى الله عليه وسلم, Allah's Messenger.

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- It is *wajib (obligatory)* to classify as disbelievers those rawafid who believe in reincarnation. They say that one who dies returns to this world, Allah's spirit dwells in the imam, the hidden imam will manifest himself and till he does not appear the operation of the commands and prohibitions are suspended, and Jibril عليه السلام had erred in passing on the revelation to Muhammad صلى الله عليه وسلم instead of Ali رضى الله عنه (to whom he ought to have conveyed the wahy or revelation from Allah).This sect is an outcast and alien to the community of Islam. The same commands apply to the members of this sect as to the apostates.

(V)MEANS OF DISBELIEF CONCERNING PROPHET عليه السلام AS WELL AS PROPHET MUHAMMAD عليه السلام (CONTD)

- If anyone is compelled to speak ill of prophet Muhammad صلى الله عليه وسلم, there can be three possibilities of it.
  - (a) He affirms that he has no semblance of doubt about the prophet صلى الله عليه وسلم in his heart but he uttered only those words that he had been compelled to utter, and even speaking that much was tremendously painful to him. In t his case he will not be called a disbeliever and he will be like one who is compelled to utter words of disbelief and he does that only with his tongue while his heart stands firm and convinced on faith.
  - (b) He declares that when he was compelled (to speak ill of Muhammad), he pictured in his mind the Christian by the name of Muhammad when he spoke ill of him, he meant that Christian man who had this name. In this case, too, he will not become a disbeliever.
  - (c) He declares that when he was forced (to speak ill of Muhammad), he had in his mind that Christian too whose name was Muhammad, but the evil words that he uttered were not about the Christian but were about Muhammad صلى الله عليه وسلم. In this case, he will be a disbeliever in law as well as in the sight of Allah.
- If any one says that Muahammad صلى الله عليه وسلم was mad, he is a disbeliever. But,
- if he says that Muhammad صلى الله عليه وسلم swooned, then he is not a disbeliever (because of that).
- If anyone says, "If Aadam عليه السلام had not eaten wheat (in paradise), we would not have been miserable," then he is a disbeliever.
- He is a disbeliever who r ejects the hadith mutawatar, and
- if he rejects the hadith machhur, some scholars place him among the disbelievers and some say that he is misled, not a disbeliever.
- If he rejects Khabar wahid, he is not a disbeliever (on that account) but a sinner because he does not accept it.
- If anyone says about a Prophet عليه السلام, "I wish that he was not a Prophet," then the ulama (Scholars) say that if he does not question the wisdom behind sending him as a Prophet, he will not become a disbeliever. But,
- if he means to insult the Prophet and give vent to his dislike for him then he will become a disbeliever.
- When someone is told of what the Prophet صلى الله عليه وسلم liked (for example, pumpkin, gourd) and he says, "I do not like it," then it is disbelief and Imam Abu

Yusuf رحمه الله also holds this opinion. However, some latter day scholars say that if the man spoke contemptuously then he will become a disbeliever, otherwise not.

- If anyone says that Prophet Aadam عليه السلام had woven cloth and on that basis we are children of a weaver, then he becomes a disbeliever.
- If anyone is told that the Prophet صلى الله عليه وسلم licked his three fingers on eating his food and he comments, "If is not something good," then he becomes a disbeliever.
- If any one remarks that ignorant do not wash their hands when they have their meals and he meant to look down upon the Prophet's صلى الله عليه وسلم practice, then he becomes a disbeliever.
- If a person question the practice of clipping the moustaches and drawing the flap of the turban forward below the neck and he has in mind the *sunnah (Prophet's* صلى الله عليه وسلم *practice)* of the Prophet صلى الله عليه وسلم which he mocks then he becomes a disbeliever.
- If a listener tells the speaker, you lie though all you say is from the Messenger," then these words are expression of disbelief.
- If he says, "I will not believe what he says though it is as the Messenger say," then this too is disbelief.
- A man prepared to beat his slave. Someone else advised him not to beat him on which he roared, "Who are you? Even if Muhammad صلى الله عليه وسلم were to forbid me, I would not spare the slave." Or, 'If I hear a command from the heaven not to beat him, I would not obey it. I shall beat him." He becomes a disbeliever.
- Someone read out a hadith. One of the listeners remarked in Persian, "Every day he reads out something that is problematic." Even though he did not name the Prophet صلى الله عليه وسلم and alluded to the speaker, he becomes a disbeliever provided the hadith concerns a command of Shari'ah (divine law) or religion itself. But, if the hadith did not speak of Shari'ah (divine law) or religion, then he will not have committed disbelief. It will be presumed that he means that it was not a better selection (that was read).
- If anyone says (بحرمت جوانک عربی) and he referred to the prophet صلى الله عليه وسلم then he perpetrates disbelief.
- He who says, "the Prophet صلى الله عليه وسلم was a Messenger sometimes and there was a time when he was not a Messenger," or he says,
- "I do not know if the Prophet صلى الله عليه وسلم is a believer in his grave or a disbeliver."

Then he becomes a disbeliever on saying such things.

- A man says to his wife, "Do not speak what contradicts." She retorted, "Even the Messenger spoke against..." These words are disbelief. She must repent and they must re-marry one another.

(VI)MEANS OF DISBELIEF CONCERNING ANGELS

- A man says to another, "Looking at you seems like looking at the angel of death." This is a serious mistake and the elders differ on whether he becomes a disbeliever or not. Some say that he becomes a disbeliever, but others say, 'he does not.'
- Fatawa Qadi Khan quotes some scholars to say that if he spoke out of hatred for the angel of death then he become a disbeliever. But, if he spoke in dislike of death then he will not become a disbeliever.

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- If he says, "I regard his face as an enemy like the angel of death, "then most scholars say that he is a disbeliever.
- If someone rejects another's testimony and he refers to Jibril عليه السلام or Mika'il عليه السلام then he becomes a disbeliever.
- If anyone describes an angel with defect, then he becomes a disbeliever.
- If a person claims to be an angle then he does not become a disbeliever, but
- If he claims to be a Prophet, then he becomes a disbeliever.
- A man marries a woman without the presence of witnesses, saying, "I call upon Allah and His Messenger to be witnesses," Or,
- he says, "I call upon Allah and the angels to bear testimony."

then, in the cases, he becomes a disbeliever. But,

- If he says, I have the angels on the right and the left as witnesses," then, in this case, he does not become a disbeliever.

(VII)MEANS OF DISBELIEF THAT CONCERN THE QURAN

- If anyone says that the quran is a creation then he will become a disbeliever.
- If any one rejects a verse of the Quran, or
- ridicules it, or
- find defect with it,
- then, in all these cases, he becomes a disbeliever.
- If anyone recites the Quran on the beat of a tambourine, or against the trill of a flute, then he has disbelieved.
- A man was reciting the Quran and another commented. "what is this sound of a storm?" This other man has disbelieved.
- If a man says, "I recited much of the Quran but sins were not forgiven to me." Then he becomes a disbeliever on saying that.
- If a man says to another, "You have pulled out the hide of (قُلْ هُوَ اللهُ اَحَدٌ) (Surah al-IKhlas), or you have held the collar of اَلَمْ نَشْرَحْ surah-al-Inshirah)or
- to one who recited surah Yasin to a sick person, "Do not insert it in the mouth of the dead," or,
- he says to another, "O you, shorter than (اِنَّا اَعْطَيْنٰكَ الْكَوْثَرَ) (surah al-Kawthar)!" or,
- to one who recited the Quran but could not recollect a word, (والتفت الساق بالساق), or,
- he brought a bowlful of something and said: (كَاْسًا دِهَاقًا), or,
- said to another in jest (فَكَانَتْ سَرَابًا), or,
- joked when weighing or measuring: (وَاِذَا كَالُوْهُمْ اَوْ وَّزَنُوْهُمْ يُخْسِرُوْنَ), or
- to someone, "You have put on turban of (الم نشرح)," meaning, he has shown off his knowledge, or,
- he assembled some people and said: (فَجَمَعْنٰهُمْ جَمْعًا), or
- he said to them: (وَحَشَرْنٰهُمْ فَلَمْ نُغَادِرْ مِنْهُمْ اَحَدًا), or,
- he said to someone, "How do you recite (والنازعات غرقا) with a dumma or a fathah or a kasra?" meaning to ridicule, or,
- he said to a bald man, "I call you great, for, Allah, says: (كلا بل ران)," or,
- someone was told, "come to offer the *salah (prayer)*," or "come to the congregational *salah (prayer)*." He replied, "I will offer the *salah (prayer)* by myself

for, Allah, says: (إِنَّ الصَّلٰوةَ تَنْهٰى)"[1]

- in all these cases he becomes a disbeliever.

- A man says to another that he has kept his house neat and tidy as: (والسماء والطارق). Some scholars said that he will become a disbeliever because of that. But, Imam Abu Bakr Ishaq رحمه الله said that if this man who made this remarks is ignorant then he will not be called a disbeliever, but if he is a scholar then he will be become one.
- If someone says (قاعا صفصفا) to compare it as spotless, then there is much risk that he becomes a disbeliever.
- If something remains in he vessel and he remarks (وَالْبَاقِيَاتُ الصَّالِحَاتُ) then this too is very risky.
- If anyone says that the Quran is ajami (non Arabic), then he becomes a disbeliever.
- If he says that one word of the Quran is ajami then we must not hasten to call him a disbeliever.
- Someone was asked why he did not recite the Quran. He replied, "I am fed up of the Quran." So, he becomes a disbeliever.
- A man has committed to memory one surah of the Quran that he recites very often. Someone else remarked, "You have found this surah as weak and helpless." Because of these words, he will become a disbeliever.
- If any one rhymes the Quran in Persian, for instance, then he would be killed because he become an unbeliever.

(VIII)MEANS OF DISBELIEF THAT CONCERN *SALAH (PRAYER)* FASTING & ZAKAH (ANNUAL DUE CHARITY)

- Someone instructed a sick man to offer the *salah (prayer)*. He said, "By Allah, I shall never offer *salah (prayer)*." Indeed, he never again offered *salah (prayer)* all his life. He died that way. Hence, he will be counted among the disbelievers.
- If he had said merely. "I shall not offer *salah (prayer)*, then there would be four possibilities of what he said.

(a) I have offered *salah (prayer)* already so will not offer it again (meaning, the *salah (prayer)* of that hour).

(b) I will be not offer it at your saying because one who is better than you has already commanded me to offer it.

(c) I will not offer it, saying it badly and as a sin.

In these cases, he does not become a disbeliever. And,

(d) I will not offer because *salah (prayer)* is not *wajib (obligatory)* on me. And I am not commanded to offer it. In this case, he become a disbeliever.

- If his answer is a clear, "I do not offer the *salah (prayer)* 'then he will not be a disbeliever for these (fore going) reasons.
- A man is reminded to offer the *salah (prayer)*. He asked, "Am I insane that I should offer *salah (prayer)* and add to my duties?" Or, he says:
- "It has been a long time that I have not done something futile," Or,
- "who can fulfil this task after all?" Or,
- "The intelligent should not indulge in such pursuits as cannot be carried on t ill the

[1] The word tanha in Urdu is alone 'by myself' in Arabic 'it forbids' (indecency). Other words are also so used in dual manner and me

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end," or,

- "Other people do it instead me", or,
- "Nothing is gained of fame by offering *salah (prayer)*," Or,
- "Did you get distinction on offering *salah (prayer)*?" or,
- "Why should I offer *salah (prayer)*? My parents are dead," or,
- "It is the same whether one offers *salah (prayer)* or does not offer," or,
- "I have offered *salah (prayer)* for so long that I feel tired," or,
- "*Salah (prayer)* is such a thing that if it is preserved it becomes stale,"

-all these responses are words of a disbeliever.

- A man advised another to offer *salah (prayer)* and pray, together with him, for redress of their need. He taunted, "I have offered many *salah (prayer)* but could not get anything at all" and showed extreme disrespect for it. He becomes a disbeliever because of it.
- If a sinner addresses the Muslims saying, "Look, what Muslims are!" and points out to the gathering of the sinners, then he becomes a disbeliever.
- If someone says, "How better it is to be among those who do not offer *salah (prayer)*," then because of these words he becomes a disbeliever.
- A man preacned to another saying, "offer *salah (prayer)* that you might savour the taste of worship." He gave a derogatory response, "You should not offer *salah (prayer)* so that you relish the sweetness of not offering it." These words land him in disbelief.
- A slave was recommended to offer *salah (prayer)* but he declined to do so on the plea that the reward for it would go to his master. He becomes a disbeliever on account of that.
- When a man was told that he should offer *salah (prayer)*, he said, "Allah has caused me to suffer loss in my property. Now, I shall withhold his rights to cause Him loss." This response too throws him into disbelief.
- One man offers *salah (prayer)* only in the month of Ramadan, saying, "that is enough," or "This will be too much because each *salah (prayer)* in Ramadan is equal to seventy." He becomes a disbeliever because of that.
- If any one deliberately turns away from the qiblah while offering the *salah (prayer)* though happens to be correctly oriented to it, then, according to Imam Abu Hanifah رحمه الله, he becomes a disbeliever (because of his intention). The jurist Abu al-Layth رحمه الله concurs with him.
- If any offers *salah (prayer)* without making ablution or while his clothing is impure then he will become an infidel.
- If any one is accustomed to offer in this manner deliberately then he too becomes a disbeliever.
- If a man cannot determine the direction of the qiblah and he contemplated over it and reasoned out a direction but did not face that direction and faced another side and offered *salah (prayer)*, Imam Abu Hanifah رحمه الله said, "I fear for him that disbelief may overtake him, because he turned away from the qiblah. Other scholars, differ on whether he becomes a disbeliever or not. The shams ul ulama (Scholars), Halawi رحمه الله, said, "If he gave up the qiblah ad by way of ridicule faced another direction towards which he offered the *salah (prayer)* then clearly he is a

disbeliever.

- If anyone was offering *salah (prayer)* in the presence of some people and happened to pass wind (or his ablution was nullified in some way) and he felt embarrassed so continued to offer *salah (prayer)* without making fresh ablution, or
- he was close to enemies and stood up and offered *salah (prayer)* though he was not in a pure condition - some scholars rule he will not become a disbeliever because he did not do it to make fun.

However, if anyone finds himself in such an embarrassing situation then he must not from an intention to offer *salah (prayer)* while he is standing and he must not recite any thing nor must he resolve to make ruku' when he bows and must recite nothing in that posture. In this way, he will not be regarded as a disbeliever in any one's opinion. Some scholars maintain that if a person offers *salah (prayer)* in impure clothing, he does not become an unbeliever.

- If anyone says that while *salah (prayer)* is *fard (compulsory)*, ruku (bowing) and sajdah (prostration_ are not *fard (compulsory)* then he will not become a disbeliever because of that saying because this may refer to the funeral *salah (prayer)* in which ruku' and sajdah are not *fard (compulsory)*. But,
- If any one denies absolutely that ruku' and sajdah are *fard (compulsory)* in all cases then he becomes a disbeliever, and even
- if he rejects the *fard (compulsory)* nature of the second sajdah (in the *salah (prayer)*) then he becomes a disbeliever, because he rejects the consensus and the continuously observed practice.
- If any one says that were the ka'bah not the qiblah but Bayt ul Maqdis was the qiblah, he would continue to face the kabah and offer *salah (prayer)* and not face Bayut ul Maqdis, or,
- he name any other place as qiblah and says, "I would not offer *salah (prayer)* towards it but only towards the ka'bah," or
- "if the Ka'bah was in certain other direction, I would not have returned myself there," or,
- he said that there are two qiblahs - the ka'bah and the Bayt ul Maqdis, - in all these cases, he is a disbeliever.
- Ibrahim ibn Yusuf رحمه الله said that if any one offers *salah (prayer)* merely to be seen by others then he will get no reward for it but sin will be recorded against him. Some others say that he becomes a disbeliever because of that. Yet others say that he earns neither a reward nor a sin and he is as one who has not offered *salah (prayer)*.
- A man went to a disbeliever and neglected *salah (prayer)* of a couple of times. If he did it out of respect for the disbeliever then he becomes a disbeliever and he will not be bound to redeem these *salah (prayer)*, but
- if he did it because of his sinful and corrupt nature then he will not be a disbeliever and will have to redeem the *salah (prayer)* he neglected.
- A man embraced Islam in Dar ul Islam (meaning, Islamic territory) one month later, he was asked about the five time *salah (prayer)* and he said, "I do not know if they are prescribed (*fard (compulsory)*) on me." He will become an disbeliever because of that. But if he resides among neo Muslims, then he will not be a disbeliever.

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- If anyone tells a mu'adhdhin when he calls the adhan, "You lie," then he becomes a disbeliever.
- If anyone says on hearing the adhan, "This is the sound of the bell," then he is a disbeliever.
- Someone was reminded that he should pay the zakah (Annual due charity). He replies, "I do not pay zakah (Annual due charity)." In that case, he is a disbeliever. Some ulama (Scholars) say that simply on the basis of this reply he will become a disbeliever. But, others say that he will be a disbeliever on the outward conditions but not on the inward, by his reply in this way. Rather, there should be four possibilities here too, like in *salah (prayer)* so that he will not be a disbeliever in three case but will become a disbeliever in one case.
- If anyone yearns that fasting in Ramadan was not *fard (compulsory)*, the ulama (Scholars) differ on the ruling. But, the correct thing is that it will on the intention of the speaker;
- if he meant that he would not be able to give the rights of the month of Ramadan, then he would not be a disbeliever, but,
- if he says, when the month begins, 'A burdensome month," or "a burdensome visitor has come!" then he will be a disbeliever.
- When the month of Rajab comes and any one says, "After this we shall face disaster," and casts aspersion on the sacred month of Ramadan then he becomes a disbeliever, but,
- if he refers to the arduous nature of fasting on his self, then he does not become a disbeliever.

The answer to the previous issue is based on the same explanation.

- If any one says that the fasts of Ramadan must and soon, then some scholars say that he becomes disbeliever on saying that. Some others say that he does not become a disbeliever.
- If anyone says, "How many more fasts? I am tired," then this expresses disbelief."
- If anyone says, "Allah has made obedience a punishment for us" and these words are interpreted then he will not be a disbeliever.
- If he says, "If Allah had not made obedience *fard (compulsory)* (obligatory), that would have been better for us," and these words and interpreted by any one then he would not be a disbeliever.
- If anyone says, "*Salah (prayer)* not worthy of me," or,
- "the lawful is not compatible with me," or,
- "why should I offer *salah (prayer)*, I have no wife and children?" or,
- "I have placed *salah (prayer)* on the shelf," –

then in all these cases he becomes a disbeliever.

(IX)MEANS TO DISBELIEF THAT CONCERN LEARNING & THE LEARNED

- If, for no apparent reason, a person bears hatred for a scholar of religion, then he is likely to become a disbeliever.
- A man commented about one who reconciled (differing) people, "to at look at him is to me like looking swine." Then he is likely to become a disbeliever.
- If any, without reason, calls a scholar or jurist an evil man then too there is likelihood of his becoming a disbeliever.

- He becomes a disbeliever who tells any one, "A donkey's sex organ be in the seat of your knowledge," meaning thereby religious knowledge.
- An ignorant man said about those who acquire knowledge, "what they learn is merely stories and tales," or
- "That is fraud," or
- "I reject learning of causes," - it must be understood that these words are all expressive of disbelief.
- If a man sits on a raised place around people who put to him questions in jest and then begin to throw pillows at him and all laugh heartily, then all of them become disbelievers.
- A man was returning from a gathering of learning. Someone remarked, "You are coming from a pagan house," and this joker becomes a disbeliever.
- If he says, 'What have I to do with places of learning?" or
- "who is capable of doing what the scholars preach?" - then he is a disbeliever in each case.
- If anyone says that learning cannot be put in a vessel or a purse (meaning, a container of food and of money , and both these things are necessary), or,
- 'what shall I do of learning? I want silver in my pocket." - then he becomes a disbeliever.
- If anyone claims to be preoccupied with his family so says sarcastically, "I cannot attend places of learning," thereby ridiculing knowledge, then he is likely to become a disbeliever.
- A scholar jurist was speaking of knowledge of narrating a sound hadith. One of his listeners remarked, "This is nothing" and rejected whatever he said, Or,
- he said, "How will this help? I need money. That rules everyone. Of what use is knowledge?" - these things express disbelief.
- Saying that making mischief is better than sagacity lands one into disbelief
- If a woman whose husband is a scholar remarks, "Curse be upon a husband who is a scholar," then she become a disbeliever.
- If anyone says that the doings of the scholars resemble those of the disbelievers then he will become a disbeliever then he demonstrates their all deeds to be at par in which case he says that truth and falsehood are equal.
- Someone had a dispute with a jurist over a reasoning put forward by the jurist. The man said, "Do not behave like a scholar. You cannot get anything here." There is likelihood of this man falling into disbelief.
- If anyone calls a jurist, "O wise man!" or,
- "O high one!" - then he will not be a disbeliever if he did not intend to belittle religion.
- It is reported that a jurist left his book in a shop. When we passed by it later, the shopkeeper called out, "You have forgotten the saw here." The jurist said, "It is my book in your shop, not a saw." But, he shopkeeper, insisted, "The carpenter cuts wood with the saw and you cut wood with the saw and you cut the necks of people with the book." The jurist complained to shaykh Imam Abu Bakr Muhammad ibn Fadl رحمه الله about it and he passed judgement that the shopkeeper should be executed.
- A man scolded his wife and said, "Obey Allah" and he forbad her from committing

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sin. She said, "What do I know of Allah and knowledge. I have placed myself in hell." Because of these words, she become a disbeliever.

- A man was told that those who seek knowledge walk on the wings of the angels. He said, "This (is not so It) in a lie." He become a disbeliever because of it.
- If anyone says that the deduction and reasoning of Imam Abu Hanifah رحمه‌الله is not correct, then he is a disbeliever. Because he has rejected his deduction outright.
- If anyone says that the bowl of tharid and rice is better then learning then he becomes a disbeliever.
- If he says that the bowl of rice is better from Allah then he will not become a disbeliever, because it could mean 'coming from Allah.' the same interpretation cannot apply to knowledge or learning. [The point is that we must look at the Urdu words which are respectively (علم سے بہتر) and (اللہ سے بہتر) (Allah say bahtar) the words say can mean 'then' as well as 'from' the message cannot be conveyed in English]
- A man said to his enemy, "Come with me on the path of Shari'ah (divine law)." He said, "Bring a policemen. I will come along. I cannot come by force." He will become a disbeliever because he contends with Shari;ah. But,
- If he says, "Come with me to the judge" and the other gives the same answer as the one he gave for Shari'ah (divine law) then he will not be disbeliever.
- If he were to say, "Speaking of Shari'ah (divine law) and excuses to me will not profit anyone." Or,
- They will not go ahead. Or,
- There is a sweet dish of dates for me. What shall I do with Shari'ah (divine law)?" - all these things express disbelief.
- If he says, 'when you had taken silver, where was the judge and Shari'ah (divine law)?" then he becomes a disbeliever. Later day scholars say that if by judge he means the (local judge or) city magistrate then he will not be a disbeliever.
- Some was told about the command of Shari'ah (divine law) on something. He said, "I follow custom, not Shari'ah (divine law)." Then, according to some he becomes a disbeliever.
- A man asked his wife, "what do you say? What is the command of Shari'ah (divine law)?" She said in a raised voice after giving a loud belch, (اینک شرع زا).[1]
  She becomes a disbeliever. And her marriage stands dissolved.
- A man presented a religious edict to his adversary. He rejected it, saying, "Have you brought a pile of edicts?" According to some, he becomes a disbeliever because he rejected the command of Shari'ah (divine law).
- But, if he said nothing about the edict, yet taking it, he put it down on the earth, saying, "Is this Shari'ah (divine law)?" So, he will become a disbeliever.
- A man asked a scholar for an edict about his wife. He replied. "Your wife stands divorced." The man protested "I do not believe in divorce. Mother and children must be at home." He will become a disbeliever because of these words.
- Two men quarrelled. One of them brought a religious edict to the other, who said, "Not like it says in the edit." Or,

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[1] She made fun of Shari'ah (divine law) by using its letters individually (شریعة) in a ridiculous expression.

- "I do not follow it." Then - he will be awarded a ta'zir (punishment)

(X)MEANS TO DISBELIEF THAT CONCERN THE LAWFUL & UNLAWFUL AND THE WORDS OF THE SINNERS & INDECENT

- If anyone believes the lawful to be forbidden and the unlawful to be lawful then he becomes a disbeliever.
- But, if he declares the forbidden to be lawful in order to sell his merchandise or out of ignorance then he will not be a disbeliever. But, the condition applies: the forbidden (or unlawful is exactly (or directly) forbidden (bi'aynihi)[1] and he believes (regards) that to be lawful in which case he will be a disbeliever. But if he unlawful is forbidden for another reason (lighayrihi)[2] and he calls it lawful then he will not be a disbeliever.
- And he will be a disbeliever concerning any thing that is unlawful (بعينه) (biaynihi) and he calls It lawful when its being unlawful is established by categorical evidence or argument, but,
- if its being unlawful is not established by categorical evidence and is proved by Khabar wahid then he will not be disbeliever for regarding it as lawful.
- A man was asked, "would you prefer one lawful thing over two unlawful?" He said, "whichever of the two kinds (lawful or u nlawful), arrives faster." In this case, he is likely to fall into disbelief.
- If he says, "I want property whether lawful or unlawful" then disbelief is feared for him too.
- If he says, "As long as I get the unlawful, I shall not hanker after the lawful then he does not become a disbeliever.
- If anyone gives something unlawful to a poor man with intention to be rewarded for that (by Allah) then he becomes a disbeliever. And,
- if the poor man knows that what he gives is unlawful yet he takes it and prays for the giver who says aameen on his prayer then he too becomes a disbeliever
- A man is told to consume only what is lawful. He retorts, But the unlawful is verydean to me." So, he becomes a disbeliever on that. And,
- if he says in answer, "Bring to me even one person in this world who consumes the lawful then I shall prostrate myself before him." Then too he will become a disbeliever because of that.
- A man was advised to consume the lawful. But he said, "I wish to have the unlawful." He becomes a disbeliever.
- The son of a sinner consumed wine. His relatives came to him and showered money on him. Because of this all of them become disbelievers. Or,
- The relatives did not offer money but merely congratulated the man. In this case too they become infidels.
- If any one asserts that the prohibition of wine is not established by the Quran, then he will become a disbeliever.
- Someone reminded a man who consumed wine that the Quran forbids wine. "Why do you drink it? Why do you not repent?" The alcoholic quipped, "Can one be satiated

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[1] directly as prescribed.

[2] indirectly for other reasons.

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with mother's milk He will not become a disbelieved on that , because this is either a question, or an expression of love of wine and milk as being equal in his mind.

- If a man believes that it is lawful to have sexual intercourse with his wife when she is having her menses, then he is a disbeliever. Also,
- he is regarded as an infidel who considers it as permitted to go into the anus of his wife. And,

It is stated in Nawadir from Imam Muhammad رحمه الله that in both cases he will not become a disbeliever. This ruling is stated to be correct.

- A man consumed wine and blurted out, "He who associates with us in this our delight, to him belongs the true delight. And he who is unhappy with this our state and delight – is in great loss." This man is a disbeliever.
- When a man was engaged in drinking wine, he poured forth, "I am showing off that I am a Muslim," or "I make it evident that I am a Muslim." He becomes a disbeliever.
- If an evil and alcoholic man utters "If a drop of wine trickles down, JIbril will pick it up with his feet," then he becomes a disbeliever.
- Someone rebuked a sinner, "you begin every morning by displeasing Allah and His creatures." He said, "I do well," this man becomes a disbeliever.
- A man says about sins that it is a religion. He becomes disbeliever because of that. This is as written in al-Muheet. However, it is stated in Tajnees Natiqi that the correct thing is that he will not become a disbeliever.
- **JEST WITH TASBIH & TAHLIL:** A man says (سبحان الله) subhan Allah (Allah is without blemish). Another remarks, "you have extinguished the light of subhan Allah," or
- "you have ripped open its hide" then – they become disbelievers
- Someone said a man that he should say (لا اله الا الله) (There is no God but Allah). He said, "I shall not say so." Some scholars say that he becomes disbeliever. Other say that if he means, "I shall not say so at your command, then he does not become a disbeliever. Yet other say that he will become a disbeliever in any case.
- If he asks, "What could you achieve by reciting this Kalimah (لا اله الا الله) that I should recite it?" then he will become a disbeliever.
- A king sneezed. One of those around him said (يرحمك الله) (may Allah have mercy on you!) Another man rebuked him, "Do not say so for the king." This man who rebuked him becomes a disbeliever.

(XI)MEANS OF DISBELIEF THAT CONCERN THE LAST DAY & RELATED MATTERS

- Anyone who denies the fact of the Last Day, the day of resurrection, paradise, hell, the scales. The sirat (bridge) and the record of deeds is a disbeliever.
- He who denies resurrection after death is a disbeliever.
- He who says that he does not know whether the Jews and the Christians would be punished in hell fire on being resurrected or not becomes a disbeliever.
- He also becomes a disbeliever who rejects that the dwellers of paradise will have a vision of Allah, or
- he denies that the dead would be punished in the grave, or
- he denies that mankind would be gathered for reckoning, - in All these cases he

becomes a disbeliever, but,

- If he denies the gathering and reckoning of other creatures then he wil not be disbeliever.
- If he says that reward and punishment applies only to the soul then too he does not become a disbeliever.
- A man preached to another that sins should not be committed otherwise reckoning in the other world would be very stiff. The other retort ed, "Who knows about the other world?"
- A debtor was warned by his creditor, "If you do not repay your debt in this world, I shall get it from you on the day of resurrection." He asked, "Of course, will there be a day of resurrection?" If he means to make fun of the day of resurrection, then he will be a disbeliever.
- A man wreaked tremendous oppression on another. The wronged one pleaded, "There finally will be of resurrection, then he will be disbeliever.
- A man wreaked tremendous oppression on another. The wronged one pleaded, "There finally will be the day of resurrection. Do fear its coming." The cruel man joked "A certain donkey will be there." This oppressor is a disbeliever.
- A creditor reminded his debtor to repay him in this world otherwise there would not be any money in the next world (but deeds). The debtor said, "Okey give me ten rupees more. You may take it back from me here or I will repay you there." He becomes a disbeliever because of that.
- If someone says, "What have I to do with the gathering (day)?" or
- "I am not afraid of the day of resurrection." – then he becomes a disbeliever in either case.
- A man said to his enemy. "I shall avenge myself on you in the hereafter." He retorted, "How will you find me in the huge crowd?" The scholars defer on the verdict of disbelief on this man and the jurist Abu Layth رحمه‌الله ruled that he does a not become a disbeliever.
- Someone commented that everything in this world must be good. Whatever happens here will happen (as final). He becomes a disbeliever.
- A man was advised to abstain from the worldly things keeping in view the hereafter. He remarked, "who would forsake that which is accessible (and in hand) for the sake of what is promised and unseen?" He becomes a disbeliever.
- Someone said that if any one is foolish in this world then he will be like one whose bag has a big hole, meaning that he will be useless. Imam Abu Bakr Muhammad ibn Fadl رحمه‌الله said that if he means to make fun of the hereafter then it spell disbelief.
- A man said to another, "I shall go with you to hell but I cannot come inside." Then he becomes a disbeliever.
- If someone says, "unless you bring something for the ridwan (keeper) of paradise, he will not open the gate." He becomes a disbeliever.
- A man said to those who enjoin piety, "what is the noise that you create?" If he means to reject, then there is likelihood that he becomes a disbeliever.
- Someone instructed a man to go to certain house and enjoin piety. He asked, "what has he done to me?' or, "Why should I hurt him?" or "I am by myself. I have no concern with this futile business." These are all words of disbelief.

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- If a man condoles with another and says, "what is last through his life, may you find an increase in yourself." This is very likely to land him in disbelief, Or,
- "May you get an increase." Then, this is ignorance and a mistake. Or,
- "The lifespan of that person decreased and it come to you." This too is ignorance. Or,
- "If he had died, he has entrusted his life to you." This is disbelief.
- A man was ill. When he recovered, someone else remarked, "That donkey is sent again." This is also disbelief.
- A man fell ill and his sickness grew worse and prolonged. The sick man was fed up and said to Allah, "Give me death whether on Islam or on disbelief." This too is a step to disbelief.

(XII)MEANS TO DISBELIEF THAT CONCERN INVITATION TO DISBELIEF & APOSTACY

- If anyone urges another to recite the expression of disbelief, he becomes a disbeliever himself, even if it is done in play and jest.
- If a man incites another's wife to turn apostate and separate from her husband then he becomes a disbeliever. This is the verdict of Imam Abu Hanifah رحمه الله and Imam Abu Yusuf رحمه الله.
- A man instructed another that he should become a disbeliever. He himself become a disbeliever whether the one who is instructed follows his instruction or not.
- Imam Abu Layth رحمه الله said that the moment any one gives another advice to become a disbeliever or express disbelief, he himself becomes on infidel.
- Similarly, when he urges anyone to become an apostate, he himself becomes a disbeliever.
- Imam Muhammad رحمه الله said that a person was compelled to utter the expression of disbelief under threat of life or severance of limbs. There can be a few possibilities for that:

(a) He uttered words of disbelief but was a believer at heart and there was not even a semblance of disbelief in his mind. So, he will neither be judged to be a disbeliever nor be one in Allah's Sight.

(b) He gives false information of his disbelief in the past and had no intention to become a disbeliever for always. In this case, he will be judged in law to have adopted disbelief and the judge will separate him and his wife.

(c) He says that while expressing disbelief he decided to give false information of disbelief in the past but had never had such in intention previously. Rather, did have that intention in future. In this case, he will be a disbeliever in Allah's sight and in the law of the land too.

- A man was compelled to offer *salah (prayer)* facing the cross. So, he did that. There can be three possibilities of that.

(a) If he affirms that though he was compelled to offer *salah (prayer)* facing the cross he had not an inkling of conviction for that, then he will not be a disbeliever in law and between himself and Allah.

(b) If he had resolved to offer *salah (prayer)* for Allah's sake and not for the cross, in this cast too, he will not be a disbeliever.

(c) If he thought of offering *salah (prayer)* for Allah's sake but he gave that up and offered *salah (prayer)* for the cross, then he is a disbeliever in law and between himself and Allah.

- If a Muslim is asked to prostrate himself before a king then it is better for him not to make the prostration, even if threatened.
- A man uttered the expression of disbelief with the tongue deliberately but had no conviction of disbelief. Some people say that he is not a disbeliever, but some others say that he is a disbeliever, and this latter is correct.
- Someone spoke the words of disbelief without knowing that it was an expression of disbelief but he had spoken them voluntarily, then all the scholars rule unanimously that he is a disbeliever. Ignorance will not count as an excuse. However, some people do say that he will not become a disbeliever.
- A man, who jests or blabbers non-serious words, utters to show-off and have himself praised, words of disbelief. He then becomes a disbeliever in the view of all scholars though he may not have a conviction of that.
- Someone uttered an expression of disbelief by mistake. He intended to say something else but happened to utter the wrong words (by a slip of tongue). He will not become a disbeliever.
- If a Muslim puts on the cap of the Majusis (Magians) then he becomes a disbeliever. However, if he does it to protect himself from heat or cold then he will not become a disbeliever.
- A Muslim becomes a disbeliever if he wears the zunnar unless he puts it on for espionage during warfare. (zunnar is a thread that Hindus wear.)
- If someone says, "Better then what you do is one who disbelieves." And he means to regard disbelief as better, then he becomes a disbeliever. But, some scholars, Abu Layth رحمه الله, among them, maintain that merely saying so makes one a disbeliever whatever his internal intention.
- If a Muslim emulates the Majusis in what they do on their Nawruz then he becomes a disbeliever.
- If he buys on Wawruz what he never buys and this thing is bought specifically to celebrate Nawruz then he becomes a disbeliever. But he will not become a disbeliever on buying eatables and necessities of life.
- If a Muslim gives some gift to the polytheists on this day as a mark of respect for it, even an ordinary gift, then he becomes a disbeliever.
- If he accepts their invitation to their custom of mundan of their children then he will not become a disbeliever.
- If anyone regards the traditions and affairs of the disbelievers as good then he becomes a disbeliever himself. For example, if he praises the custom of the Majusis of not speaking at meals or of not lying down with one's wife when she menstruates then he becomes a disbeliever.
- If a Muslim slaughters an animal when a man dons garments on being honoured then he becomes a dibeliever.
- If a Muslim slaughterers an animal when a man dons garments on being honoured then he becomes a disbeliever, and
- The sacrifice is regarded as carrion which it is not allowed to eat.
- It is an act of disbelief to slaughter an animal in honour of any one other then Allah and also
- in honour of the warriors and pilgrims on their return. (slaughtering an animal on

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that occasion is an act of disbelief.)

- An animal is let loose in the name of a false deity and is assigned the name of the deity to make it well-known. For example after some pious man's name or anyone other than Allah. These things are acts of disbelief.
- Similarly slaughtering animals at graves of pious men or at banks of rivers, or making offerings to gods and goddesses are all acts of disbelief.
- Animals slaughtered in this way fall in the category of carrion which one is not allowed to eat. It does not make any difference whether bismillah was recited at the time of slaughter or not In either case it is unlawful to eat it. If anything is devoted to other than Allah then it is no use reciting bismillah. This or the like of this, is written in various books like Tanveer ul Absar, Durr Mukhtar, etc.
- Some of these books say that one who slaughters animals set free in names for others than Allah is a disbeliever. Also, such animals are forbidden and unlawful. Among the ulama (Scholars) who have said so are Abu Hasas Kabir Abu Ali Daqqaq رحمه‌الله Abdullah Katib, رحمه‌الله, Abdul Wahid رحمه‌الله, Abu al Hasan Nawwawi رحمه‌الله etc. They have classified the verdict as correct.

  It is stated in Tafsir Nayshapuri that the ulama (Scholars) agree that if a Muslim slaughters an animal to gain nearness to anyone other than Allah and to honour him then he is an apostate. The same command applies to his slaughter as to the slaughter of an apostate.
- According to a sahih hadith, he who slaughters an animal to gain nearness to anyone other than Allah is accursed. This is as in Mishkat.[1]
- Shah Abdul Aziz Muhadith Dhalawi رحمه‌الله has explained in his Tafsir Azizi against the verse:

وَمَا أُهِلَّ لِغَيْرِ اللّٰهِ

{and that over which a name other than Allah's is invoke} (2: 23)

He writes that such animal is worse than a swine and a carrion. The tafsir may be seen for an exhaustive commentary.

- A woman fastened a rope round her waist and said, "This is zunnar." She becomes a disbeliever.
- A man said that better then treachery is disbelief. Most ulama (Scholars) say that he becomes a disbeliever. Abu al Qasim Sighar رحمه‌الله ruled accordingly.
- A man beat a woman who exclaimed, "You are not a Muslim." He said, "Yes, I am not a Muslim." He becomes a disbeliever because of that.
- Someone asked another, "Are you not a Muslim?" He said, "No," so he becomes an infidel.
- A woman asked her husband, "Do you have no religious integrity and sense of honour of a Muslim that you wish me to mingle with men?" He said, "Yes I do not possess religious integrity and Islamic sense of honour." He becomes a non-Muslim.
- A man called his wife, "O Jewess!" or "O Majusi!" or "O disbeliever!" She responded, "I am like that." Or, "If I am like that, divorced me." Or, "If I was not like that, how would I live with you?" Or, "...not live with you?" Or, "If I was not

[1] Mishkat ul Hasabih # 4070, Muslim # 45-1978, Nasa'i # 4422

that I would not have had sexual intercourse with you." Or, "....you would not have kept me with you." - then because of these words, she become a disbeliever.

- If, instead of those words, she had responded, "If I am like that, Do not keep me with you," then she would not be a disbeliever.
- If a woman calls her husband, "O disbeliever!" or "O Jew," or, "O Majusi," He says in reply. If that were not so, I would not have kept you with me," then he becomes a disbeliever because of that. But,
- if he says, "In that case, do not live with me, then he will not be a disbeliever.
- If someone is called a disbeliever Jew and he says, "I am like that. Do not live with me." or "If I was not as you say, I would not have lived with you," or he said something like that, then he becomes a disbeliever.
- A man decided to do something. His wife said, "If you do it, you will become a disbeliever." But, he went ahead and did what he had decided to do, disregarding her wife's imprecation. So he does not become a disbeliever because of that.
- A man addressed his wife with the words, "O disbeliever!" She retorted, "Not I, but you!" Or,
- A woman called her husband, "O disbeliever!" He said, "Not I you!" - then, this will not separation between them.
- If a stranger man is called, "O disbeliever!" Or,
- a stranger woman, "O disbeliever!" - and, the addressee gave no response, Or,
- a husband said to his wife, "O disbeliever! And she did not reply, or,
- a wife called her husband, "O disbeliever! and he did not reply, - then Abu Bakr A'mash Balkhi رحمه الله said that the one who addresses in this manner becomes a disbeliever. Bur, other scholars of Balkh say that he (or she) does not become an infidel. The correct answer is that if the addressors merely meant to call the addressee as bad then they do not become disbelievers. But, if they are convinced that the (addressee) Muslim is a disbeliever and call him (or her) "O disbeliever," then they will become disbelievers because of that.
- If a woman calls her child a disbelieving child then it does not make any one a disbeliever. But, some do say that it is disbelief.
- If a man calls his child a disbeliever then he too is not a disbeliever.
- If anyone calls one's animal, "O disbeliever!" then no one becomes a disbeliever.
- If a man calls a Muslim, "O disbeliever!" "O Jew!" or "O Majusi!" and the Muslim responds with labyak (here am I), then he becomes a disbeliever. But,
- if he says, "I was fearful lest I become a disbeliever" then he will not be a disbeliever.
- If a man says to another, "You caused me so much trouble that I wished I should become a disbeliever," then he will be a disbeliever.
- Someone remarked, "This is not a time to remain a Muslim. Rather it is a time of disbelief." Some people said that he becomes a disbeliever, but the authority of al-Muhit wrote that he does not become a disbeliever.
- A Majusi and a Muslim were together at one place. Someone called the Majusi, "O Majusi!" If the Muslim presumes that he calls him and responds then he will not become a disbeliever provided both of them were occupied in an assignment of the one who calls. Or,
- if they were occupied in different assignment, then it is feared that he might be

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involved in disbelief.

- If a Muslim says, "I am an apostate," then he becomes a disbeliever, but
- if he says that he did not know that one become disbeliever by those words, then he will not be excused.
- A man said something which his listeners took to be words of disbelief though it was no such thing. However, they insisted that he had become a disbeliever and a separation had taken place between him and his wife because of that. He rebounded on them with, "A disbeliever, I have become! My wife stands divorced!" When he speaks thus he does become a disbeliever and a separation does take place between him and his wife.
- A man said, "I am Fir'awn" (the Pharoah), or "I am Iblis" (the devil). He becomes a disbeliever because of that saying.
- Someone advised an evil man to mend his ways and encouraged him to repent. But, the evil man taunt ed him, "I put wine on all the heads under these turbans." So, he becomes a disbeliever.
- A woman says to her husband, "It is better to become a disbeliever than to live with you/" She becomes a disbeliever because of that.
- Another woman vowed, "If I do such a thing, I am a disbeliever." Abu Bakr Muhanmad ibn Fadl رحمه الله said, "She becomes a disbeliever on saying that and her marriage stands revoked." But, Qadi Ali Sa'di رحمه الله said, "These words are words of a vow, not of disbelief."
- A woman says to her husband, "If you oppress me after this," or
- "If you do not buy that for me, then I shall become a disbeliever." She becomes an infidel the moment she speaks those words.
- A man said by way of an example, "I was a Majusi, but I became a Muslim." He merely spoke these words without any conviction whatsoever. In spite of that he becomes a disbeliever
- If a Muslim makes a prostration of greeting before someone, then he will not become a disbeliever because of that.
- A man said to another, "May Allah seize from you your faith." He said, "Aameen!" On that, both of them will become disbelievers.
- A man caused difficulty to another man who pleaded, "Do not trouble me I am a Muslim. The trouble maker exclaimed "whatever you be; A Muslim or a disbeliever!" On this, the trouble maker becomes a disbeliever. Or, he said,
- "Even if you become a disbeliever, I lose nothing." Even in this case, he becomes a disbeliever.
- An infidel embraced Islam. So people presented to him gifts. One of the Muslims ejaculated. "would that I was a disbeliever and had embraced Islam! People would have given me gifts." Or,
- he said nothing but hoped in his heart that this would have happened, - in either case he becomes a disbeliever.
- A man yearned that Allah had not forbidden wine. He does not become a disbeliever because of that.
- If anyone wishes that Allah had not forbidden oppression and adultery, or unjust killing and bloodshed, then he becomes a disbeliever because of this wish. The

reason is that these things have never been lawful through his first wish is not impossible while his second wish is impossible. (The second four things oppression, adultery, killing and bloodshed have never been lawful in any Shari'ah (divine law))

- If anyone wishes that a brother and sister marriage was not unlawful then he does not become a disbeliever because it is not impossible and was lawful in the beginning.
- In short, if any thing had been lawful at any time and was made unlawful later then (it is not impossible and) hoping for it to become lawful is not a means to disbelief.
- A Muslim man saw a beautiful Christian woman and wished, "How I wish I was a Christian! I would have married her." He becomes a disbeliever.
- A man requested another to help him in his rightful, just cause. The other asked, "Does anyone help achieve a night cause? Rather, I will help you in an unjust, wrong cause." Because of this he becomes a disbeliever.
- If anyone claims, "I have created this tree," he does not become a disbeliever, because he will be presumed to have referred to planting the tree. But,
- If he means to have created it in the true sense of the word then he will become a disbeliever.
- Someone boasted, "As long as I have arms, I will have no problem, earning my livelihood." Some scholars say that he becomes an infidel. Other say that he qualifies for disbelief.
- If anyone calls sufiosm an unfortunate thing then it is a very bad utterance.
- A man observed a circle round the moon and predicted rain fall and he meant to know the unseen. So, he becomes a disbeliever.
- An astrologer said to a man, "your wife is pregnant. He believed him and so becomes a disbeliever.
- A man heard an owl and said, "The patient will die." Or, "A calamity will befall," or,
- He heard a crow and said, "A traveller is about to arrive," then - the scholars differ on whether he is disbeliever or not.
- Someone uttered what is not proper to say. Another man reminded him, "Why do you say such things? These words will make you a disbeliever." He said, "what may I do? If I have to become a disbeliever in that way, : I shall become one." So, he is an infidel.
- If someone recites (ز) zaa instead of (ض) daad (the letters of the Arabic alphabet), or
- he recites (أَصْحَابَ النَّارِ) (People of the fire) instead of (أَصْحَابَ الْجَنَّةِ) (people of paradise), - then such a man cannot be retained as an imam, and,
- if anyone does not becomes a disbeliever.
- If any one takes an oath, By your life." "By my life," or any such oath, then he is likely to full into disbelief.
- Someone said, "Allah gives sustenance but He wants the creatures to work," some scholars say that such speech is polytheism.
- A man said, "I am relieved of reward and punishment." He will become a disbeliever because of that.
- A man asserts that he would do whatever another would ask him to do, even an act of disbelief. He will become a disbeliever because of that.
- If anyone says, "I am fed up of being a Muslim." He becomes a disbeliever.

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- The caliph Mamun Rashid asked a jurist what should be done to a man who had killed a weaver. The jurist said t hat ta'zir (discretionary punishment) was *wajib (obligatory)*, but Ma'mun ordered that the jurist should be beaten. So, he was beaten till he died. Ma'mun explained that the jurist had made fun of Shari'ah (divine law) which amounted to disbelief.
- A beggar had a black blanket on his shoulders. Someone called him Muddaththir. This is disbelief. (The reason is that 'one with the black blanket or robe' is the appellation of the prophet صلى الله عليه وسلم and Muddaththir is one of his name صلى الله عليه وسلم
- If anyone calls an unjust king 'just then he is a disbeliever, but some authorities say that he is not a disbeliever.
- If anyone calls an oppressor, "O God!" then he is a disbeliever.
- If he calls him, "O baar khuda" (O great god) then most scholars say that he will not become a disbeliever.
- A scholar named sighar was asked about the Khatibs who deliver the sermons on Friday from the pulpits and refer to the kings as; the great just (king), the great king of kings, master of the necks of the people, king of the land of Allah, king of the countries of Allah, or mu'in Khalifah Allah (helper of Allah's caliphs). It is allowed to refer to kings with these titles in the sermon? He said, "It is not allowed. Some of these words express disbelief and some are sinful and lies. The words shah-in shah (King of kings) without the qualification 'great' is specifically for Allah as one of his names and attributes and it is not allowed to qualify it with an attributes of the creatures. And the words Maalik riqab ul Umam (master of the necks of the people is clearly a lie when a king is addressed as such. So it is with the title 'king of the land of Allah or such others when applied to a king. That, too, is a lie.
- Imam Abu Mansur said that if any one kisses the land in front of someone or bows down before him or bows his head, then he does not become a disbeliever. The reasons is that he does it out of respect and not to worship him. Other scholars say that it is a grave sin to prostrate oneself before tyrants or dictators. Some scholars say, indeed, that one who does so becomes a disbeliever. Some others say that if he intends by that to worship him then he becomes a disbeliever but if he intends to respect and honour him then he will not be a disbeliever but what he does is forbidden. And, if he has no intention at all, then, too, most say that he becomes a disbeliever.
- To kiss the earth is tantamount to prostration though placing ones forehead or cheeks on the earth is a lighter crime.
- If anyone believes that Kharaj (homage revenue) belongs to the king then it is disbelief.
- If any one teats another badly and he says that all the trouble emanated from him and Allah has so say in it then this is disbelief.
- If anyone is awarded a king's robe and he makes an offering while putting it one to please the king then he becomes a disbeliever. The slaughtered animal will be regarded as carrion which it is not allowed to eat.
- In some places, the custom of the Hindus is observed. When a child get small, women name a stone by its local name cheechak and begin to worship it expecting it to heal their child of small pox. They have the conviction that their child would

recover in this manner. This is a form of disbelief and the woman who observe it are disbelievers. If their husbands approve it, then they too are infidels.

- Similarly, it is an act of disbelief to go to the banks of a river and worship its water and to slaughter an animal there. The animal is as disallowed as carrion is. Its flesh in forbidden.
- So, it is disbelief to keep a picture in the house and to worship it as the fire-worshippers do.
- When a child is born, a chart is drawn with cinnabar and oil is poured into it. Then it is worshipped in the name of bhuwani idol (Or an outline is drawn on the where after it is worshipped as bhuwani idol)
- Similarly, other such doings are polytheistic customs and liable to disbelief. The woman who practice them are all disbelievers and the marriage of each of them stands annulled.
- If anyone says that in the present age, you cannot survive unless you cheat and speak lies, or,
- you cannot earn a living unless you resort to falsehood in buying and selling, or,
- when advised not to cheat and lie they put forward the excuse that these things cannot be avoided.
  - these words make the speaker a disbeliever.
- If a man is advised not to lie and he says in answer, "This is more correct then the Kalimah (لاالهالاالله محمدرسول الله) then he becomes a disbeliever.
- If anyone becomes angry and another person says, "It is better to be a disbeliever than to fly into a rage," then this adviser becomes a disbeliever.
- If a man speaks something that is not proper and another terminal him to be careful lest he fall into disbelief and he is tenacious. "If I fall into disbelief, what is it to you," then he becomes a disbeliever.
- If anyone gets an evil thought that could lead to disbelief and he thinks bad of it as he brings it to his tongue then it is a sign of faith, but
- if he brings it to his tongue with intention of disbelief then he becomes a disbeliever forthwith even if he adopts disbelief after one hundred years.
- If any one brings words of disbelief to his tongue willingly though his heart is firm with faith then he becomes a disbeliever (nevertheless). He will not remain a believer (nevertheless). He will not remains a believer in Allah's sight.
- If anyone utter forgetfully such words as are not liable to lead him to disbelief (but are wrong) then he remains a believer as he was and he need not make a repentance nor reaffirm his marriage ties.

A GENERAL CRITERION

If a person says or does something in which there are many responsibilities of disbelief and one in which disbelief is not possible, then the jurist is bound to learn towards this one that does not necessitate disbelief. But, if the person clearly chooses the possibility that leads to disbelief then the jurist does not have any option to resort to interpretation. If, however, his intention is based on the aspect that does not make a disbeliever, then he is a Muslim. And if, anyway, he chooses what leads to disbelief then no edict will benefit him. He will be instructed to make a repentance and revert from the wrong course that he has adopted and he must remarry his wife.

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SUPPLICATION: It is proper for a Muslim to make his supplication every day, morning and evening. Insha Allah, he will be safe from every aspect of disbelief because this is what the prophet صلى الله عليه وسلم has said, (He is as-Sadiq and al Masduq - the truthful whom people have confirmed as such.)
The supplication is:

اَللّٰهُمَّ اِنِّیْ اَعُوْذُبِكَ مِنْ اَنْ اُشْرِكَ بِكَ شَيْئًا وَاَنَا اَعْلَمُ بِهٖ وَ اَسْتَغْفِرُكَ لِمَا لَا اَعْلَمُ بِهٖ

(O Allah, I seek refuge in you from that I should associate anything with you while I know it. And I seek forgiveness for that which I do not know).

Praise belongs to Allah, we have completed the discourse on the means of disbelief that we reproduced from Alamgiri.

SECTION I اَلْفَصْلُ الْاَوَّلُ

APOSTATE IS PUT TO DEATH

(٣٥٣٣) عَنْ عِكْرَمَةَ قَالَ اُتِيَ عَلِيٌّ بِزَنَادِقَةٍ فَاَحْرَقَهُمْ فَبَلَغَ ذٰلِكَ ابْنَ عَبَّاسٍ فَقَالَ لَوْ كُنْتُ اَنَا لَمْ اُحْرِقْهُمْ لِنَهْيِ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَاتُعَذِّبُوْا بِعَذَابِ اللّٰهِ وَلَقَتَلْتُهُمْ لِقَوْلِ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ بَدَّلَ دِيْنَهٗ فَاقْتُلُوْهُ۔ (رواه البخارى)

3533. Sayyiduna Ikrimah رضى الله عنه narrated that some Zindiqs were brought to (Sayyiduna) Ali رضى الله عنه who had them burned. This news was conveyed to (Sayyiduna) Ibn Abbas رضى الله عنه who said, "Were I there, I would not have burned them because of the prohibition of Allah's Messenger صلى الله عليه وسلم, 'Do not inflict anyone with the punishment of Allah' (like consigning anyone to the fire). Rather, I would have killed them because of the saying of Allah's Messenger صلى الله عليه وسلم, "Those who change their religion, kill them."'"[1]

COMMENTARY: In reality, the zindiqs were a section of the Majusis who follow the book zand of Zardasht Majus as corrupted. However, in common parlance, every one who has apostated from his religion is called a zindiq (an atheist or a hertic, too).
In this hadith, too, the zindiq are those people apostated from Islam. Some ulama (Scholars) say that they were some of the followers of Abdullah ibn Sabsa. They pretended to be Muslims in order to create mischief and disorder in Islam and to mislead the Muslims. They claimed that Sayyiduna Ali رضى الله عنه was divine. Hence, he had all of them arrested and demanded of them that they should repent and refrain from creating mischief. But, they did not submit.
Sayyiduna Ali رضى الله عنه then had a large pit dug and had a fire kindled in it. Then he had them cast into the pit of fire.
It is reported that when Sayyiduna Ali رضى الله عنه learnt of the statement of Sayyiduna Ibn Abbas رضى الله عنه he confirmed, "indeed Ibn Abbas has spoken the truth."
This means that Sayyiduna Ali رضى الله عنه had used his ijtihad (discretion) and there was wisdom in having all of them burnt. He wanted that to serve as a warning to other people

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[1] Bukhari # 6922, Tirmidhi # 1458, Abu Dawud # 4351, Nasa'i # 4059, Ibn Majah # 2535, Musnad Ahmad 1-217.

to refrain from such mischievous activities.

DO NOT INFLICT PUNISHMENT OF BURNING

(٣٥٣٤) وَعَنْ عَبْدِاللّٰهِ بْنِ عَبَّاسٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِنَّ النَّارَ لَا يُعَذِّبُ بِهَا اِلَّا اللّٰهُ۔

(رواه البخارى)

3534. Sayyiduna Abdullah ibn Abbas رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said "The fire! No one punishes with it, but Allah."[1]
(It is not fitting for any man to punish another for a crime whatever kind it be with fire).

THE KHAWARIJ PIN POINTED

(٣٥٣٥) وَعَنْ عَلِيٍّ قَالَ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ سَيَخْرُجُ قَوْمٌ فِيْ اٰخِرِ الزَّمَانِ حُدَّاثُ الْاَسْنَانِ سُفَهَاءُ اَلَا حَلَامِ يَقُوْلُوْنَ مِنْ خَيْرِ قَوْلِ الْبَرِيَّةِ لَا يُجَاوِزُ اِيْمَانُهُمْ حَنَاجِرَهُمْ يَمْرُقُوْنَ مِنَ الدِّيْنِ كَمَا يَمْرُقُ السَّهْمُ مِنَ الرَّمِيَّةِ فَاَيْنَمَا لَقِيْتُمُوْهُمْ فَاقْتُلُوْهُمْ فَاِنَّ فِيْ قَتْلِهِمْ اَجْرًا لِمَنْ قَتَلَهُمْ يَوْمَ الْقِيَامَةِ۔ (متفق عليه)

3535. Sayyiduna Ali رضى الله عنه narrated that he heard Allah's Messenger صلى الله عليه وسلم say, "Towards the end of this age, a people will arise who will be young but foolish. They will speak good words of the people with their tongues but faith will not go past their throats. (This means that their *salah (prayer)* will not be accepted.) They will exit from religion (meaning, obedience to the ruler and the ulama (Scholars)) as an arrow gets past the game. So wherever you come across them, kill them, for a reward for killing them awaits on the day of resurrection those who kill them."[2]

COMMENTARY: They will speak good words of the people like the Quran. The Mishkah has it as translated (من خير قول البريه) but the Masabih has that they will speak words of the good people (من قول خير البريه) like the ahadith of Allah's Messenger صلى الله عليه وسلم. The ulama (Scholars) say that the construction of the sentence as in the Mishkah is more correct because the ahadith say that the Khawarij will recite the verses of the Quran and give them their own wrong meaning to uphold their own false beliefs.

These people will get away from the obedience to the Imam (religious leader) and true scholars instantly without learning anything from them just as an arrow shoots past spotless. Teebi رحمه الله said that the similitude of these people, when they enter religion and withdraw from it, is like the arrow that strikes a game from one side and withdraws from the other without receiving anything from its blood or flesh. They receive no influence of religion at all. They are disobedient to the ruler and the state and they do not hesitate to pick up arms against the people. The emerged first in the time of Sayyiduna Ali رضى الله عنه and he annihilated most of them.

RULING OF ULAMA (SCHOLARS) ABOUT THE KHAWARIJ: Khattabi رحمه الله said that the ulama (Scholars) of this *ummah* agree that the community of the Khawarij are misled but, in spite of that, they are one of the sects of the Muslims. Hence, intermarriage is

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[1] Bukhari # 2954.

[2] Bukhari # 6930, Muslim # 154-1066, Abu Dawud # 4767, Musnad Ahmad 1-131.

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allowed with them, it is proper to eat animals slaughtered by them and their testimony is acceptable. It is reported that Sayyiduna Ali رضی اللہ عنہ was asked whether they are disbelievers. He said, "Indeed, they have fled to us from disbelief. How then may we call them disbelievers?" He was then asked, "Are they hypocrites?" He said, "A hypocrite remembers Allah but a little. So, we cannot call them hypocrites too," Then he was asked, "After all, what are they?" Sayyiduna Ali رضی اللہ عنہ said, "They are a sect of the Muslims who have succumbed to error and mischief. They have turned blind and dumb."
In short, the Khawarij are a sect of the Muslims. They have gone astray. Their fundamental belief is that a person becomes an infidel not only by committing a major sin but also when he perpetrates a minor sin.

PROPHET صلی اللہ علیہ وسلم HAD FORETOLD THE COMING OF KHAWARIJ

(٣٥٣٦) وَعَنْ اَبِيْ سَعِيْدِ نِ الْخُدْرِيِّ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَكُوْنُ اُمَّتِيْ فِرْقَتَيْنِ فَيَخْرُجُ مِنْ بَيْنِهِمَا مَارِقَةٌ يَلِيْ قَتْلَهُمْ اَوْلَاهُمْ بِالْحَقِّ۔ (رواه مسلم)

3536. Sayyiduna Abu Sa'eed Khudri رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "My *ummah* will divide (soon) into two groups. From among them such a (third) group will arise as will secede (from obedience and truth). They (of the two groups) who are nearest to the truth will assume the responsibility to eliminate them."[1]

COMMENTARY: One of the two groups are supporters of Sayyiduna Ali رضی اللہ عنہ and the second of Sayyiduna Mu'awiyah رضی اللہ عنہ. A third emerged from them. They are called the Khawarij. Sayyiduna Ali رضی اللہ عنہ was the nearest to the truth and he shouldred responsibility to annihilate them and to nip their mischief in the bud.

MUSLIM KILLING A MUSLIM IS NEAR DISBELIEF

(٣٥٣٧) وَعَنْ جَرِيْرٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فِيْ حَجَّةِ الْوَدَاعِ لَا تَرْجِعُنَّ بَعْدِيْ كُفَّارًا يَضْرِبُ بَعْضُكُمْ رِقَابَ بَعْضٍ۔ (متفق علیه)

3537. Sayyiduna Jareer narrated that Allah's Messenger صلی اللہ علیہ وسلم said during the Farewell Pilgrimage (known as Hajj (pilgrimage)atul wada), "Beware! Do not revert to disbelief after me, "striking off each other's neck."[2]

COMMENTARY: Perhaps someone had asked, "How could one revert to disbelief?" So, the prophet صلی اللہ علیہ وسلم said, "By striking each other's necks" This crime resembles what the disbelievers do and it takes one near to disbelief.

(٣٥٣٨) وَعَنْ اَبِيْ بَكْرَةَ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اِذَا التَقَى الْمُسْلِمَانِ حَمَلَ اَحَدُهُمَا عَلٰى اَخِيْهِ السِّلَاحَ فَهُمَا فِيْ جُرُفِ جَهَنَّمَ فَاِذَا قَتَلَ اَحَدُهُمَا صَاحِبَهُ دَخَلَاهَا جَمِيْعًا وَفِيْ رِوَايَةٍ عَنْهُ قَالَ اِذَا الْتَقَى الْمُسْلِمَانِ بِسَيْفَيْهِمَا فَالْقَاتِلُ وَالْمَقْتُوْلُ فِي النَّارِ قُلْتُ هٰذَا الْقَاتِلُ فَمَا بَالُ الْمَقْتُوْلُ قَالَ اِنَّهُ كَانَ

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[1] Muslim # 151-1064, Musnad Ahmad 3-32.

[2] Bukhari # 7080, Muslim # 118-65, Tirmidhi # 2193, Abu Dawud # 4686, Nasa'i # 4131, Ibn Majah # 3942, Darimi # 1921, Musnad Ahmad 4-366.

حَرِيْصًا عَلٰى قَتْلِ صَاحِبِهٖ(متفق عليه)

3538. Sayyiduna Abu Bakrah رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "When two Muslims met and (in such a way that) one of them raises arms against his (Muslim) brother, they both come to the border of hell. Then, if one of them kill the other, both of them will enter it."

According to another version from him, he narrated that the Prophet صلی اللہ علیہ وسلم said: "When two Muslims meet one another with their swords, the killer and the killed will go to hell." He asked, "This one is the killer (and one understands why he goes to hell) but what causes the one killed (to go to hell)?" He said, "He too was as keen to kill his companion[1] (through he did not succeed).

COMMENTARY: The ulama (Scholars) say that both of them will be sent to hell when neither of them is justified. If one of them is right then only the unjust will be consigned to hell. It applies only if murder is premeditated and is not omitted in confusion.

The words, "He too was keen to kill his companion," show, as Ibn Malik رضی اللہ عنہ says, that even intention to commit an unlawful thing makes one liable to reckoning. However, if one of them had merely defended himself and did not have any intention to kill the other, then he will not be questioned because Shari'ah (divine law) permit defensive measure.

FATE OF APOSTATES & BANDITS

(٣٥٣٩) وَعَنْ اَنَسٍ قَالَ قَدِمَ عَلَى النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ نَفَرٌ مِنْ عُكْلٍ فَاَسْلَمُوْا فَاجْتَوَوُا الْمَدِيْنَةَ فَاَمَرَهُمْ اَنْ يَّاْتُوْ اِبِلَ الصَّدَقَةِ فَيَشْرَبُوْامِنْ اَبْوَالِهَاوَاَلْبَانِهَا فَفَعَلُوْا فَصَحُّوْا فَارْتَدُّوْاوَقَتَلُوْا رُعَاتَهَا وَاسْتَاقُوا الْاِبِلَ فَبَعَثَ فِيْ اٰثَارِهِمْ فَاُتِيَ بِهِمْ فَقَطَعَ اَيْدِيَهُمْ وَاَرْجُلَهُمْ وَسَمَلَ اَعْيُنَهُمْ ثُمَّ لَمْ يَحْسِمْهُمْ حَتّٰى مَاتُوْ وَفِيْ رِوَايَةٍ فَسُمِّرُوْا اَعْيُنَهُمْ وَفِيْ رَوَايَةٍ اَمَرَبِمَسَا مِيْرَ فَاُحْمِيَتْ فَكَحَلَهُمْ بِهَا وَطَرَحَهُمْ بِالْحَرَّةِ يَسْتَسْقُوْنَ فَمَايُسْقَوْنَ حَتّٰى مَاتُوْا(متفق عليه)

3539. Sayyiduna Anas رضی اللہ عنہ narrated that some people of 'Ukl come to the prophet صلی اللہ علیہ وسلم and embraced Islam. The climate of Madinah did not suit them (and they had swollen bellies and they turned pale). Therefore, he instructed them to go (outside the city) to (the place of) the camels of sadaqah (charity) and drink from their urine and their milk. They did that and recovered. After that they (strayed and) apostatized and (to add to that) they killed the herdsman and drove off (with) the camels. So (on learning of it), the Prophet صلی اللہ علیہ وسلم sent (some) men behind them. They were brought. He had their hands and feet severed and their eyes blinded. Then he did not have them cauterized (to disinfect and) to stop flow of blood (as was the custom to prevent bleeding). So, they died finally.

According to another version: Hot needles were scratched in their eyes.

According to yet another version: He ordered that needles should be heated and they were driven in their eyes. Then he had them cast out on the harrah (a rocky

[1] Bukhari # 6875, Musim # 16. 2888, Abu Dawud # 4268, Nasa'i # 4120, Ibn Majah # 3965, Musnad Ahmad 5-41.

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land to the rest of Madinah). They asked for water but nothing of it was given to them till they died.[1]

COMMENTARY: Imam Muhammad رحمه الله has concluded from this hadith that the urine is pure of those animals whose flesh is lawful to eat. Imam Maalik رحمه الله and Imam ahmad رحمه الله also say the same thing: But, Imam Abu Hanifah رحمه الله and Imam Abu Yusuf رحمه الله hold that the urine of these animals is impure any way for those people, the two Imams contend that the Prophet صلى الله عليه وسلم was informed by revelation that the cure of their malady by in urine of camels. So he gave that command to these people specifically.

Imam Abu Hanifah رحمه الله said that the urine of camels is not lawful to drink at all, not even as medicine, for, no one agrees that cure lies in urine. But, Imam Abu Yusuf رحمه الله said that camel's urine is lawful for medical treatment.

Ibn Maalik رحمه الله said that the Prophet رضى الله عنه has forbidden mutilation, yet he awarded these apostates and bandits, this kind of punishment. Perhaps they had done the same thing to at the keepers of the camels, so the Prophet صلى الله عليه وسلم gave them this punishment in qisas (or retaliation). Or, their crime was great and warranted this kind of punishment, for they had turned apostates and had killed the keepers of the camels and had plundered the property of zakah (Annual due charity). The Imam (or ruler) has right to punish the criminal with different punishments to keep off others and to restore peace. Hence, the prophet صلى الله عليه وسلم had this in mind when he awarded them to punishment.

Imam Nawawi رحمه الله said that the ulama (Scholars) have different opinions about the significance of this hadith.

Some scholars say that the event referred to in this hadith had taken place before the verses were revealed prescribing punishment under hudud and for bandits and robbers.

Also, the Prophet صلى الله عليه وسلم forbade mutilation after this event.

In this sense, this hadith is abrogated.

Other scholars, however, insist that this hadith is not abrogated. Rather, the verse was revealed on this occasion that the bandits should be awarded these punishment;

they should be killed or hanged, or

one hand and one foot of theirs should be severed.

But, the prophet صلى الله عليه وسلم had awarded them the punishment under qisas (or retaliation). The same thing was done to them as they had done to the herds of the camels.

The question remains: why were these bandits not given water when they were dying? The ulama (Scholars) say that this too was in retaliation. They too had denied water to the keepers of the camels and had tortured them to death;

Some other scholars say that the Prophet صلى الله عليه وسلم had not forbidden them water. Rather, the people had expressed and demonstrated their extreme hatred for these criminal and they were they denied them water on their own.

As for the ruling, the ulama (Scholars) rule unanimously that it is *wajib (obligatory)* to kill one who is awarded the death penalty. But, if he asks for water, then it should not be denied to him.

We reproduce here a relative portion from Tirmidhi hadith # 72 (Darul Isha'at Karachi)

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[1] Bukhari # 1501, 6804, Muslim # 9-1671, Tirmidhi # 72, Abu Dawud # 4364, Nasai # 4031, 4032, Ibn Majah # 2578, Musnad Ahmad 3-163.

RULING: This hadith touches on two juristic question: the urine of lawful animals and use of unlawful things as medicine. The contention of Imam Abu Hanifah رحمه الله in the first issue is that it is impure, but a mild (light) impurity. The reason is that when the scholars differ on the question, it calls for flexibility in commands. The reason is that when the scholars differ on a question, it calls for flexibility in commands. The Hanafis rely on the hadith which calls upon Believer to guard themselves against drops of urine because generally it lead to chastisement in the grave. Their second evidence is the hadith # 70 (above) about the Prophet صلى الله عليه وسلم coming across two graves.

Both these ahadith do not specify and kind for urine. One has to keep himself away from being defiled by urine itself.

When two narrations seem to be contradictory then one must resort to sunrise to reconcile them. Hence, the Hanafi thought seems more agreeable, for, urine of a lawful animal and of an unlawful animal are the same. If one impure then the other is too.

Further, the hadith keep away from being defiled by urine is qawli (by word of mouth) and a prohibitive command. According to principle, the prohibitive one is preferred as a precautionary measure.

The Hanafis forward many explanations of the hadith of this chapter (under discussion).

1. The prophet صلى الله عليه وسلم may have been informed by wahy that their cure lay in doing that (consuming camel urine).
2. He may not have instructed them to consume it but apply it externally.
3. He may have known that they were in reality disbelievers as, indeed, they apostatized thereafter.

THE SECOND QUESTION: Use of unlawful things as medicine. It is allowed to use them if it is an unavoidable situation. But, if there is no danger to life then there is a difference of opinion on the question. (Fadl Ahmad).

SECTION II اَلْفَصْلُ الثَّانِيْ

MUTILATION IS DISALLOWED

(٣٥٤٠-٣٥٤١) عَنْ عِمْرَانَ بْنِ حُصَيْنٍ قَالَ كَانَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَحُثُّنَا عَلَى الصَّدَقَةِ وَيَنْهَانَا عَنِ الْمُثْلَةِ۔ رَوَاهُ اَبُوْدَاوٗدَ وَرَوَاهُ النَّسَائِيُّ عَنْ اَنَسٍ۔

3540. Sayyiduna Imran ibn Husayn رضى الله عنه narrated: Allah's Messenger صلى الله عليه وسلم used to encourage us to give sadaqah (charity) and (used to) forbid us to mutilate any body.[1]

3541. Sayyiduna Anas رضى الله عنه narrated the same hadith.[2]

COMMENTARY: Muthlah (مثلة) is to mutilate or sever any limb of a body. Some say that it is forbidden to cut any limb of anybody. Others say that the Prophet صلى الله عليه وسلم forbade it by way of makruh tanzihi (disapproved for purification), but the more correct is that to meant that it is unlawful to do so.

As for the mutilation mentioned in the previous hadith (# 3539), we have explained there that it was done in retaliation.

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[1] Abu Dawud # 2667, Darimi # 1656, Musnad Ahmad # 4-440.

[2] Nasa'i # 4047.

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PROPHET'S MERCY رضی اللہ عنہ TO ANIMALS

(٣٥٤٢) وَعَنْ عَبْدِالرَّحْمٰنِ بْنِ عَبْدِاللّٰهِ عَنْ اَبِيْهِ قَالَ كُنَّا مَعَ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فِيْ سَفَرٍ فَانْطَلَقَ لِحَاجَتِهٖ فَرَاَيْنَا حُمَّرَةً مَعَهَا فَرْخَانِ فَاَخَذْنَا فَرْخَيْهَا فَجَاءَتِ الْحُمَّرَةُ فَجَعَلَتْ تُفَرِّشُ فَجَاءَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ مَنْ فَجَّعَ هٰذِهٖ بِوَلَدِهَا رُدُّوْا وَلَدَهَا اِلَيْهَا وَرَاٰى قَرْيَةَ نَمْلٍ قَدْ حَرَّقْنَاهَا قَالَ مَنْ حَرَّقَ هٰذِهٖ فَقُلْنَا نَحْنُ قَالَ اِنَّهٗ لَا يَنْبَغِيْ اَنْ يُّعَذِّبَ بِالنَّارِ اِلَّا رَبُّ النَّارِ۔ (رواه ابوداؤد)

3542. Sayyiduna Abdur Rahman ibn Abdullah رحمہ اللہ reported that his father narrated that they were on a journey with Allah's Messenger صلی اللہ علیہ وسلم. He went to relieve himself (at one point during the journey).They observed a hummarah (a small bird) and two young ones with it. They took away the young birds. The hummarah came and began to spread out its wings (in protest). When the Prophet صلی اللہ علیہ وسلم came (and saw it), he asked, "who has troubled this bird by removing its young? Give back to it its young ones." Then he observed the anthill that they had burned and asked "Who has burnt it?" They said, "We." He said, "It does not behave any one, but the Lord of the fire, that He should punish with the fire."[1]

COMMENTARY: The hummarah is a bird of red colour, small like a sparrow.

The hadith concludes with the message that no human being has a right to burn anyone in fire. As for ants, if they sting people without provocation, then they may be killed, otherwise it is not proper to kill them. It is forbidden to burn down the ant hills and it is makruh (disapproved) to put them in water. If only one ant stings, then only that one should be killed. It is forbidden to kill the others with it.

WORST OF MANKIND FORETOLD BY THE PROPHET صلی اللہ علیہ وسلم

(٣٥٤٣) وَعَنْ اَبِيْ سَعِيْدِ نِ الْخُدْرِيِّ وَاَنَسِ بْنِ مَالِكٍ عَنْ رَّسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ سَيَكُوْنُ فِيْ اُمَّتِيْ اِخْتِلَافٌ وَ فُرْقَةٌ قَوْمٌ يُحْسِنُوْنَ الْقِيْلَ وَيُسِيْئُوْنَ الْفِعْلَ يَقْرَئُوْنَ الْقُرْاٰنَ لَا يُجَاوِزُ تَرَاقِيَهُمْ يَمْرُقُوْنَ مِنَ الدِّيْنِ كَمَا يَمْرُقُ السَّهْمُ مِنَ الرَّمِيَّةِ لَا يَرْجِعُوْنَ حَتّٰى يَرْتَدَّ السَّهْمُ عَلٰى فُوْقِهٖ هُمْ شَرُّ الْخَلْقِ وَالْخَلِيْقَةِ طُوْبٰى لِمَنْ قَتَلَهُمْ وَقَتَلُوْهُ يَدْعُوْنَ اِلٰى كِتَابِ اللّٰهِ وَلَيْسُوْا مِنَافِيْ شَيْءٍ مَنْ قَاتَلَهُمْ كَانَ اَوْلٰى بِاللّٰهِ مِنْهُمْ قَالُوْا يَا رَسُوْلَ اللّٰهِ مَا سِيْمَاهُمْ قَالَ التَّحْلِيْقُ۔ (رواه ابوداؤد)

3543. Sayyiduna Abu Sa'eed Khudri رضی اللہ عنہ, and Sayyiduna Anas ibn Maalik رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "There will arise disagreement and dissension among my *ummah*. Some of them will be good at speech but evil in deeds. They will recite the Quran but it will not go beyond their throats. They will exit from the religion (meaning from obedience to the ulama (Scholars) and the imam) just as an arrow shoots past the game, not to return till the arrow returns to its notch. And, they are the worst of mankind and animals. Glad tidings are for them who kill them or who are killed by them! (Thus, those who contend against

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[1] Abu Dawud # 2675, Musnd Ahmad 1-404.

them to put on end to mischief and kill them or one killed have glad tidings in either way – as ghazis or as martyrs.) They (seem to) invite people to Allah's Book but are not among us (because they call for giving up the *sunnah (Prophet's* صلى الله عليه وسلم *practice)* which are the base of exegesis of the Quran) He who fights against them is nearer to Allah then they are." Allah's Messenger صلى الله عليه وسلم **was asked (by his sahabah)** رضى الله عنهم**, "O Messenger of Allah, what distinguishes them (from the others)?" He said, "At-tahleeq!" (shaving the heads).** [1]

COMMENTARY: The Prophet's صلى الله عليه وسلم words means that three will be some people in his *ummah* who spread dissension and create disunity among the Muslims. Their symbol is that they will speak well but their deeds will be very bad. They will seem to be the only one who wish well for the religion an are sincere to Allah and His Messenger صلى الله عليه وسلم and the Muslims but their deeds will be compatible with those who are tools of Islam's enemy, aspirants of wealth and fame and slaves to base desires.

The words that they would recite the Quran...could be an elaboration of the previous words. Or, as Shatbi says, a separate phrase of substitution. Or, it explains the dissension itself; two sections will arise, one will be on the right and the other will be false. Teebi said that this opinion is supported by the hadith (# 3536) and in this case the word (قوم) (people) will be the qualified noun of the next sentence. The predicate is (يقرون القران) (will recite the Quran) and it describes the false sect. The true sect is then known (by itself) automatically.

Their recital will be mere delivery and pronunciation of words. They will not derive any benefit from the verses of the Quran. Therefore, they will not believe in them and will not conduct themselves on the commands of the Quran.

The words could also mean that their recital will not be accepted by Allah and be accepted by Allah and will not go beyond their throats.

The hadith says that these dissenters and apostates will not return to religion till the arrow that is shot returns to its notch from where it was shot. Now, the arrow cannot do that so it is clear that the return of these people to religion is impossible. This particular sentence recalls the words of the Quran:

حَتّٰى يَلِجَ الْجَمَلُ فِيْ سَمِّ الْخِيَاطِ

{....until the camel passes through the eye of the needle.} (7: 40)

The message of the hadith is that those people are utterly ignorant and misled and are in a false impression that they are on the straight path already, so it is impossible for them to come to the folds of religion.

As for the final word (التحليق) (at-tahleeq – 'shaving the heads'), the Prophet صلى الله عليه وسلم mentioned it because, in that time, the Arabs were not accustomed to shave their heads. This saying in no way detracts from shaving head because it is a symbol of religion and obedience to Allah. It is the practice of the pious and the righteous.

Some scholars say that tahleeq does not mean 'shaving head' Rather, it means to get people to sit in circles as these apostates used to make them do to show off.

THREE POSSIBILITIES OF DEATH PENALTY

(٣٥٤٤) وَعَنْ عَائِشَةَ قَالَتْ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا يَحِلُّ دَمُ امْرِءٍ مُسْلِمٍ يَشْهَدُ اَنْ لَّا اِلٰهَ اِلَّا

[1] Abu Dawud # 4765, Musnad Ahmad 3-224.

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اللّٰهُ وَاَنِّیْ مُحَمَّدًا رَّسُوْلُ اللّٰهِ اِلَّا بِاِحْدٰی ثَلَاثٍ زِنًی بَعْدَ اِحْصَانٍ فَاِنَّهٗ یُرْجَمُ وَرَجُلٌ خَرَجَ مُحَارِبًا لِلّٰهِ وَرَسُوْلِهٖ فَاِنَّهٗ یُقْتَلُ اَوْ یُصَلَّبُ اَوْ یُنْفٰی مِنَ الْاَرْضِ اَوْ یَقْتُلُ نَفْسًا فَیُقْتَلُ بِهَا۔ (رواه ابوداؤد)

3544. Sayyidah Ayshah رضی اللہ عنہا narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "It is not lawful to shed the blood of a Muslim person who testifies that there is no God but Allah and that Muhammad is Allah's Messenger, except for one of three reasons: Fornication after marriage which is punishable by stoning to death. One who comes out to fight with Allah and His Messenger (by resorting to robbery and rebellion), so he must be killed, or hanged, or imprisoned. And, one who kills someone (deliberately), so he must be killed in retaliation."[1]

COMMENTARY: The Arabic word is (محصن) (muhsin). He is a Muslim freeman, responsible and married who has had sexual intercourse with his wife. If he commits fornication then he is stoned to death.

The qazzaq (or robber) is given one of three punishments:

(i) killing,
(ii) hanging, or
(iii) imprisonment.

If he could not rob but did kill someone in the process then he should be killed. And if he robbed as well as killed someone then he should be hanged. Imam Maalik رحمہ اللہ said that he should be killed by hanging, but Imam Shafi'I رحمہ اللہ said that he should be killed first and his body must be hanged for others to see and take heed.

As for the third kind which is imprisonment, Imam Shafi'I رحمہ اللہ interprets the words of the hadith to mean that he should be exiled from place to place and never allowed to stay at any one place to deny him peace and comfort.

Imam Abu Hanifah رحمہ اللہ interprets the words to mean that he should be imprisoned.

The punishment of imprisonment (or exile) is enforced when he neither robs nor kills but he pesters the passers by instilling fear in them and creating chases.

This portion about punishment to robbers is derived from the verse of the Quran.

اِنَّمَا جَزٰٓؤُا الَّذِیْنَ یُحَارِبُوْنَ اللّٰهَ وَرَسُوْلَهٗ وَیَسْعَوْنَ فِی الْاَرْضِ فَسَادًا اَنْ یُّقَتَّلُوْٓا اَوْ یُصَلَّبُوْٓا اَوْ تُقَطَّعَ اَیْدِیْهِمْ وَاَرْجُلُهُمْ مِّنْ خِلَافٍ اَوْ یُنْفَوْا مِنَ الْاَرْضِ۔ (المائده ۵: ۳۳)

{Those who fight with Allah and His Messenger and run about trying to spread disorder on earth, their punishment is no other than that they shall be killed, or be crucified, or their hands and legs cut off from different sides, or they be kept away from the land (they live in)} (5: 33)

The words [their hands and legs must be cut off from different sides] ought to have been in the hadith to make it agree with the verse. It is strongly possible that they were there originally in the hadith before the words 'or banished from the land' (or imprisoned) but the narrator may have forgotten to mention them, or he may not have included them preferring brevity.

The word (او) (or) is found in the hadith as well as the Quran to elaborate but some scholars

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[1] Abu Dawud # 4353, Nasa'i # 4048, Musnad Ahmad 6-205,

say that it suggest an option. The ruler was exercise his discretion to award any one of these punishments to the robber.

DO NOT FRIGHTEN A MUSLIM

(٣٥٤٥) وَعَنِ ابْنِ اَبِيْ لَيْلٰى قَالَ حَدَّثَنَا اَصْحَابُ مُحَمَّدٍ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَنَّهُمْ كَانُوْا يَسِيْرُوْنَ مَعَ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَنَامَ رَجُلٌ مِّنْهُمْ فَانْطَلَقَ بَعْضُهُمْ اِلٰى حَبْلٍ مَعَهٗ فَاَخَذَهٗ فَفَزِعَ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا يَحِلُّ لِمُسْلِمٍ اَنْ يُّرَوِّعَ مُسْلِمًا۔ (رواه ابوداؤد)

3545. Sayyiduna Ibn Abu Layla رحمه الله said that some of the sahabah (Prophet's Companions) رضی الله عنهم of Muhammad رضی الله عنه narrated that they were on a journey one night with Allah's Messenger. One of them went to sleep and another approached him and placed a rope (round him). He took it and was alarmed. Allah's Messenger صلى الله عليه وسلم (observed it and) said, "It is not lawful for a Muslim to frighten another Muslim."[1]

DO NOT SURRENDER YOUR HONOUR TO BUY A NON MUSLIM'S IGNOMINY

(٣٥٤٦) وَعَنْ اَبِي الدَّرْدَاءِ عَنْ رَّسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ مَنْ اَخَذَ اَرْضًا بِجِزْيَتِهَا فَقَدِ اسْتَقَالَ هِجْرَتَهٗ وَمَنْ نَزَعَ صَغَارَ كَافِرٍ مِنْ عُنُقِهٖ فَجَعَلَهٗ فِيْ عُنُقِهٖ فَقَدْ وَلَّى الْاِسْلَامَ ظَهْرَهٗ۔ (رواه ابوداؤد)

3546. Sayyiduna Abu Darda رضی الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "If anyone buys a land on which jizyah is imposed, then, indeed, he has revoked hijrah. And, if anyone removes an infidel's ignominy from his neck and puts it on his own, then, indeed, he has put Islam behind his back."[2]

COMMENTARY: (JIzyah is a head-tax or a poll-tax imposed on non-Muslims in Islamic country against protection to them and they are called dhimmis. And hijrah is migration to Muslim land.)

If a Muslim buys from a dhimmi a land on which jizyah is payable then he will be liable to pay the jizyah that the seller had been paying. Because of this the Muslim will loss the honour and rights that he had acquired on emigrating to Islamic territory and will burden himself with the disgrace of a non Muslim by shouldering the severity of the jizyah.

In other words, he puts on his neck the ignominy of the infidel and pays for it by surrendering his honour. Thereby, he makes disbelief stand for Islam.

Khattabi رحمه الله said that in this hadith jizyah stands for kharaj (homage revenue) (which is a tax imposed on non-Muslims on land revenue). When a Muslim buys from an infidel a land on which Kharaj (homage revenue) is payable, then kharaj (homage revenue) will not be waived. The Muslim buyer will have to pay it.

Imam Abu Hanifah رحمه الله rules accordingly.

MUSLIMS MUST NOT MINGLE WITH THE DISBELIEVERS

(٣٥٤٧) وَعَنْ جَرِيْرِ بْنِ عَبْدِاللّٰهِ قَالَ بَعَثَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ سَرِيَّةً اِلٰى خَثْعَمَ فَاعْتَصَمَ نَاسٌ

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[1] Abu Dawud # 5004, Musnad Ahmad 5-362.

[2] Abu Dawud # 3082.

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مِنْهُمْ بِالسُّجُوْدِ فَأُسْرِعَ فِيْهِمُ الْقَتْلُ فَبَلَغَ ذٰلِكَ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَأَمَرَ لَهُمْ بِنِصْفِ الْعَقْلِ وَقَالَ اَنَا بَرِيْءٌ مِنْ كُلِّ مُسْلِمٍ مُقِيْمٍ بَيْنَ اَظْهُرِ الْمُشْرِكِيْنَ قَالُوْا يَا رَسُوْلَ اللّٰهِ لِمَ؟ قَالَ لَا تَتَرَاءٰى نَارَاهُمَا۔ (رواہ ابوداؤد)

3547. Sayyiduna Jarir ibn Abdullah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم sent an expedition to Khath'am. Some of them sought protection by making prostration (meaning, offering *salah (prayer)* to make clear to the Muslim any that they were Muslims who had mingled with the disbelievers). But, their killing was hastened (for, the Muslim army did not trust them, imagining that they were deceiving them to save their skin, so they killed them too with the others). When the Prophet صلی اللہ علیہ وسلم learnt of that, he ordered that half the bloodwit should be paid for them (to their heirs). And, he said, "I am absolved of responsibility for every Muslim who resides among the polytheists." The sahabah (Prophet's Companions) رضی اللہ عنہم asked, "O Messenger of Allah, why (is it so)?" He said, "Their fires should not be seen by one another."[1]

(Muslims should stay so far away from the disbelievers for the fire to not be visible. If any Muslim mingles with them then its is as though he does not care for the command.)

COMMENTARY: The Prophet صلی اللہ علیہ وسلم decided to give half bloodwit for the Muslim to their heirs and not the full. The reason was that they had chosen to reside among the polytheists and had sort of abetted in their own killing.

It is to this that the Prophet صلی اللہ علیہ وسلم hinted when he declared that he was absolved of responsibility over Muslims who mingled with non Muslims.

He said that Muslims should reside so far away from the polytheists that their respective fires should not be visible to one another.

DO NOT KILL ANYONE WITHOUT FIRST FINDING OUT FACTS

(۳۵۴۸) وَعَنْ اَبِيْ هُرَيْرَةَ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اَلْاِيْمَانُ قَيَّدَ الْفَتْكَ لَا يَفْتِكُ مُؤْمِنٌ۔ (رواہ ابوداؤد)

3548. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said "faith forbids a sudden assault. So, a believer does not kill anyone suddenly."[2]

COMMENTARY: A Muslim must not take anyone's life of a sudden and without ascertaining who the other is: a Muslim or an infidel. This same command applies for a dhimmi because he is under protection of the Muslim state. He should not be killed. Of course, this command does not apply to one who creates mischief in the Islamic state. Examples of this are ka'b ibn Ashraf the Jew and Abu Rafi they were killed spontaneously. The Prophet صلی اللہ علیہ وسلم was commanded by Allah to kill these two men. Some people say that these two men were killed before the prohibition (in this hadith) to kill anyone suddenly.

KILLER OF SLAVE WHO FLEES TO ENEMY TERRITORY WILL NOT BE QUESTIONED

(۳۵۴۹) وَعَنْ جَرِيْرٍ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اِذَا اَبَقَ الْعَبْدُ اِلَى الشِّرْكِ فَقَدْ حَلَّ دَمُهٗ۔ (رواہ ابوداؤد)

3549. Sayyiduna Jarir narrated that the Prophet صلی اللہ علیہ وسلم said, "When a slave runs away to polytheism (meaning, enemy territory), his blood becomes lawful."[3]

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[1] Abu Dawud # 2645, Tirmidhi # 1604.

[2] Abu Dawud # 22269.

[3] Abu Dawud # 4360, Musnad Ahmad 4. 362.

COMMENTARY: The hadith means that if anyone kills such a slave then he will not be answerable. The slave preferred to take refuge with the polytheists and leave the Islamic territory. And if a slave not only flees to enemy land but also renegades then his blood is lawful to a great degree.

KILLING ONE WHO IS DISRESPECTFUL TO THE PROPHET صلی اللہ علیہ وسلم

(۳۵۵۰) وَعَنْ عَلِيٍّ اَنَّ يَهُوْدِيَّةً كَانَتْ تَشْتِمُ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَتَقَعُ فِيْهِ فَخَنَقَهَا رَجُلٌ حَتّٰى مَاتَتْ فَاَبْطَلَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ دَمَهَا۔ (رواہ ابوداؤد)

3550. Sayyiduna Ali narrated that a Jewess used to revile the prophet صلی اللہ علیہ وسلم and to find fault with him. One man (could not tolerate her words of insult of the Prophet صلی اللہ علیہ وسلم and he) strangled her to death. The Prophet صلی اللہ علیہ وسلم forgave him her blood.[1]

COMMENTARY: If a disbelieving dhimmi is disrespectful to the prophet صلی اللہ علیہ وسلم then he violates the covenant which allows him protection by the Islamic state. He becomes like an enemy disbeliever whose blood may be shed lawfully. This is as Imam Shafi'I says.
Imam Abu Hanifah رحمہ اللہ says that his covenant does not become invalid because of it. This question may be found in books of fiqh (Islamic jurisprudence) toward the end of the Kitab ul jizyah. The Hidayh has also reproduced relative arguments.

SORCERER MAY BE KILLED

(۳۵۵۱) وَعَنْ جُنْدُبٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ حَدُّ السَّاحِرِ ضَرْبَةٌ بِالسَّيْفِ۔ (رواہ الترمذی)

3551. Sayyiduna Jundub رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "The hadd (or the prescribed punishment) awarded to a sorcerer is to put him the he sword."[2]

COMMENTARY: The scholars say that it is forbidden to practice sorcery.
They have different opinions about it. Imam Shafi'I رحمہ اللہ said that a sorcerer should be put to death if his sorcery leads to disbelief and he does not repent.
Imam Maalik رحمہ اللہ and some other scholars maintain that a sorcerer is an infidel, sorcery is disbelief, to learn and teach sorcery is disbelief. The sorcerer must be killed and he (or she) should not be asked to repent whether he has cast a spell on a Muslim or on a dhimmi.
The Hanafis hold that if the sorcerer's conviction is that the devil is the doer and does for him whatever he (the devil) likes, then the sorcerer is a disbeliever. If his conviction is that sorcery is merely an imagination or a thought of the mind, then he is not a disbeliever but a sinner. It is forbidden to learn sorcery.
In the marginal notes of Dhur Mukhtar, Tahtawi, it is written that sorcery is of three kinds:
(i) *fard (compulsory)*, (ii) haram,(iii) Ja'iz.

(i) If anyone learn it to remove the effects of the witchcraft of the enemy then it is *fard (compulsory)* (obligatory).
(ii) If anyone learns it to grow discord between husband and wife then it is haram (forbidden).
(iii) If anyone learns it to grow love between husband wife then it is Ja'iz

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[1] Abu Dawud # 4362.
[2] Tirmidhi # 1460.

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(allowable).

The Hanbali scholars have differing views on magic being disbelief but their books are cited in Tanqih that the repentance of a sorcerer is not reliable. He becomes a disbeliever because of his sorcery.

He who practices sorcery on a Muslim must be killed.

Other things that are forbidden like sorcery are:

Soothsaying, astrology, divination and sleight of hand.

Not only learning and teaching but also earning through these things are forbidden.

SECTION III اَلْفَصْلُ الثَّالِثُ

(٣٥٥٢) عَنْ اُسَامَةَ بْنِ شَرِيْكٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَيُّمَا رَجُلٍ خَرَجَ يُفَرِّقُ بَيْنَ اُمَّتِيْ فَاضْرِبُوْا عُنُقَهٗ۔ (رواه النسائى)

3552. Sayyiduna Usamah ibn Sharik رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Any man who goes out (against the imam of the time) and creates division among my *ummah* strike his neck off."[1]

COMMENTARY: The imam is the axis on which the unity of the *ummah* is based. Every Muslim is bound to obey and be faithful to him. He brings all Muslims under one banner as a united force against the enemy of Islam. He keeps alive the glory of Islam.

If anyone goes out of this united sphere, then he is not the perpetrator of just one evil but he tries to disturb the unity of the whole *ummah*.

Hence, if anyone has any misgivings, then they may be removed to his satisfaction. But, if he does not desist and no amount of effort to correct him works, then he must be killed. This is as Sayyiduna Ali رضی اللہ عنہ had done with the Khawarij.

KHAWARIJ WERE FORETOLD

(٣٥٥٣) وَعَنْ شَرِيْكِ ابْنِ شِهَابٍ قَالَ كُنْتُ اَتَمَنّٰى اَنْ اَلْقٰى رَجُلًا مِنْ اَصْحَابِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَسْاَلُهٗ عَنِ الْخَوَارِجِ فَلَقِيْتُ اَبَابَرْزَةَ فِيْ يَوْمِ عِيْدٍ فِيْ نَفَرٍ مِنْ اَصْحَابِهٖ فَقُلْتُ لَهٗ هَلْ سَمِعْتَ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَذْكُرُ الْخَوَارِجَ قَالَ نَعَمْ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ بِاُذُنَيَّ وَرَاَيْتُهٗ بِعَيْنَيَّ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ بِمَالٍ فَقَسَمَهٗ فَاَعْطٰى مَنْ عَنْ يَمِيْنِهٖ وَمَنْ عَنْ شِمَالِهٖ وَلَمْ يُعْطَ مَنْ وَرَائَهٗ شَيْئًا فَقَامَ رَجُلٌ مِنْ وَّرَائِهٖ فَقَالَ يَا مُحَمَّدُ مَا عَدَلْتَ فِي الْقِسْمَةِ رَجُلٌ اَسْوَدُ مَطْمُوْمُ الشَّعْرِ عَلَيْهِ ثَوْبَانِ اَبْيَضَانِ فَغَضِبَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ غَضَبًا شَدِيْدًا وَقَالَ وَاللّٰهِ لَاتَجِدُوْنَ بَعْدِيْ رَجُلًا هُوَ اَعْدَلُ مِنِّيْ ثُمَّ قَالَ يَخْرُجُ فِيْ اٰخِرِ الزَّمَانِ قَوْمٌ كَاَنَّ هٰذَا مِنْهُمْ يَقْرَءُوْنَ الْقُرْاٰنَ لَايُجَاوِزُ تَرَاقِيَهُمْ يَمْرُقُوْنَ مِنَ الْاِسْلَامِ كَمَا يَمْرُقُ السَّهْمُ مِنَ الرَّمِيَّةِ سِيْمَا هُمُ التَّحْلِيْقُ لَايَزَالُوْنَ يَخْرُجُوْنَ حَتّٰى يَخْرُجَ اٰخِرُهُمْ مَعَ الْمَسِيْحِ الدَّجَّالِ فَاِذَا لَقِيْتُمُوْهُمْ هُمْ شَرُّ الْخَلْقِ وَالْخَلِيْقَةِ۔ (رواه النسائى)

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[1] Nasa'i # 4023, (4028), Tabarani Kabir # 487, Kubra # 3486.

3553. Sayyiduna Sharik ibn Shihab رحمه الله narrated that he cherished a desire to meet one of the sahabah (Prophet's Companions) رضی الله عنهم of the Prophet صلی الله علیه وسلم and to ask him about the Khawarij. (He wanted to know whether the Prophet صلی الله علیه وسلم had foretold the ones that had begun to appear.) He met Abu Barzah رضی الله عنه on the day of eed among some of his companions, and asked him, "Had you heard Allah's Messenger صلی الله علیه وسلم mention the Khawarij?" He said, Yes! I did hear Allah's Messenger صلی الله علیه وسلم with my ears and saw him with my eyes. Some property was brought to Allah's Messenger صلی الله علیه وسلم. He divided it. He gave to those on his right and to those on his left, but he gave nothing to those who were behind him. A man (among those) behind him got up and complained, 'O Muhammad, you have not been fair in dividing." He was a black man with all his hair shaved off and he was wearing a pair of white garments. This made Allah's Messenger صلی الله علیه وسلم very angry. He said, 'who will you find after me more just then I am?' Then, he added, 'toward the end of time, a people will emerge and this one seems to be one of them. They will recite the Quran but it will not go past their throats. They will (rebel against the ruler and) turn away from Islam (as rapidly) as an arrow shoots past the game at which it is shot. Their peculiar sign will be at tahleeq (their shaved heads). They will not cease to appear (in every age) till the last of them emerges with al-masih ad-dajjah. (He will come out against Easa علیه السلام when he descends on earth before the Last day). When you meet them, (kill them, for) they and the worst of man and animals."[1]

FACES OF THE DAY OF RESURRECTION

(٣٥٥٤) وَعَنْ اَبِيْ غَالِبٍ رَاَى اَبُوْاُمَامَةَ رُءُوْسًا مَنْصُوْبَةً عَلٰى دَرَجِ دِمَشْقَ فَقَالَ اَبُوْاُمَامَةَ كِلَابُ النَّارِ شَرُّ قَتْلٰى تَحْتَ اَدِيْمِ السَّمَاءِ خَيْرُ قَتْلٰى مَنْ قَتَلُوْهُ ثُمَّ قَرَأَ يَوْمَ تَبْيَضُّ وُجُوْهٌ وَ تَسْوَدُّ وُجُوْهٌ۔ الْاٰيَةَ۔ قِيْلَ لِاَبِيْ اُمَامَةَ اَنْتَ سَمِعْتَ مِنْ رَّسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لَوْلَمْ اَسْمَعْهُ اِلَّا مَرَّةً اَوْمَرَّتَيْنِ اَوْثَلَاثًا حَتّٰى عَدَّسَبْعًا مَا حَدَّثْتُكُمُوْهُ۔ رَوَاهُ التِّرْمِذِيُّ وَابْنُ مَاجَةَ وَقَالَ التِّرْمِذِيُّ هٰذَا حَدِيْثٌ حَسَنٌ۔

3554. Sayyiduna Abu Ghalib رحمه الله narrated that Abu Umamah رضی الله عنه saw some heads (of the Khawarij) hanging on the road of Damascus - or they were placed thereon. He remarked, "Dogs of hell! The worst of those slain under the sky (on the surface of the earth)! The best of those slain were the ones they have killed!" then he recited:

يَوْمَ تَبْيَضُّ وُجُوْهٌ وَ تَسْوَدُّ وُجُوْهٌ۔ الْاٰيَةَ

{On the day when (some) faces are brightened and other faces are blackened...} (3: 106, to the end)

Someone asked Abu Umamah, "Did you hear it from Allah's Messenger صلی الله علیه وسلم He said, "If I had not heard it once, twice, thrice," (four times....) till he counted up to seven times. "I would not have mentioned it to you."[2]

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[1] Nasa'i # 4103.

[2] Tirmidhi # 3000 (3011), Ibn Majah # 176, Musnad Ahmad 5-256

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(He meant that he had heard it very often from the Prophet.) صلى الله عليه وسلم

COMMENTARY: The verse that Sayyiduna Abu Umamah رضى الله عنه recited is in full:

يَوْمَ تَبْيَضُّ وُجُوْهٌ وَّتَسْوَدُّ وُجُوْهٌ فَاَمَّا الَّذِيْنَ اسْوَدَّتْ وُجُوْهُهُمْ اَكَفَرْتُمْ بَعْدَ اِيْمَانِكُمْ فَذُوْقُوا الْعَذَابَ بِمَا كُنْتُمْ تَكْفُرُوْنَ ـ (اٰل عمران ۳: ۱۰۶)

{On the day when (some) faces are brightened and other faces are blackened, then as for those whose faces are blackened (it will be said to them), "Did you disbelieve after your belief? So taste the chastisement because of what you disbelieved.} (3: 106)

Then ulama (Scholars) say about the heads mentioned in the hadith that they belonged to the apostates. Some others say that they be longed to the innovators. But, Sayyiduna Abu Umamah رضى الله عنه said that they belonged to the Khawarij.

{The name of Abu Ghalib رحمه الله was Hazawwar and of Abu Umamah Bahili رضى الله عنه was Sudayy ibn Ajlan, the chief of the Bahilah tribe}.

بسم الله الرحمن الرحيم

BOOK - XVI

KITAB-UL-HUDUD كِتَابُ الْحُدُوْدِ

PRESCRIBED PUNISHMENT

MEANING OF *HADD (PRESCRIBED PUNISHMENT)*: the word *hudud* is the plural of the word *hadd (prescribed punishment)*. The true meaning of *hadd (prescribed punishment)* is 'forbidden.' It also stands for 'obstruction. In Shari'ah (divine law), *hudud* are the punishments that are prescribed by Allah's Book and the sun nah of Allah's Messenger صلى الله عليه وسلم and are defined, too. Examples are punishment for robbery, adultery, drinking wine.

If the basic meaning of *hadd (prescribed punishment)* 'obstruction' or' prohibition, is remembered then it will be clear why the prescribed punishments are so-called. It is because these punishments hinder the creatures from committing sin, for, fear of them comes between man and crime.

*Hudud*ullah are also the maharim or a degree of consequently.[1]

It is as Allah, the Exalted, says:

تِلْكَ حُدُوْدُ اللّٰهِ فَلَا تَقْرَبُوْهَا

{They are the limits of Allah, so do not go near them} (2: 187)

It must be borne in mind that *'hudud'* applies in both cases in its basic sense of 'forbidden' or 'prohibited' because marriage and being alone with the maharim is also forbidden and prohibited, as is to exceed the decrees or maqadir of *Shariah.*

DETAILS OF PUNISHMENT: If we look at the law relating to 'crime and punishment' in Shari'ah (divine law), we find that here are three kinds of punishments in Shari'ah (divine law). They are:

(1) The punishment that are prescribed and defined by Allah but they are enforced by the creatures. No outside power, like the ruler or the state, can interfere to prescribe them. This kind of punishment is termed by Shari'ah (divine law) as Kaffarah (expiation or atonement). Examples of its application are expiation for breaking an oath, breaking a prescribed fast in Ramadan.

(2) The punishments that are prescribed by the Book of Allah and the *sunnah (Prophet's* صلى الله عليه وسلم *practice)* of Allah's Messenger صلى الله عليه وسلم and are defined too (for the defined crimes). While the ruler and the state have the right to enforce them, yet no one can enact them. Shari'ah (divine law) terms this kind of punishment *'hadd (prescribed punishment);* (Prescribed punishments or limits). Examples of their application are punishment for robbery, adultery, drinking wine.

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[1] relations that cannot marry one another.

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(3) The book and the *sunnah (Prophet's* صلى الله عليه وسلم *practice)* have not prescribed these punishment but they have defined the evil things call for these punishments as crimes. The ruler and the state are authorized to prescribe the punishment at their discretion according to the circumstances. They have the right to enact the law but within the limits prescribed by Shari'ah (divine law). This kinds of punishment are termed by Shari'ah (divine law) as Ta'zeer (also spelt tazir), or dictionary punishment

DIFFERENCE BETWEEN *HADD (PRESCRIBED PUNISHMENT)* & TAZEER: The basic difference between *hadd (prescribed punishment)* and ta'zeer is that the former are punishments for violations of rights of Allah. No creature has a say in it. Ta'zeer is a term for punishments at the discretion of the creatures. The ruler may even forgive a person who is otherwise liable to receive this punishment. He may, depending on the circumstance and wisdom, reduce or increase or even change the punishment.

In short, *hadd (prescribed punishment)* is defined by Allah and no one is authorized to alter it. Ta'zeer is entrusted to the judge or the state. It is because of the lack of its determined nature that ta'zeer is not called *hadd (prescribed punishment).*

Qisas is also a creature's right. He is authorized to forgive the culprit. So, it cannot be called *hadd (prescribed punishment).*

CHAPTER - I

SECTION I

PROPHET'S JUDGEMENT IN A CASE OF ADULTERY[1]

(٣٥٥٥) عَنْ اَبِيْ هُرَيْرَةَ وَزَيْدِ بْنِ خَالِدٍ اَنَّ رَجُلَيْنِ اِخْتَصَمَا اِلٰى رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ اَحَدُهُمَا اقْضِ بَيْنَنَا بِكِتَابِ اللّٰهِ وَقَالَ الْاٰخَرُ اَجَلْ يَا رَسُوْلَ اللّٰهِ فَاقْضِ بَيْنَنَا بِكِتَابِ الله وَائْذَنْ لِيْ اَنْ اَتَكَلَّمَ قَالَ تَكَلَّمْ قَالَ اِنَّ ابْنِيْ كَانَ عَسِيْفًا عَلٰى هٰذَا فَزَنٰى بِامْرَأَتِهٖ فَاَخْبَرُوْنِيْ اَنَّ عَلَى ابْنِيْ الرَّجْمَ فَافْتَدَيْتُ مِنْهُ بِمِائَةِ شَاةٍ وَبِجَارِيَةٍ لِيْ ثُمَّ اِنِّيْ سَاَلْتُ اَهْلَ الْعِلْمِ فَاَخْبَرُوْنِيْ اَنَّ عَلَى ابْنِيْ جَلْدَ مِائَةٍ وَ تَغْرِيْبُ عَامٍ وَاِنَّمَا الرَّجْمُ عَلٰى امْرَاتِهٖ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَمَا وَالَّذِيْ نَفْسِيْ بِيَدِهٖ لَاَقْضِيَنَّ بَيْنَكُمَا بِكِتَابِ الله اَمَّا غَنَمُكَ وَجَارِيَتُكَ فَرَدٌّ عَلَيْكَ وَاَمَّا ابْنُكَ فَعَلَيْهِ جَلْدُ مِائَةٍ وَتَغْرِيْبُ عَامٍ وَاَمَّا اَنْتَ يَا اُنَيْسُ فَاغْدُ عَلٰى امْرَاَةِ هٰذَا فَاِنِ اعْتَرَفَتْ فَارْجُمْهَا فَاعْتَرَفَتْ فَرَجَمَهَا۔ (متفق عليه)

3555. Sayyiduna Abu Hurayrah رضى الله عنه **and Sayyiduna Zayd ibn Khalid** رضى الله عنه **narrated that two man brought a dispute before Allah Messenger** صلى الله عليه وسلم**. One of them submitted, "Judge between us in accordance with Allah's Books." The other submitted, "Yes, O Messenger of Allah, judge between us in accordance with the Book of Allah, And, permit me to speak." He said, "Speak!" So, the man said, "My son was hired labourer with this man and committed adultery with his wife I was**

[1] Generally zina is translated but sometimes the word fornication is used for the un married, but not necessarily.

told that my son would be stoned to death. So, I ransomed him with one hundred sheep and my female slave. Then, I asked the scholars and they informed me that my son was liable to receive one hundred stripes and to be banished for one year (because he was an unmarried man) and that this man's wife was liable to stoning to death (being a married woman). Allah's Messenger صلى الله عليه وسلم said, "By Him in whose hand is my soul, indeed, I shall judge between you in accordance with the Book of Allah. As for your sheep and your female slave they ought to be returned to you. Your son will be awarded one hundred lashes and will be exalted for one year (if he confesses his son, or there are four witnesses to establish the crime of fornication.)" Then he said to Unays رضى الله عنه. "O Unays, go to this man's wife. If she confesses, stone her to death." She did confess and he stoned her to death.[1]

COMMENTARY: The 'Book of Allah' does not refer to the noble Quran but to the command of Allah. The reason is that the Quran does not have the command of rajm or stoning to death mentioned in it. However, it is possible that this incident had taken place when the verse of rajm had not been abrogated from the Quran for recital and the words Book of Allah in the hadith refer to the Quran itself.

Imam Shafi رحمه الله contends that banishment for one year is part of *hadd (prescribed punishment)*. He says that if an unmarried commits fornication then the punishment is one hundred stripes and being exiled for one year.

Imam Abu Hanifah رحمه الله said that one year's banishment is not part of *hadd (prescribed punishment)* but part of exigencies at the option of the ruler.

Some others maintain that in the inception of Islam, this rule applied but was abrogated when the verse 2 of surah an-Nur was revealed:

اَلزَّانِيَةُ وَالزَّانِيْ فَاجْلِدُوْا كُلَّ وَاحِدٍ مِّنْهُمَا مِائَةَ جَلْدَةٍ

{The adulteress and the adulterer scourge each one of the twian a hundred stripes.} (24: 2)

As for the woman, she confessed and Sayyiduna Unays رضى الله عنه stoned her to death. It seems that one confession is enough for the prescribed punishment to be imposed, and Imam Shafi'I رحمه الله goes by this. But, Imam Abu Hanifah رحمه الله holds that it is necessary to confess four times in four sittings. He says that the confession in this hadith is the same, meaning four time. It is authentic and reliable and is clearly borne out by other ahadith.

UNMARRIED PERSON'S PUNISHMENT

(٣٥٥٦) وَعَنْ زَيْدِ بْنِ خَالِدٍ قَالَ سَمِعْتُ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَأْمُرُ فِيْمَنْ زَنٰى وَلَمْ يُحْصِنْ جَلْدَ مِائَةٍ وَتَغْرِيْبَ عَامٍ۔ (رواه البخارى)

3556. Sayyiduna Zayd ibn Khalid رضى الله عنه narrated that he heard the Prophet صلى الله عليه وسلم give command about an unmarried man who commits fornication that he should be awarded one hundred lashes and be exiled for one year.[2]

COMMENTARY: The word in the text (محصن) (muhsin) is the sensible, adult Muslim who is married and had has a sexual relationship with his wife. If an unmarried man (ghayr muhsin)

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[1] Bukhari # 6633, Muslim # 25-1697, Tirmidhi # 1433 (1438), Abu Dawud # 4445, Nasa'i # 5410, Ibn Majah # 2549, Darimi # 2317, Muwatta Maalik # 6 (*Hudud*), Musnad Ahmad 4. 115.

[2] Bukhari # 6831.

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has illicit sex then he is punished as mentioned in this hadith: one hundred stripes and a year's banishment. The punishment of banishment has been explained previously. As for the stripes, they should not be hit on the head, face and concealed portions.

PUNISHMENT AWARDED TO MARRIED PERSON

(٣٥٥٧) وَعَنْ عُمَرَ قَالَ إِنَّ اللّٰهَ بَعَثَ مُحَمَّدًا (صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ) بِالْحَقِّ وَأَنْزَلَ عَلَيْهِ الْكِتَابَ فَكَانَ مِمَّا أَنْزَلَ اللّٰهُ تَعَالٰى آيَةُ الرَّجْمِ رَجَمَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَرَجَمْنَا بَعْدَهُ وَالرَّجْمُ فِي كِتَابِ اللّٰهِ حَقٌّ عَلٰى مَنْ زَنٰى إِذَا أَحْصَنَ مِنَ الرِّجَالِ وَالنِّسَاءِ إِذَا قَامَتِ الْبَيِّنَةُ أَوْ كَانَ الْحَبَلُ أَوِ الْإِعْتِرَافُ۔ (متفق عليه)

3557. Sayyiduna Umar رضی اللہ عنہ narrated: "Surely Allah sent Muhammad with the truth and revealed to him the Book, and among that which Allah, the Exalted, revealed is the verse of rajm (stoning). So, Allah's Messenger صلی اللہ علیہ وسلم had the adulterers stoned to death and, after him, we have stoned them to death. And, stoning to death is established as a duty in Allah's Book, for married men and women, who perpetrate adultery once it is proved, or here is pregnancy, or a confession."[1]

COMMENTARY: The previous hadith mentioned the punishment imposed on an unmarried adulterer or adulteress. This hadith mentions the punishment a married man or woman faces when they commit adultery. Here again the word muhsin is used and it has been explained previously.

The verse of stoning to death was found in the Quran but subsequently abrogated for recital. The words have been removed but the command is retained. The verse was:

اَلشَّيْخُ وَالشَّيْخَةُ إِذَا زَنَيَا فَارْجُمُوْهُمَا اَلْبَتَّةَ نَكَالًا مِّنَ اللّٰهِ وَاللّٰهُ عَزِيْزٌ حَكِيْمٌ

The hadith concludes with the enumeration of three things as essential to establish that adultery is committed. They are:

(1) Witnesses,
(2) Pregnancy, and
(3) Confession.

Pregnancy is proof of illicit sex against an unmarried woman, but this command, too, has been rescinded. The requirement of testimony and confession stands. A married person who engages in illicit sexual intercourse will be stoned to death only when the crime is proved through witnesses or confession of the perpetrator.

ADULTERERS MUST BE STONED TO DEATH

(٣٥٥٨) عَنْ عُبَادَةَ بْنِ الصَّامِتِ أَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ خُذُوْا عَنِّيْ خُذُوْا عَنِّيْ قَدْ جَعَلَ اللّٰهُ لَهُنَّ سَبِيْلًا اَلْبِكْرُ بِالْبِكْرِ جَلْدُ مِائَةٍ وَتَغْرِيْبُ عَامٍ وَالثَّيِّبُ بِالثَّيِّبِ جَلْدُ مِائَةٍ وَالرَّجْمُ۔ (رواه مسلم)

3558. Sayyiduna Ubadah ibn Samit رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "Take from me (the command)! Take from me (the command)! Allah has appointed for those women a way! When unmarried people commit adultery, they should be awarded

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[1] Bukhari # 6829, Muslim # 15-1691, Tirmidhi # 1432 (1432), Abu Dawud # 4418, Ibn Majah # 2553, Darimi # 2322, Muwatta Maalik # 10 (*Hudud*), Musnad Ahmad 1-40.

one hundred stripes and banished for one year. When married people commit adultery they should be awarded one hundred stripes and be stoned to death."[1]

COMMENTARY: This hadith actually explains the verse (4;15); (اَوْ يَجْعَلَ اللّٰهُ لَهُنَّ سَبِيْلًا) {or Allah prescribes for them a way}

Allamah Turpushti رحمه‌الله said that the Prophet صلى‌الله‌عليه‌وسلم made this declaration when *hadd (prescribed punishment)* was prescribed for the (married) adulterer and adulteress. Hence, 'a way' means the *hadd (prescribed punishment)* that was not prescribed before that, but the command was valid that is prescribed in this versse:

وَالّٰتِيْ يَاْتِيْنَ الْفَاحِشَةَ مِنْ نِّسَآئِكُمْ فَاسْتَشْهِدُوْا عَلَيْهِنَّ اَرْبَعَةً مِّنْكُمْ فَاِنْ شَهِدُوْا فَاَمْسِكُوْهُنَّ فِي الْبُيُوْتِ حَتّٰى يَتَوَفّٰهُنَّ الْمَوْتُ اَوْ يَجْعَلَ اللّٰهُ لَهُنَّ سَبِيْلًا * ـ (النساء ۴: ۱۵)

{As for those of your women who commit indecency, call against them four witness from among you, then if they testify, confine them to (their) houses until death takes them or Allah appoints for them a way} (4: 15)

In short, if woman commit illicit sex and their sin is proved through witnesses, then they should be confined to their houses till they die, or Allah causes them to have a way, meaning, the *hadd (prescribed punishment)*. Hence, when Allah revealed the command of *hadd (prescribed punishment)*, the Prophet صلى‌الله‌عليه‌وسلم said, "Allah has appointed a way for women," meaning the *hadd (prescribed punishment)*. Then, he explained what *hadd (prescribed punishment)* is.

This hadith prescribes for a married man who commits indecency one hundred stripes and stoning to death. The zawahir and some of the sahabah (Prophet's Companions) رضى‌الله‌عنهم and tabi'un رحمه‌الله abided by it, but the majority of the scholars say that if an adulterer or adultererss deserves to be stoned to death then the punishment of one hundred lashes is redundant. He will be stoned to death and the other punishments are superfluous. It is reported that one man Ma'iz had indulged in illicit sex in spite of being married. The prophet صلى‌الله‌عليه‌وسلم did not award him the stripes but only stoned him to death. The same thing is known from the hadith about Ghamidiyah which we shall read and the hadith of Unays رضى‌الله‌عنه (#3555).

(۳۵۵۹) وَعَنْ عَبْدِاللّٰهِ بْنِ عَمْرٍو اَنَّ الْيَهُوْدَ جَاءُوْا اِلٰى رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَذَكَرُوْا لَهٗ اَنَّ رَجُلًا مِنْهُمْ وَامْرَأَةً زَنَيَا فَقَالَ لَهُمْ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَاتَجِدُوْنَ فِي التَّوْرَاةِ فِيْ شَأْنِ الرَّجْمِ قَالُوْا نَفْضَحُهُمْ وَيُجْلَدُوْنَ قَالَ عَبْدُاللّٰهِ بْنُ سَلَامٍ كَذَبْتُمْ اِنَّ فِيْهَا الرَّجْمَ فَاْتُوْا بِالتَّوْرَاةِ فَنَشَرُوْهَا فَوَضَعَ اَحَدُهُمْ يَدَهٗ عَلٰى اٰيَةِ الرَّجْمِ فَقَرَأَ مَا قَبْلَهَا وَمَا بَعْدَهَا فَقَالَ عَبْدُاللّٰهِ بْنُ سَلَامٍ اِرْفَعْ يَدَكَ فَرَفَعَ يَدَهٗ فَاِذَا فِيْهَا اٰيَةُ الرَّجْمِ فَقَالُوْا صَدَقَ يَا مُحَمَّدُ فِيْهَا اٰيَةُ الرَّجْمِ فَاَمَرَ بِهِمَا النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَرُجِمَا وَفِيْ رِوَايَةٍ قَالَ ارْفَعْ يَدَكَ فَرَفَعَ فَاِذَا اٰيَةُ الرَّجْمِ تَلُوْحُ فَقَالَ يَا مُحَمَّدُ اِنَّ فِيْهَا اٰيَةَ الرَّجْمِ وَلٰكِنَّا

[1] Muslim # 12-1690, Abu Dawud # 4413, Tirmidhi # 1434 (1439), Ibn Majah # 2550, Darimi # 2327, Musnad Ahmad 5-313.

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نَتَكَاتَمُهُ بَيْنَنَا فَأَمَرَ بِهِمَا فَرُجِمَا۔ (متفق عليه)

3559. Sayyiduna Abdullah ibn Umar رضی اللہ عنہ narrated that some Jews came to Allah's Messenger صلی اللہ علیہ وسلم and stated that one of their (married) man and (married) woman had committed adultery. He asked them what the Torah said about stoning to death and they said that they ought to disgrace them and to give them stripes. But, Abdullah ibn Salaam رضی اللہ عنہ (who was there) interjected, "You lie. It says that they should be stoned to death. Bring the Torah." (I shall show you the command.) They (brought it and) placed it open. One of them put his hand on the verse of rajm and recited what preceded it and what followed it. Abdullah ibn Salaam رضی اللہ عنہ instructed him to lift his hand from there. He did so and the verse of stoning was disclosed. They said, "O Muhammad, he has spoken the truth. The verse of stoning is there in it." Then, the prophet صلی اللہ علیہ وسلم commended (accordingly) about both of them. They were stoned to death. According to another version: He (Abdullah ibn Salaam) رضی اللہ عنہ said to the man, "Remove your hand." So he lifted it up and as he did so, the verse of rajm was clearly (disclosed) in it. The man then conceded, "O Muhammad, there is the verse of stoning in it, but we have been keep it undisclosed among ourselves." He then gave orders about them (that they should be stoned to death) and they were stoned to death. [1]

COMMENTARY: Abdullah ibn Salaam رضی اللہ عنہ was a Jew previously but when Allah guided him, he become a Muslim. He was a front ranking scholar among the Jews. He had abundant knowledge of the Torah.

The Jew who had put his hand on the verse of rajm in the Torah was Abdullah ibn Suriya.

The punishment of rajm is awarded to married adulterers who are Muslim. Here, they were not Muslims, but the punishment was awarded to them according to their Book, the Torah, which also did not make it binding for it to be awarded only to married people. The Prophet صلی اللہ علیہ وسلم began to follow the Quran when the command was revealed in it and the command of the Torah was abrogated.

Moreover, Imam Shafi'I رحمہ اللہ des not apply the word muhsin (married) only to Muslims. Any married man, Muslim or not Muslim, is liable to rajm if he commits fornication. Imam Abu Yusuf رحمہ اللہ also says the same thing. He is among the Hanafis.

One should not doubt that the Prophet صلی اللہ علیہ وسلم merely relied on the testimony of the Jews which is not worth while. It is not necessary that he did not have the confession of the accused for, he may have had the testimony of four Muslim too.

The book Mirqat of Mulla Ali Qari may be seen. Here, we have merely presented a synopsis from it.

RAJM FOR WHO CONFESSED TO INDECENCY

(٣٥٦٠) وَعَنْ اَبِي هُرَيْرَةَ قَالَ اَتَى النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ رَجُلٌ وَهُوَ فِي الْمَسْجِدِ فَنَادَاهُ يَارَسُوْلَ اللّٰهِ اِنِّيْ زَنَيْتُ فَأَعْرَضَ عَنْهُ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَتَنَحّٰى لِشِقِّ وَجْهِهِ الَّذِيْ اَعْرَضَ قِبَلَهُ فَقَالَ اِنِّيْ زَنَيْتُ فَأَعْرَضَ

[1] Bukhari # 6841, Muslim # 26. 1699, Abu Dawud # 4446, Darimi # 2321, Muwatta Maalik # 1 (*Hudud*), Musnad Ahmad 2-5.

عَنْهُ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَلَمَّا شَهِدَ اَرْبَعَ شَهَادَاتٍ دَعَاهُ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ اَبِكَ جُنُوْنٌ؟ قَالَ لَا فَقَالَ اَحْصَنْتَ؟ قَالَ نَعَمْ يَا رَسُوْلَ اللّٰهِ قَالَ اذْهَبُوْا بِهٖ فَارْجُمُوْهُ۔ قَالَ ابْنُ شِهَابٍ فَاَخْبَرَنِيْ مَنْ سَمِعَ جَابِرَ بْنَ عَبْدِاللّٰهِ يَقُوْلُ فَرَجَمْنَاهُ بِالْمُصَلّٰى فَلَمَّا اَذْلَقَتْهُ الْحِجَارَةُ هَرَبَ حَتّٰى اَدْرَكْنَاهُ بِالْحَرَّةِ فَرَجَمْنَاهُ حَتّٰى مَاتَ۔ مُتَّفَقٌ عَلَيْهِ وَفِيْ رِوَايَةٍ لِلْبُخَارِيِّ عَنْ جَابِرٍ بَعْدَ قَوْلِهٖ قَالَ نَعَمْ فَاَمَرَ بِهٖ فَرُجِمَ بِالْمُصَلّٰى فَلَمَّا اَذْلَقَتْهُ الْحِجَارَةُ فَرَّ فَاُدْرِكَ فَرُجِمَ حَتّٰى مَاتَ فَقَالَ لَهُ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ خَيْرًا وَصَلّٰى عَلَيْهِ۔

3560. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that a man came to the Prophet صلی اللہ علیہ وسلم when he was in the mosque (Masjid Nabawi). He called, "O Messenger of Allah, I have committed fornication. The Prophet صلی اللہ علیہ وسلم turned (his face) away from him. He came to where he had turned his face and standing opposite to him, repeated, "I have committed fornication." The Prophet صلی اللہ علیہ وسلم turned away from him. When he testified (against himself) four times, the Prophet صلی اللہ علیہ وسلم called him (closer) and asked him, "Are you mad?" He said, "No!" He asked, "Are you married?" He said, "Yes, O Messenger of Allah," He said, "Take him away and stone him to death."

Ibn Shihab (a sub narrator) said that he who had heard from Jabir ibn Abdullah رضی اللہ عنہ said that he said, "We stoned him in Madinah. As the stones hurt him, he run away. But, we caught up with him in the harrah and stoned him to death."

According to another version in Bukhari, Jabir رضی اللہ عنہ said that after his saying, "Yes!" the prophet صلی اللہ علیہ وسلم ordered that he should be stoned to death. He was stoned at al-musallla (the place of *salah (prayer)* of Eed). When the stones struck him he fled, but he was nabbed and stoned to death. The Prophet صلی اللہ علیہ وسلم prescribed him highly and offered his funeral *salah (prayer)*. (Or, the words mean that he prayed for him).[1]

COMMENTARY: The man confessed four times, each time from a different direction. In other words, they were four testimonies in four different sittings. Imam Abu Hanifah رحمہ اللہ has deduced from it that for adultery to be established, the accused must make four confessions in four sittings. This according to him, is a condition.

The Prophet صلی اللہ علیہ وسلم asked him whether he was mad. He meant that to sane person would pave a way for his own stoning to death. He should have, rather, made a repentance to Allah and sought His forgiveness, and made a resolve never to commit sin again. Nawawi رضی اللہ عنہ said that the Prophet صلی اللہ علیہ وسلم intended to make it certain because generally no one so readily confesses to his sins and no one insists on that knowing that the punishment for it is death. Rather, a person finds it safe to get deliverance through repentance and have his sins forgiven.

It also shows that legal avenues must not be left unexplored to allow benefit of doubt to every Muslim. If a Muslim's life may be saved lawfully, then that must be done.

Further, if a mad man says that he has committed adultery then he must not be believed. Also, he must not be exposed to *hadd (prescribed punishment)*.

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[1] Bukhari # 5270, Muslim # 1601691, Bukhari # 5271. (Second version) # 6820.

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Imam Nawawi رحمه الله also said that the ruler must also investigate if all the conditions are fulfilled before imposing the *hadd (prescribed punishment)*, for example, the accused must be a married person to be subject to *hadd (prescribed punishment)*. It is the same if he makes a confession himself or witnesses testify against him. It may be presumed from the Prophet صلى الله عليه وسلم words that if such a person retracts his confession then he must be forgiven and the *hadd (prescribed punishment)* for adultery must be withdrawn.

Ibn Hammam رحمه الله said that when a man is stoned to death, he must be made to stand and face the stoning. He must not be made to hang on something or be suspended in the air. A woman who is stoned must be made to sit down and it is better if she is made to stand in a ditch and buried up to her chest so that her body is not bared. The Prophet صلى الله عليه وسلم had a ditch dug for ghamidiyh.

The ruling is that if a person who is being stoned to death runs away during the stoning then this person must not be chased if it is a punishment on voluntary confession. If the indecency is established through witnesses then the person must be chased and stoned to death.

Nawawi رحمه الله said about being stoned at al-Musalla that it was the place where funeral *salah (prayer)* used to be offered (not eed as in the text). This is corroborated by another version.

Bukhari رحمه الله and others say that if the place where the funeral *salah (prayer)* is offered or the eed *salah (prayer)* is offered is not designated as a mosque, then it will not come under the purview of rules applicable to mosques. However, generally the place where funeral *salah (prayer)* or eed *salah (prayer)* is offered attracts the same commands as apply to mosques. This means that blood must not be shed there, and it should be sanctified, Hence, the fornicator must not be stoned to death at these places meaning mosques.

***HADD (PRESCRIBED PUNISHMENT)* & TA'ZEER MUST NOT BE IMPOSED IN MOSQUES:** Ibn Hammam رحمه الله said that neither *hadd (prescribed punishment)* nor ta'zeer must be enforced on any one in the mosques. All the ulama (Scholars) are unanimous about it. It is based on the saying of the Prophet صلى الله عليه وسلم.

قَالَ جَنِّبُوْا مَسَاجِدَكُمْ صِبْيَانَكُمْ وَمَجَانِيْنَكُمْ وَرَفْعَ اَصْوَاتَكُمْ وَشِرَائِكُمْ وَبَيْعَ وَاِقَامَةِ حُدُوْدِكُمْ وَجَمِّرُوْهَا فِيْ جُمَعِكُمْ وَضَعُوا عَلٰى اَبْوَابِهَا الْمُطَاهِرِ۔

[Preserve your mosques from your children, your madmen, raising of your voices, Your trading (buying and selling) and enforcing your *hudud*. On Friday, let there be incense in your mosques and make places of ablution at their gates.]

DO NOT PUNISH BEFORE PROBING

(٣٥٦١) وَعَنِ ابْنِ عَبَّاسٍ قَالَ لَمَّا اَتٰى مَاعِزُ بْنُ مَالِكٍ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ لَهٗ لَعَلَّكَ قَبَّلْتَ اَوْ غَمَزْتَ اَوْ نَظَرْتَ قَالَ لَا يَا رَسُوْلَ اللّٰهِ قَالَ اَنِكْتَهَا لَا يَكْنِيْ قَالَ نَعَمْ فَعِنْدَ ذٰلِكَ اَمَرَ بِرَجْمِهٖ۔ (رواه البخاری)

3561. Sayyiduna Ibn Abbas رضى الله عنه narrated that when (Sayyiduna) Ma'iz ibn Maalik رضى الله عنه came to the Prophet صلى الله عليه وسلم (and submitted, "I have committed adultery,") he asked, "Perhaps, you merely kissed (her), or touched (her) with sexual intent, or looked (at her)?" But, he submitted, "No, O Messenger of Alalh!" So, he asked, "Did you have sexual intercourse with her?" He asked this question directly not by allusion. He confirmed, "Yes!" At that, he commended that he

(Ma'iz) should be stoned to death.[1]

SIN IS CEASED AFTER RECEIVING PRESCRIBED PUNISHMENT

(٣٥٦٢) وَعَنْ بُرَيْدَةَ قَالَ جَاءَ مَاعِزُ بْنُ مَالِكٍ إِلَى النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ يَا رَسُوْلَ اللّٰهِ طَهِّرْنِيْ فَقَالَ وَيْحَكَ اِرْجِعْ فَاسْتَغْفِرِ اللّٰهَ وَتُبْ إِلَيْهِ قَالَ فَرَجَعَ غَيْرَ بَعِيْدٍ ثُمَّ جَآءَ فَقَالَ يَا رَسُوْلَ اللّٰهِ طَهِّرْنِيْ فَقَالَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مِثْلَ ذٰلِكَ حَتّٰى إِذَا كَانَتِ الرَّابِعَةُ قَالَ لَهُ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فِيْمَ أُطَهِّرُكَ قَالَ مِنَ الزِّنَا قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ أَبِهِ جُنُوْنٌ فَأُخْبِرَ أَنَّهُ لَيْسَ بِمَجْنُوْنٍ فَقَالَ أَشَرِبَ خَمْرًا فَقَامَ رَجُلٌ فَاسْتَنْكَهَهُ فَلَمْ يَجِدْ مِنْهُ رِيْحَ خَمْرٍ فَقَالَ أَزَنَيْتَ قَالَ نَعَمْ فَأَمَرَ بِهِ فَرُجِمَ فَلَبِثُوْا يَوْمَيْنِ أَوْ ثَلَاثَةً ثُمَّ جَآءَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ اسْتَغْفِرُوْا لِمَاعِزِ بْنِ مَالِكٍ لَقَدْ تَابَ تَوْبَةً لَوْ قُسِمَتْ بَيْنَ أُمَّةٍ لَوَسِعَتْهُمْ ثُمَّ جَآءَتْهُ إِمْرَأَةٌ مِّنْ غَامِدٍ مِنَ الْأَزْدِ فَقَالَتْ يَا رَسُوْلَ اللّٰهِ طَهِّرْنِيْ فَقَالَ وَيْحَكِ ارْجِعِيْ فَاسْتَغْفِرِيْ اللّٰهَ وَتُوْبِيْ إِلَيْهِ فَقَالَتْ تُرِيْدُ أَنْ تُرَدِّدَنِيْ كَمَا رَدَدْتَّ مَاعِزَ بْنَ مَالِكٍ إِنَّهَا حُبْلٰى مِنَ الزِّنٰى فَقَالَ أَنْتِ؟ قَالَتْ نَعَمْ قَالَ لَهَا حَتّٰى تَضَعِيْ مَافِيْ بَطْنِكِ قَالَ فَكَفَلَهَا رَجُلٌ مِنَ الْأَنْصَارِ حَتّٰى وَضَعَتْ فَأَتَى النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ قَدْ وَضَعَتِ الْغَامِدِيَّةُ فَقَالَ إِذًا لَا نَرْجُمُهَا وَنَدَعُ وَلَدَهَا صَغِيْرًا لَيْسَ لَهُ مَنْ يُّرْضِعُهُ فَقَامَ رَجُلٌ مِّنَ الْأَنْصَارِ فَقَالَ إِلَيَّ رَضَاعُهُ يَانَبِيَّ اللّٰهِ قَالَ فَرَجَمَهَا وَفِيْ رِوَايَةٍ إِنَّهُ قَالَ لَهَا اذْهَبِيْ حَتّٰى تَلِدِيْ فَلَمَّا وَلَدَتْ قَالَ اذْهَبِيْ فَأَرْضِعِيْهِ حَتّٰى تَفْطِمِيْهِ فَلَمَّا فَطَمَتْهُ أَتَتْهُ بِالصَّبِيِّ وَفِيْ يَدِهِ كِسْرَةُ خُبْزٍ فَقَالَتْ هٰذَا يَا نَبِيَّ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَدْ فَطَمْتُهُ وَقَدْ أَكَلَ الطَّعَامَ فَدَفَعَ الصَّبِيَّ إِلٰى رَجُلٍ مِنَ الْمُسْلِمِيْنَ ثُمَّ أَمَرَ بِهَا فَحُفِرَ لَهَا إِلٰى صَدْرِهَا وَأَمَرَ النَّاسَ فَرَجَمُوْهَا فَيُقْبِلُ خَالِدُ بْنُ الْوَلِيْدِ بِحَجَرٍ فَرَمٰى رَأْسَهَا فَتَنَضَّحَ الدَّمُ عَلٰى وَجْهِ خَالِدٍ فَسَبَّهَا فَقَالَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَهْلًا يَا خَالِدُ فَوَالَّذِيْ نَفْسِيْ بِيَدِهِ لَقَدْ تَابَتْ تَوْبَةً لَوْ تَابَهَا صَاحِبُ مَكْسٍ لَغُفِرَ لَهُ ثُمَّ أَمَرَ بِهَا فَصَلّٰى عَلَيْهَا وَدُفِنَتْ۔ (رواه مسلم)

3562. Sayyiduna Buraydah رضی اللہ عنہ narrated (Sayyiduna) Ma'iz ibn Maalik رضی اللہ عنہ came to the Prophet صلی اللہ علیہ وسلم and submitted, "O Messenger of Allah, purify me!" (He meant that he should be punished in order to have his sin erased.) He said, "How Sad! Go away! Seek Allah's forgiveness and repent to Him!"

He narrated further that he went away but not far and came back only to repeat, "O Messenger of Allah, purify me!' The prophet صلی اللہ علیہ وسلم said (to him) like what he had said before, till when it happened (like that) the fourth time, Allah's Messenger صلی اللہ علیہ وسلم said to him, "Of what shall I purify you?" He submitted, "Of adultery." (by imposing *hadd (prescribed punishment)* over me). Allah's Messenger صلی اللہ علیہ وسلم asked (his sahabah)رضی اللہ عنہ. "Is he mad?" He was told, "He is not insane." He asked,

[1] Bukhari # 6824, Abu Dawud # 4427.

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"Has he drunk wine?" A man got up and sniffed at his breath but perceived not the smell of wine.

So, he asked, him, "Have you committed adultery. He said, "Yes!" So, he gave a command about him and he was stoned to death.

After two or three days, Allah's Messenger صلى الله عليه وسلم came and said, "Seek forgiveness for Ma'iz ibn Maalik. He has made so much repentance that if it were divide among an *ummah*, it would suffice them all."

Later, a woman of Ghamid of the tribe Azd came to him and submitted, "O Allah's Messenger, purify me." He said, 'Pity on you! Go back and seek Allah's forgiveness and repent to him." She asked, "would you like to send me back as you did send back Ma'iz ibn Maalik (while I am) a woman who is pregnant through adultery?" (There is no possibility of a denial any more) He asked, "You?" She Said, "Yes!" He said to her, "wait till you give birth to what you carry in your womb."

The narrator went on: An Ansar took responsibility for her till she had given birth to a child. Then, he went to the prophet صلى الله عليه وسلم and informed him that the woman of Ghamid had delivered a child. He said, "We shall not stone her and so leave her child without any one to suckle it." Thereupon another of the Ansar got up and submitted, "O Prophet of Allah. I take responsibility for the child's suckling."

The narrator added: He had her stoned to death.

According to another version: He instructed her to go and wait till she gave birth to the child when she did (and came to him), he instructed her to go and suckle the child and wait till she had weaned it. When she had done that, she came with the child holding a slice of bread in its hand and she submitted, "I have weaned this child, O Prophet of Allah, and he has eaten food." He handed over the child to one of the Muslims. He gave an order about her and she was put in a pit up to her chest. Then he instructed the people (to stone her) and they stoned her. Khalid ibn walid رضى الله عنه stepped forward with a stone that he flung at her head. Blood from it flew on his face, so he cursed her the Prophet صلى الله عليه وسلم said, "Be calm, O Khalid! By Him in whose hand is my soul! She has repented so much that if he who charges an unjust tax repents in like manner then he would be forgiven."

Then he gave an order about her and the funeral *salah (prayer)* was offered over her. Then she was buried.[1]

(the passive voice is as per the urdu translation.)

COMMENTARY: Certainly, the repentant of Ma'iz رضى الله عنه was such that the prophet صلى الله عليه وسلم spoke highly of his good fortune and excellence. It brought a forgiveness and mercy that covered a very large sanction of Allah's creation.

The enforcement of *hadd (prescribed punishment)* is called tawbah (repentance) because like repentance, it also washes off all sins.

Ibn Maalik رحمه الله deduces from the hadith that a pregnant woman should not be awarded the *hadd (prescribed punishment)* Prescribed punishment) till she gives birth to her child. In this way an innocent life will not be taken away. She should also be given respite till her child is weaned and is no more dependant on her if there is someone to look after the child. This is also the contention of Imam Abu Hanifah. رحمه الله.

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[1] Muslim # 22, 23-1695, Abu Dawud # 4442, Musnad Ahmad 5-348, Darimi # 2324.

The hadith is evidence that to charge unjust tax and other levies are very sinful. It is like snatching someone's property.

The word at the end of the hadith is salla (he offered *salah (prayer)* - (صلّى) in sahih Muslim from all the narrators. This means that the Prophet صلى الله عليه وسلم offered the funeral *salah (prayer)* over the woman. However, in the view of Tabari and in the versions of Ibn Abu Shayban and Abu Dawud the word is sulli (سلى) - in the passive voice) to imply that while the others offered the funeral *salah (prayer)*, Allah's Messenger صلى الله عليه وسلم did not offer it. Indeed, the version of Abu Dawud states very clearly that he did not offer it (لم يصل عليها) but instructed the people to offer it. This is why the imams differ on whether funeral *salah (prayer)* is offered over one who is stoned. Imam Maalik رحمه الله regards it to be makruh (disapproved).

Imam Ahmad says that the ruler and dignitaries must not offer it but the common people may offer the funeral *salah (prayer)* over such a person.

Imam shafi'I رحمه الله and Imam Abu Hanifah رحمه الله hold this person's funeral *salah (prayer)* should be offered as, in fact, of every such person who recites the kalimah, even if he was a sinner and indecent, and the *hadd (prescribed punishment)* was enforced on him.

According to another report, Imam Ahmad also gave the same opinion.

Qadi Iyad رحمه الله also outlined the two forms of the word salla and sulli (active and passive voice) in different books. He says that it is more proper that the word is in the active voice salla, If read with the preceding (ثم امربها) (then he gave a command concerning her). This means that he instructed them to give her body a bath and to enshroud it and to bring it to the place of the funeral *salah (prayer)*. This is upheld by the words in sahih Muslim (# 64. 1696):

اَمَرَ بِهَا النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَرَجَمْتُ ثُمَّ صَلّٰى عَلَيْهَا فَقَالَ لَهُ عُمَرُ تُصَلِّي عَلَيْهَا يَا نَبِيَّ اللّٰهِ وَقَدْ زَنَتْ

{...then the Prophet pronounced judgment about her and her clothes were tied around her and he commanded and she was stoned to death. He then offered the funeral *salah (prayer)* over her. Umar رضى الله عنه submitted to him, "O Prophet of Allah you offer *salah (prayer)* over her while she had committed fornication..."}

It is stated explicitly in this hadith that the prophet صلى الله عليه وسلم did offer the funeral *salah (prayer)* of this woman.

Qadi Iyad has made it clear too that though Muslim has not mentioned the Prophet's صلى الله عليه وسلم offering the funeral *salah (prayer)* over Ma'iz ib Maalik رحمه الله Bukhari has mentioned it.

The Question arises that since most of the versions of Muslim has the active voice of the word (صلّى) (salla), why do the authentic copies of Mishkat use the passive voice of this word (صُلِّي) (sulli)? He (the compiler) ought to have preferred the active voice because the positive is always chosen over the negative. But, since some reliable texts had the passive voice and there was a difference of opinion whether the funeral *salah (prayer)* was offered by the Prophet رضى الله عنه or not, the compiler of mishkat opted for the passive voice because it allows for both options. But, we must go by the majority and use the active voice to state that:

{The prophet صلى الله عليه وسلم did offer the funeral *salah (prayer)* over her.}

DEDUCTION: This hadith proves that *hadd (prescribed punishment)* (prescribed punishment) wipes out the sin for which it is imposed. In the hereafter t his person who is

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punished will not be questioned about the sin for which he is punished.

APPARENT DIFFERENCE: Finally, Nawawi رحمه الله has pointed out that of the two versions, the second makes it very clear that the woman had weaned the child before she was stoned to death. However, the first implies that she was punished when the Ansar man offered to shoulder responsibility for the suckling of the child. This may be explained by suggesting that even in the first version, it does not specify that the child was not weaned. The responsibility that the Ansar had taken to suckle the child was a figurative way of caring for it, because the child was an infant after all. He took responsibility to raise and nurture the child.

PUNISHMENT GIVEN TO INDECENT SLAVE GIRL

(٣٥٦٣) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ سَمِعْتُ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ اِذَا زَنَتْ اَمَةُ اَحَدِكُمْ فَتَبَيَّنَ زِنَاهَا فَلْيَجْلِدْهَا الْحَدَّ وَلَا يُثَرِّبْ عَلَيْهَا ثُمَّ اِنْ زَنَتْ فَلْيَجْلِدْهَا الْحَدَّ وَلَا يُثَرِّبْ ثُمَّ اِنْ زَنَتِ الثَّالِثَةَ فَتَبَيَّنَ زِنَاهَا فَلْيَبِعْهَا وَلَوْ بِحَبْلٍ مِنْ شَعْرٍ۔ (متفق عليه)

3563. Sayyiduna Abu Hurayrah رضى الله عنه narrated that he heard the Prophet صلى الله عليه وسلم say, "when the female slave of any of you commits adultery and it is obvious (that she had done so), he must impose the *had* (prescribed punishment) on her of flogging. But, he must not disgrace her. When she commits adultery again, he must impose the *hadd (prescribed punishment)* on her of flogging. But, he must not disgrace her. Then, when she commits adultery a third time and it is obvious (that she has done so), he must sell her, even if only for a string of hair (meaning, the most insignificant thing).[1]

COMMENTARY: The *hadd (prescribed punishment)* that the master must impose on his earning female slave is to give her fifty stripes. The *hadd (prescribed punishment)* of male and female slave is half of that of free man. Moreover stoning to death is not prescribed for them.

Imam Shafi رحمه الله says on the basis of this hadith that a master may carry on and execute the *hadd (prescribed punishment)* himself.

The Hanafis, however, say that this is not allowed. They say that the hadith makes him responsible to present her to the ruler that he might impose the *hadd (prescribed punishment)*. Once the female slave is awarded the punishment, she must not be taunted and disgraced. The *hadd (prescribed punishment)* wipes off her sins. This command is not only for female slave but also for the free woman, etc. since female slave are generally prone insults on sight faults, therefore this hadith mentions them particularly.

As for selling his erring female slave, he may sell her after imposing the *hadd (prescribed punishment)* on her, or without imposing it. However, the words of the hadith seem to suggest that he should dispose of her before imposing on her the *hadd (prescribed punishment)*.

Imam Nawawi رحمه الله points out that the hadith discourage living with sinners and indecent people. He said that it is *mustahab (desirable)* to sell a female slave to this nature, but the Zawahir scholars say that it is *wajib (obligatory)* to part with her.

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[1] Bukhari # 2234, Muslim # 3-1703, Tirmidhi # 1433 (1433) Abu Dawud # 4470, Ibn Majah 2565, Darimi # 2326, Muwatta Maalik # 14 (*Hudud*), Musnad Ahmad 2-249, (Tirmidhi has it is notes to hadith 1433 (14387) 2-376.

ABOUT THE *HADD (PRESCRIBED PUNISHMENT)* ON THE SICK

(٣٥٦٤) وَعَنْ عَلِيٍّ قَالَ يَا اَيُّهَا النَّاسُ اَقِيْمُوْا عَلٰى اَرِقَّائِكُمُ الْحَدَّ مَنْ اَحْصَنَ مِنْهُمْ وَمَنْ لَمْ يُحْصِنْ فَاِنَّ اَمَةً لِرَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ زَنَتْ فَاَمَرَنِيْ اَنْ اَجْلِدَهَا فَاِذَا هِيَ حَدِيْثُ عَهْدٍ بِنِفَاسٍ فَخَشِيْتُ اِنْ اَنَا جَلَدْتُّهَا اَنْ اَقْتُلَهَا فَذَكَرْتُ ذٰلِكَ لِلنَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ اَحْسَنْتَ۔ رَوَاهُ مُسْلِمٌ وَفِيْ رِوَايَةٍ لِاَبِيْ دَاوٗدَ قَالَ دَعْهَا حَتّٰى يَنْقَطِعَ دَمُهَا ثُمَّ اَقِمْ عَلَيْهَا الْحَدَّ وَاَقِيْمُوا الْحُدُوْدَ عَلٰى مَا مَلَكَتْ اَيْمَانُكُمْ۔

3564. Sayyiduna Ali رضی اللہ عنہ said, "O you people! Do enforce the *hadd (prescribed punishment)* on your (male and female) slaves (if they perpetrate adultery or fornication, fifty stripes), the married among them or the unmarried. Indeed, a female slave belonging to Allah's Messenger صلی اللہ علیہ وسلم had committed fornication. So, he commanded me to impose the *hadd (prescribed punishment)* (of lashes) on her. But, behold! She had given birth to a child recently. That caused me apprehension that if I whipped her then I might kill her Hence. I spoke of that with the noble prophet صلی اللہ علیہ وسلم and he agreed, saying. "You did well!"[1]

According to another version: He said, "Let her alone till her blood stops to flow. Then impose the *hadd (prescribed punishment)* on her. And impose the prescribed punishment on your slave (male and female)."[2]

COMMENTARY: According to this hadith a woman experiencing post -birth bleeding must be given respite from punishment till she stop bleeding. This is a kind of sickness and a sick person is not punished till he recovers.

Ibn Hamam رضی اللہ عنہ says that if a sick married person has committed fornication and is liable to stoning to death then he should be given that punishment during his sickness. If he is unmarried and has committed adultery and is liable to be lashed then he should not be awarded the lashes is his sickness but the punishment should be deferred till he recovers. However, if he suffers such an illness from which he might not recover or is infirm and feeble, then Imam Abu Hanifah رحمہ اللہ and Imam Shafi'I رحمہ اللہ say that the punishment must be carried out to fulfil the requirements of law by getting a branch of the date palm tree that has one hundred small twigs. He should be hit with that branch once in such a way that each of its one hundred twigs touches his body. It is necessary to use a wide, stretched out branch.

Moreover, the flogging should not be carried out in severe summer or in harsh winter. It should be enforced in a moderate climate (see hadith # 3574 about a sick punishment).

SECTION II اَلْفَصْلُ الثَّانِيْ

ADULTERER (LESS) RETRACTS CONFESSION

(٣٥٦٥) عَنْ اَبِيْ هُرَيْرَةَ قَالَ جَآءَ مَاعِزُ الْاَسْلَمِيُّ اِلٰى رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ اِنَّهٗ قَدْ زَنٰى فَاَعْرَضَ عَنْهُ ثُمَّ جَاءَ مِنْ شِقِّهِ الْاٰخَرِ فَقَالَ اِنَّهٗ قَدْ زَنٰى فَاَعْرَضَ عَنْهُ ثُمَّ جَآءَ مِنْ شِقِّهِ الْاٰخَرِ فَقَالَ يَا رَسُوْلَ اللّٰهِ اِنَّهٗ قَدْ زَنٰى فَاَمَرَ بِهٖ فِي الرَّابِعَةِ فَاُخْرِجَ اِلَى الْحَرَّةِ فَرُجِمَ بِالْحِجَارَةِ فَلَمَّا وَجَدَ مَسَّ الْحِجَارَةِ فَرَّ يَشْتَدُّ حَتّٰى

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[1] Muslim # 1705.

[2] Abu Dawud # 4473, Tirmidhi # 1441, Musnad Ahmad 1-156.

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مَرَّ بِرَجُلٍ مَعَهُ لَحْيُ جَمَلٍ فَضَرَبَهُ بِهِ وَضَرَبَهُ النَّاسُ حَتّٰى مَاتَ فَذَكَرُوْا ذٰلِكَ لِرَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِنَّهُ فَرَّ حِيْنَ وَجَدَ مَسَّ الْحِجَارَةِ وَمَسَّ الْمَوْتِ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ هَلَّا تَرَكْتُمُوْهُ۔ رَوَاهُ التِّرْمِذِيُّ وَابْنُ مَاجَةَ وَفِيْ رِوَايَةٍ هَلَّا تَرَكْتُمُوْهُ لَعَلَّهُ اَنْ يَّتُوْبَ اللّٰهُ عَلَيْهِ۔

3565. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated: Ma'iz Aslami رضی اللہ عنہ came to Allah's Messenger صلی اللہ علیہ وسلم and submitted that he had commit adultery, but he turned away from him. He came over to the other side and submitted, "I have committed adultery." But he turned away from him. He came over again and submitted. "O Messenger of Allah, I have committed adultery." When he repeated it the fourth time, he gave an order about him and he was taken to Harrah and was being stoned, when he felt the pair the stones caused, he fled till he come to a man who had the jawbone of a camel (in his hand). He struck him with it and (other) people (also resumed to) hit him till he died. They reported that to Allah's Messenger صلی اللہ علیہ وسلم saying, "He fled on feeling the pain of the stones and the sense of death." He said, "Why did you not spare him?"

According to another version: He said, "why did you not spare him? He might have made a repentance and gained pardon from Allah."[1]

COMMENTARY: The final words mean that he could have repented and Allah would have relented to him.

According to this hadith if any one confesses having committed a sin but retracts his confession or says that he had lied or says that he takes back his confession, then the prescribed punishment of *hadd (prescribed punishment)* will become invalid. If he does the same thing while he is being punished then the remaining portion of the punishment will be waived. Some authorities say, however, that *hadd (prescribed punishment)* will not be waived nor become invalid.

CONFESSION OF MA'IZ رضی اللہ عنہ

(٣٥٦٦) وَعَنِ ابْنِ عَبَّاسٍ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لِمَاعِزِ بْنِ مَالِكٍ اَحَقٌّ مَا بَلَغَنِيْ عَنْكَ قَالَ وَمَا بَلَغَكَ عَنِّيْ قَالَ بَلَغَنِيْ اَنَّكَ قَدْ وَقَعْتَ عَلٰى جَارِيَةِ اٰلِ فُلَانٍ قَالَ نَعَمْ فَشَهِدَ اَرْبَعَ شَهَدَاتٍ فَاَمَرَ بِهٖ فَرُجِمَ۔ (رواہ مسلم)

3566. Sayyiduna Ibn Abbas رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم asked (Sayyiduna) Ma'iz ibn Maalik رضی اللہ عنہ, "Is what is conveyed to me about you true?' He asked, "And what has been conveyed to you about me?" He said, It has been conveyed to me that you have had sexual intercourse wit h the slave girl belonging to so and so people." He said, "Yes" and he admitted it four times (in four meetings) so, he ordered that he should be s toned to death. And he was stoned to death.

COMMENTARY: The compiler of the Masabih has placed this hadith here in Section II though it ought to have been placed in Section I.

There is no contradiction between this hadith and the previous ahadith on this subject. Here, the mian subject is mentioned briefly and the initial confession of Ma'iz رضی اللہ عنہ is not

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[1] Tirmidhi # 1438 (1433), Ibn Majah # 2554, Musnad Ahmad 2-150. (See also hadith # 3561, 3562).

mentioned. It is very much likely that the prophet صلى الله عليه وسلم had known of Ma'iz' رضى الله عنه guilt beforehand and had him admit it in the manner mentioned in the other ahadith (# 3561, 3562, 3565). He had him do that four times in four positions.

CONCEAL FAULTS OF OTHER PEOPLE

(٣٥٦٧) وَعَنْ يَزِيْدَ بْنِ نُعَيْمٍ عَنْ اَبِيْهِ اَنَّ مَاعِزًا اَتَى النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَاَقَرَّ عِنْدَهٗ اَرْبَعَ مَرَّاتٍ فَاَمَرَ بِرَجْمِهٖ وَقَالَ لِهَزَّالٍ لَوْسَتَرْتَهٗ بِثَوْبِكَ كَانَ خَيْرًا لَكَ قَالَ ابْنُ الْمُنْكَدِرِ اِنَّ هَزَّالًا اَمَرَ مَاعِزًا اَنْ يَاْتِيَ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَيُخْبِرَهٗ۔ (رواه ابوداؤد)

3567. Sayyiduna Yazid ibn Nu'aym رحمه الله reported on the authority of his father, that Ma'iz رضى الله عنه came to the prophet صلى الله عليه وسلم and confessed before him four times (in four positions to having perpetrated illicit sexual intercourse). So he ordered that he should be stoned to death. (That was done) And he said to Hazzal. رضى الله عنه "Had you covered him with our garment, that would have been better for you." (meaning, if you had concealed his sin of extra marital sex).
Ibn Munkadir رحمه الله (a narrator of this hadith) said that it was Sayyidah Hazzal رضى الله عنها who had induced Ma'iz رضى الله عنه to go to the Prophet صلى الله عليه وسلم and disclose to him what he had perpetrated.[1]

COMMENTARY: Sayyiduna Hazzal رضى الله عنه had a female slave by the name of Fatimah رضى الله عنه whom he had set free. Mu'iz رضى الله عنه had illicit sex with Fatimah رضى الله عنه. When Hazzal رضى الله عنه learnt of it, he induced Ma'iz رضى الله عنه to disclose his affair to the Prophet صلى الله عليه وسلم. This is the reason the prophet صلى الله عليه وسلم advised Hazzal رضى الله عنه that it would have been better for him not to disclose the sin of Ma'iz رضى الله عنه. "Allah would have concealed your faults."
(In this regard the hadith of Ibn Umar رضى الله عنه may be borne in mind: "A Muslim is a brother of another Muslim... and whoever conceals (faults of) a Muslim, Allah will conceal (his faults for) him on the day of resurrection.")[2]

NO RULER MAY CONDONE THE PRESCRIBED PUNISHMENT

(٣٥٦٨) وَعَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ اَبِيْهِ عَنْ جَدِّهٖ عَبْدِاللّٰهِ بْنِ عَمْرِو بْنِ الْعَاصِ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ تَعَارَفُوا الْحُدُوْدَ فِيْمَا بَيْنَكُمْ فَمَا بَلَغَنِيْ مِنْ حَدٍّ فَقَدْ وَجَبَ۔ (رواه ابوداؤد و النسائي)

3568. Sayyiduna Amr ibn Shu'ayb رحمه الله reported from his father, Shuayb رحمه الله that his grandfather, Abdullah ibn Amr ibn Aas رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said "Forgive the enforcement of the prescribed punishment amongst yourselves (before I learn of them). If I learn of any crime calling for the prescribed punishment then it become *wajib (obligatory)* (to enforce it)."[3]

COMMENTARY: The people are advised to forgive each other and avert their punishment.

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[1] Abu Dawud # 4378.

[2] Bukhari # 2442, Muslim # 58-2580, Tirmidhi # 1426, Abu Dawud # 4893, Musnad Ahmad 2-68. (This book hadith # 4958)

[3] Abu Dawud # 4376, Nasai $ 4885

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They are urged to be kind and not to bring cases against each other before rulers. Once it comes to the ruler then it is not allowed to him to forgive the accused and he must enforce the punishment.

The master of a slave may not enforce the *hadd (prescribed punishment)* on his slave himself nor is it proper for him to bring him to the ruler. Rather, he must forgive him.

Moreover, the advice to forgive is not a command of a *wajib (obligatory)* nature but is a *mustahab (desirable)* (recommended) course.

OVERLOOK THE MISTAKES OF THE RESPECTABLE

(٣٥٦٩) وَعَنْ عَائِشَةَ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اَقِيْلُوْا ذَوِى الْهَيْئَاتِ عَثَرَاتِهِمْ اِلَّا الْحُدُوْدَ۔ (رواه ابوداؤد)

3569. Sayyiduna Ayshah رضی اللہ عنہا narrated that the Prophet صلی اللہ علیہ وسلم said, "Overlook the mistake of the people of distinction, but not such acts as invite the prescribed punishment (on them)."[1]

COMMENTARY: If they commit a sin by mistake or fall into an error suddenly an unexpectedly then they must be forgiven. They should not be disgraced by subjecting them to punishment whether their slip or sin concerns rights of Allah or rights of fellow men. Of course, it Is not allowed to forgive them such sins as make them liable to the *hadd (prescribed punishment)*, whether they concern rights of Allah or rights of human beings.

This command is directed to all people. Moreover, it is of the nature of *mustahab (desirable)*.

BENEFIT OF DOUBT BE GIVEN TO THE ACCUSED

(٣٥٧٠) وَعَنْهَا قَالَتْ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِدْ رَءُوا الْحُدُوْدَ عَنِ الْمُسْلِمِيْنَ مَا اسْتَطَعْتُمْ فَاِنْ كَانَ لَهٗ مَخْرَجٌ فَخَلُّوْا سَبِيْلَهٗ فَاِنَّ الْاِمَامَ اَنْ يُخْطِئَ فِي الْعَفْوِ خَيْرٌ مِنْ اَنْ يُخْطِئَ فِي الْعُقُوْبَةِ۔ رَوَاهُ التِّرْمِذِيُّ وَقَالَ قَدْ رُوِىَ عَنْهَا وَلَمْ يَرْفَعْهُ وَهُوَ اَصَحُّ۔

3570. Sayyidah Ayshah رضی اللہ عنہا narrated that Allah's Mssenger صلی اللہ علیہ وسلم said, "As for as you possibly can, preserve the Muslims from the imposition of the prescribed punishment. If there is any possibility of escape for a person then let him go, for it is better for a ruler or judge to err in forgiving then to err in punishing."[2]

COMMENTARY: These words are addressed primarily to the rulers. They should give benefit of doubt to the accused and to their best to ward off the punishment from him. In fact, they must encourage the accused to present an excuse, like asking him if he is mad. Examples are found in the case of Ma'iz رضی اللہ عنہ whom the prophet صلی اللہ علیہ وسلم prompted a number of possibilities.

As for a ruler or judge making a mistake, this does impair the judgement. However, if the mistake is in favour of the accused then a Muslim's life is saved and his honour protected. Hence this mistake is better than committing one which plays with his life.

HADD (PRESCRIBED PUNISHMENT) IS IMPOSED ON MAN WHO RAPES

(٣٥٧١) وَعَنْ وَائِلِ بْنِ حُجْرٍ قَالَ اسْتُكْرِهَتِ امْرَاَةٌ عَلٰى عَهْدِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَدَرَأَ عَنْهَا الْحُدُوْدَ

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[1] Abu Dawud # 4375, Musnad Ahmad 6. 181.

[2] Tirmidhi # 1424.

وَاَقَامَهُ عَلَى الَّذِى اَصَابَهَا وَلَمْ يَذْكُرْ اَنَّهُ جَعَلَ لَهَا مَهْرًا۔ (رواه الترمذى)

3571. Sayyiduna Wa'il ibn Hujr رضى الله عنه narrated that, in the time of Prophet صلى الله عليه وسلم, a woman was compelled (to submit to a man's evil desire against her will. He ... solved her of punishment, but imposed the *hadd (prescribed punishment)* on the man who had raped her. The narrator did not say any thing about whether the Prophet صلى الله عليه وسلم made a dower payable to the woman (by the man).[1]

COMMENTARY: If the narrator did not mention it, it does not fellow that a dower was not paid. Other ahadith do confirm that it is *wajib (obligatory)* to pay the mahr (dower) to women who are forced to submit to a man's evil desire against her will. The word mahr is actually used uqr[2] (عقر) which is a penalty payable to a woman who is subjected to illicit sexual intercourse. The amount is calculated according to what dower would have been *wajib (obligatory)* in a lawful relationship of marriage.

It is stated in fatawa Alamgiri that uqr is mahr mithl (proper dower). In other words, the rapist must be made to pay to the woman the amount equal to the dower proper to her status.

(٣٥٧٢) وَعَنْهُ اَنَّ امْرَاَةً خَرَجَتْ عَلٰى عَهْدِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ تُرِيْدُ الصَّلٰوةَ فَتَلَقَّاهَا رَجُلٌ فَتَجَلَّلَهَا فَقَضٰى حَاجَتَهُ مِنْهَا فَصَاحَتْ وَانْطَلَقَ وَمَرَّتْ عِصَابَةٌ مِنَ الْمُهَاجِرِيْنَ فَقَالَتْ اِنَّ ذٰلِكَ الرَّجُلَ فَعَلَ بِيْ كَذَا وَكَذَا فَاَخَذُوا الرَّجُلَ فَاَتَوْا بِهٖ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ لَهَا اذْهَبِيْ فَقَدْ غَفَرَ اللّٰهُ لَكِ وَقَالَ لِلرَّجُلِ الَّذِيْ وَقَعَ عَلَيْهَا اُرْجُمُوْهُ وَقَالَ لَقَدْ تَابَ تَوْبَةً لَوْ تَابَهَا اَهْلُ الْمَدِيْنَةِ لَقُبِلَ مِنْهُمْ۔ (رواه ابوداؤد الترمذى)

3572. Sayyiduna Wa'il ibn Hujr رضى الله عنه narrated that, in the time of the Prophet صلى الله عليه وسلم, a woman went out to go and offer the *salah (prayer)*. On the way, a man met her and putting a sheet of cloth over her, (molested her and) had his desire fulfilled with her. She shouted and he fled. A group of the mujahirs passed by. She told them that the man had done wrong to her. They got hold of him and took him to Allah's Messenger صلى الله عليه وسلم who instruct ed the woman to go away, "Allah has forgiven you." And, he said about the man who had raped her. "Stone him to death.' Then he said, "He has repented so much (by enduring the *hadd (prescribed punishment)*) that if the inhabitants of Madinah had repented in this way, their repentance would have been accepted from them."[3]

COMMENTARY: The concluding words mean that the man endured punishment for his crime and thereby made a repentance. If that repentance was shared by the people of Madinah then not only would their repentance have been accepted but also its reward would have sufficed all of them. The prophet صلى الله عليه وسلم made clear through these words that the man had committed a heinous crime but the punishment had purified him of his sin and he was forgiven.

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[1] Tirmidhi # 1453 (1458) Musnad Ahmad 4. 318.

[2] In such cases the word used is uqr (not mahr which is a dower.

[3] Tirmidhi # 1459, (slightly additional) Abu Dawud # 4379

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DUAL PUNISHMENT

(٣٥٧٣) وَعَنْ جَابِرٍ اَنَّ رَجُلًا زَنٰى بِامْرَاةٍ فَاَمَرَبِهِ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَجُلِدَ الْحَدَّثُمَّ اُخْبِرَ اَنَّهٗ مُحْصِنٌ فَاَمَرَ بِهٖ فَرُجِمَ۔ (رواه ابوداؤد)

3573. Sayyiduna Jabir رضی اللہ عنہ narrated that a man had illicit sexual intercourse with a woman, so the prophet صلی اللہ علیہ وسلم gave command about him. He was awarded to stripes. Later, he was told that the man was married, so he gave command and the man was stoned to death.[1]

COMMENTARY: This hadith shows that a ruler must amend his command when he learns that a culprit has been given a lighter punishment instead of what he ought to have been given.

HADD (PRESCRIBED PUNISHMENT) ON A SICK CULPRIT

(٣٥٧٤) وَعَنْ سَعِيْدِ بْنِ سَعْدِ بْنِ عُبَادَةَ اَنَّ سَعْدَ بْنَ عُبَادَةَ اَتَى النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ بِرَجُلٍ كَانَ فِي الْحَيِّ مُخْدَجٌ سَقِيْمٌ فَوُجِدَ عَلٰى اَمَةٍ مِنْ اِمَائِهِمْ يَخْبُثُ بِهَا فَقَالَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ خُذُوْالَهٗ عِثْكَالًا فِيْهِ مِائَةُ شِمْرَا اخ فَاضْرِبُوْهُ ضَرْبَةً۔ رَوَاهُ فِيْ شَرْحِ السُّنَّةِ وَفِيْ رِوَايَةِ ابْنِ مَاجَةَ نَحْوُهٗ۔

3574. Sayyiduna Sa'eed ibn Sa'd ibn Ubadah رضی اللہ عنہ reported that Sa'd ibn Ubadah رضی اللہ عنہ took to the Prophet صلی اللہ علیہ وسلم, from his neighbourhood on incompletely built, sick man (having no hopes of recovery). He was found having illicit sexual intercourse with a female slave of the neighbourhood. The Prophet صلی اللہ علیہ وسلم said, "Get for him a branch of a palm tree that has one hundred twigs. Then strike him with the branch once."[2]

The Majahj has transmitted a similar hadith.[3]

COMMENTARY: The prophet صلی اللہ علیہ وسلم said that the man should be struck once with the branch. The strike was to be such as to cause every thing to hit his person.

Previously, we have touched on this subject (hadith # 3564)

The ruler is bound to consider all aspects of the case when he passes the judgement.

HOMOSEXUALITY

(٣٥٧٥) وَعَنْ عِكْرَمَةَ عَنِ ابْنِ عَبَّاسٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ وَجَدْ تُمُوْهُ يَعْمَلُ عَمَلَ قَوْمِ لُوْطٍ فَاقْتُلُوا الْفَاعِلَ وَالْمَفْعُوْلَ بِهٖ۔ (رواه الترمذی وابن ماجة)

3575. Sayyiduna Ikrima reported from (Sayyiduna) Ibn Abbas رضی اللہ عنہ that Allah's Messenger صلی اللہ علیہ وسلم said, "If you see anyone do the deed done by the people of Lut علیہ السلام then kill the doer and the one to whom it is done."[4]

COMMENTARY: It is stated in sharh us *sunnah (Prophet's صلی اللہ علیہ وسلم practice)* that the ulama (Scholars) differ on the issue of *hadd (prescribed punishment)* enforced on a homosexual.

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[1] Abu Dawud # 4438.

[2] Sharh us *sunnah (Prophet's صلی اللہ علیہ وسلم practice).*

[3] Ibn Majah # 2574, Musnad Ahmad 5-222.

[4] Tirmidhi # 1456 (1461), Abu Dawud # 4462, Ibn Majah # 2561, Musnad Ahmad 1-300.

Imam Shafi'I رحمه الله gave two verdicts. His stronger verdict, and the verdicts of Imam Abu Yusuf رحمه الله and Imam Muhammad رحمه الله, is that the *hadd (prescribed punishment)* of the doer is that of the fornicator of adulterer. If he is married then he should be stoned to death. If he is not married then he should be given one hundred stripes and banished for one year. The same punishment applies to a lesbian.

Others say that the doer must be stoned to death in any case, married or unmarried. Imam Maalik رحمه الله and Imam Ahmad رحمه الله hold the same opinion.

The second verdict of Imam Shafi'I رحمه الله is that both the doer and one who get it done should be killed. This is as the obvious meaning of this hadith.

As for how they should be killed, some authorities say that they must be crushed under a falling house to die under its debris. Others say that they must be crushed under a falling house to die under its debris. Others say that they must be thrown down from a mountain peak.

Imam Abu Hanifah رحمه الله said that their punishment should be at the ruler's discretion. If it has become their habit, then he may, if he wishes, kill them. He may beat them or he may imprison them.

COMMITTING UNNATURAL ACT WITH ANIMALS

(٣٥٧٦) وَعَنِ ابْنِ عَبَّاسٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ اَتٰى بَهِيْمَةً فَاقْتُلُوْهُ وَاقْتُلُوْهَا مَعَهٗ قِيْلَ لِابْنِ عَبَّاسٍ مَاشَأْنُ الْبَهِيْمَةِ قَالَ مَاسَمِعْتُ مِنْ رَّسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ ذٰلِكَ شَيْئًا وَلٰكِنْ اَرَاهُ كَرِهَ اَنْ يُؤْكَلَ لَحْمُهَا اَوْيُنْتَفَعَ بِهَا وَقَدْ فُعِلَ بِهَا ذٰلِكَ۔ (رواه الترمذی وابوداؤد وابن ماجة)

3576. Sayyiduna Ibn Abbas رضی الله عنه narrated that Allah's Messenger said, "If any one has sexual intercourse with an animal, kill him and kill the animal with him." Ibn Abbas رضی الله عنه was asked, 'what wrong does the animal do?" He said, 'I had heard nothing about it from Allah's Messenger صلی الله علیه وسلم. I suppose that he did not like that its flesh may be eaten or any benefit be derived from it once this act is done to it."[1]

COMMENTARY: The words of the hadith 'kill him' do not mean that he should be killed in fact. Rather, he must be thrashed severely.

As for killing the animal, some people imagine that if the animal is spared, it might conceive from the man's sperm and a deformed animal might be born having some human features. So, to avert that, the animal must be put to death. Or, the living animal might cause embracement to its owner before other people.

It is stated in Sharh Mazhar that the four imams agree that the savage, sadistic man who has perpetrated an unnatural act with an animal must not be killed, but he must be awarded some discretionary punishment. As for this hadith, it strongly condemns the brutal act of the sadistic man.

Where the animal is concerned, some scholars hold that an animal whose flesh is eaten and has been subjected to the unnatural act. Must be killed. If its meat is not eaten, then both options are open. We abide by the apparent meaning of this hadith, then it may be killed, If it is not the desire to eat its flesh and it is not lawful then it is forbidden to slaughter it and hence it must not be killed.

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[1] Tirmidhi # 1460, Abu Dawud 4464, Ibn Majah # 2561, Musnad Ahmad 1-300.

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HOMOSEXUALITY IS WORST KIND OF SIN

(٣٥٧٧) وَعَنْ جَابِرٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِنَّ اَخْوَفَ مَا اَخَافُ عَلٰى اُمَّتِيْ عَمَلُ قَوْمِ لُوْطٍ۔ (رواه ترمذی و ابن ماجه)

3577. Sayyiduna Jabirt رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "That which I fear most for my *ummah* is that they might do what the people of Lut علیہ السلام did."[1]

COMMENTARY: He feared that his people might succumb to sexual desires and become agitated. Because of that, they might began to do the unnatural act. This is a very dirty and greatly unlawful deed. If they do it, then they will face a very grave punishment.

SEPARATE PUNISHMENT FOR ADULTERY AND FOR FALSE ACCUSATION

(٣٥٧٨) وَعَنِ ابْنِ عَبَّاسٍ اَنَّ رَجُلًا مِنْ بَنِيْ بَكْرِ بْنِ لَيْثٍ اَتَى النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَاَقَرَّ اَنَّهٗ زَنٰى بِامْرَأَةٍ اَرْبَعَ مَرَّاتٍ فَجَلَدَهٗ مِائَةً وَكَانَ بِكْرًا ثُمَّ سَاَلَهُ الْبَيِّنَةَ عَلَى الْمَرْأَةِ فَقَالَتْ كَذَبَ وَاللّٰهِ يَارَسُوْلَ اللّٰهِ فَجُلِدَ حَدَّ الْفِرْيَةِ۔ (رواه ابوداؤد)

3578. Sayyiduna Ibn Abbas رضی اللہ عنہ narrated that a man of Banu Bakr ibn Layth came to the Prophet صلی اللہ علیہ وسلم and asserted that he had committed adultery with a woman four times.[2]

So, he awarded one hundred lashes to him because he was unmarried. Then he asked him to bring witnesses against the woman, but she declared, "He lies, by Allah. O Messenger of Allah." So, he had him get the *hadd (prescribed punishment)* (prescribed lashes) for falsehood.[3]

COMMENTARY: The man was punished on the basis of his own confession that he had committed adultery. But, he also accused a woman with whom he claimed to have had sexual intercourse. So, the Prophet صلی اللہ علیہ وسلم asked him to produce witnesses against her. He could not do that, so the woman took oath that he was a liar. She established in that way that he had accused her falsely. Hence, the Prophet صلی اللہ علیہ وسلم ordered that he should be given eighty lashes for calumny.

PUNISHMENT TO THOSE WHO CAST SLANDER ON SAYYIDAH AYSHAH رضی اللہ عنہا

(٣٥٧٩) وَعَنْ عَائِشَةَ قَالَتْ لَمَّا نَزَلَ عُذْرِيْ قَامَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَلَى الْمِنْبَرِ فَذَكَرَ ذٰلِكَ فَلَمَّا نَزَلَ مِنَ الْمِنْبَرِ اَمَرَ بِالرَّجُلَيْنِ وَالْمَرْأَةِ فَضُرِبُوْا حَدَّهُمْ۔ (رواه ابوداؤد)

3579. Sayyidah Ayshah رضی اللہ عنہا narrated: when my acquital was revealed (through verses of the Quran establishing my innocence) the Prophet صلی اللہ علیہ وسلم ascended the pulpit and mentioned that (in a sermon). When he came down from the pulpit, he gave command about the two men and the woman. So, they were awarded the

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[1] Tirmidhi # 1462, Ibn Majah # 2563, Musnad Ahmad # 15095.

[2] at four places. Elsewhere it is that he asserted four times that he committed adultery.

[3] Abu Dawud # 4467.

***hadd (prescribed punishment)* (for calumny).**[1]

COMMENTARY: Some people had accused Sayyidah Ayshah رضی اللہ عنہا of committing fornication (we seek refuge in Allah from such thought). In fact, the Prophet صلی اللہ علیہ وسلم had also begun to have some doubts. But, Allah revealed verses exonerating her. This proved that the accusations were part of a conspiracy to malign her, and some people were involved in it, Her innocence was established in the verses of surah an-Nur. The Prophet صلی اللہ علیہ وسلم declared that from the pulpit, and, on alighting from it, he passed judgement against the slanders the *hadd (prescribed punishment)* qadhaf (قذف) which is eighty stripes.

The conspirators included two men, Mistah رضی اللہ عنہ and Hassan ibn Thabit رضی اللہ عنہ and one woman, Hammah bint Jahsh who was the most mischievous of all. Fach of them was given eighty stripes.

Here we reproduce hadith (# 3191) from Tirmidhi concerning the enter case of ifk (Slander).

Sayyidah Ayshah narrated: when whatever was said about me and I was unaware of it, Allah's Messenger صلی اللہ علیہ وسلم got up to address the people about me. He began with the tashahhud (testimony of Allah's unity and of the messenger ship). He praised Allah and glorified Him as He is worthy of it. He then said, "To proceed: Give me advice about those people who slander my wife. By Allah, I do not know of any evil in my wife, not at all! And they accuse her of being with a man of whom I know no evil, not at all he never enters my house except when I am there. He never undertook a journey except with me." Sa'dibn Mu'adh stood up and said, "Permit me, O Messenger of Allah that I may sever their necks." A man from the Khazraj also got up the mother of Hassan ibn Thabit was of the same tribe are this man-and he said, "You lie. By Allah, if those people were from the Aws, you would not have loved to strike at their necks." This went to far that there nearly was evil between Aws and Khazraj in the mosque. But I did not know of it. When it was evening of that day, I went out to attend to one of my needs with Umm Mistah. She stumbled and exclaimed, "May Mistah perish." I said to her, "O Mother, do you revile your son?" But she did not say anything. She stumbled a second time and said, "May Mistah be ruined." I said to her, "O Mother, do you revile your son?" She did not answer. Again, she stumbled the third time and said, "May Mistah perish!" So, I rebuked her for that, saying, "O Mother, you revile your son?" She said, "By Allah, I do not revile him except for your sake." I asked her, "What about me?" She narrated the hadith (account of what had transpired). I asked "And is that really so?" She confirmed that it was so, I returned home not at all being pressed to follow that for which I had gone out. I fell ill and the said to Allah's Messenger, صلی اللہ علیہ وسلم, "send me to the house of my father." He sent me there and sent a slave with me. I entered the house and found Umm Ruman (my mother) downstairs and Abu Bakr upstairs reciting (the Qu'ran). She asked me "what is with you, O daughter?" I informed her, relating the entire account but she was not as hurt by it as I was. said to me, "O my daughter, do not take it too hard. It is always that a beautiful woman who is loved by her husband and she had co-wives will find jealously surrounding her. Her faults are picked." But she was not as hurt about it as I was. I asked her if my father know about it. She said, "Yes." I was more grieved at that and wept loudly. Abu Bakr heard my voice. He was upstairs reciting the Quran. He came down and asked my mother how it was with me. She told him that I had learnt of the matter. Tears came to his

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[1] Abu Dawud # 4474, Tirmidhi # 3181 (3192), Ibn Majah # 2567, Musnad Ahmad 6-35.

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daughter, go back to your home." So, I went back eyes. He said, "I adjure you, O home. Allah's Messenger صلى الله عليه وسلم had already come home and asked my maidservant about me she said, "By Allah, I do not know to any defect in her except that she goes to sleep and the sheep enter the house devouring her flour or her dough." Some of the Prophet's صلى الله عليه وسلم sahabah scolded her, saying. "Speak the truth before Allah's Messenger صلى الله عليه وسلم." they were rude to her and she said," Subhan Allah. By Allah, I know about her as a jeweller knows pure gold." When that man of whom the accusation was made learnt of this, he said, "Subhan Allah! I have never seen a woman's satr (private parts) (concealed body)." He was then martyred in Allah's cause (in a battle). In the morning my parents came to me. They remained with me till Allah's Messenger صلى الله عليه وسلم came, having offered the *salah (prayer)* of asr. He came in and my parents were sitting on either side of me. The Prophet صلى الله عليه وسلم recited the tashahhud, glorified Allah in words worthy of Him. Then he said, "Ammah ba'd (to proceed), O Ayshah! If you have committed an evil deed or wronged (yourself) then repent to Allah, for, indeed Allah accepts repentance from His slaves." Meanwhile, an Ansar woman came and sat down by the door. I said (to him), "Do you not feel shy to speak so in the presence of this woman?" And he did deliver words of advice and admonition. I turned to my father and requested him to answer him, but he said, "What may I say?" Then I turned to my mother and asked her to say something, but she said, "Say what?" When they gave no reply, I recited the tashahhud, praised Allah and glorified Him with words worthy to Him. Then I said, "Now, if I were to tell you that I have done no such thing and Allah is witness that I am truthful that would be of no avail to me before you because you have spoken about it and your hearts have already accepted that. But if I say that I have done it, and Allah knows that I have not done it, you would say surely that I have confessed to the crime. By Allah, I do not find an example for myself and for you," and I intended to take the name of Ya'qub but could not recall it except Abu Yusuf (father of Yusuf) when he said:

فَصَبْرٌ جَمِيلٌ وَاللّٰهُ الْمُسْتَعَانُ عَلٰى مَا تَصِفُوْنَ

"(For me) goodly patience and Allah is He whose help is ever there to seek against that which you describe. (12: 18)

At that very instant, revelation descended on Allah's Messenger صلى الله عليه وسلم. We kept silent, When it was over, I detected signs of relief on the Prophet's صلى الله عليه وسلم face. He was wiping his forehead when he said, "Good things to you, O Ayshah! Allah has indeed revealed your acquittal." But I was in sever anger. My parents said to me, "Get up and go to him," but I refused. "No, by Allah! By Allah, I will not go to him."

Neither do I praise him nor do I praise you two, but I praise Allah who has revealed my innocence. You all did hear it, yet you did not deny or change it." Sayyidah Ayshah used to say. "As for Zaynab bint Jahsh, Allah protected her because of her religious attitude and she did not say any thing but good (words). As for her sister, Hammah, she was ruined alongwith those who were ruined. And those who spoke about the affair (a erogatory speech) were Mistah, Hassan ibn Thabit and the hypocrite Abdullah ibn Ubayy, who circulated the rumour and incited others to do likewise. He and Hammah were in the lead in this affair." She added that Abu Bakr swore never to show favour to Mistah (with help), but Allah revealed the verse.

وَلَا يَأْتَلِ أُولُوا الْفَضْلِ مِنْكُمْ وَالسَّعَةِ

Let not the possessors of bounty and abundance among you: that is Abu Bakr

اَنْ يُّؤْتُوْا اُولِى الْقُرْبٰى وَالْمَسَاكِيْنَ وَالْمُهَاجِرِيْنَ فِىْ سَبِيْلِ اللّٰهِ

Swear off giving to the kinsmen and the needy and the emigrants in the way of Allah:

اِلٰى قَوْلِهٖ اَلَا تُحِبُّوْنَ اَنْ يَّغْفِرَ اللّٰهُ لَكُمْ وَاللّٰهُ غَفُوْرٌ رَّحِيْمٌ

Let them pardon and overlook. Do you not love that Allah should forgive you? And Allah is Forgiving, Merciful (24: 22)

Abu Bakr said, "Certainly, by Allah, O our Lord! We love that you forgive us." And he to him (mistah) whatever he was accustomed to give.

(Trimidhi published by Dar ul Isha'at, Karachi)

SECTION III اَلْفَصْلُ الثَّالِثُ

ONLY THE RAPIST IS GIVEN THE *HADD (PRESCRIBED PUNISHMENT)*

(٣٥٨٠) عَنْ نَافِعٍ اَنَّ صَفِيَّةَ بِنْتَ اَبِىْ عُبَيْدٍ اَخْبَرَتْهُ اَنَّ عَبْدًا مِنْ رَقِيْقِ الْاِمَارَةِ وَقَعَ عَلٰى وَلِيْدَةٍ مِنَ الْخُمُسِ فَاسْتَكْرَهَهَا حَتّٰى افْتَضَّهَا فَجَلَدَهٗ عُمَرُ وَلَمْ يَجْلِدْهَا مِنْ اَجْلِ اَنَّهٗ اسْتَكْرَهَهَا۔ (رواه البخارى)

3580. Sayyiduna Nafi رحمه الله reported that (Sayyidah) Safiyah bint Abu Ubayd رضى الله عنها informed him that one of the slave of the state (meaning of Khalifah Umar) رضى الله عنه had sexual intercourse with a captive girl, who was part of the fifth of the booty, compelling her to submit to it though she was unwilling, thereby spoiling her virginity (meaning, he deflowered her). Umar رضى الله عنه had him beaten fifty stripes, but did not have the girl get any stripes because he had compelled her (to have sexual intercourse) against her will.[1]

COMMENTARY: The slave girl is exonerated and not punished. In this connexion, we may cite the verse (24: 33) of the Quran about one who is compelled to illicit sexual intercourse by her master.

وَلَا تُكْرِهُوْا ..... رَحِيْمٌ

{And do not compel your maids to prostitution, if they wish to observe chastity in order that you may seek the temporary benefit of the worldly life. If one compels them, then after their being compelled, Allah is Most Forgiving, Most Merciful}

ANOTHER HADITH ABOUT MO'IZ رضى الله عنه FALL INTO SIN

(٣٥٨١) وَعَنْ يَزِيْدَ بْنِ نُعَيْمِ بْنِ هَزَّالٍ عَنْ اَبِيْهِ قَالَ كَانَ مَاعِزُ بْنُ مَالِكٍ يَتِيْمًا فِىْ حَجْرِ اَبِىْ فَاَصَابَ جَارِيَةً مِنَ الْحَىِّ فَقَالَ لَهٗ اَبِىْ ائْتِ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَاَخْبِرْهُ بِمَا صَنَعْتَ لَعَلَّهٗ يَسْتَغْفِرُ لَكَ وَاِنَّمَا يُرِيْدُ بِذٰلِكَ رَجَاءَ اَنْ يَّكُوْنَ لَهٗ مَخْرَجًا فَاَتَاهُ فَقَالَ يَا رَسُوْلَ اللّٰهِ اِنِّىْ زَنَيْتُ فَاَقِمْ عَلَىَّ كِتَابَ اللّٰهِ فَاَعْرَضَ عَنْهُ فَعَادَ فَقَالَ يَارَسُوْلَ اللّٰهِ اِنِّىْ زَنَيْتُ فَاَقِمْ عَلَىَّ كِتَابَ اللّٰهِ حَتّٰى قَالَ اَرْبَعَ مَرَّاتٍ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِنَّكَ قَدْ قُلْتَهَا اَرْبَعَ مَرَّاتٍ فَبِمَنْ قَالَ بِفُلَانَةٍ قَالَ هَلْ ضَاجَعْتَهَا قَالَ نَعَمْ قَالَ هَلْ

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[1] Bukhari # 6949.

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بَاشَرْتُهَا قَالَ نَعَمْ قَالَ هَلْ جَامَعْتَهَا قَالَ نَعَمْ قَالَ فَأُمِرَ بِهٖ اَنْ يُرْجَمَ فَأُخْرِجَ بِهٖ اِلَى الْحَرَّةِ فَلَمَّا رُجِمَ فَوَجَدَ مَسَّ الْحِجَارَةِ فَجَزِعَ فَخَرَجَ يَشْتَدُّ فَلَقِيَهُ عَبْدُاللّٰهِ بْنُ اُنَيْسٍ وَقَدْ عَجَزَ اَصْحَابُهٗ فَنَزَعَ لَهٗ بِوَظِيْفِ بَعِيْرٍ فَرَمَاهُ بِهٖ فَقَتَلَهٗ ثُمَّ اَتَى النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَذَكَرَ ذٰلِكَ لَهٗ فَقَالَ هَلَّا تَرَكْتُمُوْهُ لَعَلَّهٗ اَنْ يَّتُوْبَ فَيَتُوْبَ اللّٰهُ عَلَيْهِ۔ (رواه ابوداؤد)

3581. Sayyiduna Yazid ibn Nu'ayun ibn Hazzaal رضی اللہ عنہ reported from his father (Nu'aym ibn Hazzal) رضی اللہ عنہ who narrated: Ma'iz ibn Maalik رضی اللہ عنہ was an orphan under my father's (Hazzal's) رضی اللہ عنہ care. He had sexual intercourse with a female slave of the neighbourhood my Father instructed him to go and tell Allah's Messenger صلی اللہ علیہ وسلم what he had done. "Perhaps he might seek forgiveness for you." His intention in that was merely a hope that It might be a means of escape for him. (My father had no intention to get him punished.) Thus, he came to him and submitted. "O Messenger of Allah, I have committed fornication. Enforce on me the punishment prescribed by Allah.' He turned away from him, but he came back and repeated. "O Messenger of Allah, I have committed fornication. Do enforce the punishment prescribed by Allah on me." He said this four times (in four positions) after which Allah's Messenger صلی اللہ علیہ وسلم said, "You have said this four times, indeed (and this confirms your crime). With whom did you have the intercourse.?" He named the woman and he asked, "Did you lie wit h her?" He said, "Yes." He asked, "Did you touch your body with hers.?" He said, "Yes," Then, he asked, "Did you have sexual intercourse with her?" He said, "Yes."

Then he gave order about him that he should be stoned to death. So, he was taken to Harrah. (when he was stoned) he felt the pain caused by the stones and (become panicky and) could not endure it, so he ran away quickly. On the way, he met Abdullah ibn Unays رضی اللہ عنہ while those who had been stoning him (almost gave up and) could not overtake him. So, Abdullah hurled the bone of the foreleg of a camel at him. He hit him (on target) and killed him. Then he came to the Prophet صلی اللہ علیہ وسلم and mentioned that to him. But, he said, "Why did you not spare him? He might have (retracted from his confession or) repented and Allah would have relented to him (and forgiven him)."[1]

COMMENTARY: Ibn Hammam points out that he place he was taken to it Harrah while Bukhari names it as Musalla and Muslim and Abu Dawud name it, in one version, as Baqi Gharqad. Now, Musalla, as we said previously, is the place of funeral *salah (prayer)*. It was in Baqi Gharqad. Tirmidhi Names it as Harrah as in this version of Abu Dawud. We might say that when he ran away on feeling the plain of toning, he was caught up at Harrah. Or, we might suppose that musalla was around Harrah. So, the narrators took either of the names. This reconciles the ahadith.

WHEN ADULTERY SPREADS, FAMINE TOO SPREADS

(٣٥٨٢) وَعَنْ عَمْرِو بْنِ الْعَاصِ قَالَ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ مَا مِنْ قَوْمٍ يَظْهَرُ فِيْهِمُ

[1] Abu Dawud # 4419.

الزِّنَا إِلَّا أُخِذُوْا بِالسَّنَةِ وَمَا مِنْ قَوْمٍ يَظْهَرُ فِيْهِمُ الرُّشَا إِلَّا أُخِذُوْا بِالرُّعْبِ۔ (رواه احمد)

3582. Sayyiduna Amr ibn Aas رضی اللہ عنہ narrated that he heard Allah's Messenger صلی اللہ علیہ وسلم say, "When fornication spreads among a people, famine befalls them and when bribery becomes common among a people, terror grips them."[1]

COMMENTARY: Bribery is a payment or inducment to someone to get him to act in one's favour. Some people qualify it with the addition: 'the favour is not worth that much payment as would normally call for wages over it.' It could ask for a recommendation to an authority.

This means that if payment to anyone is commensurate with labour put in to get the thing done, then it is not bribery.

So, too, if anything is paid without a precondition then it is not bribery.

Bribery is a social evil and a sin in *Shariah*. It also is a Moral injustice. It will be punished in the hereafter, but even in this world it is punished in different ways. The hadith says, for instance, that its inauspicious nature effects all people and makes them cowards and they are overawed by other people and they fear their own. The corrupt who takes bribe sells his conscience and his faith. The result is that his energy, boldness and strength sap. Unlike one who cannot be bribed and because of that commands obedience of his subordinates, the man who takes bribe is afraid of everyone and is unable to discharge his duties honestly and is cowed down easily by other men.

Therefore, when rulers also become corrupt and can be bribed then the government is shaky. Lawlessness prevails. The subjects are not happy and face innumerable problems.

HOMOSEXUALITY IS A CURSE

(٣٥٨٣-٣٥٨٤) وَعَنِ ابْنِ عَبَّاسٍ وَاَبِيْ هُرَيْرَةَ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ مَلْعُوْنٌ مَنْ عَمِلَ عَمَلَ قَوْمِ لُوْطٍ۔ رَوَاهُ رَزِيْنٌ وَفِيْ رِوَايَةٍ لَهُ عَنِ ابْنِ عَبَّاسٍ اَنَّ عَلِيًّا اَحْرَقَهُمَا وَاَبَا بَكْرٍ هَدَمَ عَلَيْهِمَا حَائِطًا۔

3583. Sayyiduna Ibn Abbas رضی اللہ عنہ and Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "He who does what the people of (Prophet) Lu't علیہ السلام practiced is accursed."[2]

3584. And Ibn Abbas رضی اللہ عنہ narrated that Ali رضی اللہ عنہ had both the doer and the one who had it done burned, and Abu Bakr رضی اللہ عنہ had a wall demolished on both of them (the active and the passive partner).[3]

COMMENTARY: The Jami Saghir has a version transmitted by Imam Ahmad رحمہ اللہ from Hasan رحمہ اللہ as narrated by Ibn Abbas رضی اللہ عنہ. It says:

"Accursed is he who denounces his own mother. Accursed is he who slaughters an animal calling a name other than Allah's. Accursed is he who alters the frontiers of an Islamic territory. Accursed is he who misguides a blind man. Accursed is he who commits an unnatural act with an animal. And accursed is he who does what the people lu't علیہ السلام did."

(٣٥٨٥) وَعَنِ ابْنِ عَبَّاسٍ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لَا يَنْظُرُ اللّٰهُ عَزَّوَجَلَّ اِلٰى رَجُلٍ اَتٰى رَجُلًا

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[1] Musnad Ahmad 4. 205

[2] Razin.

[3] Razin.

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اَوْ اِمْرَاَةً فِيْ دُبُرِهَا۔ رَوَاهُ التِّرْمِذِيُّ وَقَالَ هٰذَا حَدِيْثٌ حَسَنٌ غَرِيْبٌ۔

3585. Sayyiduna Ibn Abbas رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Allah Mighty and Glorious, will not look with mercy at a man who (commits an unnatural act and) has intercourse with a man or a woman through their anus."[1]

HADD (PRESCRIBED PUNISHMENT) IS NOT IMPOSED ON ONE WHO HAS INTERCOURSE WITH ANIMALS

(٣٥٨٦) وَعَنْهُ اَنَّهُ قَالَ مَنْ اَتٰى بَهِيْمَةً فَلَاحَدَّ عَلَيْهِ۔ رَوَاهُ التِّرْمِذِيُّ وَاَبُوْدَاوٗدَ وَقَالَ التِّرْمِذِيُّ عَنْ سُفْيَانَ الثَّوْرِيِّ اَنَّهُ قَالَ وَهٰذَا اَصَحُّ مِنَ الْحَدِيْثِ الْاَوَّلِ وَهُوَ مَنْ اَتٰى بَهِيْمَةً فَاقْتُلُوْهُ وَالْعَمَلُ عَلٰى هٰذَا عِنْدَ اَهْلِ الْعِلْمِ۔

3586. Ibn Abbas رضی اللہ عنہ is reported to have narrated the hadith in a marfu form: "He who has intercourse with an animal is not given the prescribed punishment. Tirmidhi cited Sufyan Thawri as saying that this hadith is more sahih than the previous (# 3576): 'If anyone has intercourse with an animal, kill him and kill the animal.' The ulama (Scholars) abide by this (but he is given a discretionary punishment).[2]

COMMENTARY: This hadith is not the personal opinion of Ibn Abbas رضی اللہ عنہ but these are the Prophet صلی اللہ علیہ وسلم's words. It was not so then Sufyan Thawri رحمہ اللہ would not have compared it as better than the previous hadith.

DO NOT BE PARTIAL IN IMPOSING THE *HADD (PRESCRIBED PUNISHMENT)*

(٣٥٨٧) وَعَنْ عُبَادَةَ بْنِ الصَّامِتِ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَقِيْمُوْا حُدُوْدَ اللّٰهِ فِي الْقَرِيْبِ وَالْبَعِيْدِ وَلَا تَاْخُذْكُمْ فِي اللّٰهِ لَوْمَةُ لَائِمٍ۔ (رواه ابن ماجة)

3587. Sayyiduna Ubadah ibn Samit رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Impose the prescribed punishments (*hudud*) of Allah on these who are near as also on those who are distant. And, let not anyone's reproach hinder you in executing the commands of Allah.[3]

COMMENTARY: 'The near ones and the distant ones refers to the relatives. The punishment must be imposed on the culprit whether he is a close relative or a distant acquaintance.

It could also mean that the *hadd (prescribed punishment)* must be imposed whether it is easy or difficults. In this case the words near and distant are used in this sense of ease and difficulty, or on the weak and the strong, equally.

In short *hadd (prescribed punishment)* must be imposed on every culprit: rich or poor king or subject, strong or weak, relatives or stranger.

LONG TERM BENEFITS OF ENFORCING THE *HADD (PRESCRIBED PUNISHMENT)*

(٣٥٨٨-٣٥٨٩) وَعَنِ ابْنِ عُمَرَ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اِقَامَةُ حَدٍّ مِّنْ حُدُوْدِ اللّٰهِ خَيْرٌ مِّنْ

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[1] Timidhi # 1165, Musnad Ahmad 2-344.

[2] Tirmidhi # 1455 (1460). Abu Dawud # 4425.

[3] Ibn Majah # 2540, Musnad Ahmad 5-330.

مَّطَرِ اَرْبَعِيْنَ لَيْلَةً فِيْ بِلَادِ اللّٰهِ۔ رَوَاهُ ابْنُ مَاجَةَ وَ رَوَاهُ النِّسَائِيُّ عَنْ اَبِيْ هُرَيْرَةَ۔

3588. Sayyiduna Ibn Umar رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "To enforce one of the (many) prescribed punishment (*hudud*) of Allah is better than having rain fall for forty nights in the lands of Allah."[1]

3589. Sayyiduna Abu Hurayrah رضی اللہ عنہ also narrated this hadith.[2]

COMMENTARY: To enforce the *hadd (prescribed punishment)* is to prevent people from sin and disobedience. It is a means to the gates of heaven being opened for the descent of blessings.

In contrast, to forgive the *hadd (prescribed punishment)* or prescribed punishment, or to be lazy in imposing it is like giving an opportunity to the people to commit Sin and disobediences. When too many sins are committed, people are subjected to famine and mankind and other creatures comes on the verge of destruction. Indeed, it is said that the Hubari (bustard) dies because of the sins of the children of Aadam علیہ السلام after becoming emaciated.

Generally man falls into evil ways. Then there is a strong tendency to commit sin. When this happens, Allah withholds rain and draught takes in its wake not only mankind but birds and animals. They are deprived of sustenance and die.

Bustard is named here specifically because it flies to distant places to find food.

CHAPTER - II

AMPUTATING THE THIEF

بَابُ قَطْعِ السَّرِقَةِ

Teebi رحمہ اللہ said that the caption (باب قطع السرقة) should be (باب اهل السرقة) the word (اهل) being understood. As it stands, it means 'amputation for theft' but when the word (اهل) (people) is inserted, the caption would read 'Amputating the thief,' or 'Serving the hand of the thief.'

THE WORD SARIQAH (سرقة): This words means theft. In *Shariah*, it is the taking away by a sane, adult Muslim of some or all of a preserved property in a secret manner without permission in which he has no ownership or claim to ownership. He takes it away from such a place to which no one else has access, and which is protected, guarded or not guarded. (Muhriz) See Hidayeh.VI p 416 folly for Hirz.

CLAIM TO OWNERSHIP: It means that the ownership is not certain and there is some doubt about it.

PUNISHMENT AND MINIMUM AMOUNT OF THEFT: The jurists differ on what is the minimum amount of theft on which a thief's hand should be severed.

Imam Abu Hanifah رحمہ اللہ says that it is a minimum of ten dirhams. There is no amputation on stealing anything of a lesser value.

Imam Shafi'I رحمہ اللہ says that the minimum on which a hand should severed is one-fourth dinar of gold or three dirhams of silver or any other thing of equivalent value. He cites the ahadith that mention that a hand was cut off on stealing one-fourth dinar. That was equal to three dirhams at that time and one dinar was worth twelve dirhams.

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[1] Ibn Majah # 2537.

[2] Nasaii # 4905.

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Imam Abu Hanifah رحمه الله cites the Prophet صلى الله عليه وسلم saying:

لَا قَطْعَ إِلَّا فِي دِينَارٍ أَوْ عَشَرَةِ دَرَاهِمَ

"Hand is not cut off except for a value of one dinar or ten dirham."

According to Hidayah, it is better to act on the higher value than on the lower because it is the question of severing a human limb and in the lesser value there is likelihood of lack of jinayah (offences).

WHY THE DISAGREEMENT: The jurists differ on this issue because in the time of the Prophet صلى الله عليه وسلم a hand was amputated for stealing a shield. Hence, Imam Shafi'I رحمه الله says that the price of a shield at that time was three dirhams while the Hanafis put it at ten dirhams and this is as reported by Ibn Abu Shaybah رحمه الله from Abdullah ibn Amr ibn al-Aas رحمه الله. The same value of ten dirhams is mentioned in Kafi of the value of the shield stolen in the time of the Prophet صلى الله عليه وسلم.[1]

SECTION I اَلْفَصْلُ الْاَوَّلُ

IMAM SHAFI'I UPHELD

(٣٥٩٠) عَنْ عَائِشَةَ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لَا تُقْطَعُ يَدُ السَّارِقِ إِلَّا بِرُبُعِ دِينَارٍ فَصَاعِدًا۔ (متفق عليه)

3590. Sayyiduna Ayshah رضى الله عنها narrated That the Prophet صلى الله عليه وسلم said, "Do not cut off the hand of a thief unless (it is) for (the worth of) one-fourth of dinar and more."[2]

COMMENTARY: Imam Shafi'I cities this hadith to support his contention.

Mulla Ali Qari رحمه الله has examined this hadith in great detail in his book and has established that the point of view of the Hanafis is sound.

DIFFERING VALUATIONS OF THE SHIELD

(٣٥٩١) وَعَنِ ابْنِ عُمَرَ قَالَ قَطَعَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَدَ سَارِقٍ فِي مِجَنٍّ ثَمَنُهُ ثَلَاثَةُ دَرَاهِمَ۔ (متفق عليه)

3591. Sayyiduna Ibn Umar رضى الله عنه narrated that the Prophet صلى الله عليه وسلم had a thief's (right) hand cut off for (stealing) a shield worth three dirhams.[3]

COMMENTARY: Shamni رحمه الله said that this hadith contradicts the hadith transmitted by Ibn Abu Shaybah from Abdullah ibn Amr ibn Aas رضى الله عنه who has given the value of the shield as ten dirhams. The same thing is reported from Ibn Abbas رضى الله عنه and Amr ibn Shu'ayb. Also, Ibn Hummam رحمه الله reported the same thing from Ibn Umar رضى الله عنه and Ibn Abbas رضى الله عنه. This is what Ayni رحمه الله has written in the marginal notes of Hidayah. It is on this that the Hanafi contention is based that the punishment of cutting off the hand of a thief may be enforced on him who has stolen what is worth at least ten dirhams. No punishment will be awarded to one who has stolen property worth less than that.

As for the hadith of Ibn Umar رضى الله عنه in which he has said that the shield was worth three dirhams Shaykh Abdul Haq رحمه الله and Mulla Ali Qari رحمه الله have spoken at length in their

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[1] See also The Hidayah, VI pp 405 to 440, English Translation (Dar ul- Isha'at, Karachi).

[2] Bukhari # 6789, Muslim # 2-1684, Tirmidhi # 1445 (1450), Abu Dawud # 4383, Nasai'I # 4928, Ibn Majah # 2585, Musnad Ahmad 6-104.

[3] Bukhari # 6798, Muslim # 6-1686, Tirmidhi # 1446 (1451) Abu Dawud # 4385, Ibn Majah # 2584. (See notes in Tirmidhi).

commentaries on this subject. Scholars may study their books.

ANOTHER HADITH WITH OTHER MESSAGE

(٣٥٩٢) وَعَنْ اَبِيْ هُرَيْرَةَ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لَعَنَ اللّٰهُ السَّارِقَ يَسْرِقُ الْبَيْضَةَ فَتُقْطَعُ يَدُهٗ وَيَسْرِقُ الْحَبْلَ فَتُقْطَعُ يَدُهٗ۔ (متفق عليه)

3592. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "May Allah's curse be on the thief who steals an egg and his hand is cut off and who steals a rope and his hand is cut off."[1]

COMMENTARY: Imam Nawawi رحمہ اللہ said that it is clear from this hadith that it is permitted to call a curse on the sinners in general without specifying any. This is as in Allah's words

اَلَا لَعْنَتُ اللّٰهِ عَلَى الظّٰلِمِيْنَ

{Behold! The curse of Allah Shall be upon the evil-doers} (11: 18)

However, it is not allowed to name a person and curse him.

This hadith is evidence that cutting off the hand in punishment for stealing less than one fourth dinar or three dirhams is allowed. However, none of the four imams contends that punishment of cutting off hands is enforced when the worth of the stolen property is less than one-fourth dinar or three dirhams. They explain the hadith that the word (بيضة) (in the hadith) translated egg could mean a 'a helmet' worn by the warriors on their head, and the word rope (حبل) could be the sailor's rope fastened on boats and which is very costly.

Some scholars maintain that in early Islam, the punishment of amputating a hand was awarded for stealing eggs and ropes, but it was revoked later.

Some other scholars say that the thief of these little things becomes hardened gradually. He begins to steal castlier things and turns liable to receive the punishment of cutting off hands.

SECTION II اَلْفَصْلُ الثَّانِيْ

STEALING FRUIT, ETC & CUTTING OFF HAND

(٣٥٩٣) عَنْ رَافِعِ بْنِ خَدِيْجٍ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لَاقَطْعَ فِيْ ثَمَرٍ وَلَا كَثَرٍ۔ (رواه مالك والترمذى وابوداؤد والنسائى والدارمى وابن ماجة)

3593. Sayyiduna Rafi' ibn Khadij رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "The punishment of cutting off hand is not awarded for stealing fruit and the spadix of a palm tree.[2]

COMMENTARY: Imam Abu Hanifah رحمہ اللہ says that hand is not cut off for stealing fresh fruit, whether it is protected or not, in custody or not. The same applies to dried fruit on the trees and the cultivation and harvest that has not been reaped. Those things that are perishable and have a short life like meat, milk, etc. are subjected to anology on the same basis.

However, others apart from Imam Abu Hanifah رحمہ اللہ have ruled that punishment is *wajib*

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[1] Bukhari # 6799, Muslim # 7-1687, Nasai'I # 4873, Ibn Majah # 2583, Musnad Ahmad 2-253.

[2] Tirmidhi # 1449 (1454), Abu Dawud # 4388, Nasai # 4960, Ibn Majah # 2593, Darimi # 2304, Muwatta Maalik # 32 (*Hudud*), Musnad Ahmad 3-463, Nasai Kubra # 7460.

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(obligatory) on stealing any of these things, and hand of the thief will be cut off. Imam Maalik رحمه الله and Imam Shafi'I رحمه الله are among them.

Imam Abu Hanifah رحمه الله also said that hand will not be cut off on stealing very ordinary things and very insignificant and which are permitted to everyone in an Islamic state. Examples are hay, grass, wood, reed, fish, bird, sulphurate of arsenic, lime, etc.

(٣٥٩٤) وَعَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ اَبِيْهِ عَنْ جَدِّهٖ عَبْدِاللّٰهِ بْنِ عَمْرِو بْنِ الْعَاصِ عَنْ رَّسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَنَّهٗ سُئِلَ عَنِ الثَّمَرِ الْمُعَلَّقِ قَالَ مَنْ سَرَقَ مِنْهُ شَيْئًا بَعْدَ اَنْ يُّؤْوِيَهُ الْجَرِيْنُ فَبَلَغَ ثَمَنَ الْمِجَنِّ فَعَلَيْهِ الْقَطْعُ۔ (رواه ابوداؤد والنسائی)

3594. Sayyiduna Amr ibn Shuayb narrated from his father from his grandfather Abdullah ibn Amr ibn Aas رضی الله عنه that Allah's Messenger صلی الله علیه وسلم was asked about fruit that is hung (on trees). He said, "If anyone steals some of them after they are plucked and stored in a place to dry and the value as much as a shield is worth, then his hand will be cut off.[1]

COMMENTARY: The hands are not amputated on stealing the fruit from the trees because they are not protected or in custody. But, once they are taken down and put together in place to dry, stealing them will make the thief liable to have his hand cut off because in this case they are protected. Except for Imam Abu Hanifah رحمه الله, the majority of the ulama (Scholars) go by this hadith, because he says that until the fruit dries, hands will not be cut off on stealing it, whether it is protected or not.

As for this hadith, the Hanafis says that 'storing them to dry' refers to stealing after fruit has dried. This was a custom observed by the Arabs. The Hanafis also agree that the punishment of cutting off hand is awarded to one who steals fruit collected after having been dried, but punishment of cutting off hand is not awarded if fruit has not dried whether it is on the tree or plucked and collected together at one place. It is as about fresh fruit in the previous hadith.

This hadith not only contradicts the previous hadith but also runs different from the Prophet's صلی الله علیه وسلم words

وَلَا قَطْعَ فِي الطَّعَامِ

(There is no cutting off hands for stealing food).

It is necessary in awarding the *hadd (prescribed punishment)* to be careful as for as possible and to be lenient in all respects. Every avenue should be explored to see that the *hadd (prescribed punishment)* is enforced as little as possible. Hence, in the event of contradiction in ahadith that hadith will be abided by whose meaning in respect of stealing of fruit is absolute.

In this case, two scholars may refer to mirqat of Mulla Ali Qari for an exhaustive treatment of this subject.

UNOWNED MOUNTAINOUS ANIMALS

(٣٥٩٥) وَعَنْ عَبْدِاللّٰهِ بْنِ عَبْدِالرَّحْمٰنِ بْنِ اَبِيْ حُسَيْنٍ الْمَكِّيِّ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لَاقَطْعَ فِيْ ثَمَرٍ مُعَلَّقٍ وَلَا فِيْ حَرِيْسَةِ جَبَلٍ فَاِذَا اٰوَاهُ الْمُرَاحُ وَالْجَرِيْنُ فَالْقَطْعُ فِيْمَا بَلَغَ ثَمَنَ الْمِجَنِّ۔ (رواه مالك)

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[1] Abu Dawud # 1710, Nasa'I # 4957, Tirmidhi (similar) # 1289 (1293), Musnad Ahmad 2-207.

3595. Sayyiduna Abdullah ibn Abdur Rahman ibn Abu Husayn Makki رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "A hand must not be cut off for (taking) fruit hanging on the tree and for animals grazing on the mountain. But, once they are taken away from their fold, or the fruit from where it is dried, a hand is cut off for what is worth the value of a shield."[1]

COMMENTARY: Teebi رحمہ اللہ explained the word of the hadith (حریسة) (hurisah) to imply an animal that grazes on a mountain without anyone protecting it meaning that it is not anyone's property. If anyone takes such an animals, he will not be accused of stealing. But, if anyone takes away an animal from its enclosure then it is stealing because the animal belongs to someone else. Its price is the equivalent of the value of a shield, or more. So a hand will be cut off.

THE PLUNDERER IS NOT ONE OF US

(٣٥٩٦) وَعَنْ جَابِرٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَيْسَ عَلَى الْمُنْتَهِبِ قَطْعٌ وَمَنِ انْتَهَبَ نُهْبَةً مَشْهُوْرَةً فَلَيْسَ مِنَّا۔ (رواه ابوداؤد)

3596. Sayyiduna Jabir رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "The bandit is not subject to amputation of hand. But one who plunders does not belong to us." (He does not follow our ways.)[2]

COMMENTARY: A bandit robs people brazenly while a thief steals stealthily. Though the crime of the bandit is worse, his hand is not cut off because this punishment is given to a thief whose crime is clandestine.

SWINDLER'S HAND IS NOT CUT OFF

(٣٥٩٧-٣٥٩٨-٣٥٩٩-٣٦٠٠) وَعَنْهُ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لَيْسَ عَلٰى خَائِنٍ وَلَا مُنْتَهِبٍ وَلَا مُخْتَلِسٍ قَطْعٌ۔ رَوَاهُ التِّرْمِذِيُّ وَالنَّسَائِيُّ وَابْنُ مَاجَةَ وَالدَّارِمِيُّ وَرَوٰى فِيْ شَرْحِ السُّنَّةِ اَنَّ صَفْوَانَ بْنَ اُمَيَّةَ قَدِمَ الْمَدِيْنَةَ فَنَامَ فِي الْمَسْجِدِ وَتَوَسَّدَ رِدَاءَهٗ فَجَاءَ سَارِقٌ وَ اَخَذَ رِدَاءَهٗ فَاَخَذَهٗ صَفْوَانُ فَجَاءَ بِهٖ اِلٰى رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَاَمَرَ اَنْ تُقْطَعَ يَدُهٗ فَقَالَ صَفْوَانُ اِنِّيْ لَمْ اُرِدْ هٰذَا هُوَ عَلَيْهِ صَدَقَةٌ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَهَلَّا قَبْلَ اَنْ تَاْتِيَنِيْ بِهٖ وَرَوٰى نَحْوَهٗ ابْنُ مَاجَةَ عَنْ عَبْدِاللّٰهِ بْنِ صَفْوَانَ عَنْ اَبِيْهِ وَالدَّارِمِيُّ عَنِ ابْنِ عَبَّاسٍ۔

3597. Sayyiduna Jabir رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "Hand is not amputated of one who is treacherous, one who plunders or one who pilfers."[3]

3598. Sayyiduna Safwan ibn Umayyah رضی اللہ عنہ came to Madinah and went to sleep in the mosque. He put his cloak under his head for a pillow. A thief came and steahily pulled out his cloak, but Safwan رضی اللہ عنہ nabbed him and took him to

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[1] Muwatta Maalik # 22 (*Hudud*) or 41. 7-22.

[2] Abu Dawud # 4391, Musnad Ahmad 3-380.

[3] Tirmidhi # 1448 (1453), Abu Dawud # 4393 (4391), Musnad Ahmad 3. 38 Nas'I # 4912, Ibn Majah # 2591, Darimi # 2310.

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Allah's Messenger صلى الله عليه وسلم. He ordered that his hand should be cut off. But, Safwan رضى الله عنه pleaded, "I have not intended this thing." (I request that he should be forgiven). "It is a sadaqah (charity) (charity) to him." So, Allah's Messenger صلى الله عليه وسلم asked, "Why not before you brought him to me?"[1]

3599. Sayyiduna Abdullah ibn Safwan رحمه الله reported the like of it from his father.[2]

3600. Sayyiduna Ibn Abbas رضى الله عنه also narrated it.[3]

COMMENTARY: A treacherous person misappropriates a trust placed with him, either all of it or part of it. He commits a grave sin but is not lisble to be punished with amputation of hand. What he embezzles is not a fully protected property or muhriz. It is discussed in detail in the Hidayah.[4]

(see VI p416 etc and Safwan's رضى الله عنه guilt VI p417).

The same applies to a bandit and a swindler and a pilferer. They do not steal in secret.

As for Safwan's رضى الله عنه cloak, the Hidayah (VI p417) says that the most correct thing is that keeping the cloak under the head is hirz (protective custody). The Prophet's صلى الله عليه وسلم words imply, "Why did you not forgive him earlier and surrender your right?" He had given the order to have his hand cut off after the man's guilt was established. So, that become *wajib (obligatory)*, and the complainant had no right to say or do anything in that matter. It was Allah's right after that.

This makes it clear that once a thief is before a ruler and his guilt is established, then the punishment cannot be averted from him, not even if the complainant forgives him. But, it may be done before presenting the case to the ruler.

Ibn Hammam رحمه الله, however, says that if after judgement is passed for a thief's hand to be cut off, the owner of the things stolen makes a gift of those things to him, or sells them to him, then his hand will not be cut off, But, Imam Zufar رحمه الله, Imam Shafi'I رحمه الله and Imam Ahmad رحمه الله maintain that his hand will be cut off. And, one verdict of Imam Abu Yusuf رحمه الله is like theirs. The hadith of Safwan رضى الله عنه also uphold this verdict. However, this hadith is not in this very form in Haakim and some other sources.Rather, there is some additional material in that which causes a confusion and that makes the hadith weak.

THIEF'S HAND NOT CUT OFF DURING EXPEDITION FOR JIHAD

(٣٦٠١) وَعَنْ بُسْرِ بْنِ اَرْطَاةَ قَالَ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ لَاتُقْطَعُ الْاَيْدِىْ فِى الْغَزْوِ۔ رَوَاهُ التِّرْمِذِىُّ وَالدَّارِمِىُّ وَاَبُوْدَاوٗدَ وَالنَّسَائِىُّ اِلَّا اَنَّهُمَا قَالَا فِى السَّفَرِ بَدَلَ الْغَزْوِ۔

3601. Sayyiduna Busr ibn Artah رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said. "The hand is not cut off during a battle."[5]

According to another version: 'during a journey' instead of 'a battle'[6]

COMMENTARY: Ibn Maalik رحمه الله explains this hadith thus: When the Muslim army

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[1] Muwatta Maalik # 28 (*Hudud*) Sharh ur *Sunnah (Prophet's صلى الله عليه وسلم practice)*, Hidayah VI p 417

[2] Ibn Majah # 2595, Musnad Ahmad 3. 401 (see the previous hadith).

[3] Darimi # 2299, Nasa'I # 4882.

[4] Darul-Isha'at Karachi (English translation)

[5] Tirmidhi # 1450, Darimi # 2492.

[6] Abu Dawud # 4408, Nasa'I # 4979.

fights the enemy in enemy land and the ruler himself is not among them but the command of the army heads them and someone steals something then his hand should not be cut off. Also, other prescribed punishments must not be enforced.

Some jurists go by this ruling. The reason is that the man who is guilty may take up residence in enemy territory (to avoid the punishment) and thus go astray.

It may also happen that the warriors lose heart and become disunited. According to Teebi رحمه‌الله, this is the contention of Imam Abu Hanifah رحمه‌الله

Some authorities say that if one of the warriors steals from the spoils, his hand must not be cut off because he also owns a share in it.

Teebi رحمه‌الله said about the second version (of Abu Dawud and Nasa'i), that journey means 'journey to battle'.

STEALING MORE THAN ONCE

(٣٦٠٢) وَعَنْ اَبِيْ سَلَمَةَ عَنْ اَبِيْ هُرَيْرَةَ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ فِي السَّارِقِ اِنْ سَرَقَ فَاقْطَعُوْا يَدَهٗ ثُمَّ اِنْ سَرَقَ فَاقْطَعُوْا رِجْلَهٗ ثُمَّ اِنْ سَرَقَ فَاقْطَعُوْا يَدَهٗ ثُمَّ اِنْ سَرَقَ فَاقْطَعُوْا رِجْلَهٗ۔

(رواه فی شرح السنة)

3602. Sayyiduna Abu Salamah رضی‌الله‌عنه narrated on the authority of (Sayyiduna) Abu Hurayrah رضی‌الله‌عنه that Allah's Messenger صلی‌الله‌علیه‌وسلم said about a thief, "If he steals cut off his (right) hand. If he steals again, cut off his (left) foot. And if he steals again, cut off his (right) foot."[1]

COMMENTARY: The ulama (Scholars) are unanimous about the first two punishments, but they differ about the third and the fourth. Imam Shafi'I goes by this hadith, but Imam Abu Hanifah رحمه‌الله hold that if he steals the third time, his hand will not be cut off but he will be imprisoned till he dies, or makes a repentance to Allah. Imam Abu Hanifah رحمه‌الله said that this was the practice of the sahabah (Prophet's Companions) رضی الله عنهم unanimously and, moreover, if all his hands and feet were severed, his survival would be difficult and this would amount to an in justice with him. As for this hadith, it is an expression of warning to forestall further crime by the thief and, secondly, the scholars question the soundness of this hadith. Indeed, Tahawi رحمه‌الله went so far as to say that he had examined very many of the sahabah (Prophet's Companions) رضی الله عنهم's aathar and judgements, but, in spite of deep examination and search, he could not find a correct source of this hadith. He met many scholars of hadith who had memorized ahadith but all of them denied (knowledge) of this hadith.

Ibn Hammam رحمه‌الله said that many ulama (Scholars) say, about severing the foot, that the leg is severed from near the knee.

(٣٦٠٣-٣٦٠٤) وَعَنْ جَابِرٍ قَالَ جِيْءَ بِسَارِقٍ اِلَى النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اِقْطَعُوْهُ فَقُطِعَ ثُمَّ جِيْءَ بِهٖ الثَّانِيَةَ فَقَالَ اِقْطَعُوْهُ ثُمَّ جِيْءَ بِهِ الثَّالِثَةَ فَقَالَ اقْطَعُوْهُ فَقُطِعَ ثُمَّ جِيْءَ بِهِ الرَّابِعَةَ فَقَالَ اِقْطَعُوْهُ فَقُطِعَ فَأُتِيَ بِهِ الْخَامِسَةَ فَقَالَ اقْتُلُوْهُ فَانْطَلَقْنَا بِهٖ فَقَتَلْنَاهُ ثُمَّ اجْتَرَرْنَاهُ فَاَلْقَيْنَاهُ فِيْ بِئْرٍ وَرَمَيْنَا عَلَيْهِ الْحِجَارَةَ۔ رَوَاهُ اَبُوْدَاوٗدَ

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[1] Sharh us-*Sunnah (Prophet's* صلی‌الله‌علیه‌وسلم *practice)*, Bayhaqi in *sunnah (Prophet's* صلی‌الله‌علیه‌وسلم *practice)* # 292.

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وَ النَّسَائِيُّ وَرَوٰى فِيْ شَرْحِ السُّنَّةِ فِيْ قَطْعِ السَّارِقِ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اقْطَعُوْهُ ثُمَّ احْسِمُوْهُ۔

3603. Sayyiduna Jabir رضی اللہ عنہ narrated that a thief was brought to the Prophet صلی اللہ علیہ وسلم. He said, "Cut off (his right hand)". SO, his hand was severed. He was brought a second time , and he commanded, " Cut off his left foot)." So, his foot was severed. Then, he was brought a third time and he commanded, "Cut off (his left hand)." That was cut. Again, he was brought a fourth time and he commanded, "Cut off (his right foot). "That was cut. He was brought again a fifth time and he commanded, "Kill him". They took him away, killed him and dragging him down, they cast him into a well. Then they threw stones over him. [1]

3604. Baghawi has added in Sharh us-*sunnah (Prophet's* صلی اللہ علیہ وسلم *practice)* that the Prophet صلی اللہ علیہ وسلم said about maiming the thief, "Cut off (his hand) and cauterize it." [2]

COMMENTARY: He instructed that the severed hand should be cauterized to stop bleeding, otherwise he would have bled to death.

Khattabi رحمہ اللہ said that this hadith is abrogated by the Prophet's صلی اللہ علیہ وسلم words:

لَا يَحِلُّ دَمُ امْرَءٍ اِلَّا بِاِحْدٰى ثَلٰثٍ

(Blood of a Muslim is not lawful except for one of three reasons.)

Some authorities say that the Prophet صلی اللہ علیہ وسلم command to kill the thief was based on some administrative reasons. The ruler has a right to use his wisdom in enforcing punishment to maintain law and order.

Some authorities say that the Prophet صلی اللہ علیہ وسلم may have known that the man was an apostate. So he had him killed.

Some other authorities say that the man might have regarded stealing as lawful. Hence, he stole again and again.

We must choose one of these explanations, because if he were a Muslim, then it was not at all lawful to drag his corpse and drop it into the well.

SUSPENDING SEVERED HAND IN NECK OF THIEF

(٣٦٠٥) وَعَنْ فَضَالَةَ بْنِ عُبَيْدٍ قَالَ اُتِيَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ بِسَارِقٍ فَقُطِعَتْ يَدُهٗ ثُمَّ اَمَرَ بِهَا فَعُلِّقَتْ فِيْ عُنُقِهٖ۔ (رواه الترمذی وابوداؤد والنسائی وابن ماجة)

3605. Sayyiduna Fudalah ibn Ubayd رضی اللہ عنہ narrated that a thief was brought to Allah's Messenger صلی اللہ علیہ وسلم. So (at his command), his hand was cut off. Then he commanded about it, and it was suspended on his neck. (The other people may take a lesson from it.) [3]

COMMENTARY: Imam Shafi'I رحمہ اللہ and Imam Ahmad رحمہ اللہ hold that it is *sunnah (Prophet's* صلی اللہ علیہ وسلم *practice)* to hang a thief's hand on his neck after cutting it off. Imam Abu Hanifah رحمہ اللہ said that it is at the discretion of the ruler. He may have it hung on his neck, but it is not a *sunnah (Prophet's* صلی اللہ علیہ وسلم *practice)* because it is not proved that the Prophet صلی اللہ علیہ وسلم had it done.

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[1] Abu Dawud # 4410.

[2] Baghawi Sharh us-*sunnah (Prophet's* صلی اللہ علیہ وسلم *practice).*

[3] Tirmidhi # 1447, Abu Dawud # 4411, Nasa'I # 4982, Ibn Majah # 2587, Musnad Ahmad 6. 190.

SELL THE SLAVE WHO STEALS

(٣٦٠٦) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِذَا سَرَقَ الْمَمْلُوْكُ فَبِعْهُ وَلَوْ بِنَشٍّ۔

(رواه ابوداؤد والنسائی وابن ماجة)

3606. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "If a slave steals, sell him, even if it is for a nashsh."[1]
(A nashsh is half an ooqiyah or twenty dirhams).

COMMENTARY: A slave who steals must be disposed of even for a paltry sum of money because he becomes defective after stealing. It is not proper to keep an imperfect slave.
Imam Maalik رحمہ اللہ, Imam Shafi'I رحمہ اللہ and most (earned men say that if a slave steals then his hand must be cut off whether he is a fugitive or not.
Imam Abu Hanifah رحمہ اللہ said that if a husband or a wife steals one another's property, or a slave steals the property of his master, or of his owner's wife, or husband, them no hand is cut off. The reason is that the spouses generally have access and permission to use one another's property and the slave, too has this kind of privilege over his owner's and over his owner's family's property, with their tacit permission. In this case the condition of hirz is not met in the full sense and which is necessary for cutting off a hand.

SECTION III اَلْفَصْلُ الثَّالِثُ

RULER CANNOT FORGIVE THE GUILTY

(٣٦٠٧) عَنْ عَآئِشَةَ قَالَتْ اُتِيَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ بِسَارِقٍ فَقَطَعَهُ فَقَالُوْا مَا كُنَّا نَرَاكَ تَبْلُغُ بِهٰذَا قَالَ لَوْ كَانَتْ فَاطِمَةُ لَقَطَعْتُهَا۔ (رواه النسائی)

3607. Sayyidah Ayshah رضی اللہ عنہا narrated that a thief was brought to Allah's Messenger صلی اللہ علیہ وسلم. He had his hand cut off. (When he gave the command to do that) the sahabah (Prophet's Companions) رضی اللہ عنہم said, "We had not presumed that you would go as far as (to give) this (command rather, we had thought that you would forgive him)." He said, "If it had been Fatimah (bint Muhammad), I would have had her hand cut off."[2]

COMMENTARY: That thief was perhaps a relative or an acquaintance. The Prophet صلی اللہ علیہ وسلم made it very clear that the prescribed punishment was Allah's right which cannot be violated. He said that it was *wajib (obligatory)* on him to enforce it. He made it clear that he had no say in it.

SLAVE'S HAND IS NOT CUT OFF

(٣٦٠٨) وَعَنِ ابْنِ عُمَرَ قَالَ جَاءَ رَجُلٌ اِلٰى عُمَرَ بِغُلَامٍ لَهٗ فَقَالَ اقْطَعْ يَدَهٗ فَاِنَّهٗ سَرَقَ مِرْآةً لِاِمْرَأَتِيْ فَقَالَ عُمَرُ لَا قَطَعَ عَلَيْهِ وَهُوَ خَادِمُكُمْ اَخَذَ مَتَاعَكُمْ۔ (رواه مالك)

3608. Sayyiduna Ibn Umar رضی اللہ عنہ narrated that a man brought his slave to Umar رضی

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[1] Abu Dawud # 4412, Nasa'I # 4980, Ibn Majah # 2589, Musnad Ahmad 2-337.
[2] Nasa'I # 4896, Musnad Ahmad 6-41 Nasa'I Kubra # 7378, Muslim # 1689.

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عنه الله and said, "Have his hand cut off, because he stole a mirror belonging to my wife." Umar عنه الله رضى said, "He is not liable to have his hand cut off, for he is your servant who took from your belongings."[1]

COMMENTARY: Sayyiduna Umar عنه الله رضى made it to that man, "As your servant, he resides with you and is charged with looking after your property. It is with your consent that he has power over your belongings and so no hirz applies in his case. Since that is so the Punishment of cutting off his hand does not arise."
This, indeed is the contention of Imam Abu Hanifah رحمه الله and Imam Ahmad رحمه الله. Others, however, hold a different opinion.

ONE WHO STEALS SHROUD

(٣٦٠٩) وَعَنْ اَبِيْ ذَرٍّ قَالَ قَالَ لِيْ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَا اَبَاذَرٍّ قُلْتُ لَبَّيْكَ يَا رَسُوْلَ اللّٰهِ وَسَعْدَيْكَ قَالَ كَيْفَ اَنْتَ اِذَا اَصَابَ النَّاسَ مَوْتٌ يَكُوْنُ الْبَيْتُ فِيْهِ بِالْوَصِيْفِ يَعْنِي الْقَبْرَ قُلْتُ اَللّٰهُ وَرَسُوْلُهٗ اَعْلَمُ قَالَ عَلَيْكَ بِالصَّبْرِ قَالَ حَمَّادُ بْنُ اَبِيْ سُلَيْمَانَ تُقْطَعُ يَدُ النَّبَّاشِ لِاَنَّهٗ دَخَلَ عَلَى الْمَيِّتِ بَيْتَهٗ۔

(رواه ابوداؤد)

**3609. Sayyiduna Abu Dharr رضى الله عنه said: Allah's Messenger صلى الله عليه وسلم said to me, "O Abu Dharr". I said, "Here am I, O Messenger of Allah, at your service!" He asked, "What will you do when death (meaning a pestilence) comes over the people and a house, meaning a grave, will cost as much as a slave?" (The severe pestilence will result in many deaths causing a shortage of places of graves.) I submitted, "Allah and His Messenger knows best." He said, "You must show patience."
Hammad ibn Abu Sulayman said, "The hand of one who steals shroud should be cut off because he enters the house of the dead person (to rummage it)."[2]**

COMMENTARY: Hammad ibn Abu Sulayman deduced from the Prophet صلى الله عليه وسلم's words calling the grave a house that since a house is hirz (a protected place) anyone who steals from it will have his hand cut off. So, if he steals from a grave he will have his hand cut off. However, this deduction of hammad is not strong because it is not necessary that the place would attract the command of hirz though it is a house. For instance, if a man steals from a house whose gate is open or there is no guard over it, then, all the ulama (Scholars) agree that the hands of a thief would not be cut though he steals from the house. This house was not safe, so not a hirz. In the same way, though agrave may be described as a home, yet it is not hirz or protected. So, one who steals a shroud from a grave is not liable to have his hand cut off.
Ibn Hummam رحمه الله said that the contention of Imam Abu Hanifah رحمه الله and IMAM Ahmad رحمه الله is that one who steals a shroud will not be punished by having his hand cut off. However, the other two Imams and Imam Abu Yusuf رحمه الله (of the Hanafis) opine that his hand will be cut off. For more information on this, see Mirqat.

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[1] Muwatta Maalik # 33 (*Hudud*)
[2] Abu Dawud # 4409.

CHAPTER - III

INTERCESSION REGARDING *HUDUD* (OR, PRESCRIBED PUNISHMENTS)

بَابُ عِيَادَةِ الْمَرِيْضِ وَثَوَابِ الْمَرَضِ

Such ahadith are presented in this chapter as tell us whether it is permitted to intercede with the ruler for an accused or not. May he be requested not to impose the *hadd (prescribed punishment)* on him? Does the ruler have authority to accede to the recommendation?

SECTION I — اَلْفَصْلُ الْاَوَّلُ

INTERCESSION REGARDING *HUDUD* MAY NOT BE ACCEPTED

(٣٦١٠) عَنْ عَائِشَةَ اَنَّ قُرَيْشًا اَهَمَّهُمْ شَاْنُ الْمَرْاَةِ الْمَخْزُوْمِيَّةِ الَّتِيْ سَرَقَتْ فَقَالُوْا وَمَنْ تَكَلَّمُ فِيْهَا رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالُوْا وَمَنْ يَّجْتَرِئُ عَلَيْهِ اِلَّا اُسَامَةُ بْنُ زَيْدٍ حِبُّ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَكَلَّمَهُ اُسَامَةُ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَتَشْفَعُ فِيْ حَدٍّ مِّنْ حُدُوْدِ اللّٰهِ ثُمَّ قَامَ فَاخْتَطَبَ ثُمَّ قَالَ اِنَّمَا اَهْلَكَ الَّذِيْنَ قَبْلَكُمْ اَنَّهُمْ كَانُوا اِذَا سَرَقَ فِيْهِمُ الشَّرِيْفُ تَرَكُوْهُ وَاِذَا سَرَقَ فِيْهِمُ الضَّعِيْفُ اَقَامُوْا عَلَيْهِ الْحَدَّ وَ اَيْمُ اللّٰهِ لَوْ اَنَّ فَاطِمَةَ بِنْتَ مُحَمَّدٍ سَرَقَتْ لَقَطَعْتُ يَدَهَا۔ مُتَّفَقٌ عَلَيْهِ وَفِيْ رِوَايَةٍ لِمُسْلِمٍ قَالَتْ كَانَتِ امْرَاَةٌ مَخْزُوْمِيَّةٌ تَسْتَعِيْرُ الْمَتَاعَ وَتَجْحَدُهُ فَاَمَرَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ بِقَطْعِ يَدِهَا فَاَتٰى اَهْلُهَا اُسَامَةَ فَكَلَّمُوْهُ فَكَلَّمَ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فِيْهَا ثُمَّ ذَكَرَ الْحَدِيْثَ بِنَحْوِمَا تَقَدَّمَ۔

3610. Sayyidah Ayshah رضی اللہ عنہا narrated that the Quraysh (sahabah) رضی اللہ عنہ were very worried about a Makhzumi woman. She had stolen something (and she used to borrow different things from people and then would refuse to acknowledge that she had borrowed anything. The Prophet صلی اللہ علیہ وسلم had decided that her hand should be cut off). They consulated (among themselves), "Who shall speak to Allah's Messenger صلی اللہ علیہ وسلم about her (to make a recommendation)?" Then they said, "Only Usamah ibn Zayd (is one whom he loves dearly so he) will make bold to speak. He is the friend of Allah's Messenger صلی اللہ علیہ وسلم." (Hence, they all persuaded Usamah رضی اللہ عنہ to speak to the Prophet صلی اللہ علیہ وسلم about the woman). Usamah spoke to him. And, Allah's Messenger صلی اللہ علیہ وسلم asked, "Do you intercede concerning a *hadd (prescribed punishment)* of Allah's *hudud*?" (Meaning a prescribed punishment). Then, he got up and delivered a sermon and (after praising and glorifying Allah) he said, "Those who preceded you were ruined only because when anyone of position among them stole something, they let him go free (unpunishment). But when a weak man among them stole something, they enforced the prescribed punishment on him. And, I swear by Allah, were Fatimah bint Muhammad to steal, I would have her hand cut off."

According to another version: She (sayyidah Ayshah رضی اللہ عنہا) narrated: A Makhzumi woman used to borrow things but refuse to acknowledge receipt of those things. The Prophet صلی اللہ علیہ وسلم gave an order to have her hand cut off. Her

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family members came to (Sayyiduna) Usamah رضی اللہ عنہ and spoke to him (about it, requesting him to intercede in the matter). So, he spoke to Allah's Messenger صلی اللہ علیہ وسلم about her...The rest of the hadith is like the preceding words.[1]

COMMENTARY: The woman mentioned in the hadith was Fatimah bint Aswad ibn Abdul Asad. She was the daughter of the brother of Abu Salamah رضی اللہ عنہ. She was called Makhzumiyah because she belonged to the tribe of Makhzum a prominent tribe of the Quraysh.

The ulama (Scholars) agree, on the basis of this hadith, that it is forbidden to make a recommendation to the ruler for an accused after the case of *hadd (prescribed punishment)* is presented to him. It is also forbidden to get anyone else make a recommendation. However, most ulama (Scholars) say that it is allowed to make a recommendation, or get someone else do it, before the case is forwarded to the ruler, provided the person for whom it is made is good, virtuous one who does not hurt people.

If a person has committed a wrong that does not make him liable to *hadd (prescribed punishment)* but to tazeer then it is allowed to make a recommendation for him in all instances irrespective of whether the case is sent to the ruler or not. The reason is that it is not only easy but also *mustahab (desirable)* to make a recommendation in such cases. However, the recommendation must be made for one who is an upright person who hurts no one.

The second version is from sahih Muslim and though it seems from it that the Prophet صلی اللہ علیہ وسلم punished her because she borrowed things from different people and then denied altogether that she had done that, the correct thing is that the punishment of cutting off hands was because she stole things from other people. The hadith only mentions her habit. Besides she could not have been given that punishment for denying that she had borrowed something. The words 'she stole' (فسرقت) are understood in the second version after 'she denied' (وتجحده).

A majority of the scholars say that anyone who borrows something but denies having borrowed anything is not awarded a punishment of having his hand cut off. However, Imam Ahmad رحمہ اللہ and Ishaq رحمہ اللہ assert that it is *wajib (obligatory)* to cut off hand of such person too. This chapter is without section II

SECTION III اَلْفَصْلُ الثَّالِثُ

ONE WHO INTERCEDES REGARDING *HADD (PRESCRIBED PUNISHMENT)* REJECTS ALLAH'S COMMAND

(٣٦١١) عَنْ عَبْدِاللّٰهِ بْنِ عُمَرَ قَالَ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ مَنْ حَالَتْ شَفَاعَتُهُ دُوْنَ حَدٍّ مِنْ حُدُوْدِ اللّٰهِ فَقَدْ ضَادَّ اللّٰهَ وَمَنْ خَاصَمَ فِيْ بَاطِلٍ وَهُوَ يَعْلَمُهُ لَمْ يَزَلْ فِيْ سَخَطِ اللّٰهِ تَعَالٰى حَتّٰى يَنْزِعَ وَمَنْ قَالَ فِيْ مُؤْمِنٍ مَالَيْسَ فِيْهِ اَسْكَنَهُ اللّٰهُ رَدْغَةَ الْخَبَالِ حَتّٰى يَخْرُجَ مِمَّا قَالَ۔ رَوَاهُ اَحْمَدُ وَاَبُوْدَاوٗدَ وَفِيْ رِوَايَةٍ لِلْبَيْهَقِيِّ فِيْ شُعَبِ الْاِيْمَانِ مَنْ اَعَانَ عَلٰى خُصُوْمَةٍ لَا يَدْرِيْ اَحَقٌّ اَمْ بَاطِلٌ فَهُوَ فِيْ سَخَطِ اللّٰهِ حَتّٰى يَنْزِعَ۔

3611. Sayyiduna Abdullah ibn Umar رضی اللہ عنہ narrated that he heard Allah's

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[1] Bukhari # 3475, Muslim # 8-1688, Tirmidhi # 1430 (1435) Nasaii # 4899, Ibn Majah # 4547, Darimi # 2302.

Messenger صلى الله عليه وسلم say, "If anyone's intercession hinders the execution of one of the punishments prescribed by Allah then he has contradicted Allah. (In this way he opposes Allah.) If anyone disputes about something knowing that it is unjust and false, then he remains in Allah's displeasure till he ceases (to dispute). If anyone falsely accuses a believer (of something that is not found in him), then Allah will make him lie in the corrupt fluid (of puss and blood) flowing from the inmates of hell till he retracts what (false words) he had spoken." (it means that he will continue to remain like the inmates of hell till he makes a repentance, or till he undergoes the torment of hell.) Bayhaqi also has: "He who helps in a dispute without knowing it to be true or false, will continue to remain in Allah's displeasure till he ceases (to aid in the dispute)."[1]

PUNISHMENT FOR STEALING ON CONFESSION

(٣٦١٢-٣٦١٣) وَعَنْ اَبِيْ اُمَيَّةَ الْمَخْزُوْمِيِّ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اُتِيَ بِلِصٍّ قَدِ اعْتَرَفَ اعْتِرَافًا وَلَمْ يُوْجَدْ مَعَهُ مَتَاعٌ فَقَالَ لَهُ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَا اِخَالُكَ سَرَقْتَ قَالَ بَلٰى فَاَعَادَ عَلَيْهِ مَرَّتَيْنِ اَوْ ثَلَاثًا كُلَّ ذٰلِكَ يَعْتَرِفُ فَاَمَرَ بِهٖ فَقُطِعَ فَجِيْءَ بِهٖ فَقَالَ لَهُ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِسْتَغْفِرِ اللّٰهَ وَتُبْ اِلَيْهِ فَقَالَ اَسْتَغْفِرُ اللّٰهَ وَاَتُوْبُ اِلَيْهِ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَللّٰهُمَّ تُبْ عَلَيْهِ ثَلَاثًا۔ رَوَاهُ اَبُوْدَاوٗدَ وَالنَّسَائِيُّ وَابْنُ مَاجَةَ وَالدَّارِمِيُّ هٰكَذَا وَجَدْتُ فِي الْاُصُوْلِ الْاَرْبَعَةِ وَجَامِعِ الْاُصُوْلِ وَشُعَبِ الْاِيْمَانِ وَمَعَالِمِ السُّنَنِ اَبِيْ اُمَيَّةَ وَفِيْ نُسَخِ الْمَصَابِيْحِ عَنْ اَبِيْ رِمْثَةَ بِالرَّاءِ وَالثَّاءِ الْمُثَلَّثَةِ بَدَلَ الْهَمْزَةِ وَالْيَاءِ۔

3612. Sayyiduna Abu Umayyah Makhzumi رضى الله عنه narrated that a thief was brought to the Prophet صلى الله عليه وسلم. He had confessed to his crime, but no stolen property was found on him. Allah's Messenger صلى الله عليه وسلم said to him, "I do not suppose that you have stolen anything?" He said, "Yes, I have! " He (the Prophet صلى الله عليه وسلم) asked him (the same question) twice or thrice but he insisted, "I have !" So, he gave an order and his hand was cut off. After that, he was brought to him and Allah's Messenger صلى الله عليه وسلم said to him, "Seek forgiveness of Allah and repent to Him." He said, "I seek forgiveness of Allah and I repent to Him." Then, Allah's Messenger صلى الله عليه وسلم prayed, "O Allah accept his repentance."[2]

(The compiler of the Mishkat says:) I found this tradition in all the four books (Abu Dawud, Nasa'i, Ibn Majah and Darimi), in Jami ul-Usul, in Shabul ul - Eaman of Bayhaqi and in Mualim us-*Sunnah (Prophet's صلى الله عليه وسلم practice)* of Khattabi as narrated by Abu Umayyah, but by:

3613. Abu Rimthah رضى الله عنه in the texts of Masabih.[3]

Hafiz Ibn Hajar Asqalani رحمه الله said that though Abu Rimthah رضى الله عنه was a sahabi, this tradition is not narrated by him.

COMMENTARY: The Prophet صلى الله عليه وسلم gave to man an opportunity to retract his

[1] Abu Dawud # 3597, Ibn Majah # 2320, Musnad Ahmad 2-70, Bayhaqi # 2676 Shab ul Eaman.

[2] Abu Dawud # 4380, Nasa'I # 4877, Ibn Majah # 2597, Musnad Ahmad 5-293, Nasa'i Kubra # 7363.

[3] Masabih us-*sunnah (Prophet's صلى الله عليه وسلم practice)* # 2721.

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confession in order that *hadd (prescribed punishment)* may be averted from him. This is like he had done with those who were accused of adultery.
Of the two verdicts of Imam Shafi'i رحمه الله, one is according to this hadith. But, Imam Abu Hanifah رحمه الله and the other Imams hold that encouragement to provide an excuse or to retract confession is given only in cases of adultery.
The Prophet صلى الله عليه وسلم instructed this man to repent which means that while that particular sin is forgiven on undergoing the prescribed punishment for it, other sins are not forgiven. So an istighfar should be made.

CHAPTER - IV

THE *HADD* (OR THE PRESCRIBED PUNISHMENT) FOR CONSUMING WINE

بَابُ حَدِّ الْخَمْرِ

PROHIBITION OF WINE: Wine or alchohol is called the Ummul-khabaith. Before the Prophet صلى الله عليه وسلم was sent, wine was considered a part, or a necessity, of life. Even after the Prophet صلى الله عليه وسلم was commissioned, the custom of wine was retained and, generally, people served it to each other, but, its evil and bad repercussions did prick the conscience of the Muslims. Indeed, Sayyiduna Umar رضى الله عنه remarked:

إِنَّهَا تَذْهَبُ الْمَالَ وَتَذْهَبُ الْعَقْلَ

"It takes away property and it takes away intelligence,"
Day by day, people's desire grew that the permissibility of wine should be withdraw soon. However, it was a deep rooted evil that had gripped the whole society. So, *Shariah* did not do away with it at once, but prohibited it in stages, gradually. The common men were made to detest it in piecemeal so that be achieved of this curse. When some of the Sahabah (Prophet's Companions) رضى الله عنهم asked the Prophet صلى الله عليه وسلم about it, the first verse to be revealed in this connection was:

يَسْئَلُوْنَكَ عَنِ الْخَمْرِ وَالْمَيْسِرِ قُلْ فِيْهِمَا إِثْمٌ كَبِيْرٌ وَّمَنَافِعُ لِلنَّاسِ وَإِثْمُهُمَا أَكْبَرُ مِنْ نَّفْعِهِمَا

{They ask you concerning wine and gambling. Say, "In both is a grievous sin, and some benefits for people, but the sin in them is more grievous than their benefits."} (2: 219)
The auspicious people who realized already that wine was harmful, and those who were inherently fed up with it, found it enough that the Quran declared that there was sin in wine. They gave up drinking wine. However, since this verse does not give a clear command of prohibition, many people continued to drink wine as was their habit.
Then another verse was revealed:

يَآ أَيُّهَا الَّذِيْنَ اٰمَنُوْا لَا تَقْرَبُوا الصَّلٰوةَ وَأَنْتُمْ سُكَارٰى حَتّٰى تَعْلَمُوْا مَا تَقُوْلُوْنَ

{O you who believe, draw not near *salah (prayer)* while you are intoxicated, until you know what you are saying...} (4: 43)
This was one more step against consumption of wine. It was prohibited completely at the hours of *salah (prayer)*. However, not all people gave it up at times other than *salah (prayer)*. Finally, the third verse was revealed and it made the prohibition very clear. It was in 3AH.

يَآ أَيُّهَا الَّذِيْنَ اٰمَنُوْا إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْلَامُ رِجْسٌ مِّنْ عَمَلِ الشَّيْطٰنِ فَاجْتَنِبُوْهُ لَعَلَّكُمْ تُفْلِحُوْنَ

{O you who believe, wine and gambling, and (sacrificing) to idols and divining arrows are an abomination of satan's handiwork, so abstain from it, that you may prosper.} (5: 90)

After this verse, consumption of wine was stopped totally. The containers of wine were broken and wine flowed in the streets of Madinah as water flows. The prohibition of wine was enforced.

PUNISHMENT FOR CONSUMING WINE: All the ulama (Scholars) are agreed that according to the command of the Quran and *sunnah (Prophet's* صلى الله عليه وسلم *practice)* and the consensus of the *ummah* wine is forbidden. If anyone drinks it, then the *hadd (prescribed punishment)* will be imposed on him, as *wajib (obligatory)*. The ulama (Scholars) say that it is eighty stripes. This is what Imam Abu Hanifah رحمه الله also says, but Imam Shafi'i and some other ulama (Scholars) say that it is forty stripes.

ENFORCEMENT OF THE PUNISHMENT: If anyone drinks wine, even one drop of it, and he is brought to the ruler or judge and the adour of wine is perceivable from his mouth, or he is intoxicated, though the intoxication is because of nabidh, and two persons bear testimony to his consuming wine, or he himself makes a confession once and according to Imam Abu Yusuf رحمه الله twice and it is confirmed that he compelled by anyone-then the *hadd (prescribed punishment)* will be imposed on him. If he is a freeman then eighty stripes will be awarded to him and if he is a slave then forty stripes. He will be given the stripes when he gets sober.

As for the stripes, whether it is *hadd (prescribed punishment)* concerning adultery or consuming wine, they will be struck in such a manner that they land on different parts of the body. All the number of stripes should not be struck on any single part of the body.

If anyone confesses to drinking wine when the odour is no more perceived, or two men testify against him when the odour is not perceived, then the *hadd (prescribed punishment)* will not be imposed on him.

The *hadd (prescribed punishment)* is also not be imposed when:

- Only the odour of wine is discerned.
- Only he vomited wine.
- He retracts his confession, or
- He confessed when he was intoxicated.

The intoxication that makes the imposition of *hadd (prescribed punishment) wajib (obligatory)* on anyone is when the drunkard cannot distinguished between man and woman and earth and heaven. But, according to Imam Abu Yusuf رحمه الله and Imam Muhammad رحمه الله intoxication implies that the drunkard is in a state of delirium and speaks incoherently.

SECTION I اَلْفَصْلُ الْاَوَّلُ

PUNISHMENT FOR DRINKING WINE IN PROPHET'S TIMES

(٣٦١٤-٣٦١٥) وَعَنْ اَنَسٍ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ ضَرَبَ فِي الْخَمْرِ بِالْجَرِيْدِ وَالنِّعَالِ وَجَلَدَ اَبُوْ بَكْرٍ اَرْبَعِيْنَ۔ مُتَّفَقٌ عَلَيْهِ وَفِيْ رِوَايَةٍ عَنْهُ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ كَانَ يَضْرِبُ فِي الْخَمْرِ بِالنِّعَالِ وَالْجَرِيْدِ اَرْبَعِيْنَ۔

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3614. Sayyiduna Anas رضی اللہ عنہ narrated that the Propeht صلی اللہ علیہ وسلم used (to order) a beating with branches of palm trees and sandals (as prescribed punishment) for consuming wine and (Sayyiduna) Abu Bakr رضی اللہ عنہ awarded forty lashes.[1]

3615. (According to another version) from Sayyiduna Anas رضی اللہ عنہ the Prophet صلی اللہ علیہ وسلم used to award forty stripes with branches of palm trees and sandals (as prescribed punishment) for consuming wine.[2]

COMMENTARY: The second version explains the first by giving the number of stripes. Imam Shafi'i رحمہ اللہ follows this hadith. Imam Abu Hanifah رحمہ اللہ goes by those ahadith that give the number of stripes as eighty. Mulla Ali Qari رحمہ اللہ has commented on these ahadith in details in Mirqat.

EIGHTY STRIPES WERE AWARDED BY THE SAHABAH (PROPHET'S COMPANIONS) رضی اللہ عنہم IN THEIR TIMES

(٣٦١٦) وَعَنِ السَّائِبِ بْنِ يَزِيْدَ قَالَ يُؤْتٰى بِالشَّارِبِ عَلٰى عَهْدِ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَإِمْرَةِ أَبِيْ بَكْرٍ وصَدْرًا مِنْ خِلَافَةِ عُمَرَ فَنَقُوْمُ عَلَيْهِ بِأَيْدِيْنَا وَنِعَالِنَا وَأَرْدِيَتِنَا حَتّٰى كَانَ اٰخِرُ إِمْرَةِ عُمَرَ فَجَلَدَ أَرْبَعِيْنَ حَتّٰى إِذَا عَتَوْا وَفَسَقُوْا جَلَدَ ثَمَانِيْنَ۔ (رواه البخاری)

3616. Sayyiduna Sa'ib ibn Yazid رضی اللہ عنہ narrated, "In the time of Allah's Messenger صلی اللہ علیہ وسلم and of Abu Bakr's رضی اللہ عنہ Khilafah (caliphate) and in the beginning of Umar's Khilafah (caliphate), when a drunk was brought, we got up and beat him with our hands, sandals and cloaks (using them as whips). At the end of Umar's Khilafah (caliphate), he awarded forty stripes, but when they (alcoholics) transgressed and increased in number, he awarded eighty stripes."[3]

COMMENTARY: Sa'ib ibn Yazid رضی اللہ عنہ meant that the punishment to a person who consumed wine without defining number of beatings and it was less than forty stripes. Anyway, in the time of the Prophet صلی اللہ علیہ وسلم, the punishment was not eighty stripes. Rather, eighty lashes were determined in the time of the sahabah (Prophet's Companions) رضی اللہ عنہم. Umar رضی اللہ عنہ imposed it when the evil began to spread and had to be curbed. The sahabah (Prophet's Companions) رضی اللہ عنہم concurred with him. So now no one is allowed to contradict it. Sayyiduna Ali رضی اللہ عنہ said that the Prophet صلی اللہ علیہ وسلم and Sayyiduna Abu Bakr رضی اللہ عنہ had awarded forty stripes. Then Sayyiduna Umar رضی اللہ عنہ made it *sunnah (Prophet's صلی اللہ علیہ وسلم practice)*, yet the consensus is on eighty stripes.

SECTION II اَلْفَصْلُ الثَّانِيْ

COMMAND TO KILL DRUNKARD IS WITHDRAWN

(٣٦١٧-٣٦١٨-٣٦١٩) عَنْ جَابِرٍ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ مَنْ شَرِبَ الْخَمْرَ فَاجْلِدُوْهُ فَإِنْ عَادَ فِي

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[1] bukhari # 2773, Muslim # 36-1706, Abu Dawud # 4479, Ibn Majh # 2570, Musnad Ahmad 3. 176.

[2] Muslim # 37-1706.

[3] Bukhari # 6779.

الرَّابِعَةِ فَاقْتُلُوْهُ قَالَ ثُمَّ اُتِيَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ بَعْدَ ذٰلِكَ بِرَجُلٍ قَدْ شَرِبَ فِي الرَّابِعَةِ فَضَرَبَهُ وَلَمْ يَقْتُلْهُ۔

رَوَاهُ التِّرْمِذِيُّ وَرَوَاهُ اَبُوْدَاوٗدَ عَنْ قَبِيْصَةَ بْنِ ذُوَيْبٍ وَفِيْ اُخْرٰى لَهُمَا وَلِلنَّسَائِيِّ وَابْنِ مَاجَةَ وَالدَّارِمِيِّ عَنْ نَفَرٍ مِنْ اَصْحَابِ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مِنْهُمْ بْنُ عُمَرَ وَمُعَاوِيَةُ وَاَبُوْهُرَيْرَةَ وَالشَّرِيْدُ اِلٰى قَوْلِهٖ فَاقْتُلُوْهُ۔

3617. Sayyiduna Jabir (ibn Abdullah) narrated that the Prophet صلى الله عليه وسلم said, "If anyone drinks wine, give him the lashes, and if he does it a fourth times then kill him." Jabir رضى الله عنه added that thereafter a man who had brought to the Prophet صلى الله عليه وسلم but he awarded him the lashes and did not kill him.[1]

3618. Sayyiduna Qabisah ibn Dhu'ayb رضى الله عنه narrated it too. [2]

3619. Some of the sahabah (Prophet's Companions) رضى الله عنهم, among them Ibn Umar, Mu'awiyah, Abu Hurayrah and Sharid رضى الله عنه narrated it too but up to the words 'kill him' (without mentioning the man who had drunk wine four times and was brought to him).[3]

COMMENTARY: The words 'kill him' perhaps mean that he should be beaten severely. Or, the prophet صلى الله عليه وسلم said that merely to give a warning to habitual drunkards. He did not mean to enact a law or to make it *wajib (obligatory)*. Some authorities maintain that in the beginning, this command was in force and then it was rescinded.

The fact that the Prophet صلى الله عليه وسلم did not not have the drunkard who was brought to him killed proves that his command was only to warn, or he withdrew the command.

Nawawi رحمه الله has quoted Tirmidhi رحمه الله that, apart from two hadith in his book, there is no third which the entire *ummah* agrees that should not be put in practice. One of the two is that which permits offering two *salah (prayer)* (of different hours) together without a valid reason like fear or rain and the second is this one about a drunked being killed if he does it a fourth time. (Ahadith # 187, 188 and 1499, this one under discussion in Tirmidhi.)

DRINKER DISGRACED

(٣٦٢٠) وَعَنْ عَبْدِالرَّحْمٰنِ بْنِ اَزْهَرَ قَالَ كَاَنِّيْ اَنْظُرُ اِلٰى رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِذَا اُتِيَ بِرَجُلٍ قَدْ شَرِبَ الْخَمْرَ فَقَالَ لِلنَّاسِ اضْرِبُوْهُ فَمِنْهُمْ مَنْ ضَرَبَهُ بِالنِّعَالِ وَمِنْهُمْ مَنْ ضَرَبَهُ بِالْعَصَا وَ مِنْهُمْ مَنْ ضَرَبَهُ بِالْمِيْتَخَةِ قَالَ ابْنُ وَهْبٍ يَعْنِي الْجَرِيْدَةَ الرَّطْبَةَ ثُمَّ اَخَذَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ تُرَابًا مِنَ الْاَرْضِ فَرَمٰى بِهٖ فِيْ وَجْهِهٖ۔ (رواه ابوداؤد)

3620. Sayyiduna Abdur Rahman ibn Azhar رضى الله عنه narrated, "It seems as if I still see Allah's Messenger صلى الله عليه وسلم, when a man who had drunk wine was brought to him. He instructed the men to beat him. Some of them beat him with sandals. Some of them beat hit him with sticks and some more of them struck him mitakhah." Ibn Wahb (a sub-narrator of this hadith) explained that mitakhah is a green twig of a palm tree without any leaf on it.

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[1] Tirmidhi # 1444 (1449).

[2] Abu Dawud # 4485, Tirmidhi # (1449).

[3] Abu Dawud # 4482, 4483, 4484, Tirmidhi # (1449), Ibn Majah # 2573, Darimi # 2313.

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(Abdur Rahman continued:) "Then Allah's Messenger صلى الله عليه وسلم took some dust from the ground and cast it on his face." He said that in this way he expressed a dislike for his habit because it was a very repulsive deed.[1]

DO NOT CURSE THE DRUNKARD

(٣٦٢١) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ اِنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اُتِيَ بِرَجُلٍ قَدْشَرِبَ الْخَمْرَ فَقَالَ اضْرِبُوْهُ فَمِنَّا الضَّارِبُ بِيَدِهٖ والضَّارِبُ بِثَوْبِهٖ وَالضَّارِبُ بِنَعْلِهٖ ثُمَّ قَالَ بَكِّتُوْهُ فَاقْبَلُوْا عَلَيْهِ يَقُوْلُوْنَ مَا اتَّقَيْتَ اللّٰهَ مَاخَشِيْتَ اللّٰهَ وَمَا اسْتَحْيَيْتَ مِنْ رَّسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ بَعْضُ الْقَوْمِ اَخْزَاكَ اللّٰهُ قَالَ لَاتَقُوْلُوْا هٰكَذَا لَا تُعِيْنُوْا عَلَيْهِ الشَّيْطَانَ وَلٰكِنْ قُوْلُوْا اَللّٰهُمَّ اغْفِرْلَهٗ اَللّٰهُمَّ ارْحَمْهُ۔ (رواه ابوداؤد)

3621. Sayyiduna Abu Hurayrah رضى الله عنه narrated that a man who had drunk wine was brought to Allah's Messenger صلى الله عليه وسلم. He instructed them to beat him. So, among them was the striker with his hand, striker with his garment striker with his shoe. Then, he instructed them to reproach him (with their tongue). So, they turned to him and scolded him, saying, "You are not afraid of Allah. You do not fear Him. You do not feel ashamed before Allah's Messenger." Some of them rebuked him, "May Allah shame you!" But, he said to them, "Do not say so and thereby do not help the devil overcome him. Rather, Pray, 'O Allah, forgive him! O Allah, have mercy on him.'[2]

COMMENTARY: The command to reproach the drunkard is of a *mustahab (desirable)* nature. But, the first command to beat him was *wajib (obligatory)*

They were instructed not to curse him because if Allah disgraced him then the devil would have power over him. Besides, if he was cursed, he could lose hope in Allah's mercy. In that way, the devil would achieve his wish, and if he commits more sin, Allah's wrath would fall on him.

PUNISHMENT ONLY AFTER PROOF

(٣٦٢٢) وَعَنِ ابْنِ عَبَّاسٍ قَالَ شَرِبَ رَجُلٌ فَسَكِرَ فَلُقِيَ يَمِيْلُ فِي الْفَجِّ فَانْطُلِقَ بِهٖ اِلٰى رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَلَمَّا حَاذٰى دَارَالْعَبَّاسِ اِنْفَلَتَ فَدَخَلَ عَلَى الْعَبَّاسِ فَالْتَزَمَهٗ فَذُكِرَ ذٰلِكَ لِلنَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَضَحِكَ فَقَالَ اَفَعَلَهَا وَلَمْ يَا مُرْفِيْهِ بِشَيْءٍ۔ (رواه ابوداؤد)

3622. Sayyiduna Ibn Abbas رضى الله عنه narrated that a man drank (wine) and became intoxicated. He was seen on the road (by the people) walking unsteadily (and screaming nonsense). He was being taken to Allah's Messenger صلى الله عليه وسلم but when he was near the house of (Sayyiduna) Abbas رضى الله عنه, he broke free (from them) and went to Abbas رضى الله عنه and clasped him (intending to get his intercession). The Prophet صلى الله عليه وسلم was told of that. He laughed and asked, "He did it, is that so?" And he did not give any command about him.[3]

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[1] Abu Dawud # 4489, Musnad Ahmad 4-88.

[2] Abu Dawud # 4477.

[3] Abu Dawud # 4476.

COMMENTARY: The Prophet صلى الله عليه وسلم did not punish this man because neither did he receive his confession nor did anyone testify against him. If he had come to the Prophet صلى الله عليه وسلم and confessed to his sin or witness had borne out against him, then the *hadd (prescribed punishment)* would have been enforced against him.

As for his walking unsteadily on the road, this observation is not enough for a *Shariah* rule to be applied punishing anyone for drinking wine.

SECTION III اَلْفَصْلُ الثَّالِثُ

DIYAH IS NOT *WAJIB (OBLIGATORY)* IF ONE DIES WHILE RECEIVING STRIPES

(٣٦٢٣) عَنْ عُمَيْرِ بْنِ سَعِيْدٍ النَّخْعِيِّ قَالَ سَمِعْتُ عَلِيَّ بْنَ اَبِيْ طَالِبٍ يَقُوْلُ مَا كُنْتُ لِاُقِيْمَ عَلٰى اَحَدٍ حَدًّا فَيَمُوْتُ فَاَجِدُ فِيْ نَفْسِيْ مِنْهُ شَيْئًا اِلَّا صَاحِبَ الْخَمْرِ فَاِنَّهٗ لَوْمَاتَ وَدَيْتُهٗ وَ ذٰلِكَ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَمْ يَسُنَّهٗ۔ (متفق عليه)

3623. Sayyiduna Umayr ibn Saeed Nakha'ee رحمه الله narrated that he heard (Sayyiduna) Ali ibn Abu Talib رضى الله عنه say, "If I were to award the *hadd (prescribed punishment)* to anyone and he were to die (while he is being flogged) then I shall have no regrets about him (because that would be in compliance with *Shariah*). But, this Excludes one who has drunk wine. If he were to die (while being flogged), I shall pay the bloodwit for him. That is because Allah's Messenger صلى الله عليه وسلم had not specified the *hadd (prescribed punishment)* about him, as a *sunnah (Prophet's* صلى الله عليه وسلم *practice)."*[1]

COMMENTARY: The Prophet صلى الله عليه وسلم did not specify how many stripes should be awarded to one who drinks wine. Some ahadith, however, say that forty, or about forty, stripes are to given to a drunkard.

Sayyiduna Ali رضى الله عنه was apprehensive lest the number of lashes that he awarded to the man (and he died) was in excess of the prescribed then he would have to make a retaliation. This action was a caution approach by Ali رضى الله عنه because when Umar رضى الله عنه decided to specify the number of stripes to a drinker of wine and consulated the sahabah (Prophet's Companions) رضى الله عنهم, Ali رضى الله عنه had said that he considered right stripes to be proper.

UMAR رضى الله عنه SPECIFIED THE NUMBER OF STRIPES TO DRUNKARD

(٣٦٢٤) وَعَنْ ثَوْرِ بْنِ زَيْدِ الدِّيْلَمِيِّ قَالَ اِنَّ عُمَرَ اسْتَشَارَ فِيْ حَدِّ الْخَمْرِ فَقَالَ لَهٗ عَلِيٌّ اَرٰى اَنْ تَجْلِدَهٗ ثَمَانِيْنَ جَلْدَةً فَاِنَّهٗ اِذَا شَرِبَ سَكِرَ وَاِذَا سَكِرَ هَذٰى وَاِذَا هَذٰى افْتَرٰى فَجَلَدَ عُمَرُ فِيْ حَدِّ الْخَمْرِ ثَمَانِيْنَ۔ (رواه مالك)

3624. Sayyiduna Thawr ibn Zayd Daylami رحمه الله said that Umar رضى الله عنه sought advice (of the sahabah (Prophet's Companions) رضى الله عنهم) about the prescribed punishment for drinking wine. Ali رضى الله عنه said to him, "I suggested that you should award him (drinker of wine eighty stripes because when he drinks (wine), he becomes intoxicated. When he is intoxicated, he talks incoherently. When he talks

[1] Bukhari # 6778, Muslim # 739-170.

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incoherently he slanders." So, Umar prescribed eighty stripes as punishment for drinking wine.[1]

COMMENTARY: The punishment to one who slanders, accuses falsely or defames innocent women is eighty lashes. So on the same premise a drinker of wine should be lashed eighty times.

This punishment is given to everyone who drinks wine whether he slanders others or not. Umar رضی اللہ عنہ accepted this opinion of Ali رضی اللہ عنہ and fixed eighty stripes for drinking wine. The sahabah (Prophet's Companions) رضی اللہ عنہم unanimously agreed to that.

[The name of the narrator Thawr ibn Zayd Daylami appears in the Muwatta as Thawr ibn Zayd Dilli.]

CHAPTER - V

CURSE MAY NOT BE INVOKED ON ONE WHO HAS BEEN AWARDED THE PRESCRIBED PUNISHMENT

بَابُ مَا لَا يُدْعٰى عَلَى الْمَحْدُوْدِ

In this chapter, we shall speak of a person who has become liable to receive a prescribed punished. Then, it is awarded to him. After that, is it proper to curse him and pray against him? For instance, a man cursed a drunk, (اخزاک اللہ) may Allah disgrace and deprive you!" Allah's Messenger صلی اللہ علیہ وسلم said to him that he must not do that, but he must pray for him to be forgiven and shown mercy.

SECTION I — اَلْفَصْلُ الْاَوَّلُ

DISALLOWED TO CURSE A SINNER

(٣٦٢٥) عَنْ عُمَرَ بْنِ الْخَطَّابِ اَنَّ رَجُلًا اسْمُهٗ عَبْدُاللّٰهِ تُلَقَّبُ حِمَارًا كَانَ يُضْحِكُ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَكَانَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَدْ جَلَدَهٗ فِي الشَّرَابِ فَاُتِيَ بِهٖ يَوْمًا فَاَمَرَ بِهٖ فَجُلِدَ فَقَالَ رَجُلٌ مِنَ الْقَوْمِ اَللّٰهُمَّ الْعَنْهُ مَا اَكْثَرَ مَا يُؤْتٰى بِهٖ فَقَالَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا تَلْعَنُوْهُ فَوَاللّٰهِ مَا عَلِمْتُ اَنَّهٗ يُحِبُّ اللّٰهَ وَرَسُوْلَهٗ۔ (رواه البخاری)

3625. Sayyiduna Umar ibn Khattab رضی اللہ عنہ narrated that a man whose name was Abdullah and sobriquet was Himar (meaning, Ass, because of his foolishness) used to make the Prophet صلی اللہ علیہ وسلم laugh. The Prophet صلی اللہ علیہ وسلم had awarded him lashes for drinking wine. One day, he was brought (again) and he gave an order about him, and he was flogged. One of the men there prayed against him, "O Allah, curse him! How often he is brought (here for drinking wine)!" The Prophet صلی اللہ علیہ وسلم said, "Do not invoke a curse on him, for by Allah, I do know that he loves Allah and His Messenger!"[2]

COMMENTARY: It is not permitted to curse a sinner by name, specifically. And, love of Allah and His Messenger صلی اللہ علیہ وسلم are a means to drawing near Allah, so it is never

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[1] Muwatta Maalik # 42. 1-2, Muwatta Imam Muhammad # 709.

[2] Bukhari # 6780.

allowed to invoke a curse on those who love Allah and His Messenger صلى الله عليه وسلم because the word (لعنة) (lanat-curse) implies deprivation of Allah's mercy.

(٣٦٢٦) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ اُتِيَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ بِرَجُلٍ قَدْ شَرِبَ فَقَالَ اضْرِبُوْهُ فَمِنَّا الضَّارِبُ بِيَدِهٖ وَالضَّارِبُ بِنَعْلِهٖ وَالضَّارِبُ بِثَوْبِهٖ فَلَمَّا انْصَرَفَ قَالَ بَعْضُ الْقَوْمِ اَخْزَاكَ اللّٰهُ قَالَ لَاتَقُوْلُوْا هٰكَذَا لَاتُعِيْنُوا عَلَيْهِ الشَّيْطَانَ۔ (رواه البخارى)

3626. Sayyiduna Abu Hurayrah رضى الله عنه said, "A man who had drunk wine was brought to the Prophet صلى الله عليه وسلم. He instructed (the men around) to beat him. So among us was the striker with his hand, the striker with his shoe, and the striker with his garment. As he was going away (after the punishment), someone among the people said (اخزاك الله) (may Allah disgrace you!). The Prophet صلى الله عليه وسلم said, 'Do not say so and do not support the devil in over whelming him.' "[1]

SECTION II اَلْفَصْلُ الثَّانِيْ

DEFAMING ONE WHO IS PUNISHED IS LIKE EATING CARRION

(٣٦٢٧) عَنْ اَبِيْ هُرَيْرَةَ قَالَ جَاءَ الْاَسْلَمِيُّ اِلَى النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَشَهِدَ عَلٰى نَفْسِهٖ اَنَّهٗ اَصَابَ امْرَاَةً حَرَامًا اَرْبَعَ مَرَّاتٍ كُلَّ ذٰلِكَ يُعْرِضُ عَنْهُ فَاَقْبَلَ فِي الْخَامِسَةِ فَقَالَ اَنِكْتَهَا؟ قَالَ نَعَمْ وَقَالَ حَتّٰى غَابَ ذٰلِكَ مِنْكَ فِيْ ذٰلِكَ مِنْهَا قَالَ نَعَمْ قَالَ كَمَا يَغِيْبُ الْمِرْوَدُ فِي الْمُكْحُلَةِ وَالرِّشَاءُ فِي الْبِئْرِ قَالَ نَعَمْ قَالَ هَلْ تَدْرِيْ مَا الزِّنَا قَالَ نَعَمْ اَتَيْتُ مِنْهَا حَرَامًا مَا يَاْتِي الرَّجُلُ مِنْ اَهْلِهٖ حَلَالًا قَالَ فَمَاتُرِيْدُ بِهٰذَا الْقَوْلِ قَالَ اُرِيْدُ اَنْ تُطَهِّرَنِيْ فَاَمَرَ بِهٖ فَرُجِمَ فَسَمِعَ النَّبِيُّ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ رَجُلَيْنِ مِنْ اَصْحَابِهٖ يَقُوْلُ اَحَدُهُمَا لِصَاحِبِهٖ اُنْظُرْ اِلٰى هٰذَا الَّذِيْ سَتَرَ اللّٰهُ عَلَيْهِ فَلَمْ تَدَعْهُ نَفْسُهٗ حَتّٰى رُجِمَ رَجْمَ الْكَلْبِ فَسَكَتَ عَنْهُمَا ثُمَّ سَارَ سَاعَةً حَتّٰى مَرَّ بِجِيْفَةِ حِمَارٍ شَائِلٍ بِرِجْلِهٖ فَقَالَ اَيْنَ فُلَانٌ وَفُلَانٌ فَقَالَا نَحْنُ ذَانِ يَا رَسُوْلَ اللّٰهِ فَقَالَ انْزِلَا فَكُلَا مِنْ جِيْفَةِ هٰذَا الْحِمَارِ فَقَالَا يَا نَبِيَّ اللّٰهِ مَنْ يَاْكُلُ مِنْ هٰذَا قَالَ فَمَا نِلْتُمَا مِنْ عِرْضِ اَخِيْكُمَا اٰنِفًا اَشَدُّ مِنْ اَكْلٍ مِنْهُ وَالَّذِيْ نَفْسِيْ بِيَدِهٖ اِنَّهُ الْاٰنَ لَفِيْ اَنْهَارِ الْجَنَّةِ يَنْغَمِسُ فِيْهَا۔ (رواه ابوداؤد)

3627. Sayyiduna Abu Hurayrah رضى الله عنه narrated that (Ma'iz) Aslami came to the Prophet صلى الله عليه وسلم and testified against himself four times that he had committed adultery with a woman. Each time the Prophet صلى الله عليه وسلم turned away from him (allowing him an opportunity to retract and avert the *hadd (prescribed punishment)*). But, the fifth time, he faced him and asked, "Did you have intercourse with her?" He said, "Yes!" He asked, "Till that from you (your sexual organ) disappeared in that of hers?" He said, "Yes!" Then, he asked, "Like a collyrium stick disappears in the case and a rope in the well?" He said, "Yes!" He asked, "Do you know what adulters is?" He said, "Yes, I did with her unlawfully what a man does with his

[1] Bukhari # 6777

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wife lawfully." He asked, "What do you intend (to get) by this confession?" He said, "I intend that you (punish and so) purify me." SO (having thus established his guilt) he gave command about him and he was stoned to death.
Then Allah's Prophet صلى الله عليه وسلم heard two of his sahabah (Prophet's Companions) رضى الله عنهم say, one to his companion, "Look at this man! Allah did conceal his fault but his self did not spare him (from confessing to his sin) till he was stoned (to death), the stoning of a dog." But, he (the Prophet صلى الله عليه وسلم said nothing to them. He walked a while till he came to the corpse of an ass (lying upside down) with its legs raised in the air (its body puffed up). He asked, "Where are so-and-so and so-and-so?" (He meant the two men.) They exclaimed, "Here we are! O Messenger of Allah!" He said, "Alight, and eat from the corpse of this ass." They submitted, "O Prophet of Allah, who can eat any of that (flesh)?" He said, What the two you have just now spoken in defaming your brother is more repulsive than eating from it. By Him who has my soul in His hand. He (Ma'iz) is now in the rivers of paradise, diving into them."

(٣٦٢٨) وَعَنْ خُزَيْمَةَ بْنِ ثَابِتٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ اَصَابَ ذَنْبًا اُقِيْمَ عَلَيْهِ حَدُّ ذٰلِكَ الذَّنْبِ فَهُوَ كَفَّارَتُهٗ۔ رَوَاهُ فِيْ شَرْحِ السُّنَّةِ۔

3628. Sayyiduna Khuzaymah ibn Thabit رضى الله عنه narrated, "If a person commits a sin and receives the prescribed punishment for that sin (like lashes for adultery and cutting off hand for stealing) then it is expiation for his sin."[1]

PUNISHMENT AVERTS RECKONING IN THE HEREAFTER

(٣٦٢٩) وَعَنْ عَلِيٍّ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ مَنْ اَصَابَ حَدًّا فَعُجِّلَ عُقُوْبَتُهٗ فِي الدُّنْيَا فَاللّٰهُ اَعْدَلُ مِنْ اَنْ يُثَنِّيَ عَلٰى عَبْدِهِ الْعُقُوْبَةَ فِي الْاٰخِرَةِ وَمَنْ اَصَابَ حَدًّا فَسَتَرَهُ اللّٰهُ عَلَيْهِ وَعَفَا عَنْهُ فَاللّٰهُ اَكْرَمُ مِنْ اَنْ يَّعُوْدَ فِيْ شَيْءٍ قَدْ عَفَا عَنْهُ۔ رَوَاهُ التِّرْمِذِيُّ وَابْنُ مَاجَةَ وَقَالَ التِّرْمِذِيُّ هٰذَا حَدِيْثٌ غَرِيْبٌ۔

3629. Sayyiduna Ali narrated that the Prophet صلى الله عليه وسلم said, "If anyone is liable to receive the *hadd (prescribed punishment)* (having committed a sin that makes *hadd (prescribed punishment) wajib (obligatory)* on him or a tazeer *wajib (obligatory)* on him), then Allah is too Just to punish His slave in the hereafter a second time. And as for him, who commits a sin (and is liable to receive a punishment of *hadd (prescribed punishment)*) and Allah conceals his crime and pardons him then Allah is too kind to return to something that He has forgiven.[2]

COMMENTARY: The man made a sincere repentance seeking Allah's forgiveness. So, Allah forgives him in this world and conceals his sin. It is expected of Him, therefore, that He will be kind and forgive him in the hereafter, too.

BETTER TO CONCEAL ONE'S SINS THAN TO DISCLOSE THEM

The majority of the ulama (Scholars) hold that if a person commits a sin then rather than disclose it (with a confession before the rulers to get the punishment in this world), it is

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[1] Musnad Ahmad 5-215, Shah us-*sunnah (Prophet's صلى الله عليه وسلم practice).*

[2] Tirmidhi # 2626 (2635), Ibn Majah # 2604, Musnad Ahmad 1-199.

better for him and a preferable course that he conceal his sin and make a repentance to Allah and seek forgiveness from Him. Of course, submitting himself before the ruler and making a confession of his sin is a sign of his strong faith, of soundness of his heart and his fear of Allah, but concealing it is better.

CHAPTER - VI

TAZEER (DISCRETIONARY PUNISHMENT) بَابُ التَّعْزِيْرِ

The root of the word (تعزیر) tazeer is (عذر) azzar. It means to forbid,' 'to stop', 'to blame'. In the terminology of *shariah*, this word (tazeer) is used in the sense of the punishment that is milder than *hadd (prescribed punishment)* and is awarded by way of a warning and a deterrent. It is called tazeer because it is aimed to prevent one from committing the deed (sin or crime) again because of which one had to undergo the punishment (tazeer).

DIFFERENCE BETWEEN *HADD (PRESCRIBED PUNISHMENT)* & TAZEER: *Hadd (prescribed punishment)* is the punishment prescribed by Allah's Book and the *sunnah (Prophet's* صلی اللہ علیہ وسلم *practice)* of His Messenger and it is also specified. The ruler has authority only to enforce it but he is not allowed to enact it or to amend it.
On the other hand, tazeer is punishment that is not specified by Allah's Book or the *sunnah (Prophet's* صلی اللہ علیہ وسلم *practice)* of His Messenger صلی اللہ علیہ وسلم. Rather, it is enforced at the discretion of the ruler. He may determine it according to circumstances and exigencies of the time and need of the moment.

SECTION I اَلْفَصْلُ الْاَوَّلُ

THE MAXIMUM PUNISHMENT AS TAZEER

(٣٦٣٠) عَنْ اَبِيْ بُرْدَةَ بْنِ نِيَارٍ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لَا يُجْلَدُ فَوْقَ عَشْرِ جَلَدَاتٍ اِلَّا فِيْ حَدٍّ مِّنْ حُدُوْدِ اللّٰهِ۔ (متفق علیہ)

3630. Sayyiduna Abu Bardah ibn Niyar رضی اللہ عنہ **narrated that the Prophet** صلی اللہ علیہ وسلم **said, "More than ten lashes must not be awarded (in punishment to anyone), except in one of the *hadd (prescribed punishment)* (prescribed punishment of the) of the *hudud* of Allah."**[1]

COMMENTARY: Though this hadith says that it is not allowed to award more than ten lashes in the cases of discretionary punishments or tazeer yet the ulama (Scholars) say that this hadith is abrogated.

As for the maximum number of lashes to be awarded in case of tazeer, the jurists have different opinions about it. Imam Abu Hanifah رحمہ اللہ and Imam Muhammad رحمہ اللہ say that more than thirty-nine lashes must not be awarded to anyone. Imam Abu Yusuf رحمہ اللہ says that a maximum of seventy lashes may be awarded.

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[1] Bukhari # 8648, Muslim # 40. 1708, Tirmidhi # 1463, Abu Dawud # 4491, Ibn Majah # 2601, Darimi # 2314, Musnad Ahmad 4-45.

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As for the minimum number of lashes, all of them agree that they should be three. Moreover, they agree too that the number of lashes awarded in case of tazeer should not be as many as the number awarded against *hadd (prescribed punishment)*. However, if they are more severe than that then there is no harm.

SECTION II اَلْفَصْلُ الثَّانِيْ

DO NOT BEAT ON FACE OF THE GUILTY

(٣٦٣١) عَنْ اَبِيْ هُرَيْرَةَ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اِذَا ضَرَبَ اَحَدُكُمْ فَلْيَتَّقِ الْوَجْهَ۔(رواه ابوداؤد)

3631. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "When any one of you enforces a beating (on the guilty), he should keep away from (striking) the face."[1]

PUNISHMENT FOR RUDENESS

(٣٦٣٢) وَعَنِ ابْنِ عَبَّاسٍ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اِذَا قَالَ الرَّجُلُ لِلرَّجُلِ يَايَهُوْدِيُّ فَاضْرِبُوْهُ عِشْرِيْنَ وَاِذَا قَالَ يَا مُخَنَّثُ فَاضْرِبُوْهُ عِشْرِيْنَ وَمَنْ وَقَعَ عَلٰى ذَاتِ مَحْرَمٍ فَاقْتُلُوْهُ۔ رَوَاهُ التِّرْمِذِيُّ وَقَالَ هٰذَا حَدِيْثٌ غَرِيْبٌ۔

3632. Sayyiduna Ibn Abbas رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "If anyone calls another person, 'O Jew' then give him twenty lashes. If he calls him 'O mukhannath,' then give him twenty lashes.If a man has (illicit) sexual intercourse then kill him.[2]

COMMENTARY: Mukhannath are effeminate men. Their limbs and their speech are like women's. If anyone accuses a slave or an infidel of committing illicit sex though he is innocent, then the false accuser is awarded the tazeer (some kind of punishment). So too, if anyone falsely accuses a Muslim a crime other than adultery then he is awarded a tazeer (or discretion any punishment. A *hadd (prescribed punishment)* is awarded for false accusation of adultery). Examples of these false accusations are calling him: O sinner, O disbeliever, O evil one, O thief, O hypocrite, O homosexual, O Jew, O mukhannath, O cheater, O son of an adulteress, O zindiq, (o dog), O supporter of adulterers or thieves, (O bastard).

Tazeer will not be liable on one who calls a Muslim: O donkey, (O dog), O monkey, and other animals, O barber, (O bastard), O deformed one, O worthless, O joker, O swindler, O knave, O fool, O doubter. However, the ulama (Scholars) say that the tazeer will be awarded to one who addresses these words to a virtuous, respectable person. (The words in parenthesis are repeated in both places in the original urdu.)

HUSBAND'S RIGHT: A husband has a right to punish his wife if she disobeys him when he asks her to adorn herself for him (when they are together alone), or when she does not respond to his advances, or if she does not offer the (prescribed) *salah (prayer)*, or if she does not have a purifying bath (after sexual intercourse), or if she goes out of his house without his permission.

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[1] Abu Dawud # 4493, Musnad Ahmad 2-244.

[2] Tirmidhi # 1467, Ibn Majah # 2568 (2564).

SEX WITH MAHRAM: If anyone has a sexual intercourse within the forbidden degrees (mahram), then he should be killed. Imam Ahmad رحمه الله goes by this command but the majority of the ulama (Scholars) hold that the apparent meaning is not to be observed. This statement merely means to discourage such acts. Some others say that if a person regards sexual intercourse with a mahram as lawful then he should be killed, otherwise the same command as for adultery applies in this case too (as with any woman): the married fornicator is to be stoned to death while the unmarried adulterer is to be flogged.

STEALING SPOILS

(٣٦٣٣) وَعَنْ عُمَرَ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اِذَا وَجَدْتُّمُ الرَّجُلَ قَدْ غَلَّ فِيْ سَبِيْلِ اللّٰهِ فَاَحْرِقُوْا مَتَاعَهٗ وَاضْرِبُوْهُ۔ رَوَاهُ التِّرْمِذِيُّ وَاَبُوْدَاوٗدَ وَقَالَ التِّرْمِذِيُّ هٰذَا حَدِيْثٌ غَرِيْبٌ۔

3633. Sayyiduna Umar رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "When you detect a man who is treacherous (concerning spoils) in Allah's path, then burn his possessions and give him a beating."[1]

COMMENTARY: Some ulama (Scholars) say that the command to burn his property is no more valid. It is abrogated.

Imam Ahmad رحمه الله, however, goes by the apparent meaning of this hadith. He says that all property and belongings of this man who misappropriates the spoils should be burnt, except copies of the Quran, weapons and animals.

Also, this man should be beaten as a discretionary punishment. However, as stated earlier, he is not liable to have his hand cut off.

[And this chapter is without setion III]

CHAPTER - VII

ABOUT WINE & THE WARNING TO ONE WHO DRINKS IT — بَابُ بَيَانِ الْخَمْرِ وَوَعِيْدِ شَارِبِهَا

In this chapter, wine is defined, and to what the drinker makes himself liable and a warning is sounded to the drinker.

WHAT IS KHAMR: According to the Qamus, Khamr (wine) is that which intoxicates when it is drunk. It may be the crude juice of grapes or of any other thing. The more correct approach is to go by the generally understood meaning of the word whatever intoxicates whether juice of grapes or of anyother thing, because wine was forbidden in Madinah when wine from grapes was unknown. Rather, Khamr was produced only from dates at that time.

WHY SO CALLED: In the opinion of the lexicographers, Khamr means 'to cover', 'to conceal', 'to confound'. Since wine covers the drinker's mind and confuses and confound his senses, so it is called Khamr.

KINDS OF INTOXICANTS: There are many kinds of things that intoxicate.

(1) One of these is wine. It is produced from grapes. Juice of grapes is placed in a vessel for a few days till it thickens and ferments and becomes ebullient and spirituous. In

[1] Tirmidhi # 1461 (1466), Abu Dawud # 2713.

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this way, it becomes an intoxicant. The correct opinion which is observed is that it is not necessary for it to gather foam. It is called Khamr in Arabic.

(2) The second kind is to boil the juice of grapes to some extent and store (for some time). It is called (باذق) badhiq (in Arabic) and (باده) badah (in Persian).When the juice of grapes is boiled till one-fourth of it evaporates and three-fourths remains, it is called (طلاء) Tila.

(3) The third kind is called (نقيع التمر) naqi-ut-tamr also called (سكر) sikkir. It is the thickened juice of dates it gathers foam.

(4) The fourth kind is called (نقيع الزبيب) naqi-uz-zabib.[1]

It is the juice of raisins (large and small) that is boiled and produced foam.

RULING: Of these four kinds, the first kind is absolutely prohibited. There is no doubt about it. The remaining three kinds are prohibited in the unanimous opinion of the ulama (Scholars) when they are kept in a vessel after boiling them and they thicken, because in this way they become intoxicants. But, if they do not intoxicate then they are not forbidden. For instance, if dates are immersed in water for some time till the water looks like a sherbet (or juice) without any kind of change in it , then it is proper to drink it.

OTHER DRINKS: There are four other drinks which, according to Imam Abu Hanifah, are lawful to drink provided they are boiled in a simple way such that they do not intoxicate, but if they become intoxicants then these kinds also become forbidden Again, if they are kept aside for along time without boiling them and they gather foam, then too it is forbidden to drink them.

NABIDTH: One of these four kinds is nabidth. It is produced from dates and is boiled to some extent. Even if it becomes dense then too it is allowed to drink it.

KHALEET: It is a juice prepared by boiling for a little.

THIRD KIND: It is nabidh prepared with honey, wheat, barley and corn or millet boiled in water to some extent to produce a drink.

MUTHALLITH YAMAN: It is the fourth kind. The juice of grape is boiled till two parts of it evaporate and one part (or one-third) of it remains as a drink.

RULING ON THESE FOUR: Imam Abu Hanifah رحمه الله said that if anyone drinks any of them to gain strength to be able to worship well then it is allowed. But, if it is drunk to enjoy and get sexual pleasure then it is prohibited.

However, Imam Muhammad رحمه الله held that is forbidden even to obtain energy for worship. The Hanafis, therefore, go by the ruling of Imam Muhammad رحمه الله. It is stated in the Ayni Sharh Kanz that Imam Maalik رحمه الله. Imam Shafi'i and Imam Ahmad رحمه الله and from the Hanafis Imam Muhammad رحمه الله rule: If a greater part of anything is an intoxicant and inebriates and befuddles, then even a small quantity of it is forbidden, whatever the way it goes into the drinker's head.[2]

The evidence lies in the hadith in Ibn Majah and Daraqutni that Allah's Messenger صلى الله عليه وسلم said, "Whatever is an intoxicant is wine and all intoxicants are forbidden."[3]

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[1] Hidayah has it noogoo zabib

[2] Ibn Majah # 3392 to 3394.

[3] Ibn Majah # 3390 and (similar) # 3386 to 3391, Daraqutni.

Hence, the Hanafi abide by the ruling of Imam Muhammad رحمه الله.

We know, therefore that every thing spirituous and intoxicant is wine and forbidden whether it is a drink prepared from grapes, dates, raisin, honey, wheat, barley, millet or corn or it may be the extract or juice of any tree, or it may be a kind of grass. It is forbidden irrespective of the quantity consumed, small or great.

DIVORCE: If anyone divorces his wife in a state of intoxication, then, according to the jurists, divorce will be effective whether the intoxicant had resulted from wine or nabidh, etc.

We stated in the foregoing lines that the Imams Maalik رحمه الله, Shafi'i رحمه الله and Ahmad ibn Hanbal رحمه الله as also from the Hanafis Imam Muhammad رحمه الله and, besides them, the scholars of hadith, hold that every intoxicant is forbidden, little or much. Imam Abu Hanifah رحمه الله holds that a drink is filthy and forbidden and falls under the same command as wine which boils, thickens and gathers foam. And, he says that apart from these, unless they intoxicate, other things are not forbidden. However, the research scholars of the Hanafis who prefer to exercise caution, follow the verdict of Imam Muhammad رحمه الله. It is stated so in the Nihayah, Ayni, Zayl'i, Durr Mukhtar, Al Ishabah wa an-Naza'ir , Fatawa Alamgiri, Fatawa Hummadiyah and Sharh Mawahibur Rahman. In fact, some of these assert the Imam Abu Hanifah رحمه الله concurred with Imam Muhammad رحمه الله. In this case, all the imams are one on this issue.

Muwlana Abul Hayyi Lakhnowi رحمه الله had answered a question that 'leaved bread' is forbidden. He delved exhaustively on the forgoing issue too and attested confirmation from nearly forty scholars of the Hanafis and the Shafi'is.

Among things that cause intoxication, are cannabis, intoxicating grass, herbal plants and opium. It is forbidden to eat or drink them because they completely disrupt the human mind and hinder man from worship. The Ulama (Scholars) state that if anyone says that cannabis etc are lawful (to consume) then he is zindiq and a bid'ati (innovator). Rather, the jurist Najmuddin Zahidi رحمه الله has called him a disbeliever,and said that it is permissible to kill him.

TOBACCO: Also, tobacco is forbidden as stated in Durr Mukhtar. Shah Abdul Aziz Mu*hadd (prescribed punishment)*ith Dahlawi رحمه الله has classified puffing at a hookah[1] (or a hubble.bubble) as makruh tanzihi (disapproved for purification). This is because the mouth of one who puffs at the hookah smells of onion and garlic and not only that it also resembles the inmates their mouths and it does also from this man's mouth. Besides, sound nature dislikes this habit. Also, it causes extreme lethargy, and it causes some people to swoon. This thing is among the (مفتر) muftar, meaning that which creates sloth and neglect. According to a hadith transmitted by Imam Ahmad رحمه الله and others:

"Whatever makes one lazy and neglectful is forbidden."

The compiler of Sirah and Sahah say muftar means to grow laziness. Imam Raghib has written in Mufradat ul-Quran that fatar and future mean to 'slow down after being active,' 'becoming mild after fervour,' 'turning feeble after good health.' These things are found in one who puffs at the hookah.

As for the meaning of muftar given by some as 'heating of the body,' this is a rare meaning

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[1] an oriental tobacco pipe with a long, flexible tube draws smoke through water in a bowl. (Oxford concise Dictionary)

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and it is contrary to what most lexicographers say unless it refers to an internal heat. Anyway, puffing at the hookah takes one away from Allah's pleasure because it defies the *sunnah (Prophet's صلى الله عليه وسلم practice)* of siwak. While the siwak (cleanses the teeth and) removes the bad odour from the mouth, the hookah makes the mouth bad smelling. This hadith is found in the books of hadith Sahah, etc. about siwak:

اَلسِّوَاكُ مُطْهِرَةٌ لِلْفَمِ وَمَرْضَاتٌ لِلرَّبِّ

"The siwak is a means of purifying the mouth and it earns the pleasure of the lord."[1] (siwak is a piece of a twig used to brush and clean teeth.)

[For more information see the English translation the Hidayah v2 pp 480 etc. Published in volumes by Darul-Isha'at, Karachi.]

SECTION I اَلْفَصْلُ الْاَوَّلُ

INGREDIENTS OF WINE

(٣٦٣٤) عَنْ اَبِيْ هُرَيْرَةَ عَنْ رَّسُوْلِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ الْخَمْرُ مِنْ هَا تَيْنِ الشَّجَرَ تَيْنِ: النخلةِ وَالْعِنَبَةِ۔ متفق عليه۔

3634. Sayyiduna Abu Hurayrah رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "Wine is produced from these two trees: the date-palm and the grape-vine."[2]

COMMENTARY: The meaning is that these two things: dates and grapes are the main source of wine. It does not limit the sources to these two things because of the Prophet صلى الله عليه وسلم's saying (كل سكر خمر) "Every intoxicant is wine" (in that the same command applies to all).

(٣٦٣٥) وَعَنِ ابْنِ عُمَرَ قَالَ خَطَبَ عُمَرُ عَلٰى مِنْبَرِ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ اِنَّهٗ قَدْ نَزَلَ تَحْرِيْمُ الْخَمْرِ وَهِيَ مِنْ خَمْسَةِ اَشْيَاءِ الْعِنَبِ وَالتَّمْرِ وَالْحِنْطَةِ وَالشَّعِيْرِ وَالعَسَلِ والْخَمْرُ مَاخَامَرَ الْعَقْلَ۔ (رواه البخارى)

3635. Sayyiduna Ibn Umar رضى الله عنه said that (Sayyiduna) Umar رضى الله عنه delivered a sermon from the pulpit of Allah's Messenger صلى الله عليه وسلم and he said, "Prohibition of wine has been revealed. And it is produced from five things: grapes, dates, wheat, barley and honey. Wine is what covers and confounds the mind."[3]

COMMENTARY: The ulama (Scholars) explain that the concluding words describe wine as what confounds the mind. Hence, these five things are not all from which wine is prepared. There are other things too (Prohibition was with verse 90 of sunah al-Ma'idah).

KHAMR WAS FROM DATES

(٣٦٣٦) وَعَنْ اَنَسٍ قَالَ لَقَدْ حُرِّمَتِ الْخَمْرُحِيْنَ حُرِّمَتْ وَمَا نَجِدُ خَمْرَ الْاَعْنَابِ اِلَّا قَلِيْلًا وَعَامَّةُ خَمْرِنَا الْبُسْرُ وَالتَّمْرُ۔ (رواه البخارى)

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[1] Nasai # 5, Musnad Ahmad 6-124, Abu Yala # 4916, Nasai Kubra # 4, Bukhari before # 1934 as chapter heading.

[2] Musnad Ahmad 2-279, Muslim # 13. 1985, Tirmidhi # 1875 (1882), Abu Dawud # 3678, Nasai # 5572, Ibn Majah # 3378

[3] Bukhari # 5588, Muslim # 33-3032, Abu Dawud # 3669, Nasai # 5578.

3636. Sayyiduna Anas رضی اللہ عنہ said, "Prohibition of wine was (enforced promptly) when it was forbidden (by a revelation). We did not (at that time) get wine from grapes but a little. Most of our wine was from busr (unripe dates) and tamr (dry dates)."[1]

COMMENTARY: The fresh bud, or plumule, on a palm tree is called (طلع) tala in Arabic. It is the spadix which is the initial form of dates where after (خلال) Khalal or green dates, (بسر) busr or unripe dates, (رطب) rutb or fresh, moist dates, are followed by dried dates and the final form (تمر) tamr or ripe dates.

SPIRITUOUS DRINK IS FORBIDDEN

(٣٦٣٧) وَعَنْ عَآئِشَةَ قَالَتْ سُئِلَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَنِ الْبِتْعِ وَهُوَ نَبِيْذُ الْعَسَلِ فَقَالَ كُلُّ شَرَابٍ اَسْكَرَ فَهُوَ حَرَامٌ۔ (متفق علیہ)

3637. Sayyidah Ayshah رضی اللہ عنہا said that Allah's Messenger صلی اللہ علیہ وسلم was asked about bit (بتع) or mead which is nabidh from honey. He said, "Every drink that intoxicates is forbidden."[2]

COMMENTARY: The word bit is also biti. Honey is kept in a vessel for some days till it becomes strong like the nabidh from dates. Both kinds are forbidden if they cause intoxication. It is said that bit was common among the people of Yemen.

DEPRIVED OF PURE WINE OF NEXT WORLD

(٣٦٣٨) وَعَنِ ابْنِ عُمَرَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ كُلُّ مُسْكِرٍ خَمْرٌ وَكُلُّ مُسْكِرٍ حَرَامٌ وَ مَنْ شَرِبَ الْخَمْرَ فِي الدُّنْيَا فَمَاتَ وَهُوَ يُدْ مِنْهَا لَمْ يَتُبْ لَمْ يَشْرَبْهَا فِي الْآخِرَةِ۔ (رواہ مسلم)

3638. Sayyiduna Ibn Umar رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Every intoxicant is (under the same command as) wine and every intoxicant is forbidden. He who drinks wine in this world and dies as a habitual drinker, without making a repentance, will not drink it in the hereafter."[3]

COMMENTARY: The habitual drinker drinks wine taking it to be lawful, or these words are meant to keep him away from drinking, or he will not get the pure wine of the next world with those who enter paradise straightaway.

WARNING TO DRINKERS

(٣٦٣٩) وَعَنْ جَابِرٍ اَنَّ رَجُلًا قَدِمَ مِنَ الْيَمَنِ فَسَأَلَ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَنْ شَرَابٍ يَشْرَبُوْنَهُ بِاَرْضِهِمْ مِنَ الذُّرَةِ يُقَالُ لَهُ الْمِزْرُ فَقَالَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَوَ مُسْكِرٌ هُوَ؟ قَالَ نَعَمْ قَالَ كُلُّ مُسْكِرٍ حَرَامٌ اِنَّ عَلَى اللّٰهِ عَهْدًا لِمَنْ يَشْرَبُ الْمُسْكِرَ اَنْ يَّسْقِيَهُ مِنْ طِيْنَةِ الْخَبَالِ قَالُوْا يَا رَسُوْلَ اللّٰهِ وَ مَا طِيْنَةُ

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[1] Bukhari # 5580, Muslim (like it) # 7-1980, Nasai # 5543.

[2] Bukhari # 5586, Muslim # 67-2001, Abu Dawud # 3682, Tirmidhi # 1863 (1870), Nasai # 5594, Ibn Majah # 3386, Muwatta Maalik # 9 (Ashribah), Musnad Ahmad 6-190.

[3] Muslim # 73-2003, Bukhari (second partonly) # 5575, (and so) Tirmidhi # 1868 (1871), Ibn Majah # 3373, Darimi # 2090, Muwatta Maalik # 11 (Ashribah), Musnad Ahmad 2-19

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الْجَبَالِ قَالَ عَرَقُ اَهْلِ النَّارِ اَوْ عُصَارَةُ اَهْلِ النَّارِ۔ (رواه مسلم)

3639. Sayyiduna Jabir رضی اللہ عنہ narrated that a man arrived from Yemen. He asked the Prophet صلی اللہ علیہ وسلم about a kind of liquor they consumed in Yemen which was produced from corn and is called mizr. The Prophet صلی اللہ علیہ وسلم asked him, "Is it intoxicating?" He said, "Yes!" So, he said, "Every intoxicant is forbidden. And (remember) about one who drinks intoxicants that he will give him to drink from tinat ul-Khabal." They (the sahabah (Prophet's Companions) رضی اللہ عنہم) asked, "O Messenger of Allah, what is tinat ul-Khabal?" He said, "The perspiration of the inmates of hell." Or, he said, "The puss from the wounds of the inmates of hell."[1]

COMMENTARY: The translation of Shaykh Abdul Haq Mu*hadd (prescribed punishment)*ith Dahlawi رحمہ اللہ gives the meaning of Khabal as the 'sweat' or 'puss or blood' of the inmates of hell, and tinat as 'sediment'.

ABOUT NABIDH

(٣٦٤٠) وَعَنْ اَبِيْ قَتَادَةَ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ نَهٰى عَنْ خَلِيْطِ التَّمْرِ وَالْبُسْرِ وَعَنْ خَلِيْطِ الزَّبِيْبِ وَالتَّمْرِ وَعَنْ خَلِيْطِ الزَّهْوِ وَالرُّطَبِ وَقَالَ انْتَبِذُوْا كُلَّ وَاحِدٍ عَلٰى حِدَةٍ۔ (رواه مسلم)

3640. Sayyiduna Abu Qatadah رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم forbade that dried date and unripe dates should be mixed (to prepare nabidh), that raisins and dried dates should be mixed (to prepare nabidh), that zahwi (زهو) which is unripe date that takes yellow and red colour) should be mixed with fresh dates (to prepare nabidh). But, he said, "Prepare nabidh of each (by soaking it) separately."[2]

COMMENTARY: The Prophet صلی اللہ علیہ وسلم forbade the soaking of two kinds of fruit together (to make nabidh from them), but he allowed each to be soaked separately (to make nabidh from it). The reason is that one of the two kinds of fruit may respond to water more quickly than the other and become an intoxicant casting an influence on the other, The nabidh will cause intoxication and it will not be possible to identify the intoxicant. So, drinking it will be unlawful.

Imam Maalik رحمہ اللہ and Imam Ahmad رحمہ اللہ abide by this hadith. They say that it is unlawful to drink this nabidh whether it intoxicates or not. Other say that it is forbidden only if there is intoxicant from it.

ALLOWED TO CONSUME VINEGAR FROM WINE OR NOT?

(٣٦٤١) وَعَنْ اَنَسٍ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ سُئِلَ عَنِ الْخَمْرِ يُتَّخَذُ خَلًّا؟ فَقَالَ لَا۔ (رواه مسلم)

3641. Sayyiduna Anas رضی اللہ عنہ said that the Prophet صلی اللہ علیہ وسلم was asked about wine being processed into vinegar (by immersing salt and onion into it). He said, "No." (It is not lawful).[3]

COMMENTARY: The Hanafis say that if wine is transformed into vinegar then it is allowed to use it for eating and drinking. The vinegar may be prepared by mixing

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[1] Muslim # 72-2002, Nasai # 5712, Nasai Kubra 5218, Musnad Ahmad 3-361.

[2] Bukhari # 5602, Muslim # 26-1988, Abu Dawud # 3704, Nasai # 5551, Ibn Majah # 3397, Darimi # 2113, Musnad Ahmad 5-309.

[3] Muslim # 11-1983, Tirmidhi # 1294 (1298), Darimi # 2115, Musnad Ahmad 3-260.

something in wine or without adding anything to it, by putting it aside for many days, or by leaving it in the sun after which it turns into vinegar automatically.

Imam Shafi رحمه الله says that if vinegar is processed by mixed something with wine, then it is not lawful to consume. If it is left in sun and it turns into vinegar without anything being added to it then he gave two verdicts about it and the more approved is that the wine is no more wine but will become pure and it will be allowed to consume it.

The Hanafis say that the Prophet صلى الله عليه وسلم had said unreservedly:

نِعْمَ الْإِدَامُ الْخَلُّ

(The best of seasoning is vinegar.) Hence, vinegar is lawful. Secondly, if the impurity is removed from wine because of which it was unlawful and a pure state is introduced into it then becomes lawful to consume.

As for this hadith (under discussion) the Hanafis say that the Prophet صلى الله عليه وسلم had denied that it was lawful because this question was asked after wine was forbidden and people had long been used to drinking it. Naturally, any habit that has been given up after a very long practice does not go out of minds suddenly. Minds do incline toward it for a long time afterwards. Therefore, the Prophet صلى الله عليه وسلم forbade the use of vinegar processed from wine lest the devil tempt the people to drink wine in the name of vinegar. Later, when the people were used to the prohibition of wine and there was no likelihood of their returning to it, the consumption of vinegar was permitted, processed from wine. The compiler of Hidayah has transmitted a hadith from Jabir رضى الله عنه in a marfa form:

خَيْرُ خَلِّكُمْ خَلُّ خَمْرِكُمْ۔ (بيهقى)

(The best of your vinegar is that which is produced from wine). Bayhaqi, Kitab Marifah.

NOT TO BE USED AS MEDICINE

(٣٦٤٢) وَعَنْ وَائِلٍ الْحَضْرِمِيِّ اَنَّ طَارِقَ بْنَ سُوَيْدٍ سَأَلَ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَنِ الْخَمْرِ فَنَهَاهُ فَقَالَ اِنَّمَا اَصْنَعُهَا لِلدَّوَاءِ فَقَالَ اِنَّهُ لَيْسَ بِدَوَاءٍ وَلٰكِنَّهُ دَاءٌ۔ (رواه مسلم)

3642. Sayyiduna Wa'il al-Hadrami رضى الله عنه narrated that (Sayyiduna) Tariq ibn Suwayd رضى الله عنه asked the Prophet رضى الله عنه about wine. He forbade him. Then he submitted, "We (will) only use it as a medicine." He said, "It is not a medicine but is (itself) a malady."[1]

COMMENTARY: Most ulama (Scholars) say that wine must not be used as medicine. Some ulama (Scholars) maintain, however, that if a physician says that there is no remedy for an illness but wine, then it is allowed to use it, but the physician must be skilled.

Similarly, if a morsel or something else gets stuck in a person's throat and cannot be swallowed and there is no water or any liquid to gulp it down so that he might die of suffocation, then all the ulama (Scholars) say, unanimously, that it is lawful to drink only so mush wine as is enough to get that thing down the throat.

ALLAH HAS NOT PLACED CURE IN THE UNLAWFUL THINGS: It has been mentioned earlier in the beginning of the previous chapter, that the prohibition of wine was not sent down (in the verses of the Quran) all of a sudden but was sent down

[1] Muslim # 12-1984, Daimi # 2095, Musnad Ahmad 4-331

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gradually. The first of these verses was cited there. It also says: (وَمَنَافِعُ لِلنَّاسِ) {and there is some benefit in it for the people}

The exegetes have written much on what these benefits could be. Some of them have pointed out that benefits refer to the soundness of the human body but can wine benefit the human body in any way, or be a means of cure of some illness? We must remember the words of the Prophet صلى الله عليه وسلم that Allah has not placed cure in anything that is unlawful.

SECTION II اَلْفَصْلُ الثَّانِيْ

PUNISHMENT FOR DRINKING WINE

(٣٦٤٣-٣٦٤٤) عَنْ عَبْدِاللّٰهِ بْنِ عُمَرَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ شَرِبَ الْخَمْرَ لَمْ يُقْبَلِ اللّٰهُ لَهٗ صَلَاةً اَرْبَعِيْنَ صَبَاحًا فَاِنْ تَابَ تَابَ اللّٰهُ عَلَيْهِ فَاِنْ عَادَ لَمْ يُقْبَلِ اللّٰهُ لَهٗ صَلَاةً اَرْبَعِيْنَ صَبَاحًا فَاِنْ تَابَ تَابَ اللّٰهُ عَلَيْهِ فَاِنْ عَادَ لَمْ يُقْبَلِ اللّٰهُ لَهٗ صَلَاةً اَرْبَعِيْنَ صَبَاحًا فَاِنْ تَابَ تَابَ اللّٰهُ عَلَيْهِ فَاِنْ عَادَ فِي الرَّابِعَةِ لَمْ يُقْبَلِ اللّٰهُ لَهٗ صَلَاةً اَرْبَعِيْنَ صَبَاحًا فَاِنْ تَابَ لَمْ يَتُبِ اللّٰهُ عَلَيْهِ وَسَقَاهُ مِنْ نَهْرِ الْخَبَالِ۔ رَوَاهُ التِّرْمِذِيُّ وَرَوَاهُ النَّسَائِيُّ وَابْنُ مَاجَةَ وَالدَّارِمِيُّ عَنْ عَبْدِاللّٰهِ بْنِ عَمْرٍو۔

3643. Sayyiduna Abdullah ibn Umar رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "If anyone drinks wine (and does not repent) then Allah does not accept his *salah (prayer)* for forty days. If he repents then Allah relents to him. If he reverts (to it), then Allah does not accept his *salah (prayer)* for forty days, but if he repents then Allah relents to him. Again, if he reverts (to it), then Allah does not accept his *salah (prayer)* for forty days, but if he repents then Allah relents to him. Then, if he reverts to it a fourth time, Allah does not accept his *salah (prayer)* over forty days and even if he repents, Allah does not relent to him, and He will give him to drink from the river of Khabal (which is the pus of the inmates of hell)."[1]

3644. Sayyiduna Abdullah ibn Amr رضى الله عنه narrated (the same hadith # 3463).[2]

COMMENTARY: The man will not get reward for offering *salah (prayer)* but he will have discharged his duty to offer it. The worship of *salah (prayer)* has been mentioned here specifically to make realize that when *salah (prayer)* is not approved which is the superior most of all physical forms of worship then what way be said of the other forms of worship.

The number of forty days is perhaps mentioned because a drunkard retains the effect of wine in different ways for as many days.

The Prophet's صلى الله عليه وسلم words that Allah will not relent to him the fourth time are by way of warning and are meant to keep him away from sin. In fact, he has said elsewhere, "If anyone sins and regrets and makes a repentance and hopes that Allah will forgive him then he is not defiant even if commits the same sin seventy times in a day."

Or, the Prophet's صلى الله عليه وسلم words mean that he who drinks wine the essence of all sins is so much under its bleak influence that he is unable to make a sincere repentance. He is lost

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[1] Tirmidhi # 1862, Musnad Ahmad 2-153

[2] Nasia # 5669, Ibn Majah # 3377, Darimi # 2091, Musnad Ahmad 2-189.

to the extent that he dies in his obstinacy.

LITTLE OF INTOXICANT IS ALSO HARAAM

(٣٦٤٥) وَعَنْ جَابِرٍ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ مَا اَسْكَرَ كَثِيْرُهُ فَقَلِيْلُهُ حَرَامٌ۔ (رواه الترمذى وابوداؤد وابن ماجة)

3645. Sayyiduna Jabir رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "If much of anything intoxicates, then a little of it is (also) prohibited."[1]

COMMENTARY: If there is a liquor whose large amount causes intoxication but a small amount does not intoxicates then it does not follow that its small amounts may be consumed . Rather, even a little of it is haraam (prohibited), for, it is with man that he goes on increasing the amount of whatever he uses. Hence, we must abstain from small amounts, too.

HANDFUL OF INTOXICANT IS ALSO FORBIDDEN

(٣٦٤٦) وَعَنْ عَآئِشَةَ عَنْ رَّسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ مَا اَسْكَرَ مِنْهُ الْفَرَقُ فَمِلْءُ الْكَفِّ مِنْهُ حَرَامٌ۔ (رواه احمد والترمذى وابوداؤد)

3646. Sayyidah Ayshah رضی اللہ عنہا narrated that Allah's Messenger said, "If a faraq of anything intoxicates, then a handful of it is forbidden (too)."[2]

COMMENTARY: A faraq is three sa's (eight seers). The hadith means that whatever causes intoxication is forbidden irrespective of quantity.

WHAT MAKES WINE

(٣٦٤٧) وَعَنِ النُّعْمَانِ بْنِ بَشِيْرٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِنَّ مِنَ الْحِنْطَةِ خَمْرًا وَمِنَ الشَّعِيْرِ خَمْرًا وَمِنَ التَّمْرِ خَمْرًا وَمِنَ الزَّبِيْبِ خَمْرًا وَمِنَ الْعَسَلِ خَمْرًا۔ رِوَاهُ التِّرْمِذِيُّ وَاَبُوْدَاوٗدَ وَابْنُ مَاجَةَ وَقَالَ التِّرْمِذِيُّ هٰذَا حَدِيْثٌ غَرِيْبٌ۔

3647. Sayyiduna Numan ibn Bashir رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Indeed, from wheat wine is had, from barley wine is had, from dates wine is had, from grapes wine is had and from honey wine is had."[3]

COMMENTARY: the ulama (Scholars) say that the hadith does not mean that wine is made from only these things. They are, however, the sources of wine, generally. Ibn Maalik said that wine (Khamr) is from grapes but the word is used for other sources too because the wine from them (as from nabidh) also knocks out the mind.

WINE IS NOT A PRECIOUS COMMODITY

(٣٦٤٨) وَعَنْ اَبِيْ سَعِيْدِنِ الْخُدْرِيِّ قَالَ كَانَ عِنْدَنَا خَمْرٌ لِيَتِيْمٍ فَلَمَّا نَزَلَتِ الْمَائِدَةُ سَاَلْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَنْهُ وَقُلْتُ اِنَّهُ لِيَتِيْمٍ فَقَالَ اَهْرِيْقُوْهُ۔ (رواه الترمذى)

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[1] Tirmidhi # 1865 (1872), Abu Dawud # 3681, Ibn Majah # 3393, Musnad Ahmad 3-343.

[2] Tirmidhi # 1866 (1873), Abu Dawud # 3681, Musnad Ahmad 6-131.

[3] Tirmidhi # 1879, Abu Dawud # 3676, ibn Majah # 3479, Musnad Ahmad 4-267.

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3648. Sayyiduna Abu Sa'eed Khudri رضی اللہ عنہ said, "We had with us wine belonging to an orphan (who was under our care and whose miscellaneous property was entrusted to us). When surah al- Ma'idah (meaning its verse 90 was revealed), I asked Allah's Messenger صلی اللہ علیہ وسلم about it and informed him that it belonged to an orphan (whose property should be preserved). He said, "pour it out."[1]

COMMENTARY: Wine is not a property of value. It is not lawful to earn a profit from it and we must despise it. Hence it must be spilled out.

(٣٦٤٩) وَعَنْ اَنَسٍ عَنْ اَبِيْ طَلْحَةَ اَنَّهٗ قَالَ يَانَبِيَّ اللّٰهِ اِنِّي اشْتَرَيْتُ خَمْرًا لِاَيْتَامٍ فِيْ حِجْرِيْ فَقَالَ اَهْرِقِ الْخَمْرَ وَاكْسِرِ الدِّنَانَ۔ رَوَاهُ التِّرْمِذِيُّ وَضَعَّفَهٗ وَفِيْ رِوَايَةٍ اَبِيْ دَاوٗدَ اَنَّهٗ سَاَلَ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَنْ اِيْتَامٍ وَرِثُوْا خَمْرًا قَالَ اَهْرِقْهَا قَالَ اَفَلَا اَجْعَلُهَا خَلًّا قَالَ لَا۔

3649. Sayyiduna Anas رضی اللہ عنہ reported about (Sayyiduna) Abu Talhah رضی اللہ عنہ that he asked, "O Prophet of Allah, I had bought wine for the orphans in my charge." He said, "Pour out the wine and smash the vessels.[2]

According to another version: He asked the Prophet صلی اللہ علیہ وسلم anout the orphans who had inherited wine. He said, "Throw it away!" He asked, "May I not make vinegar out of it?" He said, "No!"[3]

COMMENTARY: Abu Talhah رضی اللہ عنہ had bought wine for the orphans in his care when it was not prohibited When he asked him about it, the Prophet صلی اللہ علیہ وسلم instructed him to spill out the wine and break the vessels that contained it because wine may have seeped through into them. There was no way they could be purified. Or, the Prophet صلی اللہ علیہ وسلم may have meant to emphasise the prohibition of wine. It was so serious that the vessels associated with wine may also be eliminated.

He also disallowed the making of vinegar from it. Perhaps this was also to emphasise the dislike for wine. Or, the forbidding was by way of makruh tanzihi (disapproved for purification).

SECTION III اَلْفَصْلُ الثَّالِثُ

WHAT INTOXICATES & CAUSES LETHARGY & WEAKNESS IS FORBIDDEN

(٣٦٥٠) عَنْ اُمِّ سَلَمَةَ قَالَتْ نَهٰى رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَنْ كُلِّ مُسْكِرٍ وَمُفْتِرٍ۔ (رواه ابوداؤد)

3650. Sayyiduna Umm Salamah رضی اللہ عنہ said that Allah's Messenger صلی اللہ علیہ وسلم forbade everything that causes intoxication and renders (the drinker) languid.[4]

COMMENTARY: The word rendered 'languid' is (مفتر) (muftir). It is said of a man (مفتر الرجل) when his eye lashes become weak and the eye balls seem to have been raised. It is used for something that heats the heart and mind and then makes them remiss, faint and become allayed.

On the basis of this interpretation, the dill (or dill weed) of Khurasan and such other culinary herbs that cause weakness and laxity (after initial heat) are deduced to be forbidden.

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[1] Tirmidhi # 1263, Musnad Ahmad 3-26.

[2] Tirmidhi # 1297.

[3] Abu Dawud # 3675.

[4] Abu Dawud # 3686, Musnad Ahmad 6-309.

The aforementioned meaning is from the Nihayah.
[According to lane's lexicon. 'it is a beverage that renders languid the drinker... or which heats the body and occasions in it a languor, or laxity of the joints and weakness: such beverage is prohibited.][1]

WINE IS NEVER PERMITTED

(٣٦٥١) وَعَنْ دَيْلَمِ الْحِمْيَرِيِّ قَالَ قُلْتُ لِرَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَا رَسُوْلَ اللّٰهِ إِنَّا بِأَرْضٍ بَارِدَةٍ وَنُعَالِجُ فِيْهَا عَمَلًا شَدِيْدًا وَإِنَّا نَتَّخِذُ شَرَابًا مِنْ هٰذَا الْقَمْحِ نَتَقَوّٰى بِهٖ عَلٰى أَعْمَالِنَا وَعَلٰى بَرْدِ بِلَادِنَا قَالَ هَلْ يُسْكِرُ قُلْتُ نَعَمْ قَالَ فَاجْتَنِبُوْهُ قُلْتُ إِنَّ النَّاسَ غَيْرُ تَارِكِيْهِ قَالَ إِنْ لَمْ يَتْرُكُوْهُ فَقَاتِلُوْهُمْ۔ (رواه ابوداؤد)

3651. Sayyiduna Daylam Himyariy رضی اللہ عنہ narrated that he submitted, "O Messenger of Allah, we reside in a cold land where we have to undertake strenuous work (that requires tremendous physical exertion). So, we make wine from wheat to energise ourselves from it for our work and to withstand the it intoxicate?" He said, "Yes". He submitted, "The people will not refrain from it." He said, "If they do not give it up (and deem it to be lawful) then fight with them."[2]

WINE & GAMES OF CHANCE FORBIDDEN

(٣٦٥٢) وَعَنْ عَبْدِاللّٰهِ بْنِ عَمْرٍو أَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ نَهٰى عَنِ الْخَمْرِ وَالْمَيْسِرِ وَالْكُوْبَةِ وَالْغُبَيْرَاءِ وَقَالَ كُلُّ مُسْكِرٍ حَرَامٌ۔ (رواه ابوداؤد)

3652. Sayyiduna Abdullah ibn Amr رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم forbade (the consumption of) wine, (indulging in) gambling, (playing the) Kubah (game of chess or a kind of drum or the game backgammon or lute), and (drinking) ghubayra (a kind of wine). And he said, "Every intoxicant is prohibited."[3]

COMMENTARY: Kubah is the game of chess or backgammon, or a drum or a lute. (Maysir a game of chance). And ghubayra is a kind of wine prepared from corn or millet by the Ethiopians.

DRINKER WILL NOT ENTER PARADISE

(٣٦٥٣) وَعَنْهُ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لَا يَدْخُلُ الْجَنَّةَ عَاقٌّ وَلَا قَمَّارٌ وَلَا مَنَّانٌ وَلَا مُدْمِنُ خَمْرٍ۔ رَوَاهُ الدَّارِمِيُّ وَفِيْ رِوَايَةٍ لَهٗ وَلَا وَلَدُ زِنْيَةٍ بَدَلَ قَمَّارٍ۔

3653. Sayyiduna Abdullah ibn Amr رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "A disobedient son and a gambler, and one who reminds of his favours and a habitual drinker will not enter paradise (with those who are admitted at an early stage after earning deliverance)."[4]
According to another version from him: "A disobedient son and a bastard, and one who reminds of his favours and a habitual drinker..." to the end.

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[1] Arabic- English lexicon EW. Lane (Book I part 6 pp 232. 33). translator.
[2] Abu Dawud # 3683, Musnad Ahmad 4-232.
[3] Abu Dawud # 3685.
[4] Nasai # 5675, Darimi # 2094, Musnad Ahmad -201.

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COMMENTARY: Every play in which a bet is placed on something, or money is staked on something, is gambling. Speculation or forward trading is also gambling.

Teebi رحمه الله said that (منان) mannan could mean 'to brag about one's favour's. But, it could also mean one who' cut off.' So, he is who severs ties of relationship.

The hadith that a bastard will not enter paradise is neither sahih (or sound) nor may it be termed mawdu (or invented). Rather, it is a weak tradition. If it were to be said to be sound to some degree then it may be explained that normally a child born out of wedlock is deprived of its father's care and remains under the shadow of its mother's bad character, so it goes astray and falls into evil.

It may also be said that such a child is auspicious. Or, it is a warning to such people who indulge in unlawful intercourse to desist them they give birth to such children.

Some people say that walad uz-zina does not mean bastard but refers to those people who are habitual adulteres. It is like saying banu al-harb (children of war) or banu al-Islam (children of Islam), respectively, fighter, Muslims.

Hence, this hadith does not say that a bastard will go to hell because he is born out of wedlock. He was not at fault for the sin that was the means of his birth.

WARNING TO A DRUNKARD

(٣٦٥٤) وَعَنْ اَبِيْ اُمَامَةَ قَالَ قَالَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ بَعَثَنِيْ رَحْمَةً لِّلْعَالَمِيْنَ وَهُدًى لِّلْعَالَمِيْنَ وَاَمَرَنِيْ رَبِّيْ عَزَّوَجَلَّ بِمَحْقِ الْمَعَازِفِ وَالْمَزَامِيْرِ وَالْاَوْثَانِ وَالصُّلُبِ وَاَمْرِ الْجَاهِلِيَّةِ وَحَلَفَ رَبِّيْ عَزَّوَجَلَّ بِعِزَّتِيْ لَا يَشْرَبُ عَبْدٌ مِنْ عَبِيْدِيْ جُرْعَةً مِنْ خَمْرٍ اِلَّا سَقَيْتُهُ مِنَ الصَّدِيْدِ مِثْلَهَا وَلَا يَتْرُكُهَا مِنْ مَخَافَتِيْ اِلَّا سَقَيْتُهُ مِنْ حِيَاضِ الْقُدُسِ۔ (رواه احمد)

3654. Sayyiduna Abu Umamah رضی الله عنه narrated that the Prophet صلی الله علیه وسلم said, "Allah has sent me as a mercy to the worlds and as a guidance to the worlds. And my lord, Mighty and Glorious, has commanded me to eliminate (musical) stringed instruments and wind instruments, idols, crosses and customs of the jahiliyah (ignorance period) (pre-Islamic disbelief). And, my lord, Mighty and Glorious, has sworn, 'By My Mighty, if any of My slaves sips a mouthful of wine then I shall give him (in the next world) as much of pus (of the inmates of hell) to drink. But, if he abandons it (drinking wine) through fear of Me then I will give him (in the next world) drink from the sacred ponds (of paradise)."[1]

COMMENTARY: The (musical) instruments comprise every conceivable kind, like drums, flutes, etc. But the stringed and wind instruments are forbidden because they were used by the misled people since ancient times.

The jurists rule that humming tunes and singing songs with the musical instrument are unlawful, but without the musical instrument, they are makruh (disapproved). Moreover, to listen to songs and tunes sung by stranger women is strictly forbidden.

The cross is a sacred symbol of the Christians. It reminds them of their belief that Prophet Eesa علیه السلام was curified thecross depicts the manner in which he was put on it according to their belief. Hence, the Prophet صلی الله علیه وسلم was commanded to eliminate this symbol,

[1] Musnad Ahmad 5-228.

too. The Muslims are forbidden to use any such thing on which this symbol is found, for, it resembles another people and it is unlawful in Islam.
As for the customs of the jahiliyah (ignorance period), they are those that are absolutely false and fake. They were practiced before the advent of Islam unrestrictedly. Examples are wailing, boasting on ancestors and family background and finding faults with lineages of other people.

DISOBEDIENT CHILDREN CUCKOLD & DRUNKARD

(٣٦٥٥) وَعَنِ ابْنِ عُمَرَ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ ثَلَاثَةٌ قَدْ حَرَّمَ اللّٰهُ عَلَيْهِمُ الْجَنَّةَ مُدْمِنُ الْخَمْرِ وَالْعَاقُّ وَالدَّيُّوْثُ الَّذِىْ يُقِرُّ فِىْ اَهْلِهِ الْخُبْثَ۔ (رواه احمد والنسائى)

3655. Sayyiduna Abdullah ibn Umar رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "Three there are to whom Allah has forbidden (admittance to) paradise (and they will not be admitted in the beginning with those who have succeeded). They are: the habitual drunkard, one who is disobedient to parents, and the cuckold who connives at his wife (and womenfolk) committing illicit sexual intercourse."[1]

COMMENTARY: The cuckold compels his wife and female slave, etc to commit sin with other men, or he connives at their being sinful with other men. This includes consuming wine, remaining impure without having a purifying bath. The cuckold does not make his wife stop drinking and he does not compel her to have a purifying bath.
The cuckold is (ديوث) dayyuth in Arabic. The Majma-ul-Bahrayn says that he is also called (كشخان) Kash Khan, and (قرنان) qarnan. Some people differ and say that while the dayyuth tolerates other men's them to visit his wife, Kash Khan allows them to visit his sisters and qarnan permits them to go to his daughters. (According to steingass Persian-English Dictionary: Kash Khan is 'wittol' and qarnan is 'cornute'.)

(٣٦٥٦) وَعَنْ اَبِىْ مُوْسَى الْاَشْعَرِىِّ اَنَّ النَّبِىَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ ثَلَاثَةٌ لَا تَدْخُلُ الْجَنَّةَ مُدْمِنُ الْخَمْرِ وَقَاطِعُ الرَّحِمِ وَمُصَدِّقٌ بِالسِّحْرِ۔ (رواه احمد)

3656. Sayyiduna Abu Musa Ashari رضى الله عنه narrated that the Prophet صلى الله عليه وسلم said, "three kinds of people will not enter paradise (initially): one who is a habitual drinker, one who severs ties of relationship and one who believes in sorcery."[2]

COMMENTARY: The one who believes in sorcery believes that magic is effective by itself, otherwise it is proper to believe that sorcery is something, for it is created by Allah Himself. It works at Allah's command as stated: (اَلسِّحْرُ حَقٌّ) (sorcery is a fact).

LIKE IDOL-WORSHIP

(٣٦٥٧-٣٦٥٨-٣٦٥٩) وَعَنِ ابْنِ عَبَّاسٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مُدْمِنُ الْخَمْرِ اِنْ مَاتَ لَقِىَ اللّٰهَ تَعَالٰى كَعَابِدِ وَثَنٍ۔ رَوَاهُ اَحْمَدُ وَرَوَى ابْنُ مَاجَةَ عَنْ اَبِىْ هُرَيْرَةَ وَالْبَيْهَقِىُّ فِىْ شُعَبِ الْاِيْمَانِ عَنْ مُحَمَّدِ بْنِ عُبَيْدِ اللّٰهِ عَنْ اَبِيْهِ وَ قَالَ ذَكَرَ الْبُخَارِىُّ فِى التَّارِيْخِ عَنْ مُحَمَّدِ بْنِ عَبْدِ اللّٰهِ عَنْ اَبِيْهِ۔

3657. Sayyiduna Ibn Abbas رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said,

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[1] Musnad Ahmad 2-134.
[2] Musnad Ahmad 1-272.

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"One who is addicted to wine will, on his death, meet Allah the Exalted like an idol-worshipper."[1]

3658. Sayyiduna Abu Hurayrah رضی اللہ عنہ also narrated it.[2]

3659. Sayyiduna Muhammad ibn Ubaydullah رحمہ اللہ also narrated it from his father.[3] Bukhari also narrated it in his Tarikh from Muhammad ibn Abdullah رحمہ اللہ from his father, as Bayhaqi رحمہ اللہ said.

(٣٦٦٠) وَعَنْ اَبِيْ مُوْسٰى اَنَّهٗ كَانَ يَقُوْلُ مَا اُبَالِيْ شَرِبْتُ الْخَمْرَ اَوْ عَبَدْتُّ هٰذِهِ السَّارِيَةَ دُوْنَ اللّٰهِ۔

(رواه النسائی)

3660. Sayyiduna Abu Musa رضی اللہ عنہ (Ashari) said, "I find no difference (at all) between consuming wine and worshipping this pillar (meaning the idol of stone) instead of Allah."[4]

COMMENTARY: Abu Musa رضی اللہ عنہ means to say that consumption of wine and idolatry are sins of identical degree.

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[1] Musnad Ahmad 1-272.

[2] Ibn Majah # 3375.

[3] Bayhaqi in Shuab ul-eeman # 5597.

[4] Nasai # 5663 (5666), Nasai Kubra # 5173.

بسم الله الرحمن الرحيم

BOOK - XVII

KITAB UL-IMARAH WA AL-QADA كِتَابُ الْإِمَارَةِ وَالْقَضَاءِ

EMIRATES & JUDICIARY

(OFFICES OF THE AMIR OR RULER AND OF THE JUDGE)

The word (امارة) Imarah (emirate) means 'chieftanship and rule.' The word (قضاء) qada means 'judiciary under *shariah*.' These are the two basic pillars of the Islamic government.

The amir and imam (who is the head of the government) is the preserver of the basic laws of Islam. He is responsible for running the government and for enjoining the reputable and forbidding the disreputable. He is the trustee of the religion and the strength of the *ummah* of Islam. He oversees the general affairs of the state. He has an authority over the matters of concern to the members of the Islamic society.

The qadi (judge) is the chief of the judiciary. He is the preserver of the rights of the citizens. He is the final authority on behalf of *Shariah* to decide cases and his main responsibility is to decide, on the basis of *Shariah*, the disputes between people. And his duty, greater than that, is to respect justice, fairness and honesty in every case.

ISLAM & GOVERNANCE

Islam is the world's unparalled religion and also its most great power. It is the last and most perfect code of law of guidance for the success of mankind. It is also the eternal political power that dispenses its authority for the overall good of mankind and their general administration.

Islam is not merely a religion but as a religion is concerned with governance, rule politics and the state as with any significant reality. It is not what merely corrects the internal affairs but as a religion it lays claim to authority over the world's material life too. This is why the Quran the source of Islam's conceptions and theories, and the ahadith that are the explanations of the Quranic guidance, establish the relationship of Islam and the government, sometimes through history, sometimes through education and sometimes by recalling the blessings of Allah.

The earth belongs to Allah who has the right rule over it. So, one of the basic objectives of Islam is that Allah's rule should be established on earth and His law should be enforced.

Those of us who are obstinate and bull-headed wish to separate religion and politics and thereby to keep Islam away from politics and government with no concern for them. They have succumbed to the tactics of elements who oppose Islam but who themselves have been unable to keep the state aloof of religion. However, they are bent on preventing the Muslims from marching ahead in politics. So they have created a conception of separate entities of religion and politics. Thereby, they have poisoned Muslim minds and thought with their filthy ideas.

The initial ahadith of this Book of Al-imarah wa al-Qada bear out that Islam and government with politics are not two diverse subjects. These ahadith make clear that government and politics are part of Islam's sphere and they give ample guidance

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concerning the amir (or ruler, chief), the Khalifah (caliph), the qadi (judge) and sub-judges, he masses and subjects, the state and the army, and the different fields of administration and governance. These ahadith provide guidance and commands about them.

CHAPTER - I

SECTION I اَلْفَصْلُ الْاَوَّلُ

OBEDIENCE TO AMIR IS OBEDIENCE TO ALLAH & HIS MESSENGER صلی اللہ علیہ وسلم

(٣٦٦١) عَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ اَطَاعَنِيْ فَقَدْ اَطَاعَ اللّٰهَ وَمَنْ عَصَانِيْ فَقَدْ عَصَى اللّٰهَ وَمَنْ يُطِعِ الْاَمِيْرَ فَقَدْ اَطَاعَنِيْ وَمَنْ يَعْصِ الْاَمِيْرَ فَقَدْ عَصَانِيْ وَاِنَّمَا الْاِمَامُ جُنَّةٌ يُقَاتَلُ مِنْ وَرَائِهٖ وَيُتَّقٰى بِهٖ فَاِنْ اَمَرَ بِتَقْوَى اللّٰهِ وَعَدَلَ فَاِنَّ لَهٗ بِذٰلِكَ اَجْرًا وَاِنْ قَالَ بِغَيْرِهٖ فَاِنَّ عَلَيْهِ مِنْهُ۔ (متفق علیہ)

3661. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Whoever obeys me has obeyed Allah, and whoever disobeys me has disobeyed Allah, whoever obeys the amir has obeyed me, and whoever disobeys the amir has disobeyed me. The imam is merely a shield behind whom fighting takes place (on his orders and strength) and protection is sought (from the enemy). If he enjoins (piety and) fear of Allah and dispenses justice, then he will earn a reward for that. But, if he enjoins otherwise, then he will bear the burden (of sin)."[1]

COMMENTARY: The imam (ruler of the state) is a shield in the sense that like a shield that keeps arrows and swords away from the body, so too the imam keeps the enemy at bay.

A SLAVE WHO IS AMIR MUST BE OBEYED

(٣٦٦٢) وَعَنْ اُمِّ الْحُصَيْنِ قَالَتْ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِنْ اُمِّرَ عَلَيْكُمْ عَبْدٌ مُجَدَّعٌ يَقُوْدُكُمْ بِكِتَابِ اللّٰهِ فَاسْمَعُوْا لَهٗ وَاَطِيْعُوْا۔ (رواہ مسلم)

3662. Sayyiduna Umm Al-Husayn رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "If a slave with a slit nose and a cut ear is made your ruler and he goes by the Book of Allah (in leading you) then listen to him and obey him."[2]

COMMENTARY: This hadith emphasises the importance of obeying the ruler. The relevance of the slave makes it more emphatic. It is like the Prophet's صلی اللہ علیہ وسلم saying, "If anybody builds a mosque even like a birds nest...." Clearly a mosque is never like that. So, the Prophet صلی اللہ علیہ وسلم only meant to emphasise the importance of building mosque: how excellent and meritorious it is! In this case too it is to show how important it is to obey the ruler. Otherwise, it is not allowed to make a slave an amir or an imam (meaning, head of state). He may become an assistant of the head of state.

Hence, it must be remembered that in all these ahadith the same interpretation will apply as mention a slave as the head of state.

The same explanation is made about a split nose and ear. It means that the ruler should be

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[1] Bukhari # 2957, Muslim # 33-1835, Nasai # 4193, 4196, Ibn Majah # 2859, Musnad Ahmad 2-252. Nasai Kubra # 7816, 7819.

[2] Muslim # 311-1298, Tirmidhi # 1706 (1712), Nasai # 4196, Ibn Majah # 2861, Musnad Ahmad 6-402.

obeyed howsoever he is personally of a low rank.

(٣٦٦٣) وَعَنْ اَنَسٍ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اسْمَعُوْا وَاَطِيْعُوْا وَ اِنِ اسْتُعْمِلَ عَلَيْكُمْ عَبْدٌ حَبْشِيٌّ كَاَنَّ رَأْسَهٗ زَبِيْبَةٌ۔ (رواه البخارى)

3663. Sayyiduna Anas رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "Listen (to the command) and obey (what your ruler enjoins and forbids) even if an Ethiopian slave with a (small) head like a raisin is made your ruler."[1]

RULER MUST NOT BE OBEYED IF HE COMMANDS DISOBEDIENCE TO ALLAH

(٣٦٦٤) وَعَنِ ابْنِ عُمَرَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَلسَّمْعُ وَالطَّاعَةُ عَلَى الْمَرْءِ الْمُسْلِمِ فِيْمَا اَحَبَّ وَكَرِهَ مَالَمْ يُؤْمَرْ بِمَعْصِيَةٍ فَاِذَا اُمِرَ بِمَعْصِيَةٍ فَلَاسَمْعَ وَلَا طَاعَةَ۔ (متفق عليه)۔

3664. Sayyiduna Ibn Umar رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "To hear and to obey (his commands) are incumbent on a Muslim in what he likes and what he dislikes, as long as he is not commanded to commit sin. So, when a command is given (by the ruler) to do something sinful then he must neither hear nor obey."[2]

COMMENTARY: It is binding on every Muslim to need and obey what the ruler says whether it is to his liking or not, provided the ruler's command does not contravene the limits of *Shariah*. When he gives such a wrong command, it must not be obeyed but, even in this case it is not allowed to rebel against him.

(٣٦٦٥) وَعَنْ عَلِيٍّ قَالَ قَالَ رَسُوْلُ لِلّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا طَاعَةَ فِى مَعْصِيَةٍ اِنَّمَا الطَّاعَةُ فِى الْمَعْرُوْفِ۔ (متفق عليه)

3665. Sayyiduna Ali رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "There is no obedience (to a command from the ruler, parents, teachers, religious mentors, etc.) If it calls to disobedience (or sin). Obedience is binding only in what is pious and reputable."[3]

PROMISE TO OBEY

(٣٦٦٦) وَعَنْ عُبَادَةَ بْنِ الصَّامِتِ قَالَ بَايَعْنَا رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَلَى السَّمْعِ وَالطَّاعَةِ فِى الْعُسْرِ وَالْيُسْرِ وَالْمَنْشَطِ وَالْمَكْرَهِ وَعَلٰى اَثَرَةٍ عَلَيْنَا وَعَلٰى اَنْ لَانُنَازِعَ الْاَمْرَ اَهْلَهٗ وَعَلٰى اَنْ نَقُوْلَ بِالْحَقِّ اَيْنَمَا كُنَّا لَا نَخَافُ فِى اللّٰهِ لَوْمَةَ لَائِمٍ وَفِى رِوَايَةٍ وَعَلٰى اَنْ لَانُنَازِعَ الْاَمْرَ اَهْلَهٗ اِلَّا اَنْ تَرَوْا كُفْرًا بَوَاحًا عِنْدَكُمْ مِنَ اللّٰهِ فِيْهِ بُرْهَانٌ۔ (متفق عليه)

3666. Sayyiduna Ubadah ibn Samit رضى الله عنه said, "We aware allegiance to Allah's

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[1] Bukhari # 7142, Ibn Majah # 2860, Musnad Ahmad 3-114.

[2] Bukhari # 7144, Muslim # 38-1839, Tirmidhi # 1713, Abu Dawud # 2626, Nasai 4206, Ibn Majah 2864, Musnad Ahmad 2-17.

[3] Bukhari # 7257, Muslim # 39-184, Abu Dawud # 2625, Nasai # 4205, Musnad Ahmad 1-12.

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Messenger صلى الله عليه وسلم (promising to observe these things:)

1. To hear (his instruction and in all conditions) to obey (his commands) in time of difficulty and time of ease, in happiness and in sorrow.
2. If others are preferred over us (we shall show patience)
3. not to dispute with authority about the commands
4. to speak the truth (and what is right) wherever we be (and in whatever situation)
5. and we shall not fear anyone who blames us whatever he says in our works for Allah's sake (in religious affairs and in speaking truth)."

According to another version: "Not to dispute with authority about the commands" (and the Prophet صلى الله عليه وسلم said:) "unless you have an evidence from Allah" (like a verse of the Quran or a hadith and which is not subject to an alternate interpretation in such cases, it is allowed to reproach the authority).[1]

COMMENTARY: According to a tradition, the Prophet صلى الله عليه وسلم had forewarned the ansars that after him, other people would be given preference over them. He had instructed them to show patience when that happened. Indeed, this did happen after the righteous caliphs. When the amirs ruled they gave the slip to the ansars so they kept their promise and tolerated the injustice without making any complaint.

As for the promise not to dispute with the authority about the command(s), it implies 'we shall not crave for rule and government and whoever is made our amir, we shall not depose him nor rebel against him.' However, the concluding words of the tradition say explicitly that if the words and dees of the ruler smack of disbelief then it is allowed to depose him and he may not be obeyed.

The question whether an imam and a qadi may be deposed if he is a sinner is as: imam Shafii رحمه الله holds that he must be deposed but Imam Abu Hanifah رحمه الله says that he cannot be deposed for that reason. Also, Imam Shafi رحمه الله contends that he cannot be a guardian of anyone but Imam Abu Hanifah رحمه الله says that he is eligible to be someone's guardian and a sinning father may give off his minor daughter in marriage.

OBEDIENCE ACCORDING TO ABILITY

(٣٦٦٧) وَعَنِ ابْنِ عُمَرَ قَالَ كُنَّا إِذَا بَايَعْنَا رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَلَى السَّمْعِ وَالطَّاعَةِ يَقُوْلُ لَنَا فِيْمَا اسْتَطَعْتُمْ۔ (متفق علیه)

3667. Sayyiduna Ibn Umar رضى الله عنه narrated that whenever they pledged allegiance to Allah's Messenger صلى الله عليه وسلم to hear (his words of guidance carefully) and to obey (his commands), he would say to them : In that which you are able."[2]

COMMENTARY: The Prophet صلى الله عليه وسلم gave concession to the Sahabah (Prophet's Companions) رضى الله عنهم to hear and obey to the best of their ability. They must not lag behind in that.

DO NOT SEPARATE FROM THE *UMMAH* EVEN A BIT

(٣٦٦٨) وَعَنِ ابْنِ عَبَّاسٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ رَاٰى مِنْ اَمِيْرِهٖ شَيْئًا يَكْرَهُهٗ فَلْيَصْبِرْ

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[1] Bukhari # 7200, Muslim # 42-1709, Nasai # 4151, ibn majah # 2866, Muwatta Maalik # 5 (Jihad) , Musnad Ahmad 5-314.

[2] Bukhari # 7202, Muslim # 90-1867, Nasai # 4187, Muwatta Maalik # (Bayah) Musnad Ahmad 2-139.

فَإِنَّهُ لَيْسَ اَحَدٌ يُفَارِقُ الْجَمَاعَةَ شِبْرًا فَيَمُوْتُ اِلَّا مَاتَ مِيْتَةً جَاهِلِيَّةً۔ (متفق علیه)

3668. Sayyiduna Ibn Abbas رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "If anyone finds in his amir something that he does not approve (from the point of view of *Shariah* or naturally), then he must exercise patience. (He should not rebel against the amir) for if anyone separates from the community a span's distance and dies (without making a repentance) then he dies the death of the people of the jahiliyah (ignorance period)."[1]

COMMENTARY: The people of the pre-Islamic era were unconcerned with religion. They did not obey their amir or their imam. Rather, they openly absolved themselves of all responsibility to their leaders. They had no concept of a community and togetherness. This hadith teaches us that Islam calls for a unified *ummah*, togetherness of the Muslims, a strong reliance on the leadership and obedience to the leaders and unity in affairs of the community. These things are essential to religion and for its strength.

PARTISANSHIP HAS NO PLACE IN ISLAM

(٣٦٦٩) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ مَنْ خَرَجَ مِنَ الطَّاعَةِ وَفَارَقَ الْجَمَاعَةَ فَمَاتَ مَاتَ مِيْتَةً جَاهِلِيَّةً وَمَنْ قَاتَلَ تَحْتَ رَايَةٍ عِمِّيَّةٍ يَغْضَبُ لِعَصَبِيَّةٍ اَوْيَدْعُو لِعَصَبِيَّةٍ اَوْيَنْصُرُ عَصَبِيَّةً فَقُتِلَ فَقِتْلَةٌ جَاهِلِيَّةٌ وَمَن خَرَجَ عَلٰى اُمَّتِي يَضْرِبُ بَرَّهَا وَفَاجِرَهَا وَلَا يَتَحَاشٰى مِنْ مُؤْمِنِهَا وَلَا يَفِي لِذِيْ عَهْدٍ عَهْدَهٗ فَلَيْسَ مِنِّيْ وَلَسْتُ مِنْهُ۔ (رواه مسلم)

3669. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that he heard Allah's Messenger صلی اللہ علیہ وسلم say, "If anyone gives up obedience (to the ruler) and separates from the community (of Islam) and dies (in that condition) then he dies the death of the people of the jahiliyah (ignorance period). If anyone fights under a banner whose cause is not clear whether right or wrong and he is in a rage in favour of partisanship, or gathers people to factionalism, or promotes the cause of partisanship, and is killed (in the process not concerned with propagation of religion) then he dies the death of the people of the jahiliyah (ignorance period). If anyone comes out against my people with a raised sword killing the pious and the evil not aparing those who are believers (giving no thought to how grave it is to kill them) and (not sparing) those who observe covenants that have been agreed upon (not respecting these covenants), then he does not belong to my *ummah* (and is not among those who pursue my path) and I have no concern with him."[2]

THE BEST & THE WORST RULERS

(٣٦٧٠) وَعَنْ عَوْفِ بْنِ مَالِكٍ الْاَشْجَعِيِّ عَنْ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ خِيَارُ اَئِمَّتِكُمُ الَّذِيْنَ تُحِبُّوْنَهُمْ وَيُحِبُّوْنَكُمْ وَتُصَلُّوْنَ عَلَيْهِمْ وَيُصَلُّوْنَ عَلَيْكُمْ وَشِرَارُ اَئِمَّتِكُمُ الَّذِيْنَ تُبْغِضُوْنَهُمْ وَيُبْغِضُوْنَكُمْ وَتَلْعَنُوْنَهُمْ وَيَلْعَنُوْنَكُمْ قَالَ قُلْنَا يَارَسُوْلَ اللّٰهِ اَفَلَا نُنَابِذُهُمْ عِنْدَ ذٰلِكَ قَالَ لَا مَا اَقَامُوْا

[1] Bukhari # 7134, Muslim # 55-1819, Darimi # 2519, Musnad Ahmad 2-275.

[2] Muslim # 53-1848, Nasai # 4114, Ibn Majah # 3948, Musnad Ahmad 2-306, Nasai Kubra # 3579.

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فِيكُمُ الصَّلَاةَ لَا مَا أَقَامُوا فِيكُمُ الصَّلَاةَ إِلَّا مَنْ وُلِّيَ عَلَيْهِ وَالٍ فَرَآهُ يَأْتِي شَيْئًا مِنْ مَعْصِيَةِ اللّٰهِ فَلْيَكْرَهْ مَا يَأْتِي مِنْ مَعْصِيَةِ اللّٰهِ وَلَا يَنْزِعَنَّ يَدًا مِنْ طَاعَةٍ۔ (رواه مسلم)

3670. Sayyiduna Awf ibn Maalik Ashjai رضی اللہ عنہ narrated, "The best of your rulers are they whom you love and they love you. You pray for them and they pray for you. (This creates a mutual nearness and kind relationship.) And, the worst of your rulers are they whom you despise and they despise you. You invoke curse on them and they curse you."

He (Awf رضی اللہ عنہ) said that they (meaning, the sahabah (Prophet's Companions) رضی اللہ عنہم) asked him, : O Messenger of Allah , in that case, shall we revoke the promise made to them? (Shall we depose them?)" He said, "No! Not as long as they establish the *salah (prayer)* among you. No! Not as long as they establish the *salah (prayer)* among you. Beware! If one has a ruler over him and he observes him come up with an act of disobedience to Allah, then he must detest the act of disobedience to Allah, but must not take away his hand from obedience to him."[1]

COMMENTARY: The hadith makes us understand that if the head of state which is Islamic does not offer *salah (prayer)* then it makes it binding to revoke the promise and covenant of faithfulness and obedience to him. If he perpetrates a clear act of disbelief then the Muslims may revoke their promise of fidelity to him and depose him. So, If he gives up offering *salah (prayer)*, he deserves the same treatment and may be deposed, because *salah (prayer)* is a pillar of religion and it distinguishes Islam from disbelief.

In contrast, other sins are not as grave as neglect and abandoning of *salah (prayer)*, so if a ruler perpetrates them then it does not call for revoking the promise to obey him.

This saying of the Prophet صلی اللہ علیہ وسلم sounds a serious warning against abandoning *salah (prayer)*.

RESPONSIBILITY OF MUSLIMS TO EXPRESS DISAPPROVAL OF RULER'S WAYWARDNESS

(٣٦٧١) وَعَنْ أُمِّ سَلَمَةَ قَالَتْ قَالَ رَسُولُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَكُونُ عَلَيْكُمْ أُمَرَاءُ تَعْرِفُونَ وَتُنْكِرُونَ فَمَنْ أَنْكَرَ فَقَدْ بَرِئَ وَمَنْ كَرِهَ فَقَدْ سَلِمَ وَلٰكِنْ مَنْ رَضِيَ وَتَابَعَ قَالُوا أَفَلَا نُقَاتِلُهُمْ قَالَ لَا مَا صَلَّوْا لَا مَا صَلُّوا أَيْ مَنْ كَرِهَ بِقَلْبِهٖ وَأَنْكَرَ بِقَلْبِهٖ۔ (رواه مسلم)

3671. Sayyidah Umm Salamah رضی اللہ عنہا narrated thah Allah's Messenger صلی اللہ علیہ وسلم said, "You will have over you rulers whom you like and whom you dislike. He who speaks out what he disapproves (openly declaring what he does not accept) will be absolved (of hypocrisy and abetment). He who hates (in his heart but does not muster courage to declare openly) will be safe (from reckoning about it). But, he who is pleased (at heart and abides by the rulers in committing wrong) and follows them (will share the sin and punishment)... They said, "Shall we not fight with them?" He said, "No! Not as long as they offer *salah (prayer)*. No! Not as long as they offer *salah (prayer)*," meaning , he who considers it bad in his heart and rejects it in his heart.[2]

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[1] Muslim # 66-1855, Darimi # 2797, Musnad Ahmad 6-24.

[2] Muslim # 63-1854, Tirmidhi # 2265 (2172), Abu Dawud # 4760.

COMMENTARY: Shaykh Abdul haq Mu*hadd (prescribed punishment)*ith Dahlawi رحمه الله says that the last words of the hadith are the narrator's to explain 'He who hates will be safe.' But, Mulla Ali Qari رحمه الله says that the narrator there by expounds both sentences 'He who disapproves and speaks out,' and 'he who hates...'

RULERS WHO WILL TAKE AWAY THE BEST THINGS

(٣٦٧٢) وَعَنْ عَبْدِاللّٰهِ بْنِ مَسْعُوْدٍ قَالَ قَالَ لَنَا رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِنَّكُمْ سَتَرَوْنَ بَعْدِىْ اَثَرَةً وَاُمُوْرًا تُنْكِرُوْنَهَا قَالُوا فَمَا تَاْمُرُنَا يَا رَسُوْلَ اللّٰهِ قَالَ اَدُّوْا اِلَيْهِمْ حَقَّهُمْ وَسَلُوا اللّٰهَ حَقَّكُمْ۔ (متفق عليه)

3672. Sayyiduna Abdullah ibn Masud رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said to them, "You will see, after me, partiality against you, and other things that you will not approve." The Sahabah (Prophet's Companions) رضى الله عنهم asked him, "O Messenger of Allah, what do you command us to do (against them)?" He said, "Give them their rights. And ask Allah for your rights."[1]

COMMENTARY: If your rulers deny you your rights, you must nevertheless continue to give them their rights. You must obey them and remain their supporter and helper. Exercise patience and pray to Allah to compensate you.

(٣٦٧٣) وَعَنْ وَائِلِ بْنِ حُجْرٍ قَالَ سَاَلَ سَلَمَةُ بْنُ يَزِيْدَ الْجُعْفِيُّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ يَانَبِيَّ اللّٰهِ اَرَاَيْتَ اِنْ قَامَتْ عَلَيْنَا اُمَرَاءُ يَسْاَلُوْنَا حَقَّهُمْ وَيَمْنَعُوْنَا حَقَّنَا فَمَا تَاْمُرُنَا قَالَ اسْمَعُوا وَ اَطِيْعُوا فَاِنَّمَا عَلَيْهِمْ مَاحُمِّلُوا وَعَلَيْكُمْ مَاحُمِّلْتُمْ۔ (رواه مسلم)

3673. Sayyiduna Wail ibn Hujr رضى الله عنه narrated that (Sayyiduna) Salamah ibn Yazid Jufi رضى الله عنه asked Allah's Messenger صلى الله عليه وسلم, "O Prophet of Allah, what do you command us to do if such rulers rule over us as compel us to give them their rights but deny us our rights?" He said, "Listen (to them) and obey (them), for only they will carry their burden (of dispensing justice and giving rights of their subjects) and you will carry your burden (of obeying them)."[2]

COMMENTARY: The hadith apportions responsibility of the ruler and of the subjects. Each has to fulfil the responsibility on their shoulders irrespectives of whether the other is dutiful or derelict.

WARNING TO ONE WHO CEASES TO OBEY IMAM

(٣٦٧٤) وَعَنْ عَبْدِاللّٰهِ ابْنِ عُمَرَ قَالَ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ مَنْ خَلَعَ يَدًا مِنْ طَاعَةٍ لَقِىَ اللّٰهَ يَوْمَ الْقِيَامَةِ وَلَا حُجَّةَ لَهٗ وَمَنْ مَاتَ وَلَيْسَ فِىْ عُنُقِهٖ بَيْعَةٌ مَاتَ مِيْتَةً جَاهِلِيَّةً۔ (رواه مسلم)

3674. Sayyiduna Abdullah ibn umar رضى الله عنه said that he heard Allah's Messenger صلى الله عليه وسلم say, "If anyone withdraws himself from obedience (to the ruler of the Islamic state) then he will meet Allah on the day of resurrection without possessing any evidence (of faith). And if one dies without an oath of allegiance to the (true) imam, then his death will be like the death of (the people

[1] Bukhari # 7052, Muslim # 45-1843, Tirmidhi # 2190, Musnad Ahmad 1-433.

[2] Muslim # 49-1856, Tirmidhi # 2199 (2206)

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of) jahiliyah (ignorance period)."[1]

REJECT A CLAIMANT TO CULERSHIP WHEN ONE IS ALREADY RULING

(٣٦٧٥) وَعَنْ اَبِيْ هُرَيْرَةَ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ كَانَتْ بَنُو اِسْرَائِيْلَ تَسُوسُهُمُ الْاَنْبِيَاءُ كُلَّمَا هَلَكَ نَبِيٌّ خَلَفَهُ نَبِيٌّ وَاِنَّهُ لَانَبِيَّ بَعْدِيْ وَسَيَكُوْنُ خُلَفَاء فَيَكْثُرُوْنَ قَالُوا فَمَاتَأْمُرُنَا قَالَ فُوْا بَيْعَةَ الْاَوَّلِ فَالْاَوَّلِ اَعْطُوهُمْ حَقَّهُمْ فَاِنَّ اللّٰهَ سَائِلُهُمْ عَمَّا اسْتَرْعَاهُمْ۔ (متفق عليه)

3675. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "The Banu Isra'il were taught, trained and guided by the Prophets صلی اللہ علیہ وسلم. Whenever one Prophet died another Prophet took his place (and in this way the Prophets صلی اللہ علیہ وسلم succeeded each other). There will be no Prophet after me, but, there will be Khulafa (Caliphs), many of them." They asked, "What do you command us to do (if there are several claimants at one time)?" He said, "Fulfil the oath of allegiance to the first, (and after him) the first land if more aspire for the office, obey the first of them who takes over and reject the others). Give them their rights. Surely, Allah will Himself question them about what He has entrusted them with (of the responsibilities).[2]

COMMENTARY: The caliph who is appointed first must be given his right and each is called 'the first' in respect of the one who succeeds him. Oath of allegiance must be given to each in the same sequence as one succeeds the other. If more than one lay claim to the office, swear oath of allegiance to the first and reject the others as those hankering for power. The next hadith confirms it.

Give the rights of the ruler even if he does not give you your rights. In the next world, he will be made to make amends for his faults here and will be punished for that.

(٣٦٧٦) وَعَنْ اَبِيْ سَعِيْدِنِ الْخُدْرِيِّ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِذَا بُوْيِعَ لِخَلِيْفَتَيْنِ فَاقْتُلُوا الْاٰخِرَ مِنْهُمَا۔ (رواه مسلم)

3676. Sayyiduna Abu Sa'eed Khudri رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "When allegiance is pledged to two cliphs, kill the second of them."[3]

COMMENTARY: If a second person lies claim to the first is in office, and begins to seek oath of allegiance for himself, then fight with him till he mends his ways and submits to Allah's command of respecting the first caliph, or is killed. This is necessary because he rebels against Allah's commands. A rebel must submit or be killed.

Some authorities say that 'Kill him' implies that those who have pledged allegiance to him must revoke their pledge and make him weak and unsupported so that he is unable to spread mischief against the caliph.

KILL HIM WHO CREATES DISCORD

(٣٦٧٧) وَعَنْ عَرْفَجَةَ قَالَ سَمِعْتُ رَسُوْلَ الله صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ اِنَّهُ سَيَكُوْنُ هَنَاتٌ وَهَنَاتٌ

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[1] Muslim # 58-1851, Musnad Ahmad 2-154.

[2] Bukhari # 3455, Muslim # 44-1842, Musnad Ahmad 2-297.

[3] Muslim # 61-1853.

فَمَنْ اَرَادَ اَنْ يُفَرِّقَ اَمْرَ هٰذِهِ الْاُمَّةِ وَهِيَ جَمِيْعٌ فَاضْرِبُوْهُ بِالسَّيْفِ كَائِنًا مَنْ كَانَ۔ (رواه مسلم)

3677. Sayyiduna Arfajah narrated that he heard Allah's Messenger صلى الله عليه وسلم say, "Soon mischief and corruption will arise, So, strike with sword him who plots to disintegrate this *ummah* when they are united, be he anyone (whosoever)."[1]

COMMENTARY: With passing of time, the enemies of religion will intensify their mischief. They will employ various tactics to cause dissension in the ranks of the Muslims. Leadership is man's greatest weakness and he tries to seize it. So, some Muslims fall prey to the conspiracies of the enemies and go to extremes to oust the ruler and take his place. The result is a total collapse of law and order and spread of unrest with a rise of factions among the *ummah*.

In these circumstances, the Muslims must not cease to remain with the first leader whom they had instated originally, and must resist mischief among their ranks.

To maintain their unity, they must not hesitate to eliminate anyone who sows seeds of discord. He may be a great scholar too, seemingly a great Shaykh and honourable man. In fact, the ulama (Scholars) say that if the claimant is more deserving than the present ruler, even then he must be killed because he deserves to be eliminated being the cause of division in the *ummah*. Of course, there is a proviso that the present ruler is worthy of his responsibilities as ruler and there is no valid reason to depose him.

(٣٦٧٨) وَعَنْهُ قَالَ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ مَنْ اَتَاكُمْ وَاَمْرُكُمْ جَمِيْعٌ عَلٰى رَجُلٍ وَاحِدٍ يُرِيْدُ اَنْ يَشُقَّ عَصَاكُمْ اَوْ يُفَرِّقَ جَمَاعَتَكُمْ فَاقْتُلُوْهُ۔ (رواه مسلم)

3678. Sayyiduna Arfajah narrated that he heard Allah's Messenger صلى الله عليه وسلم say. "If anyone comes to you (as a rebel to overthrow your ruler) while you are united under one man (as your Khalifah) and he intends to split your Khalifah) and he intends to split your care, or cause division in your community, then kill him."[2]

COMMENTARY: The unity of the Muslims is spoken of as a "care" and division in their ranks as "splitting the cane'.

The next words 'and cause division in your community' are perhaps interjected by the narrator to expound the preceding. But, if they are spoken by the Prophet صلى الله عليه وسلم, then the first phrase could refer to worldly affairs and to weakening the political strength of the Muslims, and this second phrase to their religious unity being disturbed.

(٣٦٧٩) وَعَنْ عَبْدِاللّٰهِ بْنِ عَمْرٍو وَقَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ بَايَعَ اِمَامًا فَاَعْطَاهُ صَفْقَةَ يَدِهٖ وَثَمَرَةَ قَلْبِهٖ فَلْيُطِعْهُ اِنِ اسْتَطَاعَ فَاِنْ جَاءَ اٰخَرُ يُنَازِعُهُ فَاضْرِبُوْا عُنُقَ الْاٰخَرِ۔ (رواه مسلم)

3679. Sayyiduna Abdullah ibn Amr رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "If a person pledges allegiance to an imam (ruler) by giving him his hand to promise obedience and fidelity with sincere submission in his heart, then he must obey him as much as he can. If another man appears (declaring himself as

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[1] Muslim # 59-1852, Abu Dawud # 4762, Musnad Ahmad 4-341.

[2] Muslim # 60. 1852.

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imam) and rebels against the imam then sever his (contender's neck."[1]

DO NOT SEEK RULERSHIP

(٣٦٨٠) وَعَنْ عَبْدِالرَّحْمٰنِ بْنِ سَمُرَةَ قَالَ قَالَ لِي رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا تَسْأَلِ الْاِمَارَةَ فَاِنَّكَ اِنْ اُعْطِيْتَهَا عَنْ مَسْئَلَةٍ وُكِلْتَ اِلَيْهَا وَاِنْ اُعْطِيْتَهَا عَنْ غَيْرِ مَسْئَلَةٍ اُعِنْتَ عَلَيْهَا۔ (متفق علیه)

3680. Sayyiduna Abdur Rahman ibn Samurah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said to him, "Do not ask for the office of the ruler because if you are given it on your asking(for it), then it will be entrusted to you to run it yourself (while that is very difficult for anyone to handle without help). But, if you are given it while you have not asked (for it), then you will be helped (by Allah) to run it (smoothly and justly)."[2]

(٣٦٨١) وَعَنْ اَبِيْ هُرَيْرَةَ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اِنَّكُمْ سَتَحْرِصُوْنَ عَلَى الْاِمَارَةِ وَسَتَكُوْنُ نَدَامَةً يَوْمَ الْقِيَامَةِ فَنِعْمَ الْمُرْضِعَةُ وَبِئْسَتِ الْفَاطِمَةُ۔ (رواه البخاری)

3681. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "You will be keen to get the position of a ruler. But, on the day of resurrection, it will turn out to be a cause of regret. How excellent a provider of milk but how bad a weaner![3]

COMMENTARY: The office of the ruler is said to begin as a wet nurse who suckles but to end as a woman who stops suckling. So the assumption of rulership seems very good and pleasing but when the inevitable death comes and the office is surrendered, it feels very bad. Hence, it is not proper to be keen to get the relish which ends as regrettable.

(٣٦٨٢) وَعَنْ اَبِيْ ذَرٍّ قَالَ قُلْتُ يَا رَسُوْلَ اللّٰهِ اَلَا تَسْتَعْمِلُنِيْ قَالَ فَضَرَبَ بِيَدِهٖ عَلٰى مَنْكِبِيْ ثُمَّ قَالَ يَا اَبَاذَرٍّ اِنَّكَ ضَعِيْفٌ وَاِنَّهَا اَمَانَةٌ وَاِنَّهَا يَوْمَ الْقِيَامَةِ خِزْيٌ وَنَدَامَةٌ اِلَّا مَنْ اَخَذَهَا بِحَقِّهَا وَاَدّٰى الَّذِيْ عَلَيْهِ فِيْهَا، وَفِيْ رِوَايَةٍ قَالَ لَهٗ يَا اَبَاذَرٍّ اِنِّيْ اَرَاكَ ضَعِيْفًا وَاِنِّيْ اُحِبُّ لَكَ مَا اُحِبُّ لِنَفْسِيْ لَا تَأَمَّرَنَّ عَلٰى اثْنَيْنِ وَلَا تَوَلَّيَنَّ مَالَ يَتِيْمٍ۔ (رواه مسلم)

3682. Sayyiduna Abu Dhar رضی اللہ عنہ narrated that he submitted "O Messenger of Allah, why do you not make me governor (of some place? He added that he patted him on his shoulder and said, "O Abu Dhar, you are weak while this (governorship) is a trust (from Allah concerning rights of fellow-men). This will be a cause of embarrassment and regret on the day of resurrection, except for one who assumes it and handles it right fully to give the dues of the right-holders (namely, his subjects)."

According to another version, the Prophet صلی اللہ علیہ وسلم said to him, "O Abu Dharr, I find you weak (so that you will not be able to shoulder responsibilities of the office

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[1] Muslim # 46-1844, Nasa'i # 4191, Ibn Majah # 3956, Musnad Ahmad 2-161.

[2] Bukhari # 7146 Muslim # 13-1652, Tirmidhi # 1529(1534) Abu Dawud # 2929, Nasa'i # 5384, Darimi # 2346, Musnad Ahmad 5-62, Nasa'i Kubra # 5929, 5930.

[3] Bukhari # 7148, Nasa'I # 5385, Musnad Ahmad 2-448.

of governor). And, I like for you that I like for myself. Do not become ruler over even two people and do not act as guardian of an orphan's property.[1]

COMMENTARY: By saying, "I like for you what I like for myself," the Prophet صلى الله عليه وسلم made it clear that if he was weak like him, he would not have shouldered the responsibilities of leadership. But, Allah gave him enough strength and endurance. Without that, he would never have been able to take up the responsibility.

Imam Nawawi رضى الله عنه said that this hadith is the greatest guide and advice that the responsibilities of government should not be accepted, particularly by the weak.

DO NOT HAND OVER OFFICE TO ONE WHO SEEKS IT

(٣٦٨٣) وَعَنْ اَبِي مُوسٰى قَالَ دَخَلْتُ عَلَى النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَنَا وَرَجُلَانِ مِنْ بَنِي عَمِّي فَقَالَ اَحَدُهُمَا يَا رَسُوْلَ اللّٰهِ اَمِّرْنَا عَلٰى بَعْضِ مَا وَلَّاكَ اللّٰهُ وَقَالَ الْاٰخَرُ مِثْلَ ذٰلِكَ فَقَالَ اِنَّا وَاللّٰهِ لَا نُوَلِّيْ عَلٰى هٰذَا الْعَمَلِ اَحَدًا سَاَلَهُ وَلَا اَحَدًا حَرَصَ عَلَيْهِ وَفِيْ رِوَايَةٍ قَالَ لَا نَسْتَعْمِلُ عَلٰى عَمَلِنَا مَنْ اَرَادَهُ۔ (متفق عليه)

3683. Sayyiduna Abu Musa رضى الله عنه said that he and two men from among the children of his paternal uncle visited the Prophet صلى الله عليه وسلم. One of them submitted, "O Messenger of Allah, appoint us as amir of some place from the territories over which Allah has made you leader." And, the other made a similar submission. He said, "By Allah, I shall not appoint over that work anyone who asks for such appointment and also not anyone who is keen for the appointment." According to another version, he said, "We shall not appoint in our work one (as a governor) who intends to get it."[2]

COMMENTARY: It was the practice of the Prophet صلى الله عليه وسلم that he did not appoint an applicant to the post he applied for without being asked to do so. Desiring such appointment implies love for recognition. In the end it causes the seeker a disadvantage.

WHO REJECTS OFFER OF RULERSHIP IS THE BEST

(٣٦٨٤) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ تَجِدُوْنَ مِنْ خَيْرِ النَّاسِ اَشَدَّهُمْ كَرَاهِيَةً لِهٰذَا الْاَمْرِ حَتّٰى يَقَعَ فِيْهِ۔ (متفق عليه)

3684. Sayyiduna Abu Hurayrah رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "You will find him among the best of people who has the greatest of dislike of this office (of rulership) till he ends up in it."[3]

COMMENTARY: One who dislikes to take responsibility of leadership is the best of all people. But, if he does accepted it for some reason then in the end he too will be as regretful as is the fate of anyone else holding this responsibility.

Teebi رضى الله عنه said that one who dislikes rulership is the best of all people. However, if he succumbs to the temptation and seeks to become a ruler then he will turn into the worst kind of people.

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[1] Muslim # 16. 1825, Musnad Ahmad 5-173.

[2] Bukhari # 7149, Muslim # 14. 1733, Abu Dawud # 3579, Musnad Ahmad 4-409.

[3] Bukhari # 3588, Muslim # 199-2526. Musnad Ahmad 2-418.

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EVERYONE ANSWERABLE FOR HIS RESPONSIBILITY

(٣٦٨٥) وَعَنْ عَبْدِاللّٰهِ بْنِ عُمَرَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَلَا كُلُّكُمْ رَاعٍ وَكُلُّكُمْ مَسْئُوْلٌ عَنْ رَعِيَّتِهٖ فَالْاِمَامُ الَّذِى عَلَى النَّاسِ رَاعٍ وَهُوَ مَسْئُوْلٌ عَنْ رَعِيَّتِهٖ وَالرَّجُلُ رَاعٍ عَلٰى اَهْلِ بَيْتِهٖ وَهُوَ مَسْئُوْلٌ عَنْ رَعِيَّتِهٖ وَالْمَرْأَةُ رَاعِيَةٌ عَلٰى بَيْتِ زَوْجِهَا وَوَلَدِهٖ وَهِىَ مَسْئُوْلَةٌ عَنْهُمْ وَعَبْدُ الرَّجُلِ رَاعٍ عَلٰى مَالِ سَيِّدِهٖ وَهُوَ مَسْئُوْلٌ عَنْهُ اَلَا فَكُلُّكُمْ رَاعٍ وَكُلُّكُمْ مَسْئُوْلٌ عَنْ رَعِيَّتِهٖ۔ (متفق عليه)

3685. Sayyiduna Abdullah ibn Umar رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Know! Everyone is an overseen and (on the day of resurrection,) each one of you will be questioned about his subjects. So, the imam (ruler) over a people is their overseen and will be questioned about them. A man is an overseen over the dwellers of his house and will be questioned about them; a woman is an overseen over the house of her husband and his children and will be questioned about them. A man's slave is an overseen over his master's property and will be questioned about it. Beware! Every one of you is an overseen and each one of you will be questioned about his subjects ."[1]

COMMENTARY: The Arabic word raiyah is that which is under the care of a(راع) shepherd, a custodian or an overseen. The people of a country are the subjects of the rulers of that country and are called his ra;'iyah because they are under his care. Hence, the hadith is a supervisor or an overseen or a shepherd. The ulama (Scholars) go so far as to say that every person is an overseen of the sense organs of his body. These organs are his subjects. So, on the day of resurrection, every person will be questioned about his sense organs and will be asked, "How did you use them? And, where?
This has not been included in the hqadith because it is very evident.

WARNING TO THE TREACHEROUS TO THE OPPRESSOR

(٣٦٨٦) وَعَنْ مَعْقِلِ بْنِ يَسَارٍ قَالَ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ مَا مِنْ وَالٍ يَلِى رَعِيَّتَهٗ مِنَ الْمُسْلِمِيْنَ فَيَمُوْتُ وَهُوَ غَاشٌّ لَهُمْ اِلَّا حَرَّمَ اللّٰهُ عَلَيْهِ الْجَنَّةَ ۔ (متفق عليه)

3686. Sayyiduna Ma'qil ibn Yasar رضی اللہ عنہ narrated that he heard Allah's Messenger صلی اللہ علیہ وسلم say, "If anyone who rules over the Muslim subjects dies while he was treacherous (and oppressive) towards them, then Allah will forbid to him (entry into) paradise.[2]

COMMENTARY: The words that Allah will forbid to him paradise could mean that he will not earn admittance at the initial stage with the successful ones, or he will not be admitted because he considered treachery and oppression as lawful, or the Prophet صلی اللہ علیہ وسلم spoke these words to deter rulers from cheating and oppression

RULER UNMINDFUL OF WELFARE OF SUBJECTS WILL NOT SMELL FRAGRANCE OF PARADISE

(٣٦٨٧) وَعَنْهُ قَالَ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ مَا مِنْ عَبْدٍ يَسْتَرْعِيْهِ اللّٰهُ رَعِيَّةً فَلَمْ يَحُطْهَا

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[1] Bukhari # 7138, Muslim # 20. 1802, Tirmidhi # 1705(1711), Abu Dawud # 2928.

[2] Bukhari # 7151, Muslim # 22-142, Barimi # 2796, Musnad Ahmad 5-25.

بِنَصِيحَةٍ إِلَّا لَمْ يَجِدْ رَائِحَةَ الْجَنَّةِ۔ (متفق علیہ)

3687. Sayyiduna Ma'qil ibn Yasar رضی اللہ عنہ narrated that he heard Allah's Messenger صلی اللہ علیہ وسلم say, "If anyone is made by Allah to oversee the subjects (having made him their ruler) and he is not well-wishing to them in caring for them then he will not smell the fragrance of paradise.[1]

COMMENTARY: He will not smell the fragrance of paradise with those who do smell it though it is perceived at a distance of five hundred years of journey. Or he will not smell it with the successful people. But, if he dies as a disbeliever regarding his doings to be lawful then he will never get the fragrance of paradise.

OPPRESSOR OF SUBJECTS IS THE WORST OF RULERS

(٣٦٨٨) وَعَنْ عَائِذِ بْنِ عَمْرٍو وَقَالَ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ إِنَّ شَرَّ الرِّعَاءِ الْحُطَمَةُ۔

(رواہ مسلم)

3688. Sayyiduna Aaidh ibn Amr رضی اللہ عنہ narrated he heard Allah's Messenger صلی اللہ علیہ وسلم say, "The worst of the chiefs (or rulers) are they who are merciless and rough.[2] (The phrase translated "they who are merciless..." is (إِنَّ شَرَّ الرِّعَاءِ الْحُطَمَةُ) Lanes Lexicon translates (شَرَّ الرِّعَاءِ الْحُطَمَةُ) thus: "the worst of pastors is the ungentle that causes beasts to crush, or bruise, one another.") (Book I Part 2 P.594.)

(٣٦٨٩) وَعَنْ عَائِشَةَ قَالَتْ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اللّٰهُمَّ مَنْ وُلِّيَ مِنْ أَمْرِ أُمَّتِيْ شَيْئاً فَشَقَّ عَلَيْهِمْ فَاشْقُقْ عَلَيْهِ وَمَنْ وُلِّيَ مِنْ أَمْرِ أُمَّتِيْ شَيْئاً فَرَفَقَ بِهِمْ فَارْفُقْ بِهِ۔

3689. Sayyidah Ayshah رضی اللہ عنہا narrated that Allah's Messenger صلی اللہ علیہ وسلم prayed, "O Allah cause distress to him of authority over my *ummah* who causes them distress. And be mild to him of authority over my *ummah* who mild to them.[3]

GREAT RANK OF JUST RULER

(٣٦٩٠) وَعَنْ عَبْدِاللّٰهِ بْنِ عَمْرِو بْنِ الْعَاصِ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ إِنَّ الْمُقْسِطِيْنَ عِنْدَاللّٰهِ عَلٰى مَنَابِرَ مِنْ نُوْرٍ عَنْ يَمِيْنِ الرَّحْمٰنِ وَكِلْتَا يَدَيْهِ يَمِيْنٌ الَّذِيْنَ يَعْدِلُوْنَ فِيْ حُكْمِهِمْ وَأَهْلِيْهِمْ وَمَا وَلُوا۔ (رواہ مسلم)

3690. Sayyiduna Abdullah ibn Amr ibn Aas رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said "Indeed, the just rulers will be near Allah on pulpits of nur (light) to the (side of the) right hand of Ar. Rahman. And, both His hands are right. They (the just rulers) are those who are just in their commands towards their people and the affairs that are under their charge.[4]

COMMENTARY: When a man is honoured he is offered to stand or sit on the right side.

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[1] Bukhari # 7150, Muslim # 21-142.

[2] Muslim # 23-1830, Musnad Ahmad 5-64.

[3] Muslim # 19-1828, Musnad Ahmad 6-93.

[4] Muslim #18-1828, Musnad Ahmad 2-160 Nasa'I # 5379.

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So, this is a figurative manner of conveying the honour and high standing of a just ruler.
In order that there should be no confusion about hands being ascribed to Allah, it is stated that both hands of Allah are right. Thus no one may presume that the right hand is mentioned against the left, which is comparatively weak. Obviously, Allah is without any kind of weakness and shortcoming.
It must also be remembered that attributing a hand to Allah is merely a metaphoric speech. Only Allah knows the true, meaning of this, but it seems to represent strength.
These just rulers are fair and just in dispensing all affairs concerned with government and rule. They discharge these duties honestly and fairly. They do not fail to give the rights of all those who are under their influence or authority, like members of their own family or their subjects. They deal with them with full justice.
Their field also covers all affairs entrusted to them and under their charge, like the rights of the orphans and the poor, the trust properties, and so on.
A true wise man has said that man must be just to his own self too. He must not waste his time in such occupation as is not prescribed by Allah. He must spend all his time in things that are a means to earning Allah's pleasure, in fulfilling his duties to his fellow creatures, in obedience to Allah and in keeping away from the forbidden things. This is what the awliya (friends of Allah) and men of Allah do. Or, he may occupy himself in such things as keep the righteous believers busy.

TWO COMPANIONS WITH EVERY RULER

(٣٦٩١) وَعَنْ أَبِي سَعِيْدٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَابَعَثَ اللّٰهُ مِنْ نَبِيٍّ وَلَا اسْتَخْلَفَ مِنْ خَلِيْفَةٍ إِلَّا كَانَتْ لَهُ بِطَانَتَانِ بِطَانَةٌ تَأْمُرُهُ بِالْمَعْرُوْفِ وَتَحُضُّهُ عَلَيْهِ وَبِطَانَةٌ تَأْمُرُهُ بِالشَّرِّ وَتَحُضُّهُ عَلَيْهِ وَالْمَعْصُوْمُ مَنْ عَصَمَهُ اللّٰهُ۔ (رواه البخاری)

3691. Sayyiduna Abu Sa'eed رضی اللہ عنہ said, "Allah has sent no Prophet and has appointed no Khalifah (Caliph) without each having two unseen companions. One unseen companion instructs him to pursue the reputable (good things) and exhorts him to it, and the other unseen companion instructs him to pursue evil and exhorts him to it. And, the innocent one is he whom Allah protects (from sin)."[1]

COMMENTARY: The two unseen companions are the angel and the devil. They keep together with man. The angel exhorts him to good work but the devil tempts him to do bad.
The innocent are the Prophets صلی اللہ علیہ وسلم, the righteous Caliphs رضی اللہ عنہ and some other caliphs and rulers. Allah has kept them safe from the devil's mischief.
The two companions may also be the advisers and assistants who keep constant company of the caliphs. They are called bitanah(بطانة). Hence, the advisers who were with every Prophet and caliph had different views. Or, they had two groups of men whose opinions differed. This is normally observed with heads of states, chiefs and governors and sometimes their view points are poles apart, at opposite extremes and incompatible. Some who are good offer sound advice and exhort to what is good, but the bad natured people try to mislead their leader. But, Allah saves him from evil course whose He wishes.

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[1] Bukhari # 6611, 7198, Nasa'I # 4202,Musnad Ahmad 2-39, Nasa'i Kubra 7825.

PROPHET'S صلى الله عليه وسلم CONSTANT ATTENDANT

(٣٦٩٢) وَعَنْ اَنَسٍ قَالَ كَانَ قَيْسُ بْنُ سَعْدٍ مِنَ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ بِمَنْزِلَةِ صَاحِبِ الشُّرَطِ مِنَ الْاَمِيْرِ۔ (رواه البخارى)

3692. Sayyiduna Anas رضى الله عنه narrated that (Sayyiduna) Qays ibn Sa'd رضى الله عنه was in attendance with the Prophet صلى الله عليه وسلم like an escort is with an amir.[1]

COMMENTARY: Sayyiduna Qays ibn Sa'd رضى الله عنه was constantly in the company of the Prophet صلى الله عليه وسلم. He implemented and forwarded the commands and directions of the Prophet صلى الله عليه وسلم.

Here, we reproduce a relative passage from 'The Life of Muhammad صلى الله عليه وسلم by Ibn Kathir رضى الله عنه(P.767).[2]

QAYS IBN SA'D ANSARI, KHUZRAJI رضى الله عنه

Bukhari has reported from Anas رضى الله عنه that the position of Qays رضى الله عنه with the Prophet صلى الله عليه وسلم was exactly what a police officer is in he eyes of an ameer. He was a very tall man and had a very thin beard. The tallest of men would be covered up to his nose if he were to wear the trousers of Qays رضى الله عنه. Ameer Mu'awiyah رضى الله عنه sent his trousers to the ruler of Byzantine asking him. "Do you have such a tall man?" The king was dumbfounded.

Qays رضى الله عنه was very kind and generous, wise and of sound judgement.

In the Battle of Siffin, he took the side of Sayyidina Ali رضى الله عنه Qays رضى الله عنه kept his index finger raised and made supplication continuously. He died during the last days of Ameer Mu'awiyah's رضى الله عنه Khilafah (caliphate).

Bazzar reported from Anas رضى الله عنه that twenty young men of the Ansar always stayed around to respond to the Prophet صلى الله عليه وسلم whenever he needed them. He would send them where they were needed.

WOMAN RULER IS IN AUSPICIOUS FOR HER PEOPLE

(٣٦٩٣) وَعَنْ اَبِي بَكْرَةَ قَالَ لَمَّا بَلَغَ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَنَّ اَهْلَ فَارِسَ قَدْ مَلَّكُوا عَلَيْهِمْ بِنْتَ كِسْرٰى قَالَ لَنْ يُفْلِحَ قَوْمٌ وَلَّوا اَمْرَهُمْ اِمْرَاَةً۔ (رواه البخارى)

3693. Sayyiduna Abu Bakrah رضى الله عنه narrated that when Allah's Messenger صلى الله عليه وسلم was informed that the citizens of Persia had enthroned Kisra's daughter as their queen, he said, "The People who entrust their affairs of government to a woman shall never prosper."[3]

COMMENTARY: It is clear from this hadith that only man is eligible to lead and rule. A woman may not act as head of state or governor.

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[1] Bukhari # 7155, Tirmidhi # 3876.

[2] Published by Darul-Ishaat, Karachi.

[3] Bukhari # 4425, Tirmidhi # 2262(2269), Nasa'i # 5388, Musnad Ahmad 5-38, Nasa'i Kubra # 5937.

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SECTION II اَلْفَصْلُ الثَّانِيْ

DO NOT ABANDON THE COMMUNITY

(٣٦٩٤) عَنِ الْحَارِثِ الْاَشْعَرِيِّ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اٰمُرُكُمْ بِخَمْسٍ بِالْجَمَاعَةِ وَالسَّمْعِ وَالطَّاعَةِ وَالْهِجْرَةِ وَالْجِهَادِ فِيْ سَبِيْلِ اللّٰهِ وَاِنَّهٗ مَنْ خَرَجَ مِنَ الْجَمَاعَةِ قِيْدَ شِبْرٍ فَقَدْ خَلَعَ رِبْقَةَ الْاِسْلَامِ مِنْ عُنُقِهٖ اِلَّا اَنْ يُرَاجِعَ وَمَنْ دَعَا بِدَعْوَى الْجَاهِلِيَّةِ فَهُوَ مِنْ جُثَى جَهَنَّمَ وَاِنْ صَامَ وَصَلّٰى وَزَعَمَ اَنَّهٗ مُسْلِمٌ۔

(رواه احمد والترمذی)

3694. Sayyiduna Harithi Ashani's رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "I command you to observe five things: to remain attached to the community, to hear, to obey, to make hijrah (which is to emigrate) and to wage jihad in Allah's path. If anyone separates from the main body even by a span, he takes off the rope of Islam from his neck unless he returns to it. And, if anyone invites (the people) to the beliefs of the people of jahiliyah (ignorance period) then he is a member of the communities of hell, even if he fasts, offers *salah (prayer)* and declares that he is a Muslim."[1]

COMMENTARY: To emigrate is to move out of enemy territory and settle in Islamic land. Or, if he lives in a city or country whose inhabitants are bidatis (innovators) then he must get out of that place and come to one where (true) *sunnah (Prophet's صلی اللہ علیہ وسلم practice)* is practiced.

In the same way, hijrah is also to abandon sin and disobedience and make repentance and seek forgiveness of Allah. This is in the light of the saying of the Prophet صلی اللہ علیہ وسلم:

اَلْمُهَاجِرُ مَنْ هَجَرَ مَا نَهَى اللّٰهُ عَنْهُ

(The emigrant is he who abandons what Allah has forbidden to do).[2]

The command to wage jihad is to fight with the enemies of Islam and the disbelievers to propagate Islam and raise aloft its banner and to enforce Divine law in the land. It also means to suppress the desires of the soul and to deny them to it, for, nothing is more harmful to man than the enmity of his self.

"If anyone separates from the main body:..' This part of the hadith means that if a Muslim abandons what the entire community observes, then he is like one who absolves himself of obedience to Islam, even if he abandons that to a very minute degree. He cedes his responsibility that was *Wajib (obligatory)* on him as a Muslim. It also means that Islam has nothing to assure him of. However, if he repents, then he will return to the folds of Islam as an obedient member.

Whose sounds the call of the jahiliyah (ignorance period) is one who calls for the customs and rites of the jahiliyah (ignorance period) to be re-introduced. He becomes instrumental in causing the people to adopt beliefs and convictions contrary to Islam.

Some scholars interpret it to mean that he summons people to help him at the time of an accident or attack in the same manner as pre-Islamic people did. They used to call out, "O family of so-and-so! O family of so-and-so!" At that, they would hurry and come to his aid even if he was an oppressor.

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[1] Tirmidhi # 2863(2872), Musnad Ahmad 4-130.

[2] Manner In Islam (Al Adebal Mufrad) Bulzh in # 1144 (Darul Isha'at, Karachi).

THIN GARMENTS NOT SUITABLE FOR AMIR

(٣٦٩٥) وَعَنْ زِيَادِ بْنِ كُسَيْبِ نِ الْعَدَوِيِّ قَالَ كُنْتُ مَعَ اَبِي بَكْرَةَ تَحْتَ مِنْبَرِ ابْنِ عَامِرٍ وَهُوَ يَخْطُبُ وَعَلَيْهِ ثِيَابٌ رِقَاقٌ فَقَالَ اَبُوبِلَالٍ اُنْظُرُوْا اِلٰى اَمِيْرِنَا يَلْبَسُ ثِيَابَ الْفُسَّاقِ فَقَالَ اَبُوبَكْرَةَ اسْكُتْ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ مَنْ اَهَانَ سُلْطَانَ اللّٰهِ فِي الْاَرْضِ اَهَانَهُ اللّٰهُ۔ رَوَاهُ التِّرْمِذِيُّ وَقَالَ هٰذَا حَدِيْثٌ حَسَنٌ غَرِيْبٌ۔

3695. Sayyiduna Ziyad ibn Kusayb رحمه الله Al-Adwi رحمه الله said, "I was sitting with Abu Bakrah رحمه الله at the foot of the pulpit of Ibn Aamir رضی الله عنه who was delivering a sermon wearing thin garments. Abu Bilal رحمه الله (a tabi'i) remarked, 'Look at our amir wearing garments of the sinners!' Abu Bakrah رضی الله عنه interrupted him, 'Quite! I had heard Allah's Messenger صلی الله علیه وسلم say that if anyone humiliaties Allah's ruler on earth then Allah will humiliate him."[1]

COMMENTARY: Perhaps Ibn Aamir رضی الله عنه had worn what is unlawful for men to wear like silk. Abu Bakrah رضی الله عنه prevented Bilal رحمه الله from insulting the amir lest discord was created among Muslims.

It is also possible that the amir was wearing very costly and very thin clothes similar to what the highly luxurious people wear. The ascetics and the worshippers shun such garments. This is why Abu Bilal رحمه الله described them as clothing of the sinners.

Some mystics, or those who have an intimate knowledge of Allah, say:

مَنْ رَقَّ ثَوْبُهُ رَقَّ دِيْنُهُ

(He whose clothing is thin textured makes his religion too very dilute and thin)

DO NOT OBEY RULER'S COMMAND TO SIN

(٣٦٩٦) وَعَنِ النَّوَّاسِ بْنِ سَمْعَانَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا طَاعَةَ لِمَخْلُوْقٍ فِيْ مَعْصِيَةِ الْخَالِقِ۔ (رواه فی شرح السنة)

3696. Sayyiduna Nawwas ibn Samah رضی الله عنه narrated that Allah's Messenger رضی الله عنه said, "There is no obedience to the creatures in what calls for disobedience to the creator."[2]

COMMENTARY: If any of the creatures, even a king, ruler or amir, gives a command that calls for doing something that contravenes Allah's command then it must not be done, and the creature must not be obeyed. But, if a person is compelled to obey such a command then there is no sin on him.

THE FINAL TREATMENT OF THE RULER

(٣٦٩٧) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَامِنْ اَمِيْرِ عَشَرَةٍ اِلَّا يُؤْتٰى بِهٖ يَوْمَ الْقِيَامَةِ مَغْلُوْلًا حَتّٰى يَفُكَّ عَنْهُ الْعَدْلُ اَوْيُوْبِقَهُ الْجَوْرُ۔ (رواه الدارمی)

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[1] Tirmidhi # 2231, Musnad Ahmad 5-42

[2] Baghawi in Shah-us *Sunnah (Prophet's* صلی الله علیه وسلم *practice)* # 2455.

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3697. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Every ruler, even if he has ruled over ten people, will be brought on the day of resurrection with a chain on his neck till justice relaxes his chain (loose) or oppression ruins him." [1]

COMMENTARY: Every ruler, just or unjust, will necessarily be brought in shackles before the Mighty lord. If he was just then he will be released, but if proved unjust then he will be punished.

RULERS WILL BE REGRETFUL ON THE DAY OF RESURRECTION

(٣٦٩٨) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَيْلٌ لِلْاُمَرَاءِ وَيْلٌ لِّلْعُرَفَاءِ وَيْلٌ لِلْاُمَنَاءِ لَيَتَمَنَّيَنَّ اَقْوَامٌ يَوْمَ الْقِيَامَةِ اَنَّ نَوَاصِيَهُمْ مُعَلَّقَةٌ بِالثُّرَيَّا يَتَجَلْجَلُوْنَ بَيْنَ السَّمَاءِ وَالْاَرْضِ وَاِنَّهُمْ لَمْ يَلُوا عَمَلًا۔ رَوَاهُ فِيْ شَرْحِ السُّنَّةِ وَرَوَاهُ اَحْمَدُ وَفِيْ رِوَايَتِهٖ اَنَّ ذَوَائِبَهُمْ كَانَتْ مُعَلَّقَةً بِالثُّرَيَّا يَتَذَبْذَبُوْنَ بَيْنَ السَّمَاءِ وَالْاَرْضِ وَلَمْ يَكُوْنُوْا عُمِّلُوْا عَلٰى شَيْءٍ۔

3698. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Alas for the rulers! Alas for the overseers! Alas for the trustees! Many people will sigh and yearn that their forelocks had been tied to the Pleiades leaving them suspended between heaven and earth, and (yearn) that they had never been given authority."[2]

Another version has this addition: "(will yearn) that their loose hair had been tied to the Pleiades pulling them up and down between heaven and earth and (will yearn) that they had never been governors over anything."[3]

COMMENTARY: The word (ويل) wayl means 'woe to you!' 'Alas!' 'How I wish!' It is spoken when one is grieved and is an expression of sigh.

It is also said that wayl is valley in hell. The infidel will be dropped into it but will continue to fall for forty years but not reach its bottom.

The trustee (or amin (امين)) is one whom the ruler has appointed over (receipts and payments of) charity and Kharaj (homage revenue). Or, he is appointed to handle other revenue of the Muslims. Or, someone other than the ruler may have appointed him to like after his properties.

Pleiades is star cluster about 370 light years away.

Those people would prefer to have been disgraced in the world rather than undergo the severity of reckoning in the next world.

The message of the hadith is that a ruler must dispense justice because there is great reward in that. Besides, that would save them from disgrace in the hereafter.

Thus, it is clear why sympathy is offered to rulers, overseers and trustees. They generally are liable to fail in honestly discharging their duties. There are, however, exceptions whom Allah protects and guides.

CHIEFS MOST LIKELY DISTINED TO HELL

(٣٦٩٩) وَعَنْ غَالِبِ نِ الْقَطَّانِ عَنْ رَجُلٍ عَنْ اَبِيْهِ عَنْ جَدِّهٖ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ

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[1] Darimi # 2515.

[2] Sharh us-*sunnah (Prophet's* صلی اللہ علیہ وسلم *practice)* # 2468, Musnad Ahmad 2-352.

[3] Musnad Ahmad 2-352.

إِنَّ الْعِرَافَةَ حَقٌّ وَلَا بُدَّ لِلنَّاسِ مِنْ عُرَفَاءَ وَلٰكِنَّ الْعُرَفَاءَ فِي النَّارِ۔ (رواه ابوداؤد)

3699. Sayyiduna Ghalib al-Qattan رضی اللہ عنہ reported from a man who from his father, from his grandfather that Allah's Messenger صلی اللہ علیہ وسلم said, "The need of a chief is real. And certainly, there ought to be chiefs for the people. But, the chiefs will go to hell."[1]

COMMENTARY: Of course, chiefs are a necessity to sort out affairs of the people and to administer them. People and to administer them, people need them and have recourse to them..

However, it is a fact that most of them will go to hell, because they will not be just and honest. In this sense, it is a very bad bargain to accept the office of a chief. It is a very risky thing, so the intelligent must be cautions. He must, as far as possible, refrain from accepting this office lest he fall into sin and become liable to go to hell.

SEEK REFUGE IN ALLAH FROM A FOOLISH LEADER

(٣٧٠٠) وَعَنْ كَعْبِ بْنِ عُجْرَةَ قَالَ قَالَ لِي رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ أُعِيْذُكَ بِاللّٰهِ مِنْ إِمَارَةِ السُّفَهَاءِ قَالَ وَمَا ذَاكَ يَا رَسُوْلَ اللّٰهِ قَالَ أُمَرَاءُ سَيَكُوْنُوْنَ مِنْ بَعْدِيْ مَنْ دَخَلَ عَلَيْهِمْ فَصَدَّقَهُمْ بِكَذِبِهِمْ وَأَعَانَهُمْ عَلٰى ظُلْمِهِمْ فَلَيْسُوا مِنِّيْ وَلَسْتُ مِنْهُمْ وَلَنْ يَرِدُوْا عَلَيَّ الْحَوْضَ وَمَنْ لَمْ يَدْخُلْ عَلَيْهِمْ وَلَمْ يُصَدِّقْهُمْ بِكَذِبِهِمْ وَلَمْ يُعِنْهُمْ عَلٰى ظُلْمِهِمْ فَأُولٰئِكَ مِنِّيْ وَأَنَا مِنْهُمْ وَأُولٰئِكَ يَرِدُوْنَ عَلَيَّ الْحَوْضَ۔ (رواه الترمذی والنسائی)

3700. Sayyiduna Ka'b ibn Ujrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said to him, "I place you in Allah's protection from the foolish rulers." He asked. "What is that, O Messenger of Allah? He elightened him, "There will come after me, chiefs (foolish and liars and cruel). He who goes to them and takes their lie as true and will assist them in their oppression (by word of mouth and by deed), (is not mine and) has nothing to do with me and I have nothing to do with him. (I do not like his doings and I am fed up with the likes of him.) People like him will not come to me at the Pond (the hawd). As for him who does not corroborate their falsehood as true and does not assist them in their oppression, he belongs to me and I belong to him and such people will come to me at the hawd."[2]

COMMENTARY: The Pond or hawd refers to hawd Kawthar. "These people will not be permitted to come to me at hawd Kawthar. It could mean 'paradise.' "They would not be allowed to come to me in paradise."

This is a strict warning I anyone becomes a member of such a government, helps and supports them while it is run by foolish people who oppress Allah's creatures then it is a sign that this man lacks faith and he does not deserve to be called a Muslim.

NEARNESS TO A RULER GETS ONE AWAY FROM ALLAH

(٣٧٠١) وَعَنِ ابْنِ عَبَّاسٍ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ مَنْ سَكَنَ الْبَادِيَةَ جَفَا وَمَنِ اتَّبَعَ الصَّيْدَ غَفَلَ وَمَنْ أَتَى السُّلْطَانَ افْتُتِنَ۔ رَوَاهُ التِّرْمِذِيُّ وَأَحْمَدُ وَالنَّسَائِيُّ وَفِيْ رِوَايَةِ أَبِيْ دَاوٗدَ مَنْ لَزِمَ السُّلْطَانَ

[1] Abu Dawud # 2934.

[2] Tirmidhi # 416, Nasa'I # 4207, Musnad Ahmad 4-243.

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أُفْتِنَ وَمَا ازْدَادَ عَبْدٌ مِنَ السُّلْطَانِ دُنُوًّا إِلَّا ازْدَادَ مِنَ اللّٰهِ بُعْدًا۔

3701. Sayyiduna Ibn Abbas رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said. "He who resides in the desert is harsh and unfriendly. He who pursues game is careless and neglectful. And, he who visits the ruler is led astray."[1]

According to a version: "He who associates himself with a ruler is led astray. And the nearer a man gets to a ruler the farther he goes from Allah."[2]

COMMENTARY: The hadith does not mean to belittle the villagers or desert dwellers. Rather, since they do not get the company of the scholars, the pious and the men of Allah (awliya), they are hard-hearted. They lack knowledge, Divine awareness and understanding.

If anyone persistently occupies in hunting as a hobby then he is slack in obedience worship and offering *salah (prayer)* on Friday and with the congregation. Also, he lacks compassion and friendliness.

In other words this refers to those who constantly engage in hunting as a playful pursuit and not with the objective to procure a lawful subsistence, they spend most of their time in hunting for pleasure. Apart from that, there is no doubt whatsoever that hunting is permissible and lawful. Some of the sahabah (Prophet's Companions) رضی اللہ عنہم had, indeed, engaged in hunting. However, the ulama (Scholars) assert that the Prophet صلی اللہ علیہ وسلم never engaged in hunting himself but, at the same time, he never disallowed anyone to hunt game.

If anyone visits the rulers unnecessarily then he will invite trouble. If he emulates their deeds that contravene *Shariah* then he puts his religion at risk. But, if he contradicts them, then he puts his worldy life at stake. Mazhar رحمہ اللہ says that if anyone goes to a king and follows their practices (without trying to correct their he involves himself in irreligious conduct. If he does not do as they do but enjoins them piety and forbids evil, then his attendance in the king's (or ruler's) assembly will be more meritorious than participating in jihad.

Dahlawi رحمہ اللہ has presented in Musnad Firdaws`a hadith of Sayyiduna Ali رضی اللہ عنہ in a marfu form:

مَنِ ازْدَادَ عِلْمًا وَلَمْ يَزْدَدْ فِي الدُّنْيَا زُهْدًا لَمْ يَزْدَدْ مِنَ اللّٰهِ إِلَّا بُعْدًا

(He who increases his knowledge but does not expand his unconcern with the world truly increases his distance from Allah.)

ANONYMITY IS SOLACE WHILE RENOWN IS TROUBLESOME

(٣٧٠٢) وَعَنِ الْمِقْدَامِ بْنِ مَعْدِيكَرِبَ أَنَّ رَسُولَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ ضَرَبَ عَلَى مَنْكِبَيْهِ ثُمَّ قَالَ أَفْلَحْتَ يَا قُدَيْمُ إِنْ مُتَّ وَلَمْ تَكُنْ أَمِيرًا وَلَا كَاتِبًا وَلَا عَرِيفًا۔ (رواہ ابوداؤد)

3702. Sayyiduna Miqdam ibn Madikarab رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم patted him on his shoulders and said, "You have succeeded, O Qudaym, if you do not become a ruler, a clerk or an overseer till you die."[3]

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[1] Tirmidhi # 2256 (2263), Nasai # 4309, Musnad Ahmad 1-357.

[2] Abu Dawud # 2859.

[3] Abu Dawud # 2933.

COMMENTARY: This saying indicates that anonymity spells peace while limelight and fame bring trouble.

RULER WHO LEVIES UNJUST TAXES WILL BE DEPRIVED OF PARADISE

(٣٧٠٣) وَعَنْ عُقْبَةَ بْنِ عَامِرٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا يَدْخُلُ الْجَنَّةَ صَاحِبُ مَكْسٍ يَعْنِي الَّذِيْ يَعْشُرُ النَّاسَ۔ (رواه احمد وابوداؤد والدارمي)

3703. Sayyiduna Uqbah ibn Aamir رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "The tax collector will not enter paradise." He is the one who impose or collects taxes or levies from people such as are not sanctioned by *Shariah*.[1]

MERIT OF A JUST IMAM

(٣٧٠٤) وَعَنْ اَبِيْ سَعِيْدٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِنَّ اَحَبَّ النَّاسِ اِلَى اللّٰهِ يَوْمَ الْقِيَامَةِ وَاَقْرَبَهُمْ مِنْهُ مَجْلِسًا اِمَامٌ عَادِلٌ وَاِنَّ اَبْغَضَ النَّاسِ اِلَى اللّٰهِ يَوْمَ الْقِيَامَةِ وَاَشَدَّهُمْ عَذَابًا وَفِيْ رِوَايَةٍ وَاَبْعَدَهُمْ مِنْهُ مَجْلِسًا اِمَامٌ جَائِرٌ۔ رَوَاهُ التِّرْمِذِيُّ وَقَالَ هٰذَا حَدِيْثٌ حَسَنٌ غَرِيْبٌ۔

3704. Sayyiduna Abu Saeed رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "The dearest of all men to Allah and the nearest of them in rank on the day of resurrection will be ajust imam (ruler, leader), and the most despised of all men to Allah on the day of resurrection who will be awarded the harshest of punishment," or according to a version, "Who will be farthest from Him in rank will be a cruel (oppressive) imam."[2]

CONVEYING TRUTH TO A TYRANT IS BEST JIHAD

(٣٧٠٥-٣٧٠٦) وَعَنْ اَبِيْ سَعِيْدٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَفْضَلُ الْجِهَادِ مَنْ قَالَ كَلِمَةَ حَقٍّ عِنْدَ سُلْطَانٍ جَائِرٍ۔ رَوَاهُ التِّرْمِذِيُّ وَاَبُوْدَاوٗدَ وَابْنُ مَاجَةَ وَرَوَاهُ اَحْمَدُ وَالنَّسَائِيُّ عَنْ طَارِقِ بْنِ شِهَابٍ۔

3705. Sayyiduna Abu Saeed رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Indeed, the mightiest of jihad is a just word before a tyrant ruler."[3]

3706. Sayyiduna Tariq ibn Shihab رضی اللہ عنہ narrated the same hadith.[4]

COMMENTARY: In jihad, the warrior may subdue the enemy or become a marty but when he speaks a just word before a cruel king, he has no semblance of hope of saving his skin. In spite of that, he dares to speak out the truth leaving himself at the mercy of the oppressor. He discharges his duty of enjoining the reputable and forbidding the disreputable. Hence, it calls for more patience to do something that may cause him to lose his life and property than to do what might spare his life.

Moreover, the oppressive and unjust ruler is liable to hurt all his subjects and if he is prevented from being unjust then a large number of people will be benefited. The same thing cannot be said about fighting with the enemy.

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[1] Abu Dawud # 2937, Darimi # 1666, Musnad Ahmad 4-143.

[2] Tirmidhi # 1329 (1334) , Musnad Ahmad 3-55.

[3] Tirmidhi # 2174 (2181), Abu Dawud # 4344, Ibn Majah # 4011.

[4] Nasai # 4214, Musnad Ahmad 3-19. 4-314. 5-251. Nasai Kubra # 7834.

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THE WAY TO CORRECT THE EVIL MAN: Shaykh Abu Hamid رحمه الله has written in Ahya that enjoining the reputable to a ruler is to stop him from his waywardness, must be told of his deeds that are wrong, unjust and cruel, of his commands that are unlawful and of his actions that are contrary to the codes of *Shariah*. However, strong words and approach must be adopted calling him cruel or 'one who does not fear Allah' only when other people are not likely to be punished alongwith the reproacher. If they are likely to suffer his wrath, then it is not allowed to speak to him strongly. If only the reproacher is likely to be punished then it is allowed to reproach him in strong words. Rather, it is *mustahab (desirable)* to do so. The predecessors used to chide the rulers severely because they knew that if their wrath resulted in loss of their life that would be a great honour for them in that they would thereby attain the rank of martyrdom in jihad.

RIGHTEOUS ADVISERS LEAD THE RULERS TO SUCCESS

(٣٧٠٧) وَعَنْ عَائِشَةَ قَالَتْ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ إِذَا أَرَادَ اللّٰهُ بِالْأَمِيْرِ خَيْرًا جَعَلَ لَهُ وَزِيْرَ صِدْقٍ إِنْ نَسِيَ ذَكَّرَهُ وَإِنْ ذَكَرَ أَعَانَهُ وَإِذَا أَرَادَ بِهِ غَيْرَ ذٰلِكَ جَعَلَ لَهُ وَزِيْرَ سُوْءٍ إِنْ نَسِيَ لَمْ يُذَكِّرْهُ وَإِنْ ذَكَرَ لَمْ يُعِنْهُ۔ (رواه ابوداؤد والنسائی)

3707. Sayyidah Ayshah رضی الله عنها narrated that Allah's Messenger صلی الله علیه وسلم said, "When Allah decides that a ruler should have good, He lets him have a righteous minister and adviser. Is he forgets, he reminds him and if he remembers, he helps him. But, when Allah decides for him otherwise, He causes him to have an evil minister and adviser so that if he forgets, he does not remind him and if he remembers, he does not help him."[1]

SUSPICION CAUSES UNREST IN SUBJECTS

(٣٧٠٨) وَعَنْ أَبِي أُمَامَةَ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ إِنَّ الْأَمِيْرَ إِذَا ابْتَغَى الرِّيْبَةَ فِي النَّاسِ أَفْسَدَهُمْ (رواه ابوداؤد)

3708. Sayyiduna Abu Umamah رضی الله عنه said that the Prophet صلی الله علیه وسلم said, "When a ruler tries to attribute mischief to the subjects, he corrupts them."[2]

COMMENTARY: The rulers and the ruled must have complete harmony among themselves for the sake of peace in their country. The ruler must assure his subjects that he is confident of them. If he entertains doubts and accuses them and punishes them because of that, then he creates unrest and bad feelings.

This hadith teaches rulers that they must not search for faults in their subjects and must conceal their faults. They must pardon them any lapses.

(٣٧٠٩) وَعَنْ مُعَاوِيَةَ قَالَ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ إِنَّكَ إِذَا اتَّبَعْتَ عَوْرَاتِ النَّاسِ أَفْسَدْتَهُمْ رَوَاهُ الْبَيْهَقِيُّ فِي شُعَبِ الْإِيْمَانِ۔

3709. Sayyiduna Muawiyah رضی الله عنه narrated that he heard Allah's Messenger صلی الله

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[1] Abu Dawud # 2932, Nasai # 4204, Bayhaqi, Nasai Kubra # 7827.

[2] Abu Dawud # 4889, Musnad Ahmad 6-4.

عليه وسلم **say, "If you look into the secrets of the people (to find their faults), then you will corrupt them."**[1]

COMMENTARY: Like the previous hadith this too stresses that secrets should not be disclosed lest it becomes difficult to live peacefully.

(٣٧١٠) وَعَنْ اَبِي ذَرٍّ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ كَيْفَ اَنْتُمْ وَاَئِمَّةٌ مِنْ بَعْدِي يَسْتَاثِرُوْنَ بِهٰذَا الْفَيْءِ قُلْتُ اَمَا وَالَّذِيْ بَعَثَكَ بِالْحَقِّ اَضَعُ سَيْفِي عَلٰى عَاتِقِيْ ثُمَّ اَضْرِبُ بِهٖ حَتّٰى اَلْقَاكَ قَالَ اَوَلَا اَدُلُّكَ عَلٰى خَيْرٍ مِنْ ذٰلِكَ تَصْبِرُ حَتّٰى تَلْقَانِيْ۔ (رواه ابوداؤد)

3710. Sayyiduna Abu Dharr رضی اللہ عنہ **narrated that Allah's Messenger** صلی اللہ علیہ وسلم **asked him, "How will you conduct yourselves, after me with the rulers who will retain the fa'I (booty) with themselves?" He said, "Indeed, by him who sent you with the truth, I shall put my sword on my shoulder and smite (them) with it till I meet you." He asked, "Shall I not guide you to what is better than that? Be patient till you meet me."**[2]

COMMENTARY: Fa'i is what is acquired from the disbelievers without fighting with them. Examples are Kharaj (tribute), jizyah (homage revenue) or any kind of tax which the Islamic state takes from the non-Muslims. As for the property acquired from the disbelievers after fighting with them, that is called ghanimah (booty). One fifth of the fa'I goes to the state treasury while four-fifth is the right of all Muslims and disbursed among them. If the ruler does not give anything of the fa'i to the Muslims then though he denies them their right yet, merely for this property, they must not revolt against him. It is better to show patience.

The ulama (Scholars) say that this saying of the Prophet صلی اللہ علیہ وسلم includes both fa'I and ghanimah. The ruler who appropriates all of fa'I or ghanimah (booty) is a wrongdoer. (fa'i is booty acquired without fighting. Ghanimah is booty acquired after defeating the enemy in war.)

SECTION III اَلْفَصْلُ الثَّالِثُ

MERIT OF A JUST IMAM (RULER)

(٣٧١١) عَنْ عَائِشَةَ عَنْ رَّسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اَتَدْرُوْنَ مَنِ السَّابِقُوْنَ اِلٰى ظِلِّ اللّٰهِ عَزَّوَجَلَّ يَوْمَ الْقِيَامَةِ قَالُوا اللّٰهُ وَ رَسُوْلُهٗ اَعْلَمُ قَالَ الَّذِيْنَ اِذَا اُعْطُوا الْحَقَّ قَبِلُوْهُ وَاِذَا سُئِلُوْهُ بَذَلُوْهُ وَحَكَمُوْا لِلنَّاسِ كَحُكْمِهِمْ لِاَنْفُسِهِمْ۔

3711. Sayyidah Ayshah رضی اللہ عنہا **narrated that Allah's Messenger** صلی اللہ علیہ وسلم **asked, "Do you know who will be the first ones, on the day of resurrection, to the shade of (the throne of) Allah, Mighty and Glorious (or to His kindness and mercy)?" They (the sahabah (Prophet's Companions)** رضی اللہ عنہم **) said, "Allah and His Messenger** صلی اللہ علیہ وسلم **know best." He said. "They (who will be the first) are the ones who accept when the truth is placed before them. When they are asked for**

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[1] Abu Dawud # 4888, Bayhaqi in Shuab ul-Eeman # 9659.

[2] Abu Dawud # 4759, Musnad Ahmad 5-180.

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something justified, they spend without hesitation. And, they judge for the people as they judge for themselves."

COMMENTARY: This hadith describes the just rulers as possessing three characteristics because of which they will be the first to deserve the favours of Allah and the shade on the day of resurrection. (1) they readily accept every proposal concerning the betterment of their subjects and justice towards them, and they put that into action promptly. (2) They give the rights of their subjects when they demand them, and they do not procrastinate in spending on the needs of the people and the good of them. And, (3) They like for their subjects what they like for themselves. Just as they wish for their own selves comfort, they wish comfort for their people, too. They are not like selfish rulers who do not care for the general masses.

FEAR OF THREE THINGS FOR THE *UMMAH*

(٣٧١٢) وَعَنْ جَابِرِ ابْنِ سَمُرَةَ قَالَ سَمِعْتُ رَسُولَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ ثَلَاثٌ اَخَافُ عَلٰى اُمَّتِيْ الْاِسْتِسْقَاءُ بِالْاَنْوَاءِ وَحَيْفُ السُّلْطَانِ وَتَكْذِيْبٌ بِالْقَدْرِ۔

3712. Sayyiduna Jabir ibn Samurah رضی اللہ عنہ narrated, "I heard Allah's Messenger صلی اللہ علیہ وسلم say, 'I fear three things for my *ummah* (lest they adopt them and go astray. They are): (i) seeking rain by al-anwa (the phases of the moon), (ii) a king's being unjust and (iii) denying the decree of Allah."[1]

COMMENTARY: The word anwa (in the hadith with the definite article) is the plural of (نَوْ) naw which means to 'rise and fall'. Generally, it is used for the phases of the moon. The ancient astronomers said that the moon has twenty-eight phases. It is in a different phase every night. So, perhaps, 'rise and fall' are used for the rising and setting of the moon and the word anwa is used for the phases of the moon.

The Arab idolaters ascribed rain to these phases of the moon. This is a false belief and other ahadith forbid the holding of such beliefs. It is called disbelief to emphasise the significance of tawhid (monotheism) and to remove doubts of polytheism.

DO NOT BECOME A TRUSTEE OR A JUDGE UNNECESSARILY

(٣٧١٣) وَعَنْ اَبِيْ ذَرٍّ قَالَ قَالَ لِيْ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ سِتَّةَ اَيَّامٍ اَعْقِلْ يَا اَبَا ذَرٍّ مَا يُقَالُ لَكَ بَعْدُ فَلَمَّا كَانَ الْيَوْمُ السَّابِعُ قَالَ اُوْصِيْكَ بِتَقْوَى اللّٰهِ فِيْ سِرِّ اَمْرِكَ وَعَلَانِيَتِهٖ وَاِذَا اَسَأْتَ فَاَحْسِنْ وَلَا تَسْأَلَنَّ اَحَدًا شَيْئًا وَاِنْ سَقَطَ سَوْطُكَ وَلَا تَقْبِضْ اَمَانَةً وَلَا تَقْضِ بَيْنَ اثْنَيْنِ۔

3713. Sayyiduna Abu Dharr رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said to him (every day) for six days, "Bear in mind, O Abu Dharr, what is to be told to you." (He was asked to prepare himself for a guidance to be given to him which he must remember and follow.) Then, on the seventh day, he said, "I instruct you to fear Allah in your secret affairs and the open ones. And, when you commit a wrong, follow it with a good deed. Do not ask anyone (of the creatures) for anything, even if your whip drops down (from your hand, do not request anyone to pick it up for you). Do not accept a trust and do not act as an arbitrator between two people."[2]

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[1] Musnad Ahmad 5-90.

[2] Musnad Ahmad 5-172.

COMMENTARY: To keep anyone's trust for safe-keeping is not wise. One cannot trust oneself and the devil may tempt one at any time to commit treachery. Besides, there is a possibility of being accused of breach of trust by the owner of the trust or anyone else.

THREE STAGES OF A RULER DURING HIS RULE

(٣٧١٤) وَعَنْ اَبِي اُمَامَةَ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَنَّهٗ قَالَ مَا مِنْ رَجُلٍ يَلِي اَمْرَ عَشَرَةٍ فَمَا فَوْقَ ذٰلِكَ اِلَّا اَتَاهُ اللّٰهُ عَزَّوَجَلَّ مَغْلُوْلًا يَوْمَ الْقِيَامَةِ يَدُهٗ اِلٰى عُنُقِهٖ فَكَّهٗ بِرُّهٗ اَوْ اَوْبَقَهٗ اِثْمُهٗ اَوَّلُهَا مَلَامَةٌ وَ اَوْسَطُهَا نَدَامَةٌ وَاٰخِرُهَا خِزْيٌ يَوْمَ الْقِيَامَةِ۔

3714. Sayyiduna Abu Umamah رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "If a man has ruled over ten people or more, then he will be brought to Allah, Mighty and Glorious, on the day of resurrection (in the place of gathering), with his hand chained to his neck. Then, he will be set free by his piety (which is his justice and kindness to his subjects in the world), or he will be ruined because of his sin (which is his tyranny over his subjects in the world). The beginning of it (meaning, ruler ship) brings blame, the middle of it causes regret and the end of it is disgrace on the day of resurrection."[1]

COMMENTARY: Very few people there are who do not crave for high offices and ruler ship. In the initial stages, a ruler is blamed from all sides for misrule, partisanship, negligence etc. Then, he himself regrets having taken up the office and put himself to unnecessary bother. If he is deposed then he is disgraced otherwise he is despised. Then, in the hereafter, he will have to give account to the Judge of all judges and undergo punishment for his misdeeds. So take heed, O you possessed of sight!

PROPHET'S صلی اللہ علیہ وسلم ADVICE TO MUAWIYAH رضی اللہ عنہ

(٣٧١٥) وَعَنْ مُعَاوِيَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَا مُعَاوِيَةُ اِنْ وُلِّيْتَ اَمْرًا فَاتَّقِ اللّٰهَ وَاعْدِلْ قَالَ فَمَازِلْتُ اَظُنُّ اَنِّيْ مُبْتَلًى بِعَمَلٍ لِقَوْلِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ حَتّٰى ابْتُلِيْتُ۔

3715. Sayyiduna Muawiyah رضی اللہ عنہ said that Allah's Messenger صلی اللہ علیہ وسلم said to him, "Muawiyah, if you are made a ruler or given authority, fear Allah (always) and dispense justice." He said, "I continued to think that I would be tried with some kind of authority in the light of the Prophet's صلی اللہ علیہ وسلم saying till I was (finally) tried. (His words did come true and I was made an amir.)"[2]

REFUGE IN ALLAH FROM TRIAL IN FUTURE

(٣٧١٦) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ تَعَوَّذُوْا بِاللّٰهِ مِنْ رَأْسِ السَّبْعِيْنَ وَاِمَارَةِ الصِّبْيَانِ۔ رَوَى الْاَحَادِيْثَ السِّتَّةَ اَحْمَدُ وَرَوَى الْبَيْهَقِيُّ حَدِيْثَ مُعَاوِيَةَ فِيْ دَلَائِلِ النُّبُوَّةِ۔

3716. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Seek refuge in Allah from the beginning of the year seventy and from the rule of boys."[3]

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[1] Musnad Ahmad 5-267

[2] Bayhaqi in Dalail un Nabuwah

[3] Musnad Ahmad 2-326.

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COMMENTARY: Beginning of the year seventy is the seventh decade of the hijri year which began in 61AH.At the end of 60AH, Muawiyah رضی اللہ عنہ died and his era was over. Yazid ibn Mu'awiyah began his rule. At the same time the auspicious era of the Sahabah (Prophet's Companions) رضی اللہ عنہم came to an end completely.

Thereafter, the *ummah*'s history is replete with discord, in-fighting, injustice and oppression and rivalry for rulership. Yazid ruled for three years and eight months and the most shameful tragedy during his rule was the very unfortunate incident at Karbala. After Zazid, his son, Mu'awiyah ivbn Zazid ibn Mu'amiyah succeeded him only in name and rulership shipped out of the hands of the Sufyani clan of Banu Umayyah ito the hands of Banu Marwan.

The hadith refers to these Banu Marwan as the boys. During their time, there was much of tug of war for rulership, oppression, religious unrest, ethnic wars, neglect of symbols of Islam and harsh treatment or religious elders. This turned the entire administration to children's playground. The most disgraceful man of history was the cruel Hajj (pilgrimage)aj ibn Yusuf, the prominent ruler of Banu Marwan. He did not lag behind Chengez and Halaku in his cruelty and tyranny.

The Prophet صلی اللہ علیہ وسلم had foreseen these troublesome years of the seventh decade of hijri which began with the rule of Yazid ibn Mu'awiyah and reached their peak in the time of the Banu Marwan. His sight had seen them years before they transpired like a clearly read book. Therefore, he had advised his Sahabah (Prophet's Companions) رضی اللہ عنہم to seek refuge from that time and asked them to pray that Allah way not show them that period.

RULERS WILL BE APPOINTED COMMENSURATE TO YOUR DEEDS.

(٣٧١٧) وَعَنْ يَحْيَى بْنِ هَاشِمٍ عَنْ يُوْنُسَ ابْنِ اَبِي اِسْحَاقَ عَنْ اَبِيْهِ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ كَمَا تَكُوْنُوْنَ كَذٰلِكَ يُؤَمَّرُ عَلَيْكُمْ۔

3717. Sayyiduna Yahya ibn Hashim narrated from Yunus ibn Abu Ishaq رضی اللہ عنہ who from his father that Allah's Messenger صلی اللہ علیہ وسلم said, "As you will be so shall you have rulers put over you."[1]

COMMENTARY: Your rulers and governors will be appointed over you according to how you are, how you conduct yourselves. If your deeds are good they too will be good. If you do bad deeds, then you will have evil leaders over you.

KING IS ALLAH'S SHADE ON EARTH

(٣٧١٨) وَعَنِ ابْنِ عُمَرَ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اِنَّ السُّلْطَانَ ظِلُّ اللّٰهِ فِي الْاَرْضِ يَأْوِي اِلَيْهِ كُلُّ مَظْلُوْمٍ مِنْ عِبَادِهٖ فَاِذَا عَدَلَ كَانَ لَهُ الْاَجْرُ وَعَلَى الرَّعِيَّةِ الشُّكْرُ وَاِذَا جَارَ كَانَ عَلَيْهِ الْاِصْرُ وَعَلَى الرَّعِيَّةِ الصَّبْرُ۔

3718. Sayyiduna Ibn Umar رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "The King is Allah's shade on the earth. Every wronged one of the slaves of Allah comes to it (to seek redress). So, when he is just, there is a reward for him and it is *wajib (obligatory)* on the subjects to be thankful. But, when he is oppressive sin rests on him and the subjects must exercise patience.[2]

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[1] Bayhaqi in Shabul Eeman # 3792.

[2] Bayhaqi in Shaabul Eeman # 7399.

COMMENTARY: The King is said to be Allah's shade on earth. He is so called because people retire to the shade to get protection. The Kind protects his subjects from hardship and oppression. Also, sometimes the word shade stands for 'protection and support.'
The words (ظل الله) Allah's shade, denote the greatness of the shade and its blessings relative to other shades. It is like (بيت الله) Bayt Allah - Allah's House. This House is greater and more blessed than other houses. It indicates that the particular shade, meaning King is not like other shades. Rather, it is more glorious and exclusive because the King is Allah's caliph (deputy) on earth.

THE HIGHEST RANK WILL BELONG TO A MILD AND JUST RULER.

(٣٧١٩) وَعَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِنَّ اَفْضَلَ عِبَادِ اللّٰهِ عِنْدَ اللّٰهِ مَنْزِلَةً يَوْمَ الْقِيَامَةِ اِمَامٌ عَادِلٌ رَفِيْقٌ وَاِنَّ شَرَّ النَّاسِ عِنْدَ اللّٰهِ مَنْزِلَةً يَوْمَ الْقِيَامَةِ اِمَامٌ جَائِرٌ خَرِقٌ۔

3719. Sayyiduna Umar ibn Khattab رضی الله عنه narrated that Allah's Messenger صلی الله علیه وسلم said, "Surely, the most excellent of Allah's slaves in Allah's sight on the day of resurrection will be a just and a soft-hearted ruler. And, indeed, the worst of all people in Allah's sight on the day of resurrection will be a brutal and intolerant ruler."[1]

TO FRIGHTEN A MUSLIM IS PUNISHABLE OFFENCE.

(٣٧٢٠) وَعَنْ عَبْدِاللّٰهِ بْنِ عَمْرٍو قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ نَظَرَ اِلٰى اَخِيْهِ نَظْرَةً يُخِيْفُهٗ اَخَافَهُ اللّٰهُ يَوْمَ الْقِيَامَةِ۔ رَوَى الْاَحَادِيْثَ الْاَرْبَعَةَ الْبَيْهَقِيُّ فِيْ شُعَبِ الْاِيْمَانِ وَقَالَ فِيْ حَدِيْثٍ يُخَيِّلُ هٰذَا مُنْقَطِعٌ وَرِوَايَتُهٗ ضَعِيْفٌ۔

3720. Sayyiduna Abdullah ibn Amr رضی الله عنه said that Allah's Messenger صلی الله علیه وسلم said, "He who looks at his brother with a look that frightens will be frightened by Allah on the day of resurrection."[2]

COMMENTARY: If merely frightening a Muslim is punishable on the day of resurrection then what will happen to one who oppresses a Muslim?

BETTER TO CORRECT YOURSELVES THAN CURSE RULERS

(٣٧٢١) وَعَنْ اَبِي الدَّرْدَاءِ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِنَّ اللّٰهَ تَعَالٰى يَقُوْلُ اَنَا اللّٰهُ لَا اِلٰهَ اِلَّا اَنَا مَالِكُ الْمُلُوْكِ وَ مَلِكُ الْمُلُوْكِ قُلُوْبُ الْمُلُوْكِ فِيْ يَدِيْ وَ اِنَّ الْعِبَادَ اِذَا اَطَاعُوْنِيْ حَوَّلْتُ قُلُوْبَ مُلُوْكِهِمْ عَلَيْهِمْ بِالرَّحْمَةِ وَالرَّأْفَةِ وَاِنَّ الْعِبَادَ اِذَا عَصَوْنِيْ حَوَّلْتُ قُلُوْبَهُمْ بِالسَّخْطَةِ وَالنِّقْمَةِ فَسَامُوْهُمْ سُوْءَ الْعَذَابِ فَلَا تَشْغِلُوْا اَنْفُسَكُمْ بِالدُّعَاءِ عَلَى الْمُلُوْكِ وَلٰكِنِ اشْغِلُوْا اَنْفُسَكُمْ بِالذِّكْرِ وَالتَّضَرُّعِ كَيْ اَكْفِيَكُمْ مُلُوْكَكُمْ۔ رَوَاهُ اَبُوْنُعَيْمٍ فِي الْحِلْيَةِ۔

3721. Sayyiduna Abu Darda رضی الله عنه narrated that Allah's Messenger صلی الله علیه وسلم said. "Surely, Allah, the Exalted, says, 'I am Allah. There is no God but I, Master of Kings, and King of Kings. The hearts of the Kings are in My hand. When the slaves

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[1] Bayhaqi in Shaabul Eeman # 7371-7370.
[2] Bayhaqi in Shuabul Eeman # 7468.

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(creatures) obey Me, I turn the heatrs of their Kings toward them with merecy and Mildness. But, when the slaves disobey Me, I turn their hearts against them with anger and vengean so they punish them with a terrible punishment. So, do not occupy yourself with praying against the Kings, but occupy yourself in dhikr (remembrance of Me) and humble petition that I may preserve you from your Kings'[1]

COMMENTARY: This hadith says that the way the rulers treat their subjects depends inwardly on the deeds and manners of the masses. If they are righteous then even an unjust ruler turns just, mild and kind to them. But if they are wicked and disobedient to Allah, then even a just and kind ruler treats them harshly.

Therefore, instead of blaming the ruler and cursing him, the masses must turn to Allah, repent for their bad deeds and seek Allah's forgiveness. They must plead to him with humility and mould their deeds and affairs strictly according to the commands of Allah and His Messenger so that His mercy embraces them and He turns their ruler toward them in justice and kindness.

CHAPTER - II

RULERS MUST FACILITATE THINGS AS *WAJIB (OBLIGATORY)*

بَابُ مَا عَلَى الْوُلَاةِ مِنَ التَّيْسِيْرِ

The previous chapter prescribed on the subjects obedience to their rulers. This calls on the rulers to make things easy for their subjects.

SECTION I — اَلْفَصْلُ الْاَوَّلُ

RULERS MUST BE CONSIDERATE

(٣٧٢٢) عَنْ اَبِيْ مُوْسٰى قَالَ كَانَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِذَا بَعَثَ اَحَدًا مِنْ اَصْحَابِهٖ فِيْ بَعْضِ اَمْرِهٖ قَالَ بَشِّرُوْا وَلَا تُنَفِّرُوا وَيَسِّرُوا وَلَا تُعَسِّرُوْا۔ (متفق علیه)

3722. Sayyiduna Abu Musa رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said to whichever of his Sahabah رضی اللہ عنہ whom he sent to oversee some of his affairs (like taking over as governor of a place), "Give them good tidings and do not frighten them. And make things easy. Do not make things difficult[2]

(٣٧٢٣) وَعَنْ اَنَسٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَسِّرُوْا وَلَا تُعَسِّرُوا وَسَكِّنُوْا وَلَا تُنَفِّرُوا۔ (متفق علیه)

3723. Sayyiduna Anas رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said (to his governors and revenue collectors),"Make things easy (for the people). Do not put them to difficulty. Let them be serene (by conveying to them glad-tidings of Allah's blessings) and do not frighten them (much, of Allah's punishment causing them to dislike and disobey).[3]

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[1] Abu Nu'aym in Hilyatul Awliya 2-389.

[2] Muslim # 6-1732, Abu Dawud # 4835, Musnad Ahmad 4. 399. (Bukhari # 69 from Anas رضی اللہ عنہ similar.)

[3] Bukhari # 6125, Muslim # 8-1724,Musnad Ahmad 3-131.

(٣٧٢٤) وَعَنْ اَبِيْ بُرْدَةَ قَالَ بَعَثَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ جَدَّهٗ اَبَا مُوْسٰى وَمُعَاذًا اِلَى الْيَمَنِ فَقَالَ يَسِّرَا وَلَا تُعَسِّرَا وَبَشِّرَا وَلَا تُنَفِّرَا وَتَطَاوَعَا وَلَا تَخْتَلِفَا۔ (متفق عليه)

3724. Sayyiduna Abu Burdah رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم sent his grandfather, abu Musa رضی اللہ عنہ (Ash'ari) and Mu'adh رضی اللہ عنہ to Yemen, saying to them, "Make things easy and do not make them difficult. Give glad tidings and do not frighten. Be united (compliant with one another) and do not disagree.[1]

COMMENTARY: The narrator's name should be Ibn Abu Burdah. Abu Burdah رضی اللہ عنہ was the son of Abu Musa رضی اللہ عنہ. Ibn Abu Burdah رضی اللہ عنہ who narrated this hadith was sa'eed رضی اللہ عنہ. His other brothers who narrated ahadith from their father, Abu Burdah رضی اللہ عنہ were Abdullah, Yusuf and Bilal رضی اللہ عنہ Bukhari has the name of saeed ibn Abu Burdah رضی اللہ عنہ as the narrator of this hadith. He heard from his father abu Burdah رضی اللہ عنہ that the Prophet had sent to Yemen his father, Abu Musa رضی اللہ عنہ, and Mu'adh رضی اللہ عنہ.

DECEITFUL WILL BE DISGRACED

(٣٧٢٥) وَعَنِ ابْنِ عُمَرَ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اِنَّ الْغَادِرَ يُنْصَبُ لَهٗ لِوَاءٌ يَوْمَ الْقِيَامَةِ فَيُقَالُ هٰذِهٖ غَدْرَةُ فُلَانِ بْنِ فُلَانٍ۔ (متفق عليه)

3725. Sayyiduna Ibn Umar رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "On the day of resurrection, the deceitful man will have a standard set up for him (to disgrace him). An announcement will be made, "This is the (sign of) deceit of so-and-so son of so-and-so.[2]

(٣٧٢٦) وَعَنْ اَنَسٍ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لِكُلِّ غَادِرٍ لِوَاءٌ يَوْمَ الْقِيَامَةِ يُعْرَفُ بِهٖ۔ (متفق عليه)

3726. Sayyiduna Anas رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "On the day of resurrection everydeceitful person will have a standard. He will be recognized by it.[3]

(٣٧٢٧) وَعَنْ اَبِيْ سَعِيْدٍ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لِكُلِّ غَادِرٍ لِوَاءٌ عِنْدَ اِسْتِهٖ يَوْمَ الْقِيَامَةِ وَفِيْ رِوَايَةٍ لِكُلِّ غَادِرٍ لِوَاءٌ يَوْمَ الْقِيَامَةِ يُرْفَعُ لَهٗ بِقَدْرِ غَدْرِهٖ اَلَا وَلَا غَادِرَ اَعْظَمُ غَدْرًا مِنْ اَمِيْرِ عَامَّةٍ۔ (رواه مسلم)

3727. Sayyiduna Abu Saeed رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "On the day of resurrection, every deceitful person will have a standard set up near his anus." According to another version: "On the day of resurrection, every deceitful person will have a standard set up aloft for him commensurate with the amount of deceit he committed. Know! None is more deceitful than (a deceitful) leader of a people.[4]

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[1] Bukhari # 6124, Muslim # 1723, Musnad Ahmad 4-412.

[2] Bukhari # 6178, Muslim # 10-1735, Tirmidhi # 1581, Abu Dawud # 2756, Ibn Majah # 2872, Darimi # 2542, Musnad Ahmad 1-411.

[3] Bukhari # 3186, Muslim # 14-1737, Musnad Ahmad 3-270.

[4] Muslim # 15-1738.

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SECTION II اَلْفَصْلُ الثَّانِي

WARNING TO RULERS WHO DO NOT SATISFY NEEDS OF THEIR SUBJECTS

(٣٧٢٨) عَنْ عَمْرِو بْنِ مُرَّةَ اَنَّهٗ قَالَ لِمُعَاوِيَةَ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ مَنْ وَلَّاهُ اللّٰهُ شَيْئًا مِنْ اَمْرِ الْمُسْلِمِيْنَ فَاحْتَجَبَ دُوْنَ حَاجَتِهِمْ وَخَلَّتِهِمْ وَفَقْرِهِمْ اِحْتَجَبَ اللّٰهُ دُوْنَ حَاجَتِهٖ وَخَلَّتِهٖ وَفَقْرِهٖ فَجَعَلَ مُعَاوِيَةُ رَجُلًا عَلٰى حَوَائِجِ النَّاسِ۔ رَوَاهُ اَبُوْدَاوٗدَ وَالتِّرْمِذِيُّ۔ وَفِيْ رِوَايَةٍ لَهٗ وَلِاَحْمَدَ اَغْلَقَ اللّٰهُ لَهٗ اَبْوَابَ السَّمَاءِ دُوْنَ خَلَّتِهٖ وَحَاجَتِهٖ وَمَسْكَنَتِهٖ۔

3728. Sayyiduna Amr ibn Murrah رضی اللہ عنہ reported his saying to Mu'awiyah رضی اللہ عنہ "I had heard Allah's Messenger صلی اللہ علیہ وسلم say that if Allah puts someone in authority over some affairs of the Muslims but he shuts his door from redressing their need, helplessness and poverty then Allah will turn away from redressing his need, helplessness and poverty." On that Mu'awiyah placed a man to look after the needs of the People.[1]

According to a version: "Allah will shut the gates of heaven on his helplessness, needs and poverty."[2]

SECTION III اَلْفَصْلُ الثَّالِثُ

RULER WHO SHUTS HIS GATES WILL FIND GATES OF DIVINE MERCY SHUT

(٣٧٢٩) عَنْ اَبِي الشَّمَّاخِ الْاَزْدِيِّ عَنِ ابْنِ عَمٍّ لَهٗ مِنْ اَصْحَابِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَنَّهٗ اَتٰى مُعَاوِيَةَ فَدَخَلَ عَلَيْهِ فَقَالَ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ مَنْ وَلِيَ مِنْ اَمْرِ النَّاسِ شَيْئًا ثُمَّ اَغْلَقَ بَابَهٗ دُوْنَ الْمُسْلِمِيْنَ اَوِالْمَظْلُوْمِ اَوْذِي الْحَاجَةِ اَغْلَقَ اللّٰهُ دُوْنَهٗ اَبْوَابَ رَحْمَتِهٖ عِنْدَ حَاجَتِهٖ وَفَقْرِهٖ اَفْقَرَ مَايَكُوْنُ اِلَيْهِ۔

3729. Sayyiduna Abu Shammakh Azdi رضی اللہ عنہ reported that one of his paternal cousins who was a sahabi رضی اللہ عنہ of the Prophet صلی اللہ علیہ وسلم said that he visited Mu'awiyah رضی اللہ عنہ. He met him and said to him that he had heard Allah's Messenger صلی اللہ علیہ وسلم say, "He who is placed in some authority over the people and shuts his gate against the Muslims, or the oppressed, or a needy person(denying them their need),will find that Allah will shut against him the gates of His Mercy when he in need or in poverty, howsoever much he may be in need of Him."[3]

UMAR'S رضی اللہ عنہ ADVICE TO HIS GOVERNORS

(٣٧٣٠) وَعَنْ عُمَرَبْنِ الْخَطَّابِ اَنَّهٗ كَانَ اِذَا بَعَثَ عُمَّالَهٗ شَرَطَ عَلَيْهِمْ اَنْ لَاتَرْكَبُوا بِرْذُوْنًا وَلَا تَاْكُلُوْا نَقِيًّاوَلَا تَلْبَسُوا رَقِيْقًا وَلَا تُغْلِقُوا اَبْوَابَكُمْ دُوْنَ حَوَائِجِ النَّاسِ فَاِنْ فَعَلْتُمْ شَيْئًا مِنْ ذٰلِكَ فَقَدْ حَلَّتْ بِكُمُ الْعُقُوْبَةُ ثُمَّ يُشَيِّعُهُمْ رَوَاهُمَا الْبَيْهَقِيُّ فِيْ شُعَبِ الْاِيْمَانِ۔

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[1] Abu Dawud # 2948.

[2] Tirmidhi # 332(1337), Musnad Ahmad 4. 231.

[3] Bayhaqi in Shu'ab ul-Eeman # 7384.

3730. Sayyiduna Umar ibn Khattab رضی اللہ عنہ is reported to have stipulated on his governors when he sent them (to their assignments) that:
They should not ride Turkish horses, eat white bread, wear fine clothing, or shut their gates against the needs of the people.
He warned them that if they did any of these things, then they would be liable to punishment. After that (having given these instructions,) he walked with them some distance.[1]

COMMENTARY: He forbade them to ride Turkish horses that they might not be arrogant. On this basis, it is more proper not to ride the Arabian horses which are of a high breed. Teebi رضی اللہ عنہ said that the governors were disallowed those things becausae they smacked of arrogance.

CHAPTER - III

CONDUCTING THE OFFICE OF THE QADI (JUDGE) & FEAR OF IT

بَابُ الْعَمَلِ فِي الْقَضَاءِ وَالْخَوْفِ مِنْهُ

We had stated in the introductory passages of this book XVII (office of the commander & of the Qadi) that the pivot of Islamic manner of government are the head of state and the qadi and in the previous two chapters, matters concerning the ruler were treated.
In this chapter, we shall deal with the office of the judge. We shall mention:

(i) The judge must rely merely on the Islamic code of law which is drived from the book and the *sunnah (Prophet's* صلی اللہ علیہ وسلم *practice),* and his ijtihad as his guide. His decision should not contravence these sources of Islamic law.

(ii) This office is so very high and significant that not everyone should try to attain it. Rather, as far as possible, one must try to avoid taking this responsibility and must be fearful of holding it.

SECTION I — اَلْفَصْلُ الْاَوَّلُ

JUDGEMENT NOT WHEN ANGRY

(٣٧٣١) عَنْ اَبِيْ بَكْرَةَ قَالَ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ لَا يَقْضِيَنَّ حَكَمٌ بَيْنَ اثْنَيْنِ وَهُوَ غَضْبَانُ۔ (متفق علیہ)

3731. Sayyiduna Abu Bakrah رضی اللہ عنہ narrated that he heard Allah's Messenger صلی اللہ علیہ وسلم say, "A judge must not give judgement between two people when he is angry."[2]

COMMENTARY: When a person is angry, he loses ability to ponder and decide. So, he cannot pass a fair judgement. Also, no judgement may be passed when it is very cold or very hot, when one is hungry or thirsty and when one is ill. Any judgement given in such condition will be implemented with dislike.

JUDGE MAY RESORT TO IJTIHAD

(٣٧٣٢) وَعَنْ عَبْدِاللّٰهِ بْنِ عَمْرٍو وَاَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِذَا حَكَمَ الْحَاكِمُ

[1] Bayhaqi Shu'ab ul-Eeman # 7394.
[2] Bukhari # 7258, Muslim # 16-1717, Tirmidhi # 1334, Nasai # 5421, Ibn Majah # 2316, Majah Ahmad 5-36.

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فَاجْتَهَدَ وَاَصَابَ فَلَهٗ اَجْرَانِ وَاِذَا حَكَمَ فَاجْتَهَدَ وَاَخْطَاَ فَلَهٗ اَجْرٌ وَاحِدٌ۔ (متفق علیه)

3732. Sayyiduna Abdullah ibn Amr رضی اللہ عنہ and Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "When a ruler (or judge) passess judgement and resorts to ijtihad (pondering deeply over the case) and is correct(in making it), he will get two rewards (one for his ijtihad and the other for the correct decision). And, when he passess judgement having resorted fo ijtihad but is wrong, he will get one reward."[1]

COMMENTARY: When a judge finds no answer to the case before him in the Book and *Sunnah (Prophet's صلی اللہ علیہ وسلم practice)* or in fiqh (Islamic jurisprudence), he may make an ijtihad by pondering over the Book and *Sunnah (Prophet's صلی اللہ علیہ وسلم practice)* and parallel rulings in similar cases and in the books of fiqh (Islamic jurisprudence). His judgement will be regarded as correct in law, but in terms of the hereafter, there are two possibilities. If his judgement is correct by the Book and *Sunnah (Prophet's صلی اللہ علیہ وسلم practice)* then he gets a dual reward and, if it is wrong, he nevertheless gets one reward for trying honestly. So, a mujtahid is liable to err, but he gets a reward anyaway.

Mulla Ali Qari رحمہ اللہ said that if a ruling is not found in the regular texts or precedent then one may resort to qiyas (analogy). It is like finding out the qiblah. When one has no means to find it out, one may make an assumption to the best of one's ability before offering *salah (prayer)*. His effort will be deemed to have produced a correct result even if he did not face the qiblah in fact.

SECTION II اَلْفَصْلُ الثَّانِیْ

OFFICE OF QADI IS A TRIAL

(٣٧٣٣) عَنْ اَبِیْ هُرَیْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَیْهِ وَسَلَّمَ مَنْ جُعِلَ قَاضِیًا بَیْنَ النَّاسِ فَقَدْ ذُبِحَ بِغَیْرِ سِكِّیْنٍ۔ (رواه احمد والترمذی وابوداؤد وابن ماجة)

3733. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "He who has been made a judge over the people has indeed been slaughtered without a Knife."[2]

COMMENTARY: He is slaughtered because he is ruined mentally and spiritually. A judge is always upset and in agony. He is ill without medicine and is worried about spoiling his hereafter. If anyone is killed with a Knife that is painful for a moment while a judge's pain is for a lifetime.

DO NOT ASPIRE TO BE A QADI

(٣٧٣٤) وَعَنْ اَنَسٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَیْهِ وَسَلَّمَ مَنِ ابْتَغَى الْقَضَاءَ وَسَاَلَ وُكِّلَ اِلٰى نَفْسِهٖ وَمَنْ اُكْرِهَ عَلَیْهِ اَنْزَلَ اللّٰهُ عَلَیْهِ مَلَكًا یُسَدِّدُهٗ۔ (رواه الترمذی ابوداؤد وابن ماجة)

3734. Sayyiduna Anas رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "He who craves for the office of a judge and applies for it (to the authority, and gets it), then it will be entrusted to him (to sort out his problems). But, if anyone is

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[1] Bukhari # 7352, Muslim # 15-1716, Tirmidhi # 1336, Nasai # 5381.

[2] Tirmidhi # 1332, Abu Dawud # 3571, Ibn Majah # 3208, Musnad Ahmad 2. 230.

compelled to accept it (without his craving for it) then Allah sends down an angel who directs him to the right course (in running it)."[1]

JUDGES OF PARADISE AND OF HELL

(٣٧٣٥) وَعَنْ بُرَيْدَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ الْقُضَاةُ ثَلَاثَةٌ وَاحِدٌ فِي الْجَنَّةِ وَاثْنَانِ فِي النَّارِ فَاَمَّا الَّذِي فِي الْجَنَّةِ فَرَجُلٌ عَرَفَ الْحَقَّ فَقَضٰى بِهٖ وَرَجُلٌ عَرَفَ الْحَقَّ فَجَارَ فِي الْحُكْمِ فَهُوَ فِي النَّارِ وَرَجُلٌ قَضٰى لِلنَّاسِ عَلٰى جَهْلٍ فَهُوَ فِي النَّارِ۔ (رواه ابوداؤد وابن ماجة)

3735. Sayyiduna Buraydah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Judges are of three Kinds. One of these Kinds comprises those who will be admitted to paradise and two Kinds are made up of those who will be consigned to hell. As for the one who will enter paradise, he is the man who knows what is right and gives judgement on that basis. And the man who knows (the truth and) what is right yet transgresses in his judgement will be sent to hell. And, so a man who gives judgement to the people though he is ignorant will be sent to hell."[2]

(٣٧٣٦) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ طَلَبَ قَضَآءَ الْمُسْلِمِيْنَ حَتّٰى يَنَالَهٗ ثُمَّ غَلَبَ عَدْلُهٗ جَوْرَهٗ فَلَهُ الْجَنَّةُ وَمَنْ غَلَبَ جَوْرُهٗ عَدْلَهٗ فَلَهُ النَّارُ۔ (رواه ابوداؤد)

3736. Sayyiduna abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger said, "If anyone seeks the office of judge over the Muslims so that he gets it and his justice overwhelmns his injustice (and tyranny), then he will go to paradise. But, if anyone's injustice dominates his justice then he will go to hell."[3]

COMMENTARY: The apparent meaning is that both these Kinds of judges will dispense both justice and
Injustice. Since their fate will be decided according to what overwhelms, the one whose justice prevails will go to paradise. If he is move unjust in giving judgement than just, then he will go to hell. In both cases, there is predominance of one trait over the other.

QIYAS AND IJTIHAD ARE ALLOWED

(٣٧٣٧) وَعَنْ مُعَاذِ بْنِ جَبَلٍ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَمَّا بَعَثَهٗ اِلَى الْيَمَنِ قَالَ كَيْفَ تَقْضِيْ اِذَا عَرَضَ لَكَ قَضَآءٌ؟ قَالَ اَقْضِيْ بِكِتَابِ اللّٰهِ قَالَ فَاِنْ لَمْ تَجِدْ فِيْ كِتَابِ اللّٰهِ قَالَ فَبِسُنَّةِ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ فَاِنْ لَمْ تَجِدْ فِيْ سُنَّةِ رَسُوْلِ اللّٰهِ قَالَ اَجْتَهِدُ رَائِيْ وَلَا آلُوْ قَالَ فَضَرَبَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَلٰى صَدْرِهٖ وَقَالَ اَلْحَمْدُ لِلّٰهِ الَّذِيْ وَفَّقَ رَسُوْلَ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لِمَا يَرْضٰى بِهٖ رَسُوْلُ اللّٰهِ۔ (رواه الترمذی وابوداؤد والدارمی)

3737. Sayyiduna Mu'adh ibn Jabal رضی اللہ عنہ narrated that when Allah's Messenger صلی

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[1] Tirmidhi # 1324, Abu Dawud # 3578, Ibn Majah # 2309.

[2] Tirmidhi # 1322, Abu Dawud # 2573, Ibu Majah # 2315.

[3] abu Dawud # 3575.

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ﷺ sent him to Yemen (as a judge and ruler), he asked him, "How will you judge when a case is brought to you?" He said, "I shall decide according to Allah's Book." He asked, "And if you do not find an answer in Allah's Book? He said, "Then I will follow the *sunnah (Prophet's ﷺ practice)* of Allah's Messengerﷺ." He asked, "And if you find no answer in the *sunnah (Prophet's ﷺ practice)* of Allah's Messengerﷺ." He said, "I shall use my opinion and make ijtihad and not lag behind in it." So, Allah's Messengerﷺ patted him on his breast and said, "Praise belongs to Allah who has made the messenger of the Messenger of Allah consistent with what pleases him."[1]

COMMENTARY: He said that he would deduce from the relevant rulings and similar cases and laws in the Quran and the *Sunnah (Prophet's ﷺ practice).*

Mazhar also explained the hadith in the same way. The imams, who are mujtahids have deduced many judgements on qiyas. However, they have differed on its application and recourse to it. For example, Imam Shafi'I compares interest on barter of wheat for wheat to interest on watermelon for watermelon because both are eatables. Imam Abu Hanifah رضی اللہ عنہ compares wheat for wheat to lime for lime, both being weighable commodities. Interest is forbidden in any case (when more of same commodity is exchanged for less of it).

In short, this hadith is a strong evidence that qiyas and ijtihad are allowed and lawful. It rejects the zawahir (ghayr muqallidin) who reject qiyas and ijtihad.

AFTER PLAINTIFF DEFENDANT MUST BE HEARD TOO

(٣٧٣٨) وَعَنْ عَلِيٍّ قَالَ بَعَثَنِيْ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِلَى الْيَمَنِ قَاضِيًا فَقُلْتُ يَا رَسُوْلَ اللّٰهِ تُرْسِلُنِيْ وَاَنَا حَدِيْثُ السِّنِّ وَلَا عِلْمَ لِيْ بِالْقَضَاءِ فَقَالَ اِنَّ اللّٰهَ سَيَهْدِيْ قَلْبَكَ وَيُثَبِّتُ لِسَانَكَ اِذَا تَقَاضٰى اِلَيْكَ رَجُلَانِ فَلَاتَقْضِ لِلْاَوَّلِ حَتّٰى تَسْمَعَ كَلَامَ الْاٰخَرِ فَاِنَّهٗ اَحْرٰى اَنْ يَتَبَيَّنَ لَكَ الْقَضَاءُ قَالَ فَمَاشَكَكْتُ فِيْ قَضَاءٍ بَعْدُ رَوَاهُ التِّرْمِذِيُّ وَاَبُوْدَاوٗدَ وَابْنُ مَاجَةَ وَسَنَذْكُرُ حَدِيْثَ اُمِّ سَلَمَةَ اِنَّمَا اَقْضِيْ بَيْنَكُمْ بِرَأْيِيْ فِيْ بَابِ الْاَقْضِيَةِ وَالشَّهَادَاتِ اِنْ شَاءَ اللّٰهُ تَعَالٰى۔ (رواه الترمذی وابوداؤد وابن ماجة)

3738. Sayyiduna Ali رضی اللہ عنہ narrated that Allah's Messenger ﷺ decided to send him to Yemen as a qadi, so he submitted, "O Messenger of Allah, you send me while I am young and do not possess (enough) knowledge of the office of qadi." He said, "Surely, Allah will guide your heart (to rectitude) and cause your tongue to be true (in making judgement)." (Then he gave him instructions, saying) "When two men bring to you their case, do not decide in favour of the first (the plaintiff) till you have heard the argument of the second (the defendant), for this will help you arrive at a correct decision."

He narrated (further), "After that I (followed) his instructions and) did not have any doubt (or hesitation) in deciding (a case before me)."[2]

وَسَنَذْكُرُ حَدِيْثَ اُمِّ سَلَمَةَ اِنَّمَا اَقْضِيْ بَيْنَكُمْ بِرَأْيِيْ فِيْ بَابِ الْاَقْضِيَةِ وَالشَّهَادَاتِ اِنْ شَاءَ اللّٰهُ تَعَالٰى

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[1] Tirmidhi # 1327(1332), Abu Dawud # 3592, Musnad Ahmad 5-230, Darimi # 168.

[2] Tirmidhi # 1331, Abu Dawud # 3581, IBn Majah # 231, Musnad Ahmad 1-83

And we shall reproduce the hadith of Sayyidah Umm Salamah رضی اللہ عنہا (#3770) in the chapter about cases and testimonies (Chapter V).

SECTION III اَلْفَصْلُ الثَّالِثُ

THE FATE OF A TYRANT

(٣٧٣٩) عَنْ عَبْدِاللّٰهِ بْنِ مَسْعُوْدٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَامِنْ حَاكِمٍ يَحْكُمُ بَيْنَ النَّاسِ اِلَّا جَاءَ يَوْمَ الْقِيَامَةِ وَ مَلَكٌ اٰخِذٌ بِقَفَاهُ ثُمَّ يَرْفَعُ رَاسَهٗ اِلَى السَّمَاءِ فَاِنْ قَالَ اَلْقِهِ اَلْقَاهُ فِيْ مَهْوَاةٍ اَرْبَعِيْنَ خَرِيْفًا۔ (رواه احمد وابن ماجة والبيهقي في شعب الايمان)

3739. Sayyiduna Abdullah ibn Mas'ud رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Every ruler who rules and judges among the people will be brought on the day of resurrection (to the presence of the Judge of Judges and the Ruler of rulers), an angel holding his nape. The angel will raise his head to heaven (anticipating a command). If He commands, "Throw him down (in hell)," the he will throw him into a pit (that is) deep (to a distance covered in forty autumns (years)."[1]

COMMENTARY: The words forty autumns deep mean that the pit is like a bottomless pit but they do not determine the time taken to traverse it.

This command will be given for an oppressor and a cruel ruler. The just ruler will be sent to paradise, as we read against the hadith of Abu Umamah رضی اللہ عنہ (#3714).

(٣٧٤٠) وَعَنْ عَآئِشَةَ عَنْ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لَيَأْتِيَنَّ عَلَى الْقَاضِي الْعَدْلِ يَوْمُ الْقِيَامَةِ يَتَمَنّٰى اَنَّهٗ لَمْ يَقْضِ بَيْنَ اثْنَيْنِ فِيْ تَمْرَةٍ قَطُّ۔ (رواه احمد)

3740. Sayyidah Ayshah رضی اللہ عنہا narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Indeed, there will arise a deep longing to the just judge on the day of resurrection that he had never had to pass judgement between two people even a piece of date."[2]

JUST RULER HAS ALLAH'S SUPPORT

(٣٧٤١) وَعَنْ عَبْدِاللّٰهِ بْنِ اَبِيْ اَوْفٰى قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِنَّ اللّٰهَ مَعَ الْقَاضِيْ مَالَمْ يَجُرْ فَاِذَا جَارَ تَخَلّٰى عَنْهُ وَ لَزِمَهُ الشَّيْطَانُ۔ رَوَاهُ التِّرْمِذِيُّ وَابْنُ مَاجَةَ وَفِيْ رِوَايَةٍ فَاِذَا جَارَ وَكَلَهٗ اِلٰى نَفْسِهٖ۔

3741. Sayyiduna Abdullah ibn Abu Awfa رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Indeed, Allah is with the judge till he does not wrong (and be unjust and he has Allah's support and enablement till then). But when he wrongs (and becomes unjust). He departs from him and the devil sticks to him."

According to another version: "When he wrongs (and is unjust), He entrusts him to his own self."[3]

(٣٧٤٢) وَعَنْ سَعِيْدِ بْنِ الْمُسَيَّبِ اَنَّ مُسْلِمًا وَيَهُوْدِيًّا اخْتَصَمَا اِلٰى عُمَرَ فَرَاَى الْحَقَّ لِلْيَهُوْدِيِّ فَقَضٰى لَهٗ عُمَرُ بِهٖ

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[1] Ibn Majah # 2311, Musnad Ahmad 1-430, Bayhaqi in Shuab-ul-Eeman # 7533.

[2] Tirmidhi # 1330.

[3] Ibn Majah # 2312.

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فَقَالَ لَهُ الْيَهُودِيُّ وَاللّٰهِ لَقَدْ قَضَيْتَ بِالْحَقِّ فَضَرَبَهُ عُمَرُ بِالدِّرَّةِ وَقَالَ وَمَا يُدْرِيكَ فَقَالَ الْيَهُودِيُّ وَاللّٰهِ إِنَّا نَجِدُ فِي التَّوْرَاةِ أَنَّهُ لَيْسَ قَاضٍ يَقْضِي بِالْحَقِّ إِلَّا كَانَ عَنْ يَمِينِهِ مَلَكٌ وَعَنْ شِمَالِهِ مَلَكٌ يُسَدِّدَانِهِ وَيُوَفِّقَانِهِ لِلْحَقِّ مَادَامَ مَعَ الْحَقِّ فَإِذَا تَرَكَ الْحَقَّ عَرَجَا وَتَرَكَاهُ۔ (رواه مالك)

3742. Sayyiduna Saeed ibn Musayyab رضی اللہ عنہ narrated that a Muslim and a Jew brought a dispute (in which they were involved) before Umar رضی اللہ عنہ. He (heard them and) found that the Jew was justified, so he pronounced judgement in his favour. The Jew said to him, "By Allah, indeed, you judged justly." On that, Umar beat him with his whip and asked him, "How do you know it?" The Jew said, "By Allah, we do find in Torah that every judge who decides justly has an angel to his right and an angel to his left. They guide and urge him to that which is (right and) just till he sticks to the right. When he abondons the right they ascend (to the heaven) and leave him (to himself)."[1]

COMMENTARY: A question arises why did Umar رضی اللہ عنہ beat the Jew when he described his judgement as fair. Another question is how is the Jew's reply compatible with Umar's question, "How do you know it?"

The first answer is that he did not beat him angrily but struck him mildly with a good nature. The second answer is that the Jew knew that he was right, so if Umar رضی اللہ عنہ was not just, he would have favoured the Muslim, and been unjust.

DID NOT ACCEPT OFFICE OF JUDGE

(٣٧٤٣-٣٧٤٤) وَعَنِ ابْنِ مَوْهَبٍ أَنَّ عُثْمَانَ بْنَ عَفَّانَ قَالَ لِابْنِ عُمَرَ اقْضِ بَيْنَ النَّاسِ قَالَ أَوَتُعَافِينِي يَا أَمِيرَ الْمُؤْمِنِينَ قَالَ وَمَا تَكْرَهُ مِنْ ذٰلِكَ وَقَدْ كَانَ أَبُوكَ يَقْضِي قَالَ لَأَنِّي سَمِعْتُ رَسُولَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُولُ مَنْ كَانَ قَاضِيًا فَقَضَى بِالْعَدْلِ فَبِالْحَرِيِّ أَنْ يَنْقَلِبَ مِنْهُ كَفَافًا فَمَا رَاجَعَهُ بَعْدَ ذٰلِكَ۔ رَوَاهُ التِّرْمِذِيُّ. وَفِي رِوَايَةِ رَزِينٍ عَنْ نَافِعٍ أَنَّ ابْنَ عُمَرَ قَالَ لِعُثْمَانَ يَا أَمِيرَ الْمُؤْمِنِينَ لَا أَقْضِي بَيْنَ رَجُلَيْنِ قَالَ فَإِنَّ أَبَاكَ كَانَ يَقْضِي فَقَالَ إِنَّ أَبِي لَوْ أَشْكَلَ عَلَيْهِ شَيْءٌ سَأَلَ رَسُولَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَلَوْ أَشْكَلَ عَلَى رَسُولِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ شَيْءٌ سَأَلَ جِبْرِيلَ عَلَيْهِ السَّلَامُ وَإِنِّي لَا أَجِدُ مَنْ أَسْأَلُهُ وَسَمِعْتُ رَسُولَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُولُ مَنْ عَاذَ بِاللّٰهِ فَقَدْ عَاذَ بِعَظِيمٍ وَسَمِعْتُهُ يَقُولُ مَنْ عَاذَ بِاللّٰهِ فَأَعِيذُوهُ وَإِنِّي أَعُوذُ بِاللّٰهِ أَنْ تَجْعَلَنِي قَاضِيًا فَأَعْفَاهُ وَقَالَ لَا أُخْبِرُ أَحَدًا۔

3743. Sayyiduna (Abdullah) Ibn Mawhib رضی اللہ عنہ reported that Uthman ibn Affan رضی اللہ عنہ said to Ibn Umar رضی اللہ عنہ, "Become judge among the people." But, he requested, "Will you not excuse me from it, O Amir -ul-Mumineen? "He asked, "Why do you dislike it while your father used to judge (among the people)?" He said, "It is because I heard Allah's Messenger صلی اللہ علیہ وسلم say, 'He who is a judge, and is just in his

[1] Muwatta Maalik # 2 (Aqdiyah).

judgment it is hoped that he would manage to get over evens (without reward or blame)." Thereafter, he did not ask him again (to take the office).[1]

3744. Sayyiduna Nafi رحمه الله narrated[2] that Ibn Umar رضى الله عنه said to Uthman رضى الله عنه, "O Amir ul-Mumineen! I shall not act as judge between two men." He pointed out, "But your father used to judge." He submitted, "As for my father, if he was hesitant about something, then he would ask Allah's Messenger صلى الله عليه وسلم. And if Allah's Messenger صلى الله عليه وسلم wished to clarify something, he would ask Jibril عليه السلام. As for me, I do not find anyone whom I might ask. And, I had heard Allah's Messenger صلى الله عليه وسلم say, 'If anyone seeks refuge in Allah, he has sought refuge in a Mighty Being.' And, I had heard him say, 'If anyone seeks refuge in Allah, then grant refuge to him.' And I seek refuge in Allah lest you make me a qadi (judge)." Thus he excused him, but said to him, "Do not inform anyone (of this)."

He meant that if people shy away from this office then the working of the government would come to a standstill.

CHAPTER - IV

SALARY TO RULERS & GIFTS TO THEM

بَابُ رِزْقِ الْوُلَاةِ وَهَدَايَاهُمْ

This chapter will treat the subject of salaries and remuneration payable to rulers and governors. Should something be set aside from the state Treasury? Also, if anyone wishes to give the ruler a gift, what should be done?

SECTION I — اَلْفَصْلُ الْاَوَّلُ

DISTRIBUTION BY THE PROPHET صلى الله عليه وسلم

(٣٧٤٥) عَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَا اُعْطِيْكُمْ وَلَا اَمْنَعُكُمْ اَنَا قَاسِمٌ اَضَعُ حَيْثُ اُمِرْتُ۔ (رواه البخارى)

3745. Sayyiduna Abu Hurayrah رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "Neither do I give you nor do I withhold from you. I am merely one who disburses. I put where I am command to put."[3]

COMMENTARY: The Prophet صلى الله عليه وسلم made this clear when distributing property among the Sahabah (Prophet's Companions) رضى الله عنهم so that they may not have any misgivings about receiving less or more when the distribution is made.

He explained that he had no say in giving or in withholding. He did not give to anyone or hold back from anyone at his will. He distributed only as Allah commanded.

WARNING TO THOSE WHO SPEND FROM STATE TREASURY UNNECESSARILY

(٣٧٤٦) وَعَنْ خَوْلَةَ الْاَنْصَارِيَّةِ قَالَتْ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِنَّ رِجَالًا يَتَخَوَّضُوْنَ فِيْ مَالِ اللّٰهِ بِغَيْرِ حَقٍّ فَلَهُمُ النَّارُ يَوْمَ الْقِيَامَةِ۔ (رواه البخارى)

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[1] Tirmidhi # 1326.

[2] Razin.

[3] Bukhari # 3117.

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3746. Sayyiduna Khawlah al-Ansariyah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Men spend Allah's Property unjustly (such as receipts against zakat, spoils etc. which they use without the ruler's permission and draw more than they are entitled). But, on the day of resurrection,, they will have hell for them."[1]

RULER IS ENTITLED TO DRAW HIS SALARY FROM TREASURY

(٣٧٤٧) وَعَنْ عَآئِشَةَ قَالَتْ لَمَّا اسْتُخْلِفَ اَبُوْ بَكْرٍ قَالَ لَقَدْ عَلِمَ قَوْمِى اَنَّ حِرْفَتِى لَمْ تَكُنْ تَعْجِزُ عَنْ مُؤْنَةِ اَهْلِى وَشُغِلْتُ بِاَمْرِ الْمُسْلِمِيْنَ فَسَيَاْكُلُ اٰلُ اَبِى بَكْرٍ مِنْ هٰذَا الْمَالِ وَيَحْتَرِفُ لِلْمُسْلِمِيْنَ فِيْهِ۔ (رواه البخارى)

3747. Sayyidah Ayshah رضی اللہ عنہا narrated that when (Sayyiduna) Abu Bakr رضی اللہ عنہ was made caliph, he said, "My people know that my trade was enough to support my family. Now, I have become engaged with the affairs of the Muslims. Hence, Abu Bakr's family will subsist on this property (of the state Treasury) and he will work for it (to increase and to protect it) for the Muslims (using it for their benefit)."[2]

COMMENTARY: Sayyiduna Abu Bakr رضی اللہ عنہ was a draper. He sold cloth in the market, but when he was made Khalifah, he consulted the Sahabah (Prophet's Companions) رضی اللہ عنہم and drew and emolument from the state Treasury.

TRADING OF THE SAHABAH (PROPHET'S COMPANIONS) رضی اللہ عنہم: Sayyiduna Abu Bakr رضی اللہ عنہ was a dealer in textile fabrics. Sayyiduna Umar رضی اللہ عنہ sold grain. Sayyiduna Uthman رضی اللہ عنہ was a merchant of dates and textile fabrics. Sayyiduna Abbas رضی اللہ عنہ dealt in perfume.

The Ulama (Scholars) say that the best kind of business is of cloth and the next is of perfumery. According to a hadith "If the dwellers of paradise were to engage in business, they would deal in textile fabrics. If the inmates of hell were to do it, they would do business of precious metals, gold and silver."

SECTION II اَلْفَصْلُ الثَّانِى

DRAWING MORE THAN SALARY IS DECEIT

(٣٧٤٨) وَعَنْ بُرَيْدَةَ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ مَنِ اسْتَعْمَلْنَاهُ عَلٰى عَمَلٍ فَرَزَقْنٰهُ رِزْقًا فَمَا اَخَذَ بَعْدَ ذٰلِكَ فَهُوَ غُلُوْلٌ۔ (رواه ابوداؤد)

3748. Sayyiduna Buraydah رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "He whom we have employed over some work and provided him a subsistence allowance (as his remuneration) will have committed treachery in the spoils if he draws more than that."[3]

(٣٧٤٩) وَعَنْ عُمَرَ قَالَ عَمِلْتُ عَلٰى عَهْدِ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَعَمَّلَنِىْ۔ (رواه ابوداؤد)

3749. Sayyiduna Umar رضی اللہ عنہ said, "I was made a governor (or , an officer of some type) in the time of Allah's Messenger صلی اللہ علیہ وسلم and he paid me (a salary) for that."[4]

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[1] Bukhari # 3118.

[2] Bukhari # 2070.

[3] Abu Dawud # 2943.

[4] Abu Dawud # 2544, Nasai # 2604, Musnad Ahmad 1-52.

GUIDANCE TO MU`ADH رضی اللہ عنہ

(۳۷۵۰) وَعَنْ مُعَاذٍ قَالَ بَعَثَنِي رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ إِلَى الْيَمَنِ فَلَمَّا سِرْتُ أَرْسَلَ فِيْ أَثَرِيْ فَرُدِدْتُّ فَقَالَ أَتَدْرِيْ لِمَ بَعَثْتُ إِلَيْكَ لَا تُصِيْبَنَّ شَيْئًا بِغَيْرِ إِذْنِيْ فَإِنَّهُ غُلُوْلٌ وَمَنْ يَغْلُلْ يَأْتِ بِمَا غَلَّ يَوْمَ الْقِيَامَةِ لِهٰذَا دَعَوْتُكَ فَامْضِ لِعَمَلِكَ۔ (رواه الترمذی)

3750. Sayyiduna Mu`adh رضی اللہ عنہ said that Allah's Messenger صلی اللہ علیہ وسلم sent him to Yemen. When he had begun his journey, he sent for him and he was brought back. He asked, "Do you know why I sent for you? Do not take anything (during your tenure) without my permission. That would amount to treachery, and he who commits treachery will come on the day of resurrection with his treacherous deeds. This is why I had called you. Go now to your work!"[1]

STATE TREASURY WILL SUPPORT HONORARY RULER

(۳۷۵۱) وَعَنِ الْمُسْتَوْرِدِ بْنِ شَدَّادٍ قَالَ سَمِعْتُ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ مَنْ كَانَ لَنَا عَامِلًا فَلْيَكْتَسِبْ زَوْجَةً فَإِنْ لَمْ يَكُنْ لَهُ خَادِمٌ فَلْيَكْتَسِبْ خَادِمًا فَإِنْ لَمْ يَكُنْ لَهُ مَسْكَنٌ فَلْيَكْتَسِبْ مَسْكَنًا۔ وَفِيْ رِوَايَةٍ مَنِ اتَّخَذَ غَيْرَ ذٰلِكَ فَهُوَ غَالٌّ۔ (رواه ابوداؤد)

3751. Sayyiduna Mustawrid ibn *Shadd (prescribed punishment)*ad رضی اللہ عنہ narrated that he heard the Prophet صلی اللہ علیہ وسلم say, "He whom we appoint a governor (or administrator) must get himself a wife (if he has none). If he has no servant, then he must get a servant. And, if he has no house (of his own), then he must buy a house." According to another version: (He also said,)" He who takes anything other than that is one who betrays."[2]

COMMENTARY: The ruler who has no wife may draw from the state Treasury the dower payable to his wife when he takes one, as also her provision and clothing allowances (without being extravagant). He may also get from the Treasury enough for a buying a servant or to pay his salary, and to buy for himself a house. If he takes more than his need then that will be unlawful for him.

It seems that this command applies when no salary is fixed for the governor.

NOT EVEN A NEEDLE MAY BE MISAPPROPRIATED

(۳۷۵۲) وَعَنْ عَدِيِّ بْنِ عَمِيْرَةَ أَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ أَيُّهَا النَّاسُ مَنْ عُمِّلَ مِنْكُمْ لَنَا عَلٰى عَمَلٍ فَكَتَمَنَا مِنْهُ مِخْيَطًا فَمَا فَوْقَهُ فَهُوَ غَالٌّ يَأْتِيْ بِهِ يَوْمَ الْقِيَامَةِ فَقَامَ رَجُلٌ مِنَ الْأَنْصَارِ فَقَالَ يَا رَسُوْلَ اللّٰهِ اقْبَلْ عَنِّيْ عَمَلَكَ قَالَ وَمَا ذَاكَ قَالَ سَمِعْتُكَ تَقُوْلُ كَذَا وَكَذَا قَالَ وَأَنَا أَقُوْلُ ذٰلِكَ مَنِ اسْتَعْمَلْنَاهُ عَلٰى عَمَلٍ فَلْيَأْتِ بِقَلِيْلِهٖ وَكَثِيْرِهٖ فَمَا أُوْتِيَ مِنْهُ أَخَذَهُ وَمَا نُهِيَ عَنْهُ انْتَهٰى۔ رَوَاهُ مُسْلِمٌ وَأَبُوْدَاوٗدَ وَاللَّفْظُ لَهٗ۔

3752. Sayyiduna Adi ibn Ameerah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ

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[1] Tirmidhi # 1335 (1340).

[2] Abu Dawud # 2945, Musnad Ahmad 4-229

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وسلم said, "O people! He among you who is employed by us over some work (as a governor, revenue collector, or such other) and he conceals from us (so much as) a needle, or more, is being unfaithful. He will bring it on the day of resurrection." A man from the ansars got up and submitted, "O Messenger of Allah, take away from me your task (that you have assigned to me)." He asked, "And, why so?" He submitted," I heard you say in this way. (Therefore, I am scared, for, one may err while doing this work.)" He said, "Yes! I do say. If we employ someone to some post, then he must bring (to us) little or much (Whatever he is given of it). And that which he is paid from it, he must take but he must desist from what he is denied."[1] (Given this guidance, he who is capable of handling this responsibility, may accept it. He who finds himself unable to discharge it may not take it.)

THE RECEIVER AND THE PAYER OF BRIBERY

(٣٧٥٣-٣٧٥٥) وَعَنْ عَبْدِاللّٰهِ بْنِ عَمْرٍو وقَالَ لَعَنَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ الرَّاشِيَ وَالْمُرْتَشِيَ۔ رَوَاهُ اَبُوْدَاوٗدَ وَابْنُ مَاجَةَ وَرَوَاهُ التِّرْمِذِيُّ عَنْهُ وَعَنْ اَبِي هُرَيْرَةَ وَرَوَاهُ اَحْمَدُ وَالْبَيْهَقِيُّ فِيْ شُعَبِ الْاِيْمَانِ عَنْ ثَوْبَانَ وَزَادَ وَالرَّائِشَ يَعْنِي الَّذِيْ يَمْشِي بَيْنَهُمَا۔

3753. Sayyiduna Abdullah ibn Amr رضی اللہ عنہ said that Allah's Messenger صلی اللہ علیہ وسلم cursed the person who bribes and the person who receives bribe[2]

3754. Sayyidua abu Hurayrah رضی اللہ عنہ narrated (the same hadith). With the additional words: "in litigation."[3]

3755. Sayyiduna Thawban رضی اللہ عنہ narrated (the same hadith) with the words (after 'who receives bribe'): "and arra'ish, meaning, the person who is agent between them regarding a bribe (demanding more for this or less for this)."[4]

COMMENTARY: Bribery is offered to a ruler, a governor or a judge, etc. to legalise the illegal or to make the legal or lawful unlawful. However, there is no harm if it is done to establish one's own right as correct or to defend oneself.

(٣٧٥٦) وَعَنْ عَمْرِو بْنِ الْعَاصِ قَالَ اَرْسَلَ اِلَيَّ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَنِ اجْمَعْ عَلَيْكَ سِلَاحَكَ وَثِيَابَكَ ثُمَّ ائْتِنِي قَالَ فَاَتَيْتُهٗ وَهُوَ يَتَوَضَّأُ فَقَالَ يَاعَمْرُو اِنِّي اَرْسَلْتُ اِلَيْكَ لِاَبْعَثَكَ فِيْ وَجْهٍ يُسَلِّمُكَ اللّٰهُ وَيُغَنِّمُكَ وَاَرْغَبُ لَكَ رَغْبَةً مِنَ الْمَالِ فَقُلْتُ يَا رَسُوْلَ اللّٰهِ مَاكَانَتْ هِجْرَتِيْ لِلْمَالِ وَمَاكَانَتْ اِلَّا لِلّٰهِ وَلِرَسُوْلِهٖ قَالَ نِعِمَّا بِالْمَالِ الصَّالِحِ لِلرَّجُلِ الصَّالِحِ رَوَاهُ فِيْ شَرْحِ السُّنَّةِ وَرَوَى اَحْمَدُ نَحْوَهٗ وَفِيْ رِوَايَتِهٖ قَالَ نِعْمَ الْمَالُ الصَّالِحُ لِلرَّجُلِ الصَّالِحِ۔

3756. Sayyiduna Amr ibn Aas رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم sent for him with instructions to collect his weapons and his garments (to prepare for a journey) and to come to him. He came to him while he was performing

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[1] Muslim # 30. 1833, Abu Dawud # 3581, Musnad Ahmad 4-192.

[2] Abu Dawud # 3580, Tirmidhi # 1337(1342)..

[3] Tirmidhi #1336(1341).

[4] Musnad Ahmad 5-279,,Bayhaqi in Shu'ab ul-Eeman # 5503. Lane's Part 3, P.1091, under (rishwa).

ablution. He said, "Amr, I sent for you to send you to a place where Allah keep you safe and let you have the spoils. And, I too will give you a share from the property." He said, "O Messenger of Allah صلى الله عليه وسلم, my hijrah (emigration and embracing Islam) was not for the sake of property. It was only for the sake of Allah and for His Messenger." He said, "Excellent is lawful property for a righteous man![1]
Another version has the words:
"Excellent is good property for a righteous man."[2]

COMMENTARY: Sayyiduna Amr ibn Aas رضى الله عنه had embraced Islam in 5AH. He emigrated to Madinah from Ethiopia with Sayyiduna Khalid ibn Walid رضى الله عنه. some authorities say that he had embraced Islam in 8 AH. The Prophet صلى الله عليه وسلم had appointed him governor of Uman (Oman) and most probably this ha·iith concerns this appointment. Good property is what is earned lawfully and is spent on pious causes. The righteous man is he who respects the rights of Allah and the rights of His slaves.

SECTION III اَلْفَصْلُ الثَّالِثُ

THE INTERCESSOR MUST ACCEPT NO GIFT

(٣٧٥٧) عَنْ اَبِي اُمَامَةَ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ مَنْ شَفَعَ لِاَحَدٍ شَفَاعَةً فَاَهْدَى لَهٗ هَدِيَّةً عَلَيْهَا فَقَبِلَهَا فَقَدْ اَتٰى بَابًا عَظِيْمًا مِنْ اَبْوَابِ الرِّبَا۔ (رواه ابوداؤد)

3757. Sayyiduna Abu Umamah رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "If anyone makes a recommendation for another person who presents to him gift for that recommendation and he accepts it, then he comes to a great gate of the gates of interest."[3]

COMMENTARY: This kind of a gift is bribery, but here it is called interest. The one who recommends gets it in return for nothing.

CHAPTER - V

CASES AND TESTIMONIES بَابُ الْاَقْضِيَةِ وَالشَّهَادَاتِ

This chapter concerns al-aqdiyah or disputes that are brought to rulers and judges for judgement between the disputing parties.
Shahadah or testimonies are to depose on behalf of one of the disputing parties.

SECTION I اَلْفَصْلُ الْاَوَّلُ

PLAINTIFF MUST PROVE HIS CASE

(٣٧٥٨) عَنِ ابْنِ عَبَّاسٍ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لَوْ يُعْطَى النَّاسُ بِدَعْوَاهُمْ لَادَّعٰى نَاسٌ دِمَاءَ رِجَالٍ وَ اَمْوَالَهُمْ وَلٰكِنَّ الْيَمِيْنَ عَلَى الْمُدَّعٰى عَلَيْهِ رَوَاهُ مُسْلِمٌ وَفِيْ شَرْحِهٖ لِلنَّوَوِيِّ اَنَّهٗ قَالَ وَجَاءَ فِيْ رِوَايَةِ الْبَيْهَقِيِّ بِاِسْنَادٍ

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[1] Bayhaqi in Shu'ab ul-Eeman # 5503, Musnad Ahmad 5. 279, Baqhawi in Sharh as *Sunnah (Prophet's* صلى الله عليه وسلم *practice)* # 2495.

[2] Musnad Ahmad 4-197.

[3] Abu Dawud # 2495.

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حَسَنٍ أَوْ صَحِيحٍ زِيَادَةٌ عَنِ ابْنِ عَبَّاسٍ مَرْفُوعًا لٰكِنَّ الْبَيِّنَةَ عَلَى الْمُدَّعِي وَالْيَمِيْنُ عَلٰى مَنْ أَنْكَرَ۔

3758. Sayyiduna Ibn Abbas رضی اللہ عنہ narrated that the Prophet said, "If people were granted their claim (without calling for witnesses or getting the defendant's response), they would make claims for lives and for the properties of others. But, the oath is binding on the defendant.

According to Nawawi, there is an addition in Bayhaqi's version from Ibn Abbas رضی اللہ عنہ in a marfu form:

"But it is the responsibility of the plaintiff to present proof (or witnesses) and the oath must be taken by him who rejects (the claim, meaning the defendant)."[1]

COMMENTARY: If the defendant rejects the claim of the plaintiff who then asks him to take an oath, it is imperative that he do so. This hadith of Muslim does not say that the plaintiff must bring witnesses, but it is an undeniable law of *Shariah* that he must support his claim with testimonies. If he does not present witnesses, then the defendant must indicate himself by taking an oath and rejecting the plaintiff's claim.

The second version of Ibn Abbas رضی اللہ عنہ makes this meaning very clear.

WARNING TO ONE WHO TAKES FALSE OATH

(۳۷۵۹) وَعَنِ ابْنِ مَسْعُوْدٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ حَلَفَ عَلٰى يَمِيْنِ صَبْرٍ وَهُوَ فِيْهَا فَاجِرٌ يَقْتَطِعُ بِهَا مَالَ امْرِءٍ مُسْلِمٍ لَقِيَ اللّٰهَ يَوْمَ الْقِيَامَةِ وَهُوَ عَلَيْهِ غَضْبَانُ فَأَنْزَلَ اللّٰهُ تَصْدِيْقَ ذٰلِكَ إِنَّ الَّذِيْنَ يَشْتَرُوْنَ بِعَهْدِ اللّٰهِ وَأَيْمَانِهِمْ ثَمَنًا قَلِيْلًا إِلَى اٰخِرِ الْاٰيَةِ۔ (متفق علیہ)

3759. Sayyiduna Ibn Mas'ud رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "If anyone takes an oath on being commanded to do so, and he is a liar in doing so, intending thereby to deprive a Muslim of his property, then, on the day of resurrection, Allah will be angry at him when he meets Him." Allah revealed the confirmation of that (in the verse 3: 77):

إِنَّ الَّذِيْنَ يَشْتَرُوْنَ بِعَهْدِ اللّٰهِ وَأَيْمَانِهِمْ ثَمَنًا قَلِيْلًا الى آخر الأية

{Surely those who barter Allah's covenant and their oaths, for a small price....} (to end of the verse).[2]

COMMENTARY: The hadith implies that the plaintiff is confined by the judge until he takes an oath to support his claim.

Some people say that it refers to one who swears falsely to intentionally appropriate a Muslim's property. This is as the words of the hadith (وهو فيها فاجر) (and he is a liar in doing so). The entire verse is:

إِنَّ الَّذِيْنَ يَشْتَرُوْنَ بِعَهْدِ اللّٰهِ وَأَيْمَانِهِمْ ثَمَنًا قَلِيْلًا أُولٰئِكَ لَا خَلَاقَ لَهُمْ فِي الْاٰخِرَةِ وَلَا يُكَلِّمُهُمُ اللّٰهُ وَلَا يَنْظُرُ إِلَيْهِمْ يَوْمَ الْقِيَامَةِ وَلَا يُزَكِّيْهِمْ وَلَهُمْ عَذَابٌ أَلِيْمٌ۔ (ال عمران ۳: ۷۷)

{Surely those who barter Allah's covenant and their oaths for a small price – there

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[1] Bukhari # 4552, Muslim # 1-1711, Bayhaqi.

[2] Bukhari # 4549, Muslim # 220-138, Tirmidhi # 3012, Ibn Majah # 2323. (verse of surah Aal Imran 77).

shall be no share for them in the hereafter. And allah shall not speak to them, nor shall He look at them on the day of resurrection, nor shall He purify them, and for them is a painful chastisement.]

(٣٧٦٠) وَعَنْ اَبِي اُمَامَةَ قَالَ قَالَ رَسُولُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنِ اقْتَطَعَ حَقَّ اِمْرِءٍ مُسْلِمٍ بِيَمِيْنِهٖ فَقَدْ اَوْ جَبَ اللّٰهُ لَهُ النَّارَ وَحَرَّمَ عَلَيْهِ الْجَنَّةَ فَقَالَ لَهٗ رَجُلٌ وَاِنْ كَانَ شَيْئًا يَسِيْرًا يَا رَسُوْلَ اللّٰهِ قَالَ وَاِنْ كَانَ قَضِيْبًا مِنْ اَرَاكٍ۔ (رواه مسلم)

3760. Sayyiduna Abu Umamah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "If anyone takes away by his (false) oath the right of a Muslim, then Allah has made hell-fire *wajib (obligatory)* on him and has forbidden paradise to him." A man asked him, "Even if it is something in significant, O Messenger of Allah?" He said, "Even if is a (broken) twig of an arak tree."[1]

COMMENTARY: The words 'Allah has made hell-fire *wajib (obligatory)* on 'could be explained in two ways.

(i) This command applies to one who swears falsely to appropriate a Muslim's right and believes that what he does is lawful till he dies.

(ii) He will be punished in hell definitely but it is not unexpected that Allah will forgive him, being Kind and Compassionate.

Similarly, the second portion about his entry into paradise being forbidden means that he will not be admitted to it with the first successful people.

It must be clear that this warning applies also to one who deprives a dhimmi of his right by a false oath.

ADVICE TO PLAINTIFFS

(٣٧٦١) وَعَنْ اُمِّ سَلَمَةَ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اِنَّمَا اَنَا بَشَرٌ وَاِنَّكُمْ تَخْتَصِمُوْنَ اِلَيَّ وَلَعَلَّ بَعْضَكُمْ اَنْ يَكُوْنَ اَلْحَنَ بِحُجَّتِهٖ مِنْ بَعْضٍ فَاَقْضِيْ لَهٗ عَلٰى نَحْوِ مَا اَسْمَعُ مِنْهُ فَمَنْ قَضَيْتُ لَهٗ بِشَيْءٍ مِنْ حَقِّ اَخِيْهِ فَلَا يَاْخُذَنَّهٗ فَاِنَّمَا اَقْطَعُ لَهٗ قِطْعَةً مِنَ النَّارِ۔ (متفق عليه)

3761. Sayyidah Umm Salamah رضی اللہ عنہا narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "I am only a human being. You come to me with your disputes. It is possible that one of you is more persuasive in presenting his argument. I may give judgement in his favour being impressed by his argument. Therefore, if I decide for someone something that is the right of his brother, he must not take it, for, (it is as though) I give him only a piece of fire."[2]

COMMENTARY: The Prophet صلی اللہ علیہ وسلم said that mistake and forgetfulness is not unexpected in any man. Besides, man goes only by the apparent and he meant, "I am human too and liable to the same tendencies and peculiarities as any human being." He made it clear, however, that he did receive Divine revelation and guidance which enabled

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[1] Muslim # 218-137, Nasa'I # 5419, Darimi # 2603, Muwatta Maalik # 11 (Aqdiyah), Musnad Ahmad 5-260.

[2] Bukhari # 6967, Muslim # 4-1713, Tirmidhi # 1339, Abu Dawud # 3582, Nasai # 5401, Ibu Majah # 2317, Musnad Ahmad 6-290.

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him to know facts and realities.

Hence, he said that if he happened to decide any case on its apparent aspects when the plaintiff proves his case, and if he is not rightful, then he must not regard what he gets as lawful to him but think of it as a flame of fire that he gets.

WARNING TO HIM WHO FILES CASES UNNECESSARILY

(٣٧٦٢) وَعَنْ عَائِشَةَ قَالَتْ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِنَّ اَبْغَضَ الرِّجَالِ اِلَى اللّٰهِ اَلَدُّ الْخَصِمُ۔ (متفق علیه)

3762. Sayyidah Ayshah رضی اللہ عنہا narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Surely, the man most detested in Allah's sight is he who is very quarrel some (and disputes very much) unnecessarily."[1]

(The word for most quarrelsome is al-aladukhisam. It is found in surah al-Baqarah verse 204 and means 'most stubborn in altercation'. It is translated in 'Vocabulary of the Holy Quran'[2] compiled by Dr. Abdullah Abbas al-Nadwi as 'most contentions of the adversaries.')

MAY PLAINTIFF PRESENT ONE WITNESS AND TAKE AN OATH

(٣٧٦٣) وَعَنِ ابْنِ عَبَّاسٍ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَضٰى بِيَمِيْنٍ وَشَاهِدٍ۔ (رواه مسلم)

3763. Sayyiduna Ibn Abbas رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم pronounced judgement (on a case) against an oath and (only) one witness.[3]

COMMENTARY: The obvious meaning of this hadith is that if a plaintiff is able to support his claim with only one witness then he must be asked to take an oath in place of a second witness. The oath may be regarded as a substitution for one witness, and his claim should be entertained. This is what is said by the three imams, Imam Shafi`I رحمہ اللہ, Imam Maalik رحمہ اللہ and Imam Ahmad رحمہ اللہ. However, Imam Abu Hanifah رحمہ اللہ said that it is not permitted to decide on the basis of one witness and one oath, rather two witnesses must support his claim as is established by the Quran. The command of the Quran may not be overridden by khabar wahid (which is narrated by only one narrator and transmitted by a single chain of narrators). Hence, no rulling can be given on the basis of this hadith that contradicts a command of the Quran.

Teebi رحمہ اللہ said that when a dispute pertains to anything other than property, the imams are agreed that one witness and an oath will not be accepted as the basis of judgement. For dispute involving property, the imams differ on whether one witness and an oath (in lie of a second witness) will serve as basis of judgement.

DEFENDANT'S OATH MUST BE BELIEVED

(٣٧٦٤) وَعَنْ عَلْقَمَةَ بْنِ وَائِلٍ عَنْ اَبِيْهِ قَالَ جَاءَ رَجُلٌ مِنْ حَضْرَمَوتَ وَ رَجُلٌ مِنْ كِنْدَةَ اِلَى النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ الْحَضْرَمِيُّ يَا رَسُوْلَ اللّٰهِ اِنَّ هٰذَا غَلَبَنِي عَلٰى اَرْضٍ لِيْ فَقَالَ الْكِنْدِيُّ هِيَ اَرْضِيْ وَفِيْ يَدِيْ لَيْسَ لَهٗ فِيْهَا حَقٌّ فَقَالَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لِلْحَضْرَمِيِّ اَلَكَ بَيِّنَةٌ قَالَ لَا قَالَ فَلَكَ يَمِيْنُهٗ قَالَ يَا رَسُوْلَ

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[1] Bukhari # 2457, Muslim # 5-2668, Tirmidhi # 2976, Nasa'I # 5423, Musnad 6-55.

[2] Published by Darul Ishaat, Karachi.

[3] Muslim # 1712, Abu Dawud # 3608, Ibn Majah # 2370, Musnad Ahmad 1-315.

اللّٰهِ إِنَّ الرَّجُلَ فَاجِرٌ لَا يُبَالِ عَلٰى مَا حَلَفَ عَلَيْهِ وَلَيْسَ يَتَوَرَّعُ مِنْ شَيْءٍ قَالَ لَيْسَ لَكَ مِنْهُ إِلَّا ذٰلِكَ فَانْطَلَقَ لِيَحْلِفَ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَمَّا اَدْبَرَ لَئِنْ حَلَفَ عَلٰى مَالِهِ لِيَأْكُلَهُ ظُلْمًا لَيَلْقِيَنَّ اللّٰهَ وَهُوَ عَنْهُ مُعْرِضٌ۔ (رواه مسلم)

3764. Sayyiduna Alqamah ibn Wa`il رضی اللہ عنہ narrated on the authority of his father that a man from Hadramawt and a man from Kinda came to the Prophet صلی اللہ علیہ وسلم The Hadrami pleaded, "O Messenger of Allah, this man has seized my land." The Kindi said, not have a right to it." The Prophet صلی اللہ علیہ وسلم asked the Hadrami (after listening to both), "Do you have a witness?" He said, "No!" He said, "Then you may ask him to state on oath. (If he does not then your plea is granted otherwise it will be turned down.)" He submitted, " O Messenger of Allah, this man is a profligate , an immoral. He will not mind to swear to anything, He is not righteous." He said, "You have no option but to get him to swear." So He (the Kindi) turned to take an oath and Allah's Messenger صلی اللہ علیہ وسلم said when he had turned his back, "If he swear over his property to seize it wrongly, he will certainly meet Allah (on the day of resurrection), while He turns away from him."[1]

COMMENTARY: The man turned to take oath. This could be as the Shafii believe that one who take oath must first make ablution and take oath at a specified hour which is after asr on Friday. Or this man may have turned his back on the plaintiff and walked towards the Prophet صلی اللہ علیہ وسلم to take the oath near him.

Nawawi رحمہ اللہ said that some rulings are derived from this hadith.

(1) The one who is the possessor is preferred over the claimant.
(2) The defendant must take an oath if he rejects the plaintiff's claim.
(3) The oath of the defendant is accepted irrespective of whether he is a sinner or a just, honest man.
(4) When the defendant swears the plaintiff's claim becomes void and is dismissed. (However, if true testimony bears out the falsehood of the oath of the defendant, then his oath will be invalid.)

HELL IS THE DESTINATION OF THE FALSE CLAIMANT

(٣٧٦٥) وَعَنْ اَبِي ذَرٍّ اَنَّهٗ سَمِعَ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ مَنِ ادَّعٰى مَا لَيْسَ لَهٗ فَلَيْسَ مِنَّا وَلْيَتَبَوَّأْ مَقْعَدَهٗ مِنَ النَّارِ۔ (رواه مسلم)

3765. Sayyiduna Abu Dhar رضی اللہ عنہ narrated that he heard Allah's Messenger صلی اللہ علیہ وسلم say, "He who lays claim to what does not belong to him is not one of us and he must find his seat in hell."[2]

THE BEST WITNESS

(٣٧٦٦) وَعَنْ زَيْدِ بْنِ خَالِدٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَلَا اُخْبِرُكُمْ بِخَيْرِ الشُّهَدَاءِ الَّذِي يَأْتِي بِشَهَادَتِهٖ قَبْلَ اَنْ يُسْأَلَهَا۔ (رواه مسلم)

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[1] Muslim # 223-139, Tirmidhi # 1340 (1345), Abu Dawud # 3245.

[2] Muslim # 61-112, Ibn Majah # 2319

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3766. Sayyiduna Zayd ibn Khalid رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم asked, "Shall I not inform you of the best of witnesses? He is the one who offers his testimony before being asked for it."[1]

COMMENTARY: To give testimony truly is the same thing as to state facts and it is not proper to disclose truth only when asked to do so. The ideal witness is he who does not wait to being asked, "Are you the one?" or, "Do you wish to testify?" He volunteers to disclose the truth and facts.

IS IT PROPER: However, according to another hadith, those who come forward to give testimony on their own are blamed. So, the Hanafis rule that no one must offer testimony until asked, It is *wajib (obligatory)* to give it when one is asked and it is better to conceal it in cases of hudood (prescribed punishments).

As for this hadith, the Hanafis explain that (1) it applies to one who is witness for someone's right but the plaintiff is not aware of his having withnessed it. So he must inform the plaintiff that he is his witness. (2) This hadith pertains to giving testimony for rights of Allah, like Zakah (Annual due charity), expiation, observing the new moon and inheritance, and such other things. For example, one who has observed the newmoon must bear witness to it before the ruler or relevant authority.

It is also said that the command in this hadith is by way of exhortation, meaning that one who is asked to testify, must then discharge his responsibility at the earliest. As for the condemnation of one who gives testimony without being asked, it condemns doing it before the demand.

FALSE TESTIMONIES BY LATER PEOPLE

(٣٧٦٧) وَعَنِ ابْنِ مَسْعُوْدٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ خَيْرُ النَّاسِ قَرْنِي ثُمَّ الَّذِيْنَ يَلُوْنَهُمْ ثُمَّ الَّذِيْنَ يَلُوْنَهُمْ ثُمَّ يَجِيْئُ قَوْمٌ تَسْبِقُ شَهَادَةُ اَحَدِهِمْ يَمِيْنَهُ وَيَمِيْنُهُ شَهَادَتَهُ۔ (متفق علیہ)

3767. Sayyiduna Ibn Mas'ud رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "The best of the people are my generation (my sahabah). Then they who will come after them (the tabi'un). Then they who will come after them (the tab tabi'un). After that a people will come who will give testimony before taking an oath and will take an oath before giving testimony."[2]

COMMENTARY: These last people will be so hasty in swearing and bearing testimony that they will be careless in offering them to the extent that sometimes they would give oath before testifying and sometimes they would testify before they swear.

Majher رحمہ اللہ said that they would not even know what they have done and what sequence they had observed.

Same scholars say that this saying of the Prophet صلی اللہ علیہ وسلم is about false oaths and false testimonies. These things will become very common. There will be professional witnesses and people who will swear by habit as a superfluous word in their speech. This is what is common these days. These people ruin their hereafter in this way.

Some other people explain this saying to mean that someone will promote his testimony

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[1] Muslim # 19-1719, Tirmidhi # 2295 (2302), Abu Dawud # 3569, Ibn Majah # 2364, Musnad Ahmad 5-193, Muwatta Maalik # 3 (Aqdiyah).

[2] Bukhari # 3651, Muslim # 212-2533, Tirmidhi # 2303, Ibn Majah # 2362, Musnad Ahmad 1-442.

through his oath. At other times, he will promote his oath through his testimony. For example, in the first case, he will say, "By Allah, I am a true witness!" In the second case, he will say, "People do testify that I am true in my oath."

CASTING LOTS FOR THE OATH

(٣٧٦٨) وَعَنْ اَبِيْ هُرَيْرَةَ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَرَضَ عَلٰى قَوْمٍ الْيَمِيْنَ فَاسْرَعُوا فَاَمَرَاَنْ يُسْهَمَ بَيْنَهُمْ فِي الْيَمِيْنِ اَيُّهُمْ يَحْلِفُ۔ (رواه البخاری)

3768. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم called on some people to swear an oath (to belie the plaintiff if they rejected his claim). So, they made haste (vying with each other) to do so. Hence, he instructed them that lots should be cast among them to take the oath to decide which one should take the oath.[1]

COMMENTARY: It seems that someone had implicated a few people over something. They rejected his allegations. The Prophet instructed them to swear oaths and they made haste to comply. Every was prepared to swear at the sometime. So, the Prophet صلی اللہ علیہ وسلم did not let everyone swear but said that they should cast lots and he whose name was drawn should swear.

However, the exponents have suggested that perhaps two men had claimed something that was in the possession of the third man. But, both could not produce a witness. Or, though they had witnesses, the third man said that he did not know to whom the thing belonged. Hence, the two were to cast lots. The one whose name was drawn was to swear an oath and the thing was to be handed over to the person after that. The question arises that this situation calls for the plaintiff to swear an oath while this is the responsibility of the defendant. This is because each of the two plaintiffs rejected the other's claim and the rule is:

وَالْيَمِيْنُ عَلٰى مَنْ اَنْكَرَ

(The oath is to be taken by one who rejects).

Both these possibilities are from the apparent meaning of the hadith. As for the juristic point of view, Sayyiduna Ali رضی اللہ عنہ held these opinions, but Imam Shafi'i رضی اللہ عنہ ruled that in such cases the judge must let the third man retain that thing, and neither of the plaintiffs must be given anything. Imam Abu Hanifah رضی اللہ عنہ ruled that the disputed thing should be given to the two plaintiffs, half and half. But, some people assert that Imam Ahmad رضی اللہ عنہ and Imam Shafi'I رضی اللہ عنہ have two views one of which coincides with the opinion of Sayyiduna Ali رضی اللہ عنہ and the other with the ruling of Imam Abu Hanifah رضی اللہ عنہ.

The hadith of Sayyidah Umm Salamah رضی اللہ عنہا (#3770) that follows (after the next) upholds the ruling of Imam Abu Hanifah رضی اللہ عنہ and his disciples.

SECTION II اَلْفَصْلُ الثَّانِيْ

PLAINTIFF IS RESPONSIBLE FOR PRESENTING WITNESS AND DEFENDANT FOR TAKING OATH

(٣٧٦٩) عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ اَبِيْهِ عَنْ جَدِّهٖ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ الْبَيِّنَةُ عَلَى الْمُدَّعِيْ وَالْيَمِيْنُ عَلَى الْمُدَّعٰى عَلَيْهِ۔ (رواه الترمذی)

[1] Bukhari #2674.

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3769. Sayyiduna Amr ibn Shu'ayb رضی اللہ عنہ reported from his father that his grandfather narrated that the Prophet صلی اللہ علیہ وسلم said, "Providing testimony is the responsibility of the plaintiff while the oath is to be sworn by the defendant."[1]

WHEN TWO PEOPLE CLAIM SOMETHING

(٣٧٧٠) وَعَنْ أُمِّ سَلَمَةَ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فِي رَجُلَيْنِ اخْتَصَمَا إِلَيْهِ فِي مَوَارِيثَ لَمْ تَكُنْ لَهُمَا بَيِّنَةٌ إِلَّا دَعْوَاهُمَا فَقَالَ مَنْ قَضَيْتُ لَهُ بِشَيْءٍ مِنْ حَقِّ أَخِيهِ فَإِنَّمَا أَقْطَعُ لَهُ قِطْعَةً مِنَ النَّارِ فَقَالَ الرَّجُلَانِ كُلُّ وَاحِدٍ مِنْهُمَا يَا رَسُولَ اللّٰهِ حَقِّي هٰذَا لِصَاحِبِي فَقَالَ لَا وَلٰكِنْ اذْهَبَا فَاقْتَسِمَا وَتَوَخَّيَا الْحَقَّ ثُمَّ اسْتَهِمَا ثُمَّ لِيُحَلِّلْ كُلُّ وَاحِدٍ مِنْكُمَا صَاحِبَهُ وَفِي رِوَايَةٍ قَالَ إِنَّمَا أَقْضِي بَيْنَكُمَا بِرَأْيِي فِيمَا لَمْ يُنْزَلْ عَلَيَّ فِيهِ۔ (رواہ ابوداؤد)

3770. Sayyidah Umm Salamah رضی اللہ عنہا narrated from the Prophet صلی اللہ علیہ وسلم about two men who brought to him a dispute about inheritances, neither of whom had any evidence except their (respective) claim. He said, "If I judge in favour of one (of you) concerning what (actually) is his brother's right, then I (really) apportion for him something of hell-fire (nothing more)." (In other words, if anyone knowingly files a false claim and I decide on the basis of the law going by his fake oath or testimony, then he gets a flame of hell-fire.) So (on hearing that), both the men said, "O Messenger of Allah, let my right go to my brother!" He said, "No! go and divide it, and (if there is disagreement on which portion should go to whom) draw lots and each of you should forgive his companion his own right (that may have gone to him)."

According to another version: He said, "I only decide between the two of you by my (opinion and) judgement concerning which no revelation is sent down to me."[2]

JUDGEMENT IN FAVOUR OF POSSESSOR

(٣٧٧١) وَعَنْ جَابِرِ بْنِ عَبْدِ اللّٰهِ أَنَّ رَجُلَيْنِ تَدَاعَيَا دَابَّةً فَأَقَامَ كُلُّ وَاحِدٍ مِنْهُمَا الْبَيِّنَةَ إِنَّهَا دَابَّتُهُ نَتَجَهَا فَقَضَى بِهَا رَسُولُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لِلَّذِي فِي يَدِهِ۔ (رواہ فی شرح السنۃ)

3771. Sayyiduna Jabir ibn Abdullah رضی اللہ عنہ narrated that two men claimed an animal and each of them presented his evidence, (saying that) it was the offspring of one of his beasts. So, Allah's Messenger صلی اللہ علیہ وسلم passed judgement that it should be retained by him who possessed it.[3]

COMMENTARY: Some ulama (Scholars) go by this hadith and say that of the disputants, he should be preferred in whose possession the thing disputed lies. However, this is not so. The correct thing is that this command applies only when the disputed thing is an animal to which the disputants lay claim to having been sired by their stallion or bull.

It is stated in Sharh us *sunnah (Prophet's صلی اللہ علیہ وسلم practice)* that the ulama (Scholars) say, about an animal or a thing whose ownership is claimed by two people and it is in the hands of one of them, that the right of the possessor will be preferred and he will be asked

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[1] Tirmidhi # 1341.

[2] Abu Dawud # 3584, Musnad Ahmad 6-230. (Abu Dawud has only the second version)

[3] Baghawi in Sharh us-*Sunnah (Prophet's صلی اللہ علیہ وسلم practice)* # 2504, Daraqutni #21.

to swear an oath. However, if the other person substantiates his claim by witnesses that the animal or thing belongs to him and not to the possessor, then it will be handed over to this other person. If both the disputants are equally vociferous and bring their evidences, then the possessor will be allowed to retain that animal or whatever it is.

According to the Hanafi point of view then both disputants present their witnesses, the witnesses of the possessor will not be entertained. Rather, those of the other claimant will be trusted. The possessor will be made to hand over the disputed property to the other claimant, if the dispute is not about siring of an animal in which case when each person claims and substantiates his claim with evidence that his stallion or bull had sired the disputed animal then the possessor will be permitted to retain it. Further, if they dispute about something that is in the hands of each of them and they both claim full ownership to it, then both will be asked to swear an oath and that thing will be divided between them according to what each holds in his hand. Similarly, if none of them holds the disputed thing while both of them claim if and produce enough evidence of ownership then it will be divided between the two.

TWO CLAIMANTS OF SAME THING

(٣٧٧٢) وَعَنْ اَبِي مُوْسٰى الْاَشْعَرِيِّ اَنَّ رَجُلَيْنِ اِدَّعَيَا بَعِيْرًا عَلٰى عَهْدِ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَبَعَثَ كُلُّ وَاحِدٍ مِنْهُمَا شَاهِدَيْنَ فَقَسَمَهُ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ بَيْنَهُمَا نِصْفَيْنِ رَوَاهُ اَبُوْدَاوٗدَ۔ وَفِيْ رِوَايَةٍ لَهٗ وَلِلنَّسَائِيِّ وَابْنِ مَاجَةَ اَنَّ رَجُلَيْنِ اِدَّعَيَا بَعِيْرًا لَيْسَتْ لِوَاحِدٍ مِنْهُمَا بَيِّنَةٌ فَجَعَلَهُ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ بَيْنَهُمَا۔

3772. Sayyiduna Abu Musa Ash'ary رضی اللہ عنہ said that two men laid claim to a camel in the time of Allah's Messenger صلی اللہ علیہ وسلم. Each of them presented two witnesses. So, the Prophet صلی اللہ علیہ وسلم divided it into halves between them.

According to another version: Two men claimed ownership of a camel. But, neither of them had a witness (or proof). So, the Prophet صلی اللہ علیہ وسلم decided that both of them should share it equally.[1]

(second version of) Abu Dawud # 3613.

COMMENTARY: Khattabi رضی اللہ عنہ says that perhaps the camel may have been in possession of both men.

Mulla Ali Qari رضی اللہ عنہ says that perhaps the camel was in the hands of a third man who may have had a dispute with these two about it.The two versions perhaps refer to two different incidents. The first says that they each had their witnesses while the second says that they had no witnesses. Or, it is the same incident but when they produced their witnesses, they turned hostile and in disagreement with one another, so the two men were at par with those who had no witnesses. Hence, none of the claimants qualified to be preferred.

Ibn Maalik رضی اللہ عنہ says about the camel being shared that if two people claim the same thing and:

(i) none of them has witnesses, or,

[1] Abu Dawud # 3615(second version) Nasa'I # 5424, Ibn Maiah # 2330.

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(ii) both have witnesses and that disputed property is in the hands of both of them, or,

(iii) none of them holds it in his hands-

Then it should be divided between the two of them half and half (so they will use it equally).

(٣٧٧٣) وَعَنْ اَبِيْ هُرَيْرَةَ اَنَّ رَجُلَيْنِ اِخْتَصَمَا فِيْ دَابَّةٍ وَلَيْسَ لَهُمَا بَيِّنَةٌ فَقَالَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اسْتَهِمَا عَلَى الْيَمِيْنِ۔ (رواه ابوداؤد وابن ماجة)

3773. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that two men disputed about (the ownership of) an animal, but neither of them had a proof. So, the Prophet صلی اللہ علیہ وسلم said, "Cast lots about the oath." (He whose name is drawn will take an oath and the decision shall be made in his favour.)[1]

COMMENTARY: See hadith # 3768.

OATH OF THE DEFENDANT

(٣٧٧٤) وَعَنِ ابْنِ عَبَّاسٍ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لِرَجُلٍ حَلِّفْهُ اِحْلِفْ بِاللّٰهِ الَّذِيْ لَا اِلٰهَ اِلَّا هُوَ مَا لَهُ عِنْدَكَ شَيْءٌ يَعْنِيْ لِلْمُدَّعِيْ۔ (رواه ابوداؤد)

3774. Sayyiduna Ibn Abbas رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said to a man whom he had instructed to take an oath, "Swear by Allah besides whom there is no God that you do not have anything belonging to him," meaning the plaintiff.[2]

COMMENTARY: As stated earlier, if the plaintiff does not produce evidence to substantiate his claim and the defendant challenges him then it is necessary for the latter to take an oath. He will swear, "I swear by Allah, the One other than whom no one is worthy of worship, that this man (the plaintiff) has made a claim on me that is not based on facts. He has no right pending on me."

The oath will be taken by the qadi (judge). A Muslim will be made to swear on Allah, the One; a Christian on the God of the Bible; a Jew on the God of the Torah; and a Majusi (Magian) and the others on God.

The oath of the defendant will be delieved in any case whether he is pious or a sinner, truthful or liar. But if the judge knows through true testimony that his oath is false, then his oath will become in valid.

EVEN A LIAR DEFENDANT HAS A RIGHT TO TAKE AN OATH

(٣٧٧٥) وَعَنِ الْاَشْعَثِ بْنِ قَيْسٍ قَالَ كَانَ بَيْنِيْ وَبَيْنَ رَجُلٍ مِنَ الْيَهُوْدِ اَرْضٌ فَجَحَدَنِيْ فَقَدَّمْتُهُ اِلَى النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ اَلَكَ بَيِّنَةٌ قُلْتُ لَا قَالَ لِلْيَهُوْدِيِّ اِحْلِفْ قُلْتُ يَا رَسُوْلَ اللّٰهِ اِذًا يَحْلِفُ وَيَذْهَبُ بِمَالِيْ فَاَنْزَلَ اللّٰهُ تَعَالَى اِنَّ الَّذِيْنَ يَشْتَرُوْنَ بِعَهْدِ اللّٰهِ وَاَيْمَانِهِمْ ثَمَنًا قَلِيْلًا۔ الْاٰيَةَ۔ (رواه ابوداؤد وابن ماجة)

3775. Sayyiduna Ash`ath ibn Qays رضی اللہ عنہ said that he owned a piece of land in partnership with a Jew but he denied the right of Ash`ath رضی اللہ عنہ (to the land). So, he took him to the Prophet صلی اللہ علیہ وسلم who asked him, "Do you have witness (or

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[1] Abu Dawud # 3618, Ibn Majah # 2346, Musnad Ahmad 2-289.

[2] Abu Dawud # 3620.

proof)." He said, "No!" Then, he said to the Jew, "Take an oath." Ash`ath رضی اللہ عنہ submitted, "O Messenger of Allah in that case he will swear and go away with my property." But, Allah the Exalted (had) revealed (concerning a similar case mentioned in hadith # 3759) the verse:

إِنَّ الَّذِيْنَ يَشْتَرُوْنَ بِعَهْدِ اللّٰهِ وَاَيْمَانِهِمْ ثَمَنًا قَلِيْلًا (الاية)

{Surely, those who barter Allah's covenant and their oaths, for a small price...}[1]

COMMENTARY: The verse cited here was revealed at the time of the incident mentioned in the hadith # 3759 (of Ibn Mas`ud رضی اللہ عنہ).

WARNING TO USURPER THROUGH FALSE OATH

(٣٧٧٦) وَعَنْهُ اَنَّ رَجُلًا مِنْ كِنْدَةَ وَرَجُلًا مَنْ حَضْرَمُوْتَ اخْتَصَمَا اِلٰى رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فِيْ اَرْضٍ مِنَ الْيَمَنِ فَقَالَ الْحَضْرَمِيُّ يَا رَسُوْلَ اللّٰهِ اِنَّ اَرْضِيْ اِغْتَصَبَنِيْهَا اَبُوْهٰذَا وَهِيَ فِيْ يَدِهٖ قَالَ هَلْ لَكَ بَيِّنَةٌ قَالَ لَا وَلٰكِنْ اُحَلِّفُهٗ وَاللّٰهِ مَا يَعْلَمُ اَنَّهَا اَرْضِيْ اِغْتَصَبَنِيْهَا اَبُوْهُ فَتَهَيَّاَ الْكِنْدِيُّ لِلْيَمِيْنِ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا يَقْطَعُ اَحَدٌ مَالًا بِيَمِيْنٍ اِلَّا لَقِيَ اللّٰهَ وَهُوَ اَجْذَمُ فَقَالَ الْكِنْدِيُّ هِيَ اَرْضُهٗ۔ (رواه ابوداؤد)

3776. Sayyiduna Ash`ath ibn Qays رضی اللہ عنہ narrated that a man of Kindah and a man of Hadramawt brought to Allah's Messenger صلی اللہ علیہ وسلم a dispute about a piece of land in Yemen. The man of Hadramawt pleaded, "O Messenger of Allah, this man's father snatched my land from me and it is now in his hands." He asked, "Do you have witnesses?" He said, "No, but I do ask him to swear by Allah that he is not aware that it is my land that his father had taken from me by force. The man of Kindah prepared to take the oath, but Allah's Messenger صلی اللہ علیہ وسلم warned (him). "No one takes away (anyone's) property by a false oath but he will meet Allah with his hand cut off." The man of Kindah exclaimed, "That is his land."[2]

COMMENTARY: The Arabic words of the hadith are (الا لقی اللہ وھواجذم). The word (جذام) (judhaam) is the malady 'leprosy'. The climbs are dis figured and discoloured and decayed. But, the root word of (جذام) is (جذم) (jadham) which means 'to cut' and 'to cut quickly.' It also means' to sever the hand or 'amputated hand.' In this hadith it is used in this last sense, and it means 'to lack blessing' and 'to be without any good.' It is as in a hadith:

مَنْ تَعَلَّمَ الْقُرْاٰنَ ثُمَّ نَسِيَهٗ لَقِيَ اللّٰهَ وَهُوَ اَجْذَمُ

(He who learns the Quran but after that forgets it, will meet Allah while his hand is severd.)[3]

Some people however, say that here the word means (مقطوع الحجة) (having no proof, no argument). That man will meet Allah with nothing to prove his religion and fear of Allah to be able to get deliverance. He will not have a tongue to makes his submission and plea.

PERJURY IS A GRAVE SIN

(٣٧٧٧) وَعَنْ عَبْدِاللّٰهِ بْنِ اُنَيْسٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِنَّ مِنْ اَكْبَرِ الْكَبَائِرِ الشِّرْكَ

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[1] Tirmidhi # 2996, Abu dawud # 3621, Ibn Majah # 2322, Musnad Ahmad 5-211.

[2] Musnad Ahmad 5-212 Abu Dawud # 3622.

[3] The hadith in Abu Dawud is similar # 1474

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بِاللّٰهِ وَعُقُوْقَ الْوَالِدَيْنِ وَالْيَمِيْنَ الْغَمُوْسَ وَمَا حَلَفَ حَالِفٌ بِاللّٰهِ يَمِيْنَ صَبْرٍ فَاَدْخَلَ فِيْهَا مِثْلَ جَنَاحِ بَعُوْضَةٍ اِلَّا جُعِلَتْ نُكْتَةٌ فِيْ قَلْبِهٖ اِلٰى يَوْمِ الْقِيَامَةِ۔ رَوَاهُ التِّرْمِذِيُّ وَقَالَ هٰذَا حَدِيْثٌ غَرِيْبٌ۔

3777. Sayyiduna Abdullah ibn Unays رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Among the gravest of the major sins are (i) to ascribe a partner to Allah, (ii)to displease parents (and disobey them), and (iii) to swear a false oath. Whoever swears an oath on Allah, a firm oath (or an oath under compulsion of some sort) including therein so much lie as a gnat's wing (which is very insignificant) then a spot grows in his heart till the day of resurrection" (for which he will have to account in the hereafter).[1]

COMMENTARY: The word (غموس) ghamus is from (غمس) ghams 'to dive' (یمین غموس) (yamin ghamus) is to take a false oath on something past intentionally.,

The Hanafis say that one who swears in this way does not have to make an atonement, but he must make a repentance and seek forgiveness, and resolve not to swear a false oath anymore, because this kind oath will lead to hell. This oath is called ghamus because one who swears it will be made to dive in hell. Further, the false oath that is taken to snatch someone's property is akin to this oath ghamus.

Yamin sabr (یمین صبر) is an oath under compulsion (when one is confined or is helpless) or it is a 'firm oath'. This has been explained against the hadith # 3759. It is as bad as yamin ghabus but no atonement is necessary for this oath, too. However, it makes one liable to punishment in hell like the ghamus.

A spot grows in the heart of one who swears a false oath. It is like rust that will remain till the last day. In the hereafter, this man will be punishment. One must ponder that when as infinitesimal lie can cause chastisement of this magnitude then what are the consequences of bold falsehood.

The Prophet صلی اللہ علیہ وسلم mentioned three things as among the gravest of the grave sins. Then he sounded a warning for the last mentioned to make it clear that it is one of the most serious sins so that people may not consider it to be lighter than attributing a partner to Allah and disobeying parents.

We shall see the same thing in the hadith of Sayyiduna khuzaymah ibn Fatik رضی اللہ عنہ (#3779) to follow. It puts false testimony at par with polytheism.

(٣٧٧٨) وَعَنْ جَابِرٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا يَحْلِفُ اَحَدٌ عِنْدَ مِنْبَرِيْ هٰذَا عَلٰى يَمِيْنٍ اٰثِمَةٍ وَلَوْ عَلٰى سِوَاكٍ اَخْضَرَ اِلَّا تَبَوَّاَ مَقْعَدَهٗ مِنَ النَّارِ اَوْ وَجَبَتْ لَهُ النَّارُ۔ (رواه مالك وابوداؤد وابن ماجة)

3778. Sayyiduna Jabir رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, 'If anyone swears a false oath near this my pulpit even for a green siwak, then he arranges for his seat in the fire (of hell)." Or, he said, 'The fire of hell becomes *wajib (obligatory)* for him."[2]

COMMENTARY: The pulpit of the Prophet صلی اللہ علیہ وسلم is mentioned specifically because that is a sacred place where the sin of a false oath is accentuated. However a false oath is a

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[1] Tirmidhi # 3020 (3031), Musnad Ahmad 3-495.

[2] Abu dawud # 3246, Ibn Majah # 2325, Muwatta Maalik # 36. 8-10.

sin wherever it is sworn and warrants punishment.
The green siwak is the most insignificant thing. When it dries, it appreciates in value. Anyway a siwak is a very cheap thing especially before it dries. So, if afalse oath over it is punishable in hell then what may be said of a daring false oath in the courts of law?

FALSE TESTIMONY IS LIKE ASCRIBING PARTNER TO ALLAH

(٣٧٧٩-٣٧٨٠) وَعَنْ خُرَيْمِ بْنِ فَاتِكٍ قَالَ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ صَلَاةَ الصُّبْحِ فَلَمَّا انْصَرَفَ قَامَ قَائِمًا فَقَالَ عُدِلَتْ شَهَادَةُ الزُّوْرِ بِالْاِشْرَاكِ بِاللّٰهِ ثَلَاثَ مَرَّاتٍ ثُمَّ قَرَأَ فَاجْتَنِبُوا الرِّجْسَ مِنَ الْاَوْثَانِ وَاجْتَنِبُوا قَوْلَ الزُّوْرِ حُنَفَاءَ لِلّٰهِ غَيْرَ مُشْرِكِيْنَ بِهٖ۔ رَوَاهُ اَبُوْدَاوٗدَ وَابْنُ مَاجَةَ وَرَوَاهُ اَحْمَدُ وَالتِّرْمِذِيُّ عَنْ اَيْمَنَ بْنِ خُرَيْمٍ اِلَّا اَنَّ ابْنَ مَاجَةَ لَمْ يَذْكُرِ الْقِرَاءَةَ۔

3779. Sayyiduna Khuraym ibn Fatik رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم offered the *salah (prayer)* of the morning (fajr). When he finished he stood up (to address the Sahabah (Prophet's Companions) رضی اللہ عنہم and said three times, "False testimony is made equivalent to ascribing a partner to Allah." Then he recited:

فَاجْتَنِبُوا الرِّجْسَ مِنَ الْاَوْثَانِ وَاجْتَنِبُوا قَوْلَ الزُّوْرِ حُنَفَاءَ لِلّٰهِ غَيْرَ مُشْرِكِيْنَ بِهٖ

{So shun the abomination of the idols and shun the speaking of falsehood, being upright men of pure faith, not associating anything with Him.} Ibn Majah did not mention the recital.[1]

3780. Sayyiduna Ayman ibn Khuraym رضی اللہ عنہ also narrated it.[2]

COMMENTARY: To associated partner with Allah and to bear false witness are equally sinful. The reason is that associating a partner with Allah is to forge a lie against Him. Certainly this is not allowed. Thus, both these things are non-existent, so the same command applies to both.

TESTIMONY THAT ARE REJECTED

(٣٧٨١) وَعَنْ عَائِشَةَ قَالَتْ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا تَجُوْزُ شَهَادَةُ خَائِنٍ وَلَا خَائِنَةٍ وَلَا مَجْلُوْدٍ حَدًّا وَلَا ذِيْ غِمْرٍ عَلٰى اَخِيْهِ وَلَا ظَنِيْنٍ فِيْ وَلَاءٍ وَلَا قَرَابَةٍ وَلَا الْقَانِعِ مَعَ اَهْلِ الْبَيْتِ۔ رَوَاهُ التِّرْمِذِيُّ وَقَالَ هٰذَا حَدِيْثٌ غَرِيْبٌ وَيَزِيْدُ بْنُ زِيَادٍ الدِّمَشْقِيُّ الرَّاوِيْ مُنْكَرُ الْحَدِيْثِ۔

3781. Sayyidah Ayshah رضی اللہ عنہا narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "The testimony of these people is not admissible:

(i) A deceitful man or a deceitful woman,
(ii) One who has been awarded the lashes for violating the limits (*hadd (prescribed punishment)*) for slander,
(iii) An enemy who hates his (Muslim) brother,
(iv) One who is suspected regarding wala (allegiance) that he claims.
(v) One who is suspected about relationship

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[1] Abu Dawud # 3599,Ibn Majah # 2372.
[2] Tirmidhi # 2300 (2306), Musnad Ahmad 4-321.

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(vi) One who is dependant on a family.[1]

COMMENTARY: According to Islam, it is as necessary for a witness to be just as it is for a judge and ruler to be just because testimony is such an important means as enables the court to arrive at a just decision. The people mentioned in the hadith do not measures to the standard of justice, so their testimony is termed unacceptable.

KHA`IN: The deceitful people are they who commit treachery when trusts are placed with them. They are notorious for this and commit this crime very often, for otherwise treachery is not generally detected by men though it cannot be concealed from Allah.

SINNER: Some authorities say that in this hadith (خائن) deceiver who commits (خيانة) Khiyanah deception or treachery is said to have committed sin whether a grave sin or a minor sin persistently, Or, he neglects to observe commands of *Shariah* and prescribes duties of religion.

AMANAH: Indeed, Allah has described the commands of religion as amanah (trust)as in the verse:

إِنَّا عَرَضْنَا الْأَمَانَةَ عَلَى السَّمٰوٰتِ وَالْأَرْضِ۔ (الاحزاب ۳۳: ۷۲)

{Surely, we offered the trust to the heavens and the earth...}

KHIYANAH: He has described failure to obey the commands of religion as Khiyanah (deception, betrayal, treachery) as in the verse:

لَا تَخُونُوا اللّٰهَ وَالرَّسُوْلَ وَتَخُوْنُوْٓا اَمَانَاتِكُمْ۔ (الانفال ۸: ۲۷)

{Betray not Allah and the Messenger صلى الله عليه وسلم nor betray your trusts.}

In this case, first, the hadith would mean that those who do not obey and observe the commands and duties of *Shariah* and religion, or who perptrate major sins, or persistently commit minor sins, their testimony is inadmissible.

Secondly a hadith that follow mentions illicit sexual intercourse (zina زنا) after treachery (خيانة). We may say about it that after 'generalising', it 'confines' or 'delimits'.

FISQ: The scholars maintain that it is better to understand Khiyanah (treachery) as (فسق) fisq (transgression, lasciviousness) otherwise all the other evils and sins will remain untreated, though their commission disqualifies the perpetrator from giving testimony. Mentioning only treachery does not cover the entire prohibition.

SLANDER: The person who is one awarded the lashes for slander is one who accuses an innocent woman of having committed adultery or fornication. The *hadd (prescribed punishment)* qadhf (which is punishment for false accusation of unchasitity) was imposed on him. His testimony is inadmissible even if he has repented from his sin.

RULINGS: Imam Abu Hanifah رحمه الله rules that apart from *hadd (prescribed punishment)* qadhf (حد قذف), there is enough latitude for anyone who has been awarded any other *hadd (prescribed punishment)* (prescribed punishment) and has made a repentance for his sin that his testimony is admissible. As long as he does not repent, however, his testimony is not accepted. It is not so for one who has been awarded *hadd (prescribed punishment)* qadhf, for even after he repents, his testimony is never accepted.

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[1] Tirmidhi # 2298 (2305)

Other imams, however, rule that the same principle applies whatever kind of *hadd (prescribed punishment)* has been awarded to anyone. When he makes a repentance for his sin, his testimony will be accepted even if he was awarded punishment of lashes for slandering an innocent woman; or for any other sin.

ENEMY: When two people bear animosity to one another, their testimony for one another is not acceptable. This is applicable even if they are real brothers, or strangers, meaning brothers in religion.

WALA: If anyone is suspected regarding wala then it is a slave freed by his (or her) master but he (or she) attributes the freedom to a third person, not to the real master. This is a lie and it is well-known that he (or she) lies. People suspect him (or her) of a false attribution. The testimony of such a person is not accepted because he is a fasiq (sinner) on that account. Therefore, to cut off the wala (or right) of one who sets free and attribute it to someone else who has not set sin. A person who does so is severely warned and must desist from doing it.

FALSE RELATIONSHIP: The same applies to anyone who traces for himself a false relationship like calling another person his father who is not his father. His lie is a fisq. One who ascribes parentage to another falsely is cursed.

DEPENDENT ON ANY: The sixth kind could mean a beggar who is content with just satisfying his hunger or whose sustenance depends on a single family and/or he ha become of one house, meaning family.

However, this hadith does not mean any of these persons but refers to one who is dependant on someone for his provision. He depends on him for his living, like a servent. The testimony of such a person will not be admissible for his employers or benefactors. The reasons are: (i) He might be partial to them and favour them. (ii) He benefits from what they get by his giving testimony in their favour.

Hence, it is like the mutual testimony of father and son, or of the spouses. Their testimonies for one another are not acceptable, because any benefit that accrues to one spills over to the other too.

However, it must be known that the testimony of brothers for one another is correct and acceptable.

One of the narrators of this hadith Yazid ibn Ziyad Damishqi is munkar ul hadith. It implies that his hadith is munkar (unknown) and it is stated in Sharh Nakhbah that if a narrator commits a gross mistake, or is excessively negligent or forgetful, or is known for his fisq (sin) then the hadith that he narrates is called munkar.[1]

(٣٧٨٢) وَعَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ اَبِيْهِ عَنْ جَدِّهٖ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لَاتَجُوْزُ شَهَادَةُ خَائِنٍ وَلَا خَائِنَةٍ وَلَا زَانٍ وَلَا زَانِيَةٍ وَلَا ذِيْ غِمْرٍ عَلٰى اَخِيْهِ وَرَدَّ شَهَادَةَ الْقَانِعِ لِاَهْلِ الْبَيْتِ۔ (رواه ابوداؤد)

3782. Sayyiduna Amr Ibn Shu'ayb رحمه الله narrated from his father from his grandfather that the Prophet صلى الله عليه وسلم said, "The testimony is not acceptable of

(i) A deceitful man or a deceitful woman,

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[1] According to Mu'jam Lughat ul Fuqaha, munkar hadith is 'a denied hadith. According to Qamus al Alfaz al Islamiyan, it is a denied hadith whose weak narrator contradicts the narrations of a trusty narrator.

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(ii) In adulterer or an adulteress (married or unmarried man or woman who have unlawful intercourse),

(iii) An enemy who has a grudge against an enemy." and, he rejected the testimony of one who was dependant on a family (for that family).[1]

VILLAGER'S TESTIMONY FOR A TOWNSMAN

(٣٧٨٣) وَعَنْ اَبِيْ هُرَيْرَةَ عَنْ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لَا تَجُوْزُ شَهَادَةُ بَدَوِيٍّ عَلٰى صَاحِبِ قَرْيَةٍ۔

(رواه ابوداؤد وابن ماجة)

3783. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said. "the testimony of a desert villager is not admissible for a city dweller."[2]

COMMENTARY: The desert dweller is generally ignorant of the commands of Shari'ah (divine law) and does not come up to the standards of a witness. Also, he is liable to forget and neglect. However if he is a responsible man, Just and measures to the standards of a witness then his testimony is acceptable.

Imam Maalik رحمہ اللہ goes by the apparent meaning of this hadith. He rules that the testimony of a villager is not acceptable for a townsman or city dweller, or against him.

Other imams, however, hold what we have stated in the foregoing lines about a learned villager. They explain the hadith to be qualified with the exceptions we have mentioned.

PRESENT YOUR CASE WISELY

(٣٧٨٤) وَعَنْ عَوْفِ ابْنِ مَالِكٍ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَضٰى بَيْنَ رَجُلَيْنِ فَقَالَ الْمَقْضِيُّ عَلَيْهِ لَمَّا اَدْبَرَ حَسْبِيَ اللّٰهُ وَنِعْمَ الْوَكِيْلُ فَقَالَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِنَّ اللّٰهَ تَعَالٰى يَلُوْمُ عَلَى الْعَجْزِ وَلٰكِنْ عَلَيْكَ بِالْكَيْسِ فَاِذَا غَلَبَكَ اَمْرٌ فَقُلْ حَسْبِيَ اللّٰهُ وَنِعْمَ الْوَكِيْلُ۔ (رواه ابوداؤد)

3784. Sayyiduna Awf ibn Maalik رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم pronounced judgement (in a case) between two men. He against whom he judgement was pronounced said as he turned to depart (from the place):

حَسْبِيَ اللّٰهُ وَنِعْمَ الْوَكِيْلُ

{Allah is sufficient for us and He is an excellent Guardian.} (3: 173)

On that, the prophet صلی اللہ علیہ وسلم said, "Allah blames the stupid and careless. Use common sense. When you are in difficulty say:

حَسْبِيَ اللّٰهُ وَنِعْمَ الْوَكِيْلُ

{Allah is sufficient for us and He is an Excellent Guardian}"[3]

COMMENTARY: Perhaps it was a debtor's case. He might have repaid the dept but had not procured a receipt of repayment or made anyone witness for it. The creditor had proof and presented his case before the Prophet صلی اللہ علیہ وسلم, so he decided in his favour. The debtor called out the words meaning, "Allah is sufficient..." to complain that the plaintiff

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[1] Abu Dawud # 3600, Ibn Majah # 2366, Musnad Ahmad 2-181.

[2] Abu Dawud # 3602, Ibn Majah # 2367.

[3] Abu Dawud # 3627, Musnad Ahmad 6-25.

had cheated him.

The Prophet صلى الله عليه وسلم was displeased at that and remarked that is not good to be careless in one's affairs. Allah condemns such a person. He cautioned him to exercise good judgement in his dealings with people.

When any one is careless, Allah is displeased. He has blessed man with intellect and commonsense and this blessing calls on him to use them. If any one happens to commit a lapse because of carelessness then he must not sigh, "Allah is sufficient..." Rather, these words must be spoken when one has tried all ways to get his objective and used all options to achieve it. And, when he fails after that to get his ambition then he must say:

حَسْبِيَ اللّٰهُ وَنِعْمَ الْوَكِيْلُ

ACCUSED MAY BE IMPRISONED

(٣٧٨٥) وَعَنْ بَهْزِ بْنِ حَكِيْمٍ عَنْ اَبِيْهِ عَنْ جَدِّهٖ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ حَبَسَ رَجُلًا فِي تُهْمَةٍ۔ رَوَاهُ اَبُوْدَاوٗدَ وَزَادَ التِّرْمِذِيُّ وَالنَّسَائِيُّ ثُمَّ خَلّٰى عَنْهُ۔ (ابوداؤد)

3785. Sayyiduna Bahz ibn Hakim رحمه الله reported from his father that his grandfather narrated that the Prophet صلى الله عليه وسلم imprisoned a man on an accusation.[1]

According to another version: He then set him free.[2]

COMMENTARY: The man may have been accused by someone. So, the prophet صلى الله عليه وسلم confined him till such time as he obtained the testimony of witnesses. When the plaintiff failed to produce any witness, the prophet صلى الله عليه وسلم (set the man at liberty, and) acquitted him.We learnt from this hadith that it is allowed to imprison an accused.

SECTION III اَلْفَصْلُ الثَّالِثُ

BOTH PLAINTIFF & DEFENDANT MUST BE PRESENT BEFORE RULER

(٣٧٨٦) عَنْ عَبْدِاللّٰهِ بْنِ الزُّبَيْرِ قَالَ قَضٰى رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَنَّ الْخَصْمَيْنِ يُقْعَدَانِ بَيْنَ يَدَيِ الْحَاكِمِ۔ (رواه احمد وابوداؤد)

3786. Sayyiduna Abdullah ibn Zubayr رضى الله عنه said that Allah's Messenger صلى الله عليه وسلم decreed that both contending parties (plaintiff and defendant) must sit before the judge (or ruler who judges).[3]

COMMENTARY: Teebi رحمه الله said that nothing is more difficult for a judge than to be impartial to both the disputants and to treat them at par when their case is before him.

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[1] Abu Dawud # 3630.

[2] Tirmidhi # 1471 (1422), Nasa'i # 4891.

[3] Abu Dawud # 3588.

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بسم الله الرحمن الرحيم

BOOK - XVIII

"JIHAD" كِتَابُ الْجِهَادِ

MEANING OF *JIHAD (CRUSADE)*: The dictionary meaning of (جهد) jahd, and (جهاد) *jihad (crusade)* is a 'bear pains' (or hardship) and 'endure more than one's strength' Imam Raghib gives this meaning:

اَلْجِهَادُ اِسْتِفْرَاغُ الْوُسْعِ فِيْ مُدَافَعَةِ الْعَدُوِّ

(*Jihad (crusade)* is to repulse on attacking enemy with extreme force).

In the terminology of Shari'ah (divine law), *jihad (crusade)* is to use one's strength in a battle fought against the disbelievers by offering one's life, or supporting with one's property, or suggesting a strategy with one's mind and acumen, or simply enlisting in the Muslim army and increasing its manpower, or helping and encouraging the Muslim army against the enemies of Islam in any way other than these.[1]

THE GOAL OF *JIHAD (CRUSADE)*: The aim of *jihad (crusade)* is to keep aloft the word of Allah always. The banner of Islam may fly on Allah's earth perpetually, and the claims of His rebels may be obliterated.

THE COMMAND OF *JIHAD (CRUSADE)*: *Jihad (crusade)* is *fard (compulsory)* Kifayah (which means if some take part in *jihad (crusade)*, other will be absolved of the duty). However, if a general call is made to enlist when the infidels attack a Muslim city or the Islamic state then *jihad (crusade)* is *fard (compulsory)* ayn on all Muslims (meaning that every individual will have to participate with the Muslim army). It makes no difference whether the one who issues the command to enlist is a virtuous, just man or a sinner. It becomes *wajib (obligatory)* on all citizens of the city and the state to fight the enemy and participate in *jihad (crusade)*. It will also become *wajib (obligatory)* on those people who reside in the neighbourhood of that city or state, if its own residents are not enough to tackle the enemy and protect their city and state, or they are sluggish and careless and sinful in discharging their responsibilities to fight the foe and defend their territory. It is like the case of a funeral. Preparing, bathing and shrouding the corpse and offering the funeral *salah (prayer)* is *wajib (obligatory)*, in the first instance, on the people of the neighbourhood of the dead person. If they are unable to bear this responsibility, then it is *wajib (obligatory)* on the citizen to do these things. It is the same when Muslims of a territory are faced against the infidels and cannot cope with them for lack of strength or courage, it is *wajib (obligatory)* on neighbouring Muslim to shoulder the responsibility of *jihad (crusade)*. Rather, it becomes *wajib (obligatory)* on all Muslims between the east and the west to join the *jihad (crusade)* and defend the dignity of Islam and Muslims and rout the enemy of religion.

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[1] The vocabulary of the Quran compiled by Dr Abdullah Abbas al Nadvi defines: *jihad* as 'struggle, strive. Jahd as 'to exert oneself, endeavor.' Dar ul Isha'at Karachi.

SECTION I اَلْفَصْلُ الْاَوَّلُ

THE MOST EXCELLENT *JIHAD (CRUSADE)*

(٣٧٨٧) عَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ اٰمَنَ بِاللّٰهِ وَرَسُوْلِهٖ وَاَقَامَ الصَّلَاةَ وَصَامَ رَمَضَانَ كَانَ حَقًّا عَلَى اللّٰهِ اَنْ يُدْخِلَهُ الْجَنَّةَ جَاهَدَ فِيْ سَبِيْلِ اللّٰهِ اَوْ جَلَسَ فِيْ اَرْضِهِ الَّتِيْ وُلِدَ فِيْهَا قَالُوْا اَفَلَا نُبَشِّرُ بِهِ النَّاسَ قَالَ اِنَّ فِي الْجَنَّةِ مِائَةَ دَرَجَةٍ اَعَدَّهَا اللّٰهُ لِلْمُجَاهِدِيْنَ فِيْ سَبِيْلِ اللّٰهِ مَابَيْنَ الدَّرَجَتَيْنِ كَمَابَيْنَ السَّمَاءِ وَالْاَرْضِ فَاِذَا سَاَلْتُمُ اللّٰهَ فَسْئَلُوْهُ الْفِرْدَوْسَ فَاِنَّهٗ اَوْسَطُ الْجَنَّةِ وَاَعْلَى الْجَنَّةِ وَفَوْقَهٗ عَرْشُ الرَّحْمٰنِ وَمِنْهُ تَفَجَّرُ اَنْهَارُ الْجَنَّةِ۔ (رواه البخارى)

3787. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah' Messenger صلی اللہ علیہ وسلم said, "He who believes in Allah and His Messenger (and the Shari'ah (divine law) that he brought) and offers *salah (prayer)* and fasts in Ramadan, will be admitted by Allah to paradise as binding on Him (because of the assurance He had given out of compassion) whether he engages in *jihad (crusade)* (and emigrates) in Allah's path or remains in his land where he was born (without engaging in *jihad (crusade)* or hijrah - emigration)." They (the sahabah) رضی اللہ عنہ submitted, "Shall we not convey this glad tidings to the people?" He said, "Surely in paradise, there are one hundred degrees that Allah had prepared for the mujahids (crusaders) (crusaders) in Allah's path, between every two degrees is a distance as between heaven and earth. So, when you ask Allah (for a higher degree against *Jihad (crusade)*), ask Him for Firdaws. Indeed, it is the best (portion) of paradise and its highest portion. Above it is the throne of Ar-Rahman (The compassionate) and from it issue the rivers of paradise." (He meant the four things that are the essence of the rivers of paradise: Water, milk, wine and honey. They issue from Firdaws is paradise)[1] (Mujahid is a warrior who participates in *jihad (crusade)*).

COMMENTARY: Only *salah (prayer)* and fasting are mentioned in this hadith because they are the most important of all prescribed duties and also because they are binding on all Muslims whereas Hajj (pilgrimage) and zakah (Annual due charity) are obligatory only on the rich who can afford.

It is clear that the Prophet صلی اللہ علیہ وسلم spoke these words on the day of conquest of Makkah because before that hijarah because before that hijrah (migration) (or emigration) was *fard (compulsory)* on all Muslim.

(٣٧٨٨) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَثَلُ الْمُجَاهِدِ فِيْ سَبِيْلِ اللّٰهِ كَمَثَلِ الصَّائِمِ الْقَائِمِ الْقَانِتِ بِاٰيَاتِ اللّٰهِ لَا يَفْتُرُ مِنْ صِيَامٍ وَلَا صَلَاةٍ حَتّٰى يَرْجِعَ الْمُجَاهِدُ فِيْ سَبِيْلِ اللّٰهِ۔ (متفق عليه)

3788. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "The example of the mujahid in Allah's path is like the one who fasts and keeps vigil in the night in *salah (prayer)* and recites the verses of Allah thoroughly and does not desist from fasting and *salah (prayer)* until the mujahid (crusader) in

[1] Bukhari # 2790. Musnad Ahmad 2-335.

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Allah's path returns."[1]

COMMENTARY: From the time the mujahid leaves his home to participate in *jihad (crusade)* till he returns, obviously he is not occupied all this time in *jihad (crusade)*. He is not always engaged in battle for Allah's sake because he takes time to eat and drink and to sleep and to do other things. In spite of that, he is considered to be engaged in worship all the time. Whatever, he does, rests, sleeps, laughs or enjoys his record of deed is credited with reward.

(٣٧٨٩) وَعَنْهُ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ انْتَدَبَ اللّٰهُ لِمَنْ خَرَجَ فِي سَبِيْلِهٖ لَا يُخْرِجُهُ اِلَّا اِيْمَانٌ بِيْ وَتَصْدِيْقٌ بِرُسُلِيْ اَنْ اَرْجِعَهُ بِمَا نَالَ مِنْ اَجْرٍ اَوْ غَنِيْمَةٍ اَوْ اُدْخِلَهُ الْجَنَّةَ۔ (متفق علیه)

3789. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "If anyone goes out in His path, Allah is his guardian (and He says) 'He does not go out but because of faith in me and confirmation of My Messenger. (He does not go out to show or to earn worldly possessions) I shall bring him back with reward (or the hereafter), or booty. Or I shall admit him to paradise (if he is martyred, without reckoning, with the first batch to enter paradise or immediately on his death before the day of resurrection)."
(This is as found in the Quran:

ولا تقولوا لمن يقتل.....بل احياء

(And say not of those who are slain in the path of Allah, "dead.' Nay, they are alive.)[2]

PROPHET'S صلی اللہ علیہ وسلم DESIRE FOR MARTYRDOM

(٣٧٩٠) وَعَنْهُ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَالَّذِيْ نَفْسِيْ بِيَدِهٖ لَوْلَا اَنْ رِجَالًا مِنَ الْمُؤْمِنِيْنَ لَا تَطِيْبُ اَنْفُسُهُمْ اَنْ يَتَخَلَّفُوْا عَنِّيْ وَلَا اَجِدُ مَا اَحْمِلُهُمْ عَلَيْهِ مَا تَخَلَّفْتُ عَنْ سَرِيَّةٍ تَغْزُوْ فِيْ سَبِيْلِ اللّٰهِ وَالَّذِيْ نَفْسِيْ بِيَدِهٖ لَوَدِدْتُ اَنْ اُقْتَلَ فِيْ سَبِيْلِ اللّٰهِ ثُمَّ اُحْيٰى ثُمَّ اُقْتَلَ ثُمَّ اُحْيٰى ثُمَّ اُقْتَلَ ثُمَّ اُحْيٰى ثُمَّ اُقْتَلَ۔

(متفق علیه)

3790. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "By him I whose hand is my soul, if it was not that (those) man among the believers (who are poor) would not be pleased at remaining behind me (and separate from me) and I cannot find riding beasts for them, I would not stay behind when an army goes ahead in Allah's path. By him in whose hand is my soul, I long that I should be killed in Allah's path, then revived, again killed and revived, and again killed."[3]
(This may happen repeatedly that I may earn reward again and again).

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[1] Bukhari # 2787, Muslim # 11-1878, Muwatta Maalik # 1 (*Jihad*).

[2] (The verse is # 154 at Baqarah) Bukhari # 36, Muslim # 103-1870, Nasa'i # 5029, Darimi # 2391, Muwatta Maalik # 2 (*Jihad*), Musnad Ahmad 2-117.

[3] Bukhari # 2797, Muslim # 106. 1876, Nasa'i # 3152, Ibn Majah # 2753, Musnad Ahmad 2-273, "400 Ahadith Qudsiyah" # 174 (Darul Isha'at Karachi).

COMMENTARY: This saying demonstrates the Prophet's صلى الله عليه وسلم immense desire to take part in *jihad (crusade)*. It also discloses why he did not participate in most of the battles against the infidels. It was not possible to arrange enough beasts for all the Muslim who would have accompanied him if he had joined each army.

SYMBOLIC PARTICIPATION IN *JIHAD (CRUSADE)* BETTER THEN EVERYTHING

(٣٧٩١) وَعَنْ سَهْلِ بْنِ سَعْدٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ رِبَاطُ يَوْمٍ فِيْ سَبِيْلِ اللّٰهِ خَيْرٌ مِنَ الدُّنْيَا وَمَا عَلَيْهَا۔ (متفق عليه)

3791. Sayyiduna Sahl ibn Sa'd رضى الله عنه **narrated that Allah's Messenger** صلى الله عليه وسلم **said, "To stand guard at the frontier in Allah's path for a day is better than the world and what it has."[1]**

COMMENTARY: There could be one of two meaning:

(i) One day's duty as a guard in *jihad (crusade)* is better then what is spent in Allah's name. Or,

(ii) The reward that will accrue for standing as guard in *jihad (crusade)* will surpass the worth of the world and what it contains.

(٣٧٩٢) وَعَنْ اَنَسٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَغَدْوَةٌ فِيْ سَبِيْلِ اللّٰهِ اَوْ رَوْحَةٌ خَيْرٌ مِنَ الدُّنْيَا وَمَا فِيْهَا۔ (متفق عليه)

3792. Sayyiduna Anas رضى الله عنه **narrated that Allah's Messenger** صلى الله عليه وسلم **said, "To participate in *jihad (crusade)* in Allah's path for a morning or an evening is better than the world and whatever it contains."[2]**

COMMENTARY: If anyone goes along to wage *jihad (crusade)* merely one morning or an evening than the reward he gets is everlasting and is better than the blessings of the world which are ephemeral.

BETTER THAN FASTING ONE MONTH & VIGIL IN ITS NIGHTS

(٣٧٩٣) وَعَنْ سَلْمَانَ الْفَارِسِيِّ قَالَ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ رِبَاطُ يَوْمٍ وَلَيْلَةٍ فِيْ سَبِيْلِ اللّٰهِ خَيْرٌ مِنْ صِيَامِ شَهْرٍ وَقِيَامِهِ وَاِنْ مَاتَ جَرٰى عَلَيْهِ عَمَلُهُ الَّذِيْ كَانَ يَعْمَلُهُ وَاُجْرِيَ عَلَيْهِ رِزْقُهُ وَاَمِنَ الْفَتَّانَ۔ (رواه مسلم)

3793. Sayyiduna Salman Farisi رضى الله عنه **narrated that he heard Allah's Messenger** صلى الله عليه وسلم **say. "To guard the frontier for a day and a night in Allah's path is better then fasting one month and standing during its night in worship. If he dies (while performing this duty) then he will be rewarded for the deeds he had been doing. He will be provided his sustenance (of food and drink of paradise) and he will be safe from the trial or mischief of the devil or the dajjal, or the trial of the angels of**

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[1] Bukhari # 2892.

[2] Bukhari # 6415, Muslim # 113-1881, Musnad Ahmad 5-339.

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punishment in the grave."[1]

PARTICIPATION IN *JIHAD (CRUSADE)* IS ASSURED PROTECTION FROM HELL

(٣٧٩٤) وَعَنْ اَبِي عَبْسٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَا اغْبَرَّتْ قَدَ مَاعَبْدٍ فِيْ سَبِيْلِ اللّٰهِ فَتَمَسَّهُ النَّارُ۔ (رواه البخارى)

3794. Sayyiduna Abu Abs Narrated that Allah's Messenger صلى الله عليه وسلم said, "If a man's feet become dusty in Allah's path, then the fire (of hell) will not touch them."[2]

COMMENTARY: This saying of the prophet صلى الله عليه وسلم is about the merits of *jihad (crusade)*. When feet become dusty while waging *jihad (crusade)*, hell fire will not hurt them. We an understand what a great reward awaits a participant of *jihad (crusade)* who endures its difficulties.

WARRIOR WHO KILLS AN INFIDEL

(٣٧٩٥) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ اِنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لَا يَجْتَمِعُ كَافِرٌ وَقَاتِلُهُ فِي النَّارِ اَبَدًا۔ (رواه مسلم)

3795. Sayyiduna Abu Hurayrah رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "The disbeliever and the (Muslim) one who killed him cannot be together in hell, at all."[3]

COMMENTARY: This is glad tidings for the Muslim who kills an infidel during *jihad (crusade)*. This Muslim will never go to hell. This saying highlights the merit of *jihad (crusade)*. The Muslim who kills an infidel in the battle will be safe from hell, though even if he is unable to lay an infidel, he will go to paradise because of his participation in *jihad (crusade)*, and full effort in it.

THE BEST KIND OF LIFE

(٣٧٩٦) وَعَنْهُ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مِنْ خَيْرِ مَعَاشِ النَّاسِ لَهُمْ رَجُلٌ مُمْسِكٌ عِنَانَ فَرَسِهٖ فِيْ سَبِيْلِ اللّٰهِ يَطِيْرُ عَلٰى مِتْنِهٖ كُلَّمَا سَمِعَ هَيْعَةً اَوْفَزْعَةً طَارَ عَلَيْهِ يَبْتَغِي الْقَتْلَ وَالْمَوْتَ مَظَانَّهٗ اَوْ رَجُلٌ فِيْ غُنَيْمَةٍ فِيْ رَأْسِ شَعْفَةٍ مِنْ هٰذِهِ الشَّعَفِ اَوْبَطْنِ وَادٍ مِنْ هٰذِهِ الْاَوْدِيَةِ يُقِيْمُ الصَّلَاةَ وَيُؤْتِي الزَّكٰوةَ وَيَعْبُدُ رَبَّهٗ حَتّٰى يَأْتِيَهُ الْيَقِيْنُ لَيْسَ مِنَ النَّاسِ اِلَّا فِيْ خَيْرٍ۔ (رواه مسلم)

3796. Sayyiduna Abu Hurayrah رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "The best kind of human life is of a man who holds the reins of his horse in Allah's path and sprints on its back heading towards places from where he hears frightening shout or cry for help expecting to be killed or looking for places where death is possible (to occur). Or, (the best kind of life is) of a man with some sheep on a peak of one of

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[1] Muslim # 163-1913, Nasa'i # 3167, Musnad Ahmad 5-440.

[2] Bukhari # 2811, Tirmidhi # 1632, Nasa'i # 3116.

[3] Muslim # 130-1981, Abu Dawud # 2495.

these mountains or down one of these valley standing in *salah (prayer)* and paying the zakah (Annual due charity) (when the sheep are enough for zakah (Annual due charity) to be paid on them), worshipping his Lord till death comes (to him). He is not among the people but spends life in a good way among them."[1]

COMMENTARY: Such a person lives apart from other people. So, he is safe from their wicked ways and mischief. He also keeps them away from his mischief.
This hadith is based on *jihad (crusade)* against the enemies of Islam, against one's own self and abstinence from the pleasures of the world and evil desires of the self.
If a person lives among people to further religion then it is better, otherwise (if he cannot be safe among them) he may keep in seclusion.

SOLITUDE OR MINGLING: Imam Nawawi رحمه الله said that this hadith upholds the view of those who prefer isolation or solitude to socializing or mingling.
Imam Shafi'I رحمه الله and most of the u lama hold that it is better to live among people and mingle with them provided there is hope of being safe from mischief and corruption (of religion).
On the other hand, the advocates of asceticism hold that one must keep away from the people and live a live of solitude which they say is better. They have deduced it from this hadith. However, the majority of the u lama hold that this hadith concerns either the time when there would be much mischief and trial, or such a person who cannot endure the trouble and hardship caused by people, or the people themselves are not secure form his mischief. Their strongest evidence is that the Prophet عليه السلام, most of the sahabah (Prophet's Companions) رضى الله عنهم the tabi'un, رحمه الله the ulama (Scholars) mshaikh (religious leaders) and Sufis (mysties) spent their lives among the people in this world without secluding themselves from them. Them continued to derive religious benefits which they could not have had by secluding themselves, like congregational *salah (prayer)*, Friday *salah (prayer)*, funeral *salah (prayer)*, sick visits and so on.

MERIT OF HELPING THE MUJAHID

(٣٧٩٧) وَعَنْ زَيْدِ ابْنِ خَالِدٍ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ مَنْ جَهَّزَ غَازِيًا فِي سَبِيْلِ اللّٰهِ فَقَدْ غَزَا وَمَنْ خَلَفَ غَازِيًا فِيْ اَهْلِهٖ فَقَدْ غَزَا۔ (متفق عليه)

3797. Sayyiduna Zayd ibn Khalid رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "He who equips a warrior in Allah's path has taken part in *jihad (crusade)*. (He is bracketed with the warrior and gets reward for it) And, he who represents a warrior (in looking after his family when he set out) has taken part in *jihad (crusade)*."[2]

WOMAN OF THE MUJAHIDS (CRUSADERS) (CRUSADERS) MUST BE RESPECTED

(٣٧٩٨) وَعَنْ بُرَيْدَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ حُرْمَةُ نِسَاءِ الْمُجَاهِدِيْنَ عَلَى الْقَاعِدِيْنَ كَحُرْمَةِ اُمَّهَاتِهِمْ وَمَا مِنْ رَجُلٍ مِنَ الْقَاعِدِيْنَ يَخْلُفُ رَجُلًا مِنَ الْمُجَاهِدِيْنَ فِيْ اَهْلِهٖ فَيَخُوْنُهٗ فِيْهِمْ اِلَّا وُقِفَ لَهٗ

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[1] Muslim # 125-1889, Ibn Majah # 3977.

[2] Bukhari # 2843, Muslim # 135-1895, Abu Dawud # 2509, Nasa'i # 3180, Ibn Majah # 2759, Musnad Ahmad 4-115.

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يَوْمَ الْقِيَامَةِ فَيَاخُذُ مِنْ عَمَلِهِ مَاشَاءَ فَمَا ظَنُّكُمْ۔ (رواه مسلم)

3798. Sayyiduna Burayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "The respect to be shown to the woman of the mujahids (crusaders) by the stayers at home (who did not participate in *jihad (crusade)* for some reason) must be like the respect shown (by them) to their mothers. (They must not have evil intentions about the women) If any man among the stayers at home is made overseer of his family by a man of the mujahids (crusaders) and he betrays him (concerning his woman or female slaves), then he will be made to stand for him (the mujahid) on the day of resurrection so that he may pick up what he want s from his (pious) deeds. Then what do you think?"[1]

COMMENTARY: What do you suppose? Will the warrior spare any of the good deeds of the betrayer? Or, what do think Allah will do? Do you doubt that He will not reward the mujahid additionally? The mujahid will get high ranks.

MERIT OF EQUIPPING ARMY

(٣٧٩٩) وَعَنْ اَبِي مَسْعُوْدِ ِ الْاَنْصَارِيِّ قَالَ جَاءَ رَجُلٌ بِنَاقَةٍ مَخْطُوْمَةٍ فَقَالَ هٰذِهٖ فِيْ سَبِيْلِ اللّٰهِ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَكَ بِهَا يَوْمَ الْقِيَامَةِ سَبْعُ مِائَةِ نَاقَةٍ كُلُّهَا مَخْطُوْمَةٌ۔ (رواه مسلم)

3799. Sayyiduna Abu Ma'sud al Ansari رضی اللہ عنہ narrated that a man came (to the Prophet) صلی اللہ علیہ وسلم with a she-camel holding a hope through its nose-ring, saying "This is presented in Allah's path." (Meaning, I offer it for His pleasure to use in *jihad (crusade).*) Allah's Messenger صلی اللہ علیہ وسلم said,, "On the day of resurrection, you will receive (in return) for this seven hundred she-camels each with a rope through its nose-ring."[2]

LOOKING AFTER MUJAHID'S FAMILY

(٣٨٠٠) وَعَنْ اَبِي سَعِيْدٍ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ بَعَثَ بَعْثًا اِلٰى بَنِيْ لِحْيَانَ مِنْ هُذَيْلٍ فَقَالَ لِيَنْبَعِثْ مِنْ كُلِّ رَجُلَيْنِ اَحَدُهُمَا وَالْاَجْرُ بَيْنَهُمَا۔ (رواه مسلم)

3800. Sayyiduna Abu Sa'eed رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم sent an army against Banu LIhyan a branch of Hudhayl. He said, "Send one of every two men (to the battle so that half the male population of every tribe should go and the rest should look after the families). But, both would share the reward."[3]

COMMENTARY: The participants in the *jihad (crusade)* will get the reward, of course. But those remainders who care for their families will also earn a like reward.

JIHAD (CRUSADE) WILL BE WAGED TILL THE LAST HOUR

(٣٨٠١) وَعَنْ جَابِرِ بْنِ سَمُرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَنْ يَبْرَحَ هٰذَا الدِّيْنُ قَائِمًا يُقَاتِلُ عَلَيْهِ

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[1] Muslim # 139-1897, Abu Dawud # 2496, Nasa'i # 3191, 3193, Musnad Ahmad 5-355.

[2] Muslim # 132-1892, Nasa'i # 3187, Darimi # 2402, Musnad Ahmad 5-274.

[3] Muslim # 137-1896, Musnad Ahmad 3-49.

عِصَابَةٌ مِنَ الْمُسْلِمِيْنَ حَتّٰى تَقُوْمَ السَّاعَةُ۔ (رواه مسلم)

3801. Sayyiduna Jabir ibn Sumarah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "This religion shall not cease to remain. A section of the Muslim shall continue to fight in defence of it till the Last Hour is established."[1]

COMMENTARY: Teebi رحمہ اللہ says that the words "they will fight elaborate on the first portion of the prophet's صلی اللہ علیہ وسلم saying. The whole would mean that this religion would continue to prosper because a group of Muslim will always fight with the enemies of religion and debase the rebels.

THE WOUNDED MUJAHID WILL BE RAISED IN THE CONDITION

(۳۸۰۲) وَعَنْ اَبِیْ هُرَیْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا يُكْلَمُ اَحَدٌ فِیْ سَبِيْلِ اللّٰهِ وَاللّٰهُ اَعْلَمُ بِمَنْ يُكْلَمُ فِیْ سَبِيْلِهٖ اِلَّا جَاءَ يَوْمَ الْقِيَامَةِ وَجُرْحُهٗ يَثْعَبُ دَمًا اللَّوْنُ لَوْنُ الدَّمِ وَالرِّيْحُ رِيْحُ الْمِسْكِ۔ (متفق علیہ)

3802. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "If anyone is wounded in Allah's path - and Allah knows best him who is wounded in His path - he will come on the day of resurrection with blood pouring out of his wound, the colour will be the colour of blood but the frongrance will be the fragrance of musk.[2]

MERIT OF MARTYRS

(۳۸۰۳) وَعَنْ اَنَسٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَا مِنْ اَحَدٍ يَدْخُلُ الْجَنَّةَ يُحِبُّ اَنْ يَرْجِعَ اِلَى الدُّنْيَا وَلَهٗ مَا فِی الْاَرْضِ مِنْ شَیْءٍ اِلَّا الشَّهِيْدُ يَتَمَنّٰى اَنْ يَّرْجِعَ اِلَى الدُّنْيَا فَيُقْتَلَ عَشْرَ مَرَّاتٍ لِمَا يَرٰى مِنَ الْكَرَامَةِ۔ (متفق علیہ)

3803. Sayyiduna Anas رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "None of those who enter paradise would like to come back to the world and get anything in the earth. But the martyr! He will long to come back to the world and be martyred ten times (in Allah's path) because he has observed the honour (bestowed on a martyr, and the reward he gets).[3]

ABOUT LIFE OF MARTYRS

(۳۸۰۴) وَعَنْ مَسْرُوْقٍ قَالَ سَاَلْنَا عَبْدَاللّٰهِ بْنَ مَسْعُوْدٍ عَنْ هٰذِهِ الْاٰيَةِ وَلَا تَحْسَبَنَّ الَّذِيْنَ قُتِلُوْا فِیْ سَبِيْلِ اللّٰهِ اَمْوَاتًا بَلْ اَحْيَاءٌ عِنْدَ رَبِّهِمْ يُرْزَقُوْنَ الْاٰيَةُ قَالَ اِنَّا قَدْ سَاَلْنَا عَنْ ذٰلِكَ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ اَرْوَاحُهُمْ فِیْ اَجْوَافِ طَيْرٍ خُضْرٍ لَهَا قَنَادِيْلُ مُعَلَّقَةٌ بِالْعَرْشِ تَسْرَحُ مِنَ الْجَنَّةِ حَيْثُ شَاءَتْ ثُمَّ تَاْوِیْ اِلٰى

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[1] Muslim # 172-1922.

[2] Bukhari # 2803, Muslim # 105-1876, Tirmidhi # 1656, Nasa'i # 3147, Ibn Majah # 2795, Darimi # 2406, Muwatta Maalik # 29 (*Jihad*) Musnad Ahmad 2-243.

[3] Bukhari # 2817, Muslim # 109-1877, Tirmidhi # 2109, Nasa'i # 3160, Musnad Ahmad 3-131, Darimi # 1643.

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تِلْكَ الْقَنَادِيْلِ فَاطَّلَعَ اِلَيْهِمْ رَبُّهُمْ اِطِّلَاعَةً فَقَالَ هَلْ تَشْتَهُوْنَ شَيْئًا قَالُوْا اَيَّ شَيْءٍ نَشْتَهِي وَنَحْنُ نَسْرَحُ مِنَ الْجَنَّةِ حَيْثُ شِئْنَا فَفَعَلَ ذٰلِكَ بِهِمْ ثَلَاثَ مَرَّاتٍ فَلَمَّا رَاَوْا اَنَّهُمْ لَنْ يُتْرَكُوْا مِنْ اَنْ يَسْئَلُوْا قَالُوْا يَا رَبِّ نُرِيْدُ اَنْ تَرُدَّ اَرْوَاحَنَا فِيْ اَجْسَادِنَا حَتّٰى نُقْتَلَ فِيْ سَبِيْلِكَ مَرَّةً اُخْرٰى فَلَمَّا رَاٰى اَنْ لَيْسَ لَهُمْ حَاجَةٌ تُرِكُوْا۔ (رواه مسلم)

3804. Sayyiduna Masruq رحمه الله narrated that they asked Abdullah ibn Mas'ud رضی الله عنه about this verse:

وَلَا تَحْسَبَنَّ الَّذِيْنَ قُتِلُوْا فِيْ سَبِيْلِ اللّٰهِ اَمْوَاتًا بَلْ اَحْيَاءٌ عِنْدَ رَبِّهِمْ يُرْزَقُوْنَ (الاية)

{Think not of those who were slain in Allah's way as dead. Nay. They are alive are provided with sustenance from their Lord} (3: 169)

He said that they had asked Allah's Messenger صلی الله علیه وسلم about it and he had said "Their (meaning the martyrs') souls are in the bodies of birds of green colour that have (as their nests) lamps suspended from the Throne. Then fly wherever they like in paradise and then return to those lamps. Their Lord looks down at them out of familiarity and asks 'Do you desire anything?' They submit, 'what (more) could we desire while we can fly wherever we like in paradise? He does that three times with them. So, they realize that they will not be spared till they ask for something, they say, 'O Lord, we wish that you return our souls to our bodies (and send us back to the world) that we might be slain in Your path once again,' He finds that they have no other) desire (and it is against His decree to send them again and besides, they have received their full reward for martyrdom), So He lets them alone (without asking again for their desires)."[1]

COMMENTARY: The martyrs desire to have their souls back in their bodies that they might be slain again in Allah's path is actually their desire to thank Him for His bounties and reward. They seem to say that it is *wajib (obligatory)* on them to show gratitude to Him by offering their lives once again in His path.
Or, they might imagine that the second time they would get more reward. But, Allah's decree is final and their reward remains unchanged.

OBSERVATION: The ulama (Scholars) say that the souls of the martyrs are placed in bodies of birds (or their cavities) as sign of respect for them. It is like placing jewellery in cases for safe-keeping. It is also the aim that they might move round paradise swiftly and enjoy the sweet fragrance and cool breeze. Besides that they also come near those angels who are very close to Allah. This itself is a great blessing This is what Allah says in the verse:

يُرْزَقُوْنَ فَرِحِيْنَ بِمَا اٰتٰهُمُ اللّٰهُ مِنْ فَضْلِهٖ

{Rejoicing in the bounty (of martyrdom) which Allah has granted them...} (3: 170)

REINCARNATION: It must be understood that this hadith does not prove the theory of reincarnation. Those who believe in this theory, say that the soul returns to some body in

[1] Muslim # 121. 1887, Tirmidhi # 301 (3022) Darimi # 2401, Abu Dawud # 2520, Ibn Majah # 2800.

this world. They do not connect the theory of return of soul to the hereafter. Besides, they do not believer in the hereafter.

PARADISE EXISTS: This hadith establishes that paradise is created and it is there already. This is what the ahlus *sunnah (Prophet's* صلى الله عليه وسلم *practice)* wa al-jama'ah hold.

JIHAD (CRUSADE) GETS ALL SINS FORGIVEN BUT NOT RIGHTS OF FELLOW MEN

(٣٨٠٥) وَعَنْ اَبِي قَتَادَةَ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَامَ فِيْهِمْ فَذَكَرَ لَهُمْ اَنَّ الْجِهَادَ فِيْ سَبِيْلِ اللّٰهِ وَالْاِيْمَانَ بِاللّٰهِ اَفْضَلُ الْاَعْمَالِ فَقَامَ رَجُلٌ فَقَالَ يَارَسُوْلَ اللّٰهِ اَرَاَيْتَ اِنْ قُتِلْتُ فِيْ سَبِيْلِ اللّٰهِ يُكَفِّرُ عَنِّيْ خَطَايَايَ فَقَالَ لَهُ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ نَعَمْ اِنْ قُتِلْتَ فِيْ سَبِيْلِ اللّٰهِ وَاَنْتَ صَابِرٌ مُحْتَسِبٌ مُقْبِلٌ غَيْرُ مُدْبِرٍ ثُمَّ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ كَيْفَ قُلْتَ فَقَالَ اَرَاَيْتَ اِنْ قُتِلْتُ فِيْ سَبِيْلِ اللّٰهِ اَيُكَفِّرُ عَنِّيْ خَطَايَايَ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ نَعَمْ وَاَنْتَ صَابِرٌ مُحْتَسِبٌ مُقْبِلٌ غَيْرُ مُدْبِرٍ اِلَّا الدَّيْنَ فَاِنَّ جِبْرِيْلَ قَالَ لِيْ ذٰلِكَ۔ (رواه مسلم)

3805. Sayyiduna Abu Qatadah رضى الله عنه **narrated that Allah's Messenger** صلى الله عليه وسلم **got up among them (one day) and delivered a sermon in which he) mentioned, "*Jihad (crusade)* in Allah's path and faith in Allah are the best of deeds." A man got up and asked, "O Messenger of Allah do inform me, if I am killed in Allah's path will my sins be forgiven to me?" So, Allah's Messenger** صلى الله عليه وسلم **said to him, "Yes, if you are killed in Allah's Path and you are patient (in the face of the onslaught), hoping for reward and not showing your back." (But, contending against the enemy) Then, Allah's Messenger** صلى الله عليه وسلم **asked, "What did you say? He submitted "Inform me, if I am killed in Allah's path, will my sins be forgiven to me?" So, Allah's Messenger** صلى الله عليه وسلم **said, "Yes, if you are patient, hoping for reward and not showing your back (but facing) the enemy undauntedly), but (this does) not (include) a debt, for, indeed, Jibril** عليه السلام **told this to me."**[1]

COMMENTARY: The fact that faith is the most excellent deed is self evident. No explanation is needed. As for *jihad (crusade)*, it is called the best because it is the only deed whereby the word of Allah is raised high. It put down the rebels and the enemies of the religion. The warrior offers his life and property and endures different kinds of hardships and anxieties.

As for the hadith that call *salah (prayer)* to be the best deed, it is because *salah (prayer)* is the only deed that is done constantly. It is one deed but is made up of many worships.

As for the exception (دين) dayn or debt, Allamah Toorpushti رحمه الله said that here dayn covers 'the rights of the Muslim. Hence, the saying means that performing *jihad (crusade)* erases all sins except rights of fellowmen.

(٣٨٠٦) وَعَنْ عَبْدِاللّٰهِ بْنِ عَمْرِو بْنِ الْعَاصِ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ الْقَتْلُ فِيْ سَبِيْلِ اللّٰهِ يُكَفِّرُ

[1] Muslim # 117-1885, Tirmidhi # 1712, Nasa'i # 3156, Muwatta Maalik # 31 (*Jihad*/Musnad Ahmad 5-304)

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كُلَّ شَيْءٍ إِلَّا الدَّيْنَ۔ (رواه مسلم)

3806. Sayyiduna Abdullah ibn Amr ibn Aas رضی اللہ عنہ narrated that the prophet صلی اللہ علیہ وسلم said, "To be killed in Allah's path (in *jihad (crûsade)*), gets all sins except depts. (meaning, rights of fellowmen) erased."[1]

THE KILLER & KILLED IN PARADISE

(۳۸۰۷) وَعَنْ اَبِيْ هُرَيْرَةَ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ يَضْحَكُ اللّٰهُ تَعَالٰى رَجُلَيْنِ يَقْتُلُ اَحَدُهُمَا الْاٰخَرَ يَدْخُلَانِ الْجَنَّةَ يُقَاتِلُ هٰذَا فِيْ سَبِيْلِ اللّٰهِ فَيُقْتَلُ ثُمَّ يَتُوْبُ اللّٰهُ عَلَى الْقَاتِلِ فَيُسْتَشْهَدُ۔ (متفق علیہ)

3807. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Allah the exalted laugh at two men. One of them kills the other, but both of them will enter paradise. One fight in Allah's path and is martyred. Then Allah relents to the slayer (and he embraces Islam and he too fights in Allah's path) and he becomes a martyr so (enter paradise)."[2]

DESIRE FOR MARTYRDOM

(۳۸۰۸) وَعَنْ سَهْلِ بْنِ حُنَيْفٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ سَأَلَ اللّٰهَ الشَّهَادَةَ بِصِدْقٍ بَلَّغَهُ اللّٰهُ مَنَازِلَ الشُّهَدَاءِ وَإِنْ مَاتَ عَلٰى فِرَاشِهٖ۔ (رواه مسلم)

3808. Sayyiduna Sahl ibn Hunayf رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "He who prays to Allah sincerely for martyrdom, Allah brings him to the ranks of the martyrs, even though he may die on his bed."[3]

MARTYRS IN FIRDOWS

(۳۸۰۹) وَعَنْ اَنَسٍ اَنَّ الرُّبَيِّعَ بِنْتَ الْبَرَاءِ وَهِيَ اُمُّ حَارِثَةَ بْنِ سُرَاقَةَ اَتَتِ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَتْ يَانَبِيَّ اللّٰهِ اَلَا تُحَدِّثُنِيْ عَنْ حَارِثَةَ وَكَانَ قُتِلَ يَوْمَ بَدْرٍ اَصَابَهٗ سَهْمٌ غَرْبٌ فَإِنْ كَانَ فِي الْجَنَّةِ صَبَرْتُ وَإِنْ كَانَ غَيْرَ ذٰلِكَ اِجْتَهَدْتُ عَلَيْهِ فِي الْبُكَاءِ فَقَالَ يَا اُمَّ حَارِثَةَ اِنَّهَا جِنَانٌ فِي الْجَنَّةِ وَاَنَّ ابْنَكِ اَصَابَ الْفِرْدَوْسَ الْاَعْلٰى۔ (رواه البخاری)

3809. Sayyiduna Anas رضی اللہ عنہ narrated that Rubaiyi bint رضی اللہ عنہ Barra, the mother of Harithah ibn Suraqah رضی اللہ عنہ came to the Prophet صلی اللہ علیہ وسلم and submitted, "O Prophet صلی اللہ علیہ وسلم of Allah, will you not tell me about Harithah." - He had been martyred on the day of Badr being hit by an arrow and it could not be known who shot it. "If he is in paradise, I shall be patient. But, if he is elsewhere, then I shall try to weep over him (Like a wailing woman). He said, "O Umm Harithah! There are gardens in paradise and, indeed, your son has made it to al-Firdows, the highest

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[1] Muslim # 120. 1886.

[2] Muslim 1283122, Bukhari # 2826, Nasa'i # 3166, Muwatta Maalik # 28 (*Jihad*), Musnad Ahmad 2-464.

[3] Muslim # 157-1909, Tirmidhi # 1653, Nasa'i # 3162, Abu Dawud # 1530, Ibn Majah # 2797, Darimi # 2407.

place in paradise)."[1]

(٣٨١٠) وَعَنْ اَنَسٍ قَالَ اِنْطَلَقَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَاَصْحَابُهٗ حَتّٰى سَبَقُوا الْمُشْرِكِيْنَ اِلٰى بَدْرٍ وَجَاءَ الْمُشْرِكُوْنَ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قُوْمُوْا اِلٰى جَنَّةٍ عَرْضُهَا السَّمٰوٰتُ وَالْاَرْضُ قَالَ عُمَيْرُ بْنُ الْحُمَامِ بَخٍ بَخٍ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَايَحْمِلُكَ عَلٰى قَوْلِكَ بَخٍ بَخٍ قَالَ لَا وَاللّٰهِ يَا رَسُوْلَ اللّٰهِ اِلَّا رَجَاءَ اَنْ اَكُوْنَ مِنْ اَهْلِهَا قَالَ فَاِنَّكَ مِنْ اَهْلِهَا قَالَ فَاَخْرَجَ تَمَرَاتٍ مِنْ قَرَنِهٖ فَجَعَلَ يَاْكُلُ مِنْهُنَّ ثُمَّ قَالَ لَئِنْ اَنَا حَيِيْتُ حَتّٰى اٰكُلَ تَمَرَاتِيْ اِنَّهَا لَحَيَاةٌ طَوِيْلَةٌ قَالَ فَرَمٰى بِمَا كَانَ مَعَهٗ مِنَ التَّمْرِ ثُمَّ قَاتَلَهُمْ حَتّٰى قُتِلَ۔ (رواه مسلم)

3810. Sayyiduna Anas رضى الله عنه said that Allah's Messenger صلى الله عليه وسلم and his sahabah (Prophet's Companions) رضى الله عنهم set out (from Madinah) and arrived at Badr before the idolaters. Then, the idolaters came and Allah's Messenger said, "Prepare to go to paradise whose breadth is as (the breadth of) the heavens and the earth." Umayr ibn Humam رضى الله عنه (a sahabi) exclaimed, "Bakh, bakh!" (meaning 'bravo, bravo! 'excellent'). Allah's Messenger صلى الله عليه وسلم asked him, "What led you to say, 'Bakh, bakh!?" He submitted "No (there is nothing), By Allah, O Messenger of Allah except a hope that I should be one of its dwellers!" He said, "Indeed, you are one of them!"

He narrator added that (no hearing the glad tidings) he took out some dates from his quiver and began to eat out of them. Then, he said, "were I to survive till I eat (all these) my dates, that will be a long life." He threw away whatever he had with him of the dates. Then he plunged to fight with them till he was martyred.[2]

COMMENTARY: The Prophet صلى الله عليه وسلم encouraged his sahabah (Prophet's Companions) رضى الله عنهم to prepare for paradise through *jihad (crusade).*

Paradise is vast, very large. It is compared to the span of heaven and earth because it is the greatest thing a human mind will fathom.

Umayr رضى الله عنه assured the prophet صلى الله عليه وسلم that he had not uttered 'Bakh, bakh' without purpose or out of fear. Then he wasted no time in advancing into enemy ranks to attain martyrdom.

MARTYRS ARE OF KINDS

(٣٨١١) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَاتُعَدُّوْنَ الشَّهِيْدَ فِيْكُمْ قَالُوْا يَا رَسُوْلَ اللّٰهِ مَنْ قُتِلَ فِيْ سَبِيْلِ اللّٰهِ فَهُوَ شَهِيْدٌ قَالَ اِنَّ شُهَدَاءَ اُمَّتِيْ اِذًا لَقَلِيْلٌ مَنْ قُتِلَ فِيْ سَبِيْلِ اللّٰهِ فَهُوَ شَهِيْدٌ وَمَنْ مَاتَ فِيْ سَبِيْلِ اللّٰهِ فَهُوَ شَهِيْدٌ وَمَنْ مَاتَ فِي الطَّاعُوْنِ فَهُوَ شَهِيْدٌ وَمَنْ مَاتَ فِي الْبَطْنِ فَهُوَ شَهِيْدٌ۔ (رواه مسلم)

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[1] Bukhari # 2807, Tirmidhi # 3174 (3105), Musnad Ahmad 2-124, (Tirmidhi names has a Rubay bin Nadr and she said, "If he has not found good, I shall engage in Supplication.")

[2] Muslim # 145-1901, Musnad Ahmad 3-137

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3811. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم asked, "who among you do you count as a martyr?" They said, "O Messenger of Allah, he who is killed in Allah's path is a martyr." He said, "In that case, the martyrs of my ummah will be few. He who is killed in Allah's path is a martyr. He who dies (a natural death in *jihad (crusade)* without fighting) is a martyr. He who dies of pestilence is a martyr. He who dies of a disease in the belly diarhea dropsy) is a martyr. (They are in the same rank as a true martyr with as much reward.)[1]

REWARD OF WARRIORS

(٣٨١٢) وَعَنْ عَبْدِاللّٰهِ بْنِ عَمْرٍو قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَامِنْ غَازِيَةٍ اَوْ سَرِيَّةٍ تَغْزُوْ فَتَغْنَمَ وَتَسْلَمَ اِلَّا كَانُوا قَدْ تَعَجَّلُوا ثُلُثَيْ اُجُوْرِهِمْ وَمَا مِنْ غَازِيَةٍ اَوْ سَرِيَّةٍ تُخْفِقُ وَتُصَابُ اِلَّا تَمَّ اُجُوْرَهُمْ۔ (رواه مسلم)

3812. Sayyiduna Abdullah ibn Amr رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "If a unit of warriors or an army of fighters wages jhjad, gains booty and returns safely, then they earn two thirds of their rewards promptly (in this world). And, if a group of warriors or an army of fighters (wages jhad) fails to gain booty and are routed (with wounds and death), then they earn their rewards in full."[2]

COMMENTARY: The mujahids (crusaders) who set out to fight with the infidels for Islam can face three possibilities.

(i) They may return safe and sound with spoil which will belong to them. The hadith speaks of them as getting two thirds for their reward in this world which is their safe return and the spoils. The remaining one third is the reward for participating in *jihad (crusade)* which they shall get in the next world.

(ii) They return safe but could get no spoils. So, they have earned in this world one third, they will get on the day of resurrection.

(iii) The mujahids (crusaders) who took part in *jihad (crusade)* and were wounded or martyred in the battle field. They could not gain sp[oils at all. So, they will receive their full reward, that remains, in the next world in full.

BELIEVER WHO HAS NO LONGING FOR *JIHAD (CRUSADE)*

(٣٨١٣) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ مَاتَ وَلَمْ يَغْزُ وَلَمْ يُحَدِّثْ بِهٖ نَفْسَهٗ مَاتَ عَلٰى شُعْبَةٍ مِنْ نِفَاقٍ۔ (رواه مسلم)

3813. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "If a (believing) person dies without having participated in *jihad (crusade)* or having thought of it (as an obligation) hen he has died with a kind of hypocrisy,"[3]

COMMENTARY: It is a characteristic of a hypocrite that not only does he not take part in

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[1] Muslim # 165-1915.

[2] Muslim # 154-1906, Abu Dawud # 2497.

[3] Muslim # 185-1910, Abu Dawud # 2502, Nasa'i # 3097.

jihad (crusade) but also he never resolves and never longs to do so. When a *jihad (crusade)* is to be fought, the hypocrites disappear in their homes and never feel guilty about it. So, going by the adage (مَنْ تَشَبَّهَ بِقَوْمٍ فَهُوَ مِنْهُمْ) (whoso resembles a people is one of them), such believers are like hypocrites.

In his Sharh Muslim, Imam Nawawi رحمه الله writes that if anyone intends to make a worship but dies before doing it, then he will not be punished as much for not doing it as he would have been it if he had formed no intention to do it.

He also writes that if a man is able to offer *salah (prayer)* and also intends to offer but dies before offering it, and is also able to offer Hajj (pilgrimage) but procrastinates and dies before performing Hajj (pilgrimage), then some Shafi'I ulama (Scholars) say that in both cases he will have committed sin. Other say that he will not be a sinner in both cases. Yet others say that he will be sinner for not performing Hajj (pilgrimage), but not in the case of *salah (prayer)*.

The Hanafi point of view corresponds to the final view.

THE REAL MUJAHID

(٣٨١٤) وَعَنْ اَبِيْ مُوْسٰى قَالَ جَاءَ رَجُلٌ اِلَى النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ الرَّجُلُ يُقَاتِلُ لِلْمَغْنَمِ وَالرَّجُلُ يُقَاتِلُ لِلذِّكْرِ وَالرَّجُلُ يُقَاتِلُ لِيُرٰى مَكَانُهُ فَمَنْ فِيْ سَبِيْلِ اللّٰهِ قَالَ مَنْ قَاتَلَ لِتَكُوْنَ كَلِمَةُ اللّٰهِ هِيَ الْعُلْيَا فَهُوَ فِيْ سَبِيْلِ اللّٰهِ۔ (متفق عليه)

3814. Sayyiduna Abu Musa رضی الله عنه narrated that a man came to the prophet صلی الله علیه وسلم and submitted, "One man fights, for booty, A man fights to be mentioned (as a fighter). A man fights to be seen as of (Great) rank (which is ostentation) which (of them) is in Allah's path?" He said, "He who fights that Allah's Word should be raised high is in Allah's path."[1]

KEPT BACK FROM *JIHAD (CRUSADE)* BY A VALID EXCUSE

(٣٨١٥-٣٨١٦) وَعَنْ اَنَسٍ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ رَجَعَ مِنْ غَزْوَةِ تَبُوْكَ فَدَنَا مِنَ الْمَدِيْنَةِ فَقَالَ اِنَّ بِالْمَدِيْنَةِ اَقْوَامًا مَا سِرْتُمْ مَسِيْرًا وَلَا قَطَعْتُمْ وَادِيًا اِلَّا كَانُوْا مَعَكُمْ وَفِيْ رِوَايَةٍ اِلَّا شَرِكُوْكُمْ فِي الْاَجْرِ قَالُوْا يَا رَسُوْلَ اللّٰهِ وَهُمْ بِالْمَدِيْنَةِ قَالَ وَهُمْ بِالْمَدِيْنَةِ حَبَسَهُمُ الْعُذْرُ۔ رَوَاهُ الْبُخَارِيُّ وَرَوَاهُ مُسْلِمٌ عَنْ جَابِرٍ۔

3815. Sayyiduna Anas رضی الله عنه narrated that Allah's Messenger صلی الله علیه وسلم returned from the Battle of Tabuk and approached Madinah. He said, "There are some people in Madinah (who were not with you in your expedition outwardly, but), never did you traverse a path and cross a valley yet they were with you." (physically they may have been in Madinah but their prayer, their hearts and their desires were with you.)

According to another version (he said:) "But they have shared with you your reward." They expressed surprise, Messenger of Allah, while they had stayed in

[1] Bukhari 2810, Muslim # 149-1901, Abu Dawud # 2517, Nasa'i # 3136, Ibn Majah # 2183, Musnad Ahmad 4-453.

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Madinah" He said, "They remained in Madinah, detained by a (proper) excuse."[1]
3816. Sayyiduna Jabir رضی اللہ عنہ narrated it (too).[2]

COMMENTARY: Those people who could not participate in *jihad (crusade)* because of some reason and were detained in Madinah did share the reward with those who took part in *jihad (crusade)*. But, they had not the same rank as the mujahjids, be because those who participated in *jihad (crusade)* physically and offered their lives and property in Allah's path are superior, as Allah says:

فَضَّلَ اللّٰهُ الْمُجَاهِدِيْنَ بِاَمْوَالِهِمْ وَاَنْفُسِهِمْ عَلَى الْقَاعِدِيْنَ دَرَجَةً۔

{Allah has preferred in rank those who struggle hard with their riches and their lives over those who sit back at home} (4: 95)

KINDNESS TO PARENTS

(۳۸۱۷) وَعَنْ عَبْدِاللّٰهِ بْنِ عَمْرٍو وقَالَ جَاءَ رَجُلٌ اِلٰى رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَاسْتَأْذَنَهٗ فِي الْجِهَادِ فَقَالَ اَحَيٌّ وَالِدَاكَ قَالَ نَعَمْ قَالَ فَفِيْهِمَا فَجَاهِدْ۔ مُتَّفَقٌ عَلَيْهِ وَفِيْ رِوَايَةٍ فَارْجِعْ اِلٰى وَالِدَيْكَ فَاَحْسِنْ صُحْبَتَهُمَا۔ (بخاری ومسلم)

3817. Sayyiduna Abdullah ibn Amr رضی اللہ عنہ narrated that a man came to Allah's Messenger صلی اللہ علیہ وسلم and requested him for permission to participate in *jihad (crusade)*. He asked, "Are your parents alive?" He said, "Yes" He said, "Then (stay with them and) exert yourself for them."
According to another version, he said: "Then return to your parents and give them good company."[3] (serve them and let them have their rights.)

COMMENTARY: It is stated in Sharh us *sunnah (Prophet's صلی اللہ علیہ وسلم practice)* that this hadith concerns an optional *jihad (crusade)*. If it is *fard (compulsory)* or compulsory *jihad (crusade)* then it Is not necessary to obtain their permission. Rather, even if they forbid then they should not be obeyed but one must take part in *jihad (crusade)*. If the parents are non Muslims then it is not necessary to have their permission to take part in any kind of *jihad (crusade), fard (compulsory)* or optional.
The ulama (Scholars) say that if one's parents, or one of them, are not pleased then one must not proceed to do any optional worship, like optional Hajj (pilgrimage) or umrah, or observe such voluntary fasting.

AFTER CONQUEST OF MAKKAH, NO HIJRAH

(۳۸۱۸) وَعَنِ ابْنِ عَبَّاسٍ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ يَوْمَ الْفَتْحِ لَاهِجْرَةَ بَعْدَ الْفَتْحِ وَلٰكِنْ جِهَادٌ وَنِيَّةٌ وَاِذَا اسْتُنْفِرْتُمْ فَانْفِرُوْا۔ (متفق علیہ)

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[1] Bukhari # 4423, Ibn Majah # 2763.
[2] Muslim # 159-1911, Ibn Majah # 2765, Musnad Ahmad 3-300.
[3] Bukhari # 3004, Muslim # 5-2546, Tirmidhi # 1671, Abu Dawud # 2529, Nasa'i # 3013, Musnad Ahmad 2-188.

3818. Sayyiduna Ibn Abbas رضی اللہ عنہ narrated that on the day of the conquest, the Prophet صلی اللہ علیہ وسلم said, "There is no hijrah after the conquest (of Makah), but only *jihad (crusade)* and niyah (intention). So when you are called to join in fighting, join (and enlist yourselves because it is *fard (compulsory)* to respond positively on the call to enlist)."

COMMENTARY: Before the conquest of Makkah, it was *fard (compulsory)* ayn to emigrate to Madinah from Makkah and from every land of the infidels, because there were very few Muslims in Madinah and they were very weak. So, the convergence of the Muslim in Madinah strengthened the ummah and made the idolaters weak and helpless.

When Allah made the Muslims dominant after the conquest of Makkah, the need to make hijrah become redundant. So, it was no longer *fard (compulsory)* to make hijrah, except in a few cases in which it is *mustahab (desirable)*. Examples are to go out of one's native land to take part in *jihad (crusade)*, to emigrate to acquire knowledge. And to leave the land of the infidels and the place where mischief in rampant, goodness is given up and evil is commonly practiced.

As for the words: 'but only *jihad (crusade)* and niyah (intention) remain, they mean that the command is still operative to have the resolve to wage *jihad (crusade)* against the enemies of the religion and rebels against Allah. In short, it is no longer *fard (compulsory)* to leave one's country or homeland to emigrate to Madinah. But, the command is not abrogated to go out from the hub of disbelief, or ignorant innovators or mischief, or to acquire learning, to make *jihad (crusade)* or with pious intention.

SECTION II اَلْفَصْلُ الثَّانِیْ

THERE WILL ALWAYS BE *JIHAD (CRUSADE)*

(۳۸۱۹) وَعَنْ عِمْرَانَ بْنِ حُصَيْنٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَاتَزَالُ طَائِفَةٌ مِنْ أُمَّتِيْ يُقَاتِلُوْنَ عَلَى الْحَقِّ ظَاهِرِيْنَ عَلٰى مَنْ نَاوَاهُمْ حَتّٰى يُقَاتِلَ اٰخِرُهُمُ الْمَسِيْحَ الدَّجَّالَ۔ (رواہ ابوداؤد)

3819. Sayyiduna Imran ibn Husayn رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "A section of my ummah will not cease to fight for the right (protecting and promoting it) and will overcome those who oppose them till the last of them (the ummah) fight with the masih ud dajjal"[1] (the impostor of Essa, علیہ السلام the Masih).

COMMENTARY: This saying of the prophet صلی اللہ علیہ وسلم makes clear that those who appose the mujahids (crusaders), of Islam will be humiliated eventually, though initially the mujahids (crusaders) may face difficulty.

The last of this ummah refer to Imam Mahdi رحمہ اللہ prophet Essa علیہ السلام and their followers. They will fight with the progeny of the dajjal(imposter). Ultimately, Prophet Eesa علیہ السلام will eliminate him. Thereafter, there shall be no *jihad (crusade)*, because no one will be strong enough to fight with Yajuj and Majuj (Gag and Magog). When Allah causes them to die, Prophet Eesa علیہ السلام will be alive in the world and there would be no disbeliever remaining on earth. When he dies, some people will revert to disbelief and all Muslims will

[1] Abu Dawud 2484, Musnad Ahmad 4-429.

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die when a fresh sweet, pure wind blows. Only disbelievers will survive in the world and when the last Day comes, there will be no one on earth who calls on Allah. Thus, the ahadith that s tress that some people of this ummah will not some people of this ummah will not cease to fight for the right till the Last Day, mean till the approach of the Last day.' Their last battle will be against the dajjal whose coming is among the signs of the Last Day.[1]

WARNING TO NON PARTICIPANT IN *JIHAD (CRUSADE)*

(٣٨٢٠) وَعَنْ اَبِيْ اُمَامَةَ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ مَنْ لَّمْ يَغْزُ وَلَمْ يُجَهِّزْ غَازِيًا اَوْيَخْلُفْ غَازِيًا فِيْ اَهْلِهٖ بِخَيْرٍ اَصَابَهُ اللّٰهُ بِقَارِعَةٍ قَبْلَ يَوْمِ الْقِيَامَةِ۔ (رواه ابوداؤد)

3820. Sayyiduna Abu Umamah رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "If anyone does not take part in *jihad (crusade)* (himself), or equip a warrior, or take care of the family of a warrior in a good way, then Allah will cause him to suffer a calamity before the Last Day."[2]

(٣٨٢١) وَعَنْ اَنَسٍ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ جَاهِدُوا الْمُشْرِكِيْنَ بِاَمْوَالِكُمْ وَاَنْفُسِكُمْ وَاَلْسِنَتِكُمْ۔ (رواه ابوداؤد و النسائی والدارمی)

3821. Sayyiduna Anas رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "Strive against the polytheist (the enemies of Islam) with your properties, your lives and your tongues (waging *jihad (crusade)* against them)."[3]

COMMENTARY: Life and property may be sacrificed against the enemy on the battlefield. The tongue may be used to condemn them, their idols and their beliefs and to pray against them. It may be used to threaten them and to pray for the Muslim to triumph. It may be used to encourage people to participate in *jihad (crusade)*.

HEIRS OF PARADISE

(٣٨٢٢) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَفْشُوا السَّلَامَ وَاَطْعِمُوا الطَّعَامَ وَاضْرِبُوا الْهَامَ تُوْرَثُوا الْجِنَانَ۔ رَوَاهُ التِّرْمِذِيُّ وَقَالَ هٰذَا حَدِيْثٌ غَرِيْبٌ۔

3822. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Make salaam (the greeting of Islam) common, feed food (to the poor and needy) and kill the infidels." (Greeting every Muslim you meet, feeding the poor and striking at the heads of the infidels) "You will inherit paradise."[4]

GUARDING THE BORDERS

(٣٨٢٣-٣٨٢٤) عَنْ فَضَالَةَ بْنِ عُبَيْدٍ عَنْ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ كُلُّ مَيِّتٍ يُخْتَمُ عَلٰى عَمَلِهٖ اِلَّا الَّذِيْ مَاتَ مُرَابِطًا فِيْ سَبِيْلِ اللّٰهِ فَاِنَّهٗ يُنْمٰى لَهٗ عَمَلُهٗ اِلٰى يَوْمِ الْقِيَامَةِ وَيَاْمَنُ فِتْنَةَ الْقَبْرِ۔ رَوَاهُ التِّرْمِذِيُّ

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[1] See 'Before & After the Last hour' Ibn Kathir, Darul Isha'at Karachi.

[2] Abu Dawud # 2503, Ibn Majah # 2762, Darimi # 2418.

[3] Abu Dawud # 3096, Darimi # 2431, Musnad Ahmad 3-124.

[4] Trimidhi # 1854 (1861).

وَاَبُوْدَاوٗدَ وَرَوَاهُ الدَّارِمِيُّ عَنْ عُقْبَةَ بْنِ عَامِرٍ۔

3823. Sayyiduna Fudalah ibn Ubayd رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Every dying person has his deeds sealed, except the one who dies while guarding the frontiers in Allah's path. His deed is grown for him till the day of resurrection, And, he is safe from the trial of the grave."[1]

3824. Sayyiduna Uqbah ibn Aamir رضی اللہ عنہ too narrated this hadith.[2]

COMMENTARY: When the man who guards the borders dies, he will continue to receive a fresh reward for his deed every moment. The reason is that he gave up his life while doing a deed that will help the Muslim always. His deed is meant to keep alive the religion.

MERIT OF PARTICIPANT OF *JIHAD (CRUSADE)*

(٣٨٢٥) وَعَنْ مُعَاذِ بْنِ جَبَلٍ اَنَّهٗ سَمِعَ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ مَنْ قَاتَلَ فِيْ سَبِيْلِ اللّٰهِ فَوَاقَ نَاقَةٍ فَقَدْ وَجَبَتْ لَهُ الْجَنَّةُ وَمَنْ جُرِحَ جُرحًا فِيْ سَبِيْلِ اللّٰهِ اَوْنُكِبَ نُكْبَةً فَاِنَّهَا تَجِيْئُ يَوْمَ الْقِيَامَةِ كَاَغْزَرِ مَا كَانَتْ لُوْنُهَا الزَّعْفَرَانُ وَرِيْحُهَا الْمِسْكُ وَمَنْ خَرَجَ بِهٖ خُرَاجٌ فِيْ سَبِيْلِ اللّٰهِ فَاِنَّ عَلَيْهِ طَابَعَ الشُّهَدَاءِ۔

(رواه الترمذی وابوداؤد والنسائی)

3825. Sayyiduna Mu'adh ibn Jabal رضی اللہ عنہ narrated that he heard Allah's Messenger صلی اللہ علیہ وسلم say, "If anyone fights in Allah's path for so long as the pause between two milkings of a she camel then he is assured of paradise. And if any one receives a wound in Allah's cause or is hurt somewhat then he will come on the day of resurrection with the largest of wounds whose colour will be safron and whose odour will be musk. And if anyone is afflicted with ulcers while in Allah's path, then he will get on him a seal of the martyrs.[3]

COMMENTARY: The pause between two milkings is very short. So, it means that the man participated in *jihad (crusade)* for the shortest possible time.

MERIT OF SPENDING TOWARDS *JIHAD (CRUSADE)*

(٣٨٢٦) وَعَنْ خُرَيْمِ بْنِ فَاتِكٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ اَنْفَقَ نَفَقَةً فِيْ سَبِيْلِ اللّٰهِ كُتِبَ لَهٗ بِسَبْعِمِائَةِ ضِعْفٍ۔ (رواه الترمذی)

3826. Sayyiduna Khuraym ibn Fatik رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "He who spends anything from his property in the path of Allah (meaning *jihad (crusade)*) will have seven hundred times of that recorded for him (as reward)"[4]

COMMENTARY: This is the minimum reward mentioned here. Actually, it depends on

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[1] Tirmidhi # 1021 (1627), Abu Dawud # 2500, Musnad Ahmad 6-20.

[2] Darimi # 2425.

[3] Abu Dawud # 2541, Tirmidhi # 1657, (1662) Nasa'i # 3141, Ibn Majah # 2792, Darimi # 2394, Musnad Ahmad # 5-230.

[4] Tirmidhi # 1625, Nasa'i # 3186, Musnad Ahmad 4-345

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Allah's will. He may give more than this if he will.

(٣٨٢٧) وَعَنْ اَبِيْ اُمَامَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَفْضَلُ الصَّدَقَاتِ ظِلُّ فُسْطَاطٍ فِيْ سَبِيْلِ اللّٰهِ وَمِنْحَةُ خَادِمٍ فِيْ سَبِيْلِ اللّٰهِ اَوْ طَرُوْقَةُ فَحْلٍ فِيْ سَبِيْلِ اللّٰهِ۔ (رواه الترمذى)

3827. Sayyiduna Abu Umamah رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "The most excellent sadaqah (charity) is the shade of a tent in Allah's path (given to warrior, a pilgrim, a student of religion, or the like), the gift of a servant in Allah's path (outright or on delegation), or giving in Allah's path a she camel that is old enough to be covered by a stallion."[1]

MERIT OF THE MUJAHID

(٣٨٢٨) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا يَلِجُ النَّارَ مَنْ بَكٰى مِنْ خَشْيَةِ اللّٰهِ حَتّٰى يَعُوْدَ اللَّبَنُ فِي الضَّرْعِ وَلَا يَجْتَمِعُ عَلٰى عَبْدٍ غُبَارٌ فِيْ سَبِيْلِ اللّٰهِ وَدُخَانُ جَهَنَّمَ۔ رَوَاهُ التِّرْمِذِيُّ وَزَادَ النَّسَائِيُّ فِيْ اُخْرٰى فِيْ مَنْخِرَيْ مُسْلِمٍ اَبَدًا وَفِيْ اُخْرٰى لَهُ فِيْ جَوْفِ عَبْدٍ اَبَدًا وَلَا يَجْتَمِعُ الشُّحُّ وَالْاِيْمَانُ فِيْ قَلْبِ عَبْدٍ اَبَدًا۔

3828. Sayyiduna Abu Hurayrah رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "A man who weeps from fear of Allah will not go to hell till the milk returns to the udder. And dust in Allah's path and smoke of hell will never come together on anyone."
In another version, Nasai'i added: "never in a Muslim's nostrils."
'Never in the belly of a slave of Allah, And miserliness and faith will never come together in the heart of a slave of Allah."[2]

COMMENTARY: Just as it is impossible for milk to return to the udder so too it is impossible that this man will go to hell.

TWO SAFE EYES

(٣٨٢٩) وَعَنِ ابْنِ عَبَّاسٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَيْنَانِ لَا تَمَسُّهُمَا النَّارُ عَيْنٌ بَكَتْ مِنْ خَشْيَةِ اللّٰهِ وَعَيْنٌ بَاتَتْ تَحْرُسُ فِيْ سَبِيْلِ اللّٰهِ۔ (رواه الترمذى)

3829. Sayyiduna Ibn Abbas رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم, said, "Two eyes are such that the fire of hell shall never touch them: an eye that weeps for fear of Allah and an eye that keeps (guard) vigil in the night in Allah's path."[3]

EXCELLENCE OF *JIHAD (CRUSADE)*

(٣٨٣٠) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ مَرَّ رَجُلٌ مِنْ اَصْحَابِ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ بِشِعْبٍ فِيْهِ عُيَيْنَةٌ مِنْ مَاءٍ عُذُبَةٍ فَاَعْجَبَتْهُ فَقَالَ لَوْ اِعْتَزَلْتُ النَّاسَ فَاَقَمْتُ فِيْ هٰذَا الشِّعْبِ فَذَكَرَ ذٰلِكَ لِرَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ

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[1] Tirmidhi # 1627, Musnad Ahmad 5-270.
[2] Tirmidhi # 1633 (1639) Nasa'i # 3107, Ibn Majah # 2274, Musnad Ahmad 2-502.
[3] Tirmidhi # 1639.

وَسَلَّمَ فَقَالَ لَاتَفْعَلْ فَإِنَّ مَقَامَ اَحَدِكُمْ فِيْ سَبِيْلِ اللّٰهِ اَفْضَلُ مِنْ صَلَاتِهٖ فِيْ بَيْتِهٖ سَبْعِيْنَ عَامًا اَلَاتُحِبُّوْنَ اَنْ يَغْفِرَ اللّٰهُ لَكُمْ وَيُدْخِلَكُمُ الْجَنَّةَ اُغْزُوْا فِيْ سَبِيْلِ اللّٰهِ مَنْ قَاتَلَ فِيْ سَبِيْلِ اللّٰهِ فُوَاقَ نَاقَةٍ وَجَبَتْ لَهُ الْجَنَّةُ۔ (رواه الترمذی)

3830. Sayyiduna Abu Hurayrah narrated that one of the sahabah (Prophet's Companions) رضی اللہ عنہم came upon a mountain pass that had a spring of sweet water. He was over whelmed by it and thought. "Would that I keep away from people and retire to this place!" He mentioned that to Allah's Messenger صلی اللہ علیہ وسلم who said, "Do not do so, for the station of one of you in Allah's path (in *jihad (crusade)*) is more excellent than his *salah (prayer)* in his home for seventy years. Do you people must engage in *jihad (crusade)* in Allah's path not love that Allah should forgive you and admit you to paradise? So, you people. If anyone engaged in *jihad (crusade)* for only as long as the time between two milking of she came, paradise becomes *wajib (obligatory)* for him."[1] (with the first entrants)

COMMENTARY: Saying 'seventy years' does not specify the time but means a long time. This hadith does not contradict the one:

مَقَامُ الرَّجُلِ فِي الصَّفِ فِيْ سَبِيْلِ اللّٰهِ اَفْضَلُ عِنْدَ اللّٰهِ مِنْ عِبَادَةِ الرَّجُلِ سِتِّيْنَ سَنَةً

"If a man stands in ranks in the path of Allah then it is better in Allah's sight then worship of a man for sixty years."

This hadith seems to say that if anyone isolates himself from the people and worships Allah in distant deserts or the like, then he does not get forgiveness of Allah merely by doing this. The ulama (Scholars) say that *jihad (crusade)* was *wajib (obligatory)* and it is a sin to neglect a *wajib (obligatory)* to do some nafl (optional) worship. So, the Prophet صلی اللہ علیہ وسلم impressed on that sahabi that though his aim to separate from people only to devote himself to Allah's worship, yet he would be committing a sin of neglecting the *wajib (obligatory)* and would be depriving himself of many benefits which he could avail by remaining among the people and discharging his religious obligation and responsibilities By remaining with them he could earn complete forgiveness and admission to paradise at the earliest stage.

Hence, it is better to mingle with people then to seclude oneself. However, sometimes when it is likely to fall into mischief and go astray by living with others, then it would be better to live a life of seclusion.

(٣٨٣١) وَعَنْ عُثْمَانَ عَنْ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ رِبَاطُ يَوْمٍ فِيْ سَبِيْلِ اللّٰهِ خَيْرٌ مِنْ اَلْفِ يَوْمٍ فِيْمَا سِوَاهُ مِنَ الْمَنَازِلِ۔ (رواه الترمذی والنسائی)

3831. Sayyiduna Uthman رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Ribat of a day in Allah's path is better then engaging in other worship for (even) one thousand days." Ribat is to guard the frontiers against infidels.)[2]

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[1] Tirmidhi # 1650 (1656), Musnad Ahmad 2-524.

[2] Tirmidhi # 1667, Nasa'i # 3169, Darimi # 2424, Musnad Ahmad # 1-65

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COMMENTARY: The words in other worship make an exception of exerting oneself towards protection of religion.
It is *wajib (obligatory)* on such a person to guard the borders. It is sinful for him to engage in other work while on this duty, even other forms of worship, like waiting for the next *salah (prayer)* in the mosque which is also called ribat. The translation in Tirmidhi has is better than being at home for one thousand days.

MARTYS WILL ENTER PARADISE DIRECTLY

(٣٨٣٢) وَعَنْ اَبِيْ هُرَيْرَةَ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ عُرِضَ عَلَيَّ اَوَّلُ ثَلَاثَةٍ يَدْخُلُوْنَ الْجَنَّةَ شَهِيْدٌ وَعَفِيْفٌ مُتَعَفِّفٌ وَعَبْدٌ اَحْسَنَ عِبَادَةَ اللّٰهِ وَنَصَحَ لِمَوَالِيْهِ۔ (رواه الترمذى)

3832. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, 'Those people were presented to me who will be the first to enter paradise a martyr, an abstinent who refrains from the unlawful (and does not beg), and a slave who worship Allah sincerely and serves his master honestly.[1]

COMMENTARY: They will be the first to enter paradise but only after the prophet علیہ السلام These are three kinds of people.

BEST MUJAHID & BEST MARTYR

(٣٨٣٣) وَعَنْ عَبْدِاللّٰهِ بْنِ حُبْشِيٍّ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ سُئِلَ اَيُّ الْاَعْمَالِ اَفْضَلُ قَالَ طُوْلُ الْقِيَامِ قِيْلَ فَاَيُّ الصَّدَقَةِ اَفْضَلُ قَالَ جُهْدُ الْمُقِلِّ قِيْلَ فَاَيُّ الْهِجْرَةِ اَفْضَلُ قَالَ مَنْ هَجَرَ مَاحَرَّمَ اللّٰهُ عَلَيْهِ قِيْلَ فَاَيُّ الْجِهَادِ اَفْضَلُ قَالَ مَنْ جَاهَدَ الْمُشْرِكِيْنَ بِمَالِهٖ وَنَفْسِهٖ قِيْلَ فَاَيُّ الْقَتْلِ اَشْرَفُ قَالَ مَنْ اُهْرِيْقَ دَمُهٗ وَعُقِرَ جَوَادُهٗ۔ رَوَاهُ اَبُوْدَاوٗدَ وَفِيْ رِوَايَةِ النَّسَائِيِّ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ سُئِلَ اَيُّ الْاَعْمَالِ اَفْضَلُ قَالَ اِيْمَانٌ لَاشَكَّ فِيْهِ وَجِهَادٌ لَاغُلُوْلَ فِيْهِ وَحَجَّةٌ مَبْرُوْرَةٌ قِيْلَ فَاَيُّ الصَّلَاةِ اَفْضَلُ قَالَ طُوْلُ الْقُنُوْتِ ثُمَّ اتَّفَقَا فِي الْبَاقِيْ۔

3833. Sayyiduna Abdulalh ibn Hubashi رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم was asked,?"Which of the deed is the best?" He said, "A lengthy standing in *salah (prayer)*." He was asked which kind of sadaqah (charity) is the best?" He said, : "The effort of the poor," He was asked, "which jihah is the best?" He said, "The abstinence of one who keeps away from what Allah has forbidden." He was asked, "which *jihad (crusade)* is the best?" He said, "The struggle of one against the polytheists with his property and his life." He was asked, "which is the best way of being killed?" He said, "Of one whose blood is shed and whose horse is wounded (at the feet)."[2]
The version in Nasa'i is: The prophet صلی اللہ علیہ وسلم was asked, "which of the deed is best?" He said, "Faith that is unwavering, *jihad (crusade)* that is without treachery in booty, and a Hajj (pilgrimage) that is approved." He was asked, "which kind of *salah (prayer)* is the best?" He said, 'one with a lengthy standing in it." Thereafter

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[1] Tirmidhi # 1641, Musnad Ahmad 2-425.
[2] Abu Dawud # 1449.

both version concur with one another.[1]

COMMENTARY: The most excellent *jihad (crusade)* is one in which the mujahid spends his property on himself and on other mujahid and offers his life too in the battlefield.
As for the most excellent deeds, the ahadith mention various actions as the best. The Prophet صلى الله عليه وسلم described them depending on the situation and nature of the person who was asking. He named humility to those who were proud, generosity to the niggardly, the tahajjud *salah (prayer)* to one who seemed lethargic, and so on, so, he named a deed as best to imply that it was one of the best deeds.

ALLAH'S FAVOUR TO MARTYRS

(٣٨٣٤) وَعَنِ الْمِقْدَامِ بْنِ مَعْدِ يَكْرِبَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لِلشَّهِيْدِ عِنْدَاللّٰهِ سِتُّ خِصَالٍ يُغْفَرُلَهُ فِيْ اَوَّلِ دَفْعَةٍ وَيُرٰى مَقْعَدَهُ مِنَ الْجَنَّةِ وَيُجَارُ مِنْ عَذَابِ الْقَبْرِ وَيَامَنُ مِنَ الْفَزَعِ الْاَكْبَرِ وَيُوْضَعُ عَلٰى رَاسِهٖ تَاجُ الْوَقَارِ اَلْيَا قُوْتَةُ مِنْهَا خَيْرٌ مِنَ الدُّنْيَا وَمَا فِيْهَا وَيُزَوَّجُ ثِنْتَيْنِ وَسَبْعِيْنَ زَوْجَةً مِنَ الْحُوْرِ الْعِيْنِ وَيُشَفَّعُ فِيْ سَبْعِيْنَ مِنْ اَقْرِبَائِهٖ۔ (رواه الترمذى وابن ماجة)

3834. Sayyiduna Miqdam ibn Madikarib رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "There are for the martyr six blessings with Allah.

(1) He is forgiven with the first drop of blood.
(2) He is shown his abode in paradise.
(3) He is preserved from the torment of the grave, and will be safe from the great terror lal faza al akbar (الفزع الاكبر)
(4) A crown of honour will be placed on his head and it will be ingrained will pearl better than the world and what it contains.
(5) He will be married to seventy two huris (maidens) of paradise.
(6) His intercession for seventy of his relatives will be accepted."[2]

NEGLECTOR OF *JIHAD (CRUSADE)* WARNED

(٣٨٣٥) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ لَقِيَ اللّٰهَ بِغَيْرِ اَثَرٍ مِنْ جِهَادٍ لَقِيَ اللّٰهَ وَفِيْهِ ثُلْمَةٌ۔ (رواه الترمذى وابن ماجه)

3835. Sayyiduna Abu Hurayrah رضى الله عنه narrated that he who meets Allah without any trace of *jihad (crusade)* (on him), will meet him with his religion imperfect."[3]

COMMENTARY: If anyone did not take part in *jihad (crusade)* all his life in person or by helping towards it, then his religion will be incomplete. This applies to one on who *jihad (crusade)* was *fard (compulsory)* but he did not taka part and had no intention to take part at all.
Teebi رحمه الله said that the *jihad (crusade)* mentioned here could mean the battle against

[1] Nasa'i # 2526, Musnad Ahmad 5-58.
[2] Tirmidhi # 1663 (1669), Ibn Majah # 2799, Musnad Ahmad # 12013.
[3] Tirmidhi # 1666, Ibn Majah # 2763.

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the infidels. It could also mean one's own struggle with one's self and the devil. It is called mujahadah(struggle to purify). This is drawn from the hadith of Abu umamah رضی اللہ عنہ (# 3837).

MARTYR IS PRESERVED FROM PAIN

(٣٨٣٦) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَلشَّهِيْدُ لَايَجِدُ اَلَمَ الْقَتْلِ اِلَّا كَمَا يَجِدُ اَحَدُكُمُ اَلَمَ الْقَرْصَةِ۔ رَوَاهُ التِّرْمِذِيُّ وَالنَّسَائِيُّ وَالدَّارِمِيُّ وَقَالَ التِّرْمِذِيُّ هٰذَا حَدِيْثٌ حَسَنٌ غَرِيْبٌ۔

3836. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "The martyr experiences no pain on being killed except like what one of you feels on being stung by an ant."[1]

COMMENTARY: Teebi رحمہ اللہ says that it is about that martyr who gives his life in Allah's path willingly. It could also mean the feeling of the martyr after death on finding the blessings of Allah. Therefore, a believer must not shrink from offering his life for Allah's sake. He must embrace martyrdom happily.

DROP OF BELIEVERS BLOOD IN *JIHAD (CRUSADE)* IS DEAREST TO ALLAH

(٣٨٣٧) وَعَنْ اَبِيْ اُمَامَةَ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لَيْسَ شَيْءٌ اَحَبَّ اِلَى اللّٰهِ مِنْ قَطْرَتَيْنِ وَاَثَرَيْنِ قَطْرَةُ دُمُوْعٍ مِنْ خَشْيَةِ اللّٰهِ وَقَطْرَةُ دَمٍ يُهْرَاقُ فِيْ سَبِيْلِ اللّٰهِ وَاَمَّا الْاَثَرَانِ فَاَثَرٌ فِيْ سَبِيْلِ اللّٰهِ وَاَثَرٌ فِيْ فَرِيْضَةٍ مِنْ فَرَائِضِ اللّٰهِ تَعَالٰى۔ رَوَاهُ التِّرْمِذِيُّ وَقَالَ هٰذَا حَدِيْثٌ حَسَنٌ غَرِيْبٌ۔

3837. Sayyiduna Abu Umamah رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "Nothing is dearer to Allah thon two drops and two marks: a drop of tear from fear of Allah and a drop of blood shed in Allah's path. As for the two marks, one is a trace that a man gets in Allah's path (in *jihad (crusade)* from a wound, for instance) and the other is a trace on discharge of an obligatory duty."[2]

COMMENTARY: The marks in Allah's path are what a mujahid gets in *jihad (crusade)*, dust on his body, a wound, etc. or dirt on clothing or body of a student. Seeking knowledge of religion is also following in Allah's path and the seeker is a mujahid.

A mark may be seen on the body after performing a prescribed duty, like having cuts in the hands or the feet on performing ablution in winter, a mark on the forehead through prostrating oneself in *salah (prayer)* a burning of the forehead in hot whether after prostration leaving a spot, bad odour from the mouth of one who is fasting, or getting dust on the body while performing pilgrimage.

SEA VOYAGE ONLY WHEN NECESSARY

(٣٨٣٨) وَعَنْ عَبْدِاللّٰهِ بْنِ عَمْرٍو وقَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَاتَرْكَبِ الْبَحْرَ اِلَّا حَاجًّا اَوْ مُعْتَمِرًا اَوْ غَازِيًا فِيْ سَبِيْلِ اللّٰهِ فَاِنَّ تَحْتَ الْبَحْرِ نَارًا وَتَحْتَ النَّارِ بَحْرًا۔ (رواہ ابوداؤد)

3838. Sayyiduna Abdullah ibn Amr رضی اللہ عنہ said that Allah's Messenger صلی اللہ علیہ وسلم

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[1] Tirmidhi # 1674, Ibn Majah # 2802, Nasa'i # 3161, Musnad Ahmad 8958.

[2] Tirmidhi # 1675.

said, "Do not sail on the sea except to (travel to) perform Hajj (pilgrimage) or 'umrah, or to fight in Allah's path, because there is a fire under the sea and there is a sea under the fire."[1]

COMMENTARY: Journey by sea is a risky undertaking. But, it is *mustahab (desirable)* to sail on the sea for a cause sanctioned by Shari'ah (divine law), for, it is then a mean of nearness to Allah.

The jurist Abu al-Layth رحمه الله samarqandi said that if it is safe to travel by sea, then it is *fard (compulsory)* to go by ship to perform Hajj (pilgrimage). But, if it is not safe then the pilgrim is authorized to decide. If he is fearful then he may not go. If the journey is not safe yet he intends to travel then he may go. There is no harm. Let us here explain this verse:

وَلَا تُلْقُوْا بِاَيْدِيْكُمْ اِلَى التَّهْلُكَةِ

{And cast not yourselves by your own hands into ruin} (2: 195)

This verse applies when it does not involve a religious work. Baylawi رحمه الله wrote against this verse that there are some aspects of ruin, like wasting property employment, business, etc. by one's own hands, refraining from spending for *jihad (crusade)* or participating in it. It is tantamount to helping your enemy and to give him ability to crush you.

There is fire under the sea means it is very dangerous to travel by sea.

Some people say that Allah is All powerful the sentence may mean what it says.

MARTYRDOM FOR ONE WHO DIES ON SEA

(٣٨٣٩) وَعَنْ اُمِّ حَرَامٍ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ الْمَائِدُ فِي الْبَحْرِ الَّذِي يُصِيْبُهُ الْقَيْءُ لَهُ اَجْرُ شَهِيْدٍ وَالْغَرِيْقُ لَهُ اَجْرُ شَهِيْدَيْنِ۔ (رواه ابوداؤد)

3839. Sayyiduna Umm Haram رضی الله عنه narrated that the Prophet صلی الله علیه وسلم said, "If any one (travelling by sea) has nausea and vomits during a sea voyage, then he has the reward of martyr. He who drowns gets the reward of two martyrs."[2]

COMMENTARY: They will earn the reward only when their travel is to participate in *jihad (crusade)* acquire knowledge or perform Hajj (pilgrimage). It also applies if anyone's journey is to trade and the objective of trading is to survive and to meet the needs of one's family and there is no alternative means of travel.

DEATH DURING *JIHAD (CRUSADE)* IS MARTYRDOM

(٣٨٤٠) وَعَنْ اَبِيْ مَالِكٍ الْاَشْعَرِيِّ قَالَ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ مَنْ فَصَلَ فِيْ سَبِيْلِ اللّٰهِ فَمَاتَ اَوْقُتِلَ اَوْ وَقَصَهُ فَرَسُهُ اَوْبَعِيْرُهُ اَوْلَدَغَتْهُ هَامَّةٌ اَوْمَاتَ عَلٰى فِرَاشِهٖ بِاَيِّ حَتْفٍ شَاءَ اللّٰهُ فَاِنَّهُ شَهِيْدٌ وَاِنَّ لَهُ الْجَنَّةَ۔ (رواه ابوداؤد)

3840. Sayyiduna Abu Maalik Ash'ary رضی الله عنه narrated that he heard Allah's Messenger صلی الله علیه وسلم say. "If anyone set forth (from his house) in Allah's path and

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[1] Abu Dawud # 2428.

[2] Abu Dawud # 2493.

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dies (of wounds) or is slain or is thrown down by his horse or his camel, or is stung by a poisonous creature, or dies on his bed any natural death Allah wills, then he is a martyr (or falls under the same command). **For him is paradise."**[1]
(He will go to it directly with martyr and the righteous).

MUJAHID GETS REWARD EVEN IF HE RETURNS SAFELY

(٣٨٤١) وَعَنْ عَبْدِاللّٰهِ بْنِ عَمْرٍو اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ قَفْلَةٌ كَغَزْوَةٍ۔ (رواه ابوداؤد)

3841. Sayyiduna Abdullah ibn Amr رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, **'Returning home is like setting out of fight (*jihad (crusade)*).'**[2]

COMMENTARY: A returnee home after battle earns as much rewards as he earned when he at out for *jihad (crusade)*. Because a mujahid is ever prepare to lay down his life for Allah's sake.

DUAL REWARD FOR WHO EQUIPS

(٣٨٤٢) وَعَنْ عَبْدِاللّٰهِ بْنِ عَمْرٍو قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لِلْغَازِى اَجْرُهٗ وَلِلْجَاعِلِ اَجْرُهٗ وَاَجْرُ الْغَازِىْ۔ (رواه ابوداؤد)

3842. Sayyiduna Abdullah ibn Amr رضی اللہ عنہ narrated that Allah's Messenger said, "The ghazi (warrior) (who engages in ***jihad (crusade)***) gets his reward and the jail (who equips the ghazi (warrior)) gets **his own reward and the reward of the ghazi (warrior)."**[3]

COMMENTARY: Ja'il (جاعل) is one who equips a ghazi (warrior) (غازی) fighter in *jihad (crusade)* that he might engage in battle. He gets a reward for spending in Allah's path and for enabling the Ghazi (warrior) to wage *jihad (crusade)*. The ulama (Scholars) agree that this deed is allowed.
However, Ibn Maalik رحمہ اللہ says that a ja'il is one who pay a ghazi (warrior) for taking part in *jihad (crusade)*. The Hanafis say that it is allowed. In this case too, the ghazi (warrior) will earn one reward and the jail two rewards.
However, Imam Shafi رحمہ اللہ says that it is not allowed to pay someone to take part in *jihad (crusade)* He says that if a ghazi (warrior) has received wages for taking part in a battle then it is *wajib (obligatory)* for him to return that to the payer.

MERCENARY IS NEITHER GHAZI (WARRIOR) NOR MUJAHID

(٣٨٤٣) وَعَنْ اَبِىْ اَيُّوْبَ سَمِعَ النَّبِىَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ سَتُفْتَحُ عَلَيْكُمُ الْاَمْصَارُ وَسَتَكُوْنُ جُنُوْدٌ مُجَنَّدَةٌ يُقْطَعُ عَلَيْكُمْ فِيْهَا بُعُوْثٌ فَيَكْرَهُ الرَّجُلُ الْبَعْثَ فَيَتَخَلَّصُ مِنْ قَوْمِهٖ ثُمَّ يَتَصَفَّحُ الْقَبَائِلَ يَعْرِضُ نَفْسَهٗ عَلَيْهِمْ مَنْ اَكْفِيْهِ بَعْثَ كَذَا اَلَا وَذٰلِكَ الْاَجِيْرُ اِلٰى اٰخِرِ قَطْرَةٍ مِنْ دَمِهٖ۔ (رواه ابوداؤد)

3843. Sayyiduna Abu Ayyub رضی اللہ عنہ **narrated that he heard the prophet** صلی اللہ علیہ وسلم **say, "Soon, large cities will be conquered by you. You will have companies of the**

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[1] Abu Dawud # 2499.
[2] Abu Dawud # 2487, Musnad Ahmad 2-174.
[3] Abu Dawud # 2526, Musnad Ahmad 2-174.

army under different banners. (If a man dislikes to enlist without remuneration and) a man will not be prepared to be sent with the army, then he will go away from his people (to avoid being sent). He will seek other tribes offering himself to them. Whom may I replace in such and such a battle?" (who will hire me that I may fight on his behalf?) He will remain a paid labourer to the last drop of his blood."[1] (Do not think of him as a ghazi (warrior) or mujahid. He is a hired or paid mercenary if he is killed in battle).

COMMENTARY: The head of a Islamic state will bind every tribe and group to raise their army and sent them to engage in *jihad (crusade)*.
Mazhar (RH(says that when Islam will spread throughout the world, the head of state will send armies to different directions to put out the infidels on that side so that they may not raise their head against the Muslims.

(٣٨٤٤) وَعَنْ يَعْلَى بْنِ أُمَيَّةَ قَالَ اٰذَنَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ بِالْغَزْوِ وَاَنَا شَيْخٌ كَبِيْرٌ لَيْسَ لِي خَادِمٌ فَالْتَمَسْتُ اَجِيْرًا يَكْفِيْنِي فَوَجَدْتُ رَجُلًا سَمَّيْتُ لَهُ ثَلَاثَةَ دَنَانِيْرَ فَلَمَّا حَضَرَتْ غَنِيْمَةٌ اَرَدْتُ اَنْ اُجْرِيَ لَهُ سَهْمَهُ فَجِئْتُ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَذَكَرْتُ لَهُ فَقَالَ مَا اَجِدُ لَهُ فِيْ غَزْوَتِهِ هٰذِهٖ فِي الدُّنْيَا وَالْاٰخِرَةِ اِلَّا دَنَانِيْرَهُ الَّتِيْ تُسَمِّي۔ (رواه ابوداؤد)

3844. Sayyiduna Ya'la Ibn Umayyah رضی اللہ عنہ narrated, Allah's Messenger صلی اللہ علیہ وسلم proclaimed that they would set our for *jihad (crusade)*. I was an old man and had no servant. So, I looked for a servant who might care for me during the fighting. I did find a man whose wages I fixed at three dinars. Afterwards (when the fighting was over) the booty arrived and intended to give him his portion. So I went to the Prophet صلی اللہ علیہ وسلم and spoke to him about the matter. He said, "I do not find (in the commands of Shari'ah (divine law)) anything for him in this fighting of his but the three dinars appointed for him, in the world and the next."[2]

COMMENTARY: The Prophet صلی اللہ علیہ وسلم said that the hired servant would get no share of booty and no reward in the hereafter. The ulama (Scholars) say that this command applies to a servant hired by a mujahid or ghazi (warrior) during the battle to serve him. But, if anyone is hired to engage in *jihad (crusade)*, then he will get a share from the booty though some ulama (Scholars) hold that he will be deprived of reward for fighting in *jihad (crusade)*,
According to Sharh us *sunnah (Prophet's صلی اللہ علیہ وسلم practice)*, the ulama (Scholars) differ on one who is hired on wages for kindred work or for caring of animals, and is then sent to the battlefield to fight. Will he get a share of the booty? Some of them deny him any portion of the booty whether he fights or not. Rather, he is entitled only to the wages determined for his service. This is as Awza'I رحمہ اللہ and Ishaq رحمہ اللہ say. Imam Shafi'I رحمہ اللہ agrees with them in one opinion of two known from him. Imam Maalik رحمہ اللہ and Imam Ahmad رحمہ اللہ say that he will be given a share even if he had not fought, but had been with the mujahids (crusaders) at the time of the fighting.

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[1] Abu Dawud # 2526, Musnad Ahmad 5-413.

[2] Abu Dawud # 2527, Musnad Ahmad 4. 223.

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ENGAGING IN *JIHAD (CRUSADE)* FOR WORLDLY GAINS DEPRIVES OR REWARD

(٣٨٤٥) وَعَنْ اَبِيْ هُرَيْرَةَ اَنَّ رَجُلًا قَالَ يَا رَسُوْلَ اللّٰهِ رَجُلٌ يُرِيْدُ الْجِهَادَ فِيْ سَبِيْلِ اللّٰهِ وَهُوَ يَبْتَغِيْ عَرَضًا مِنْ عَرَضِ الدُّنْيَا فَقَالَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا اَجْرَ لَهٗ۔ (رواه ابوداؤد)

3845. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that a man submitted, O Messenger of Allah, a man desires to take part in *jihad (crusade)* in Allah's path. But he (also) desires some worldly gains. The prophet صلی اللہ علیہ وسلم said, "He will get no reward."[1]

COMMENTARY: A person gets reward for his deeds of his intention is sincere to please Allah. This man's desire was not purely to please Allah but only to receive the spoils, so he will earn no reward. If anyone participates in *jihad (crusade)* for the pleasure of Allah and also hopes to get the spoils then he will get a reward but not as much as he gets whose intention is to please Allah only.

THE TRUE SPIRIT

(٣٨٤٦) وَعَنْ مُعَاذٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ الْغَزْوُ غَزْوَانِ فَاَمَّا مَنِ ابْتَغٰى وَجْهَ اللّٰهِ وَاَطَاعَ الْاِمَامَ وَاَنْفَقَ الْكَرِيْمَةَ وَيَاسَرَ الشَّرِيْكَ وَاجْتَنَبَ الْفَسَادَ فَاِنَّ نَوْمَهٗ وَنَبْهَهٗ اَجْرٌ كُلُّهٗ وَاَمَّا مَنْ غَزَا فَخْرًا وَرِيَاءً وَسُمْعَةً وَعَصَى الْاِمَامَ وَاَفْسَدَ فِي الْاَرْضِ فَاِنَّهٗ لَمْ يَرْجِعْ بِالْكَفَافِ۔ (رواه مالك وابوداؤد والنسائی)

3846. Sayyiduna Mu'adh رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said *"Jihad (crusade)* is of two kinds. As for him who seeks Allah's pleasure, obeys the imam (meaning, the leader or ruler and the laws of the state), gives his pure property and pure life (in Allah's path) cooperates with his associates and refrains from making mischief, his sleep and his awakening will earn him reward continuously. But, as for him who fights to boast, ostentatiously and to earn fame, disobeys the imam and makes mischief, he will return neither with reward nor have his sins forgiven."[2]

ALLAH WILL RESURRECT ACCORDING TO INTENTION

(٣٨٤٧) وَعَنْ عَبْدِاللّٰهِ بْنِ عَمْرٍو اَنَّهٗ قَالَ يَا رَسُوْلَ اللّٰهِ اَخْبِرْنِيْ عَنِ الْجِهَادِ فَقَالَ يَا عَبْدَاللّٰهِ بْنَ عَمْرٍو اِنْ قَاتَلْتَ صَابِرًا مُحْتَسِبًا بَعَثَكَ اللّٰهُ صَابِرًا مُحْتَسِبًا وَاِنْ قَاتَلْتَ مُرَائِيًا مُكَاثِرًا بَعَثَكَ اللّٰهُ مُرَائِيًا مُكَاثِرًا يَا عَبْدَاللّٰهِ بْنَ عَمْرٍو عَلٰى اَيِّ حَالٍ قَاتَلْتَ اَوْ قُتِلْتَ بَعَثَكَ اللّٰهُ عَلٰى تِلْكَ الْحَالِ۔ (رواه ابوداؤد)

3847. Sayyiduna Abdullah ibn Amr رضی اللہ عنہ narrated that he submitted, "O Messenger of Allah, enlighten me about *jihad (crusade)* (that fetches reward)." He said, "O Abdullah ibn Amr, if you fight as one patient and seeking reward, Allah will resurrect you (on the day of resurrection) showing patience and seeking reward (and He will give you reward just as another tradition says: كَمَا تَعِيْشُوْنَ تَمُوْتُوْنَ وَكَمَا تَمُوْتُوْنَ تُحْشَرُوْنَ – 'the manner in which you live you will die and the manner in which you die

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[1] Abu Dawud # 2516, Musnad Ahmad 2-290.

[2] Abu Dawud # 2515, Nasai'i # 3188, Darimi # 2417 Muwatta Maalik # 21. 18-43, Musnad Ahmad 5-234.

you will be resurrected). And , if you fight to show off and take pride in your strength (and wealth and numbers), Allah will resurrect you showing off and taking pride in your strength. O Abdullah ibn Amr, in whether state you fight or are killed, Allah will resurrect you in that state."[1]

REPLACE THE AMIR

(٣٨٤٨) وَعَنْ عُقْبَةَ بْنِ مَالِكٍ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اَعَجَزْتُمْ اِذَا بَعَثْتُ رَجُلًا فَلَمْ يَمْضِ لِاَمْرِيْ اَنْ تَجْعَلُوْا مَكَانَهُ مَنْ يَمْضِيْ لِاَمْرِيْ۔ (رواه ابوداؤد) وَذُكِرَ حَدِيْثُ فَضَالَةَ وَالْمُجَاهِدُ مَنْ جَاهَدَ نَفْسَهُ فِيْ كِتَابِ الْاِيْمَانِ۔

3848. Sayyiduna Uqbah ibn Maalik رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم asked, "Are you not able to replace a man whom I send out (as your amir) and he does not implement my command with one who will implement my command obeying what I ask to do and refraining from what I forbid)?"[2]

COMMENTARY: The prophet صلی اللہ علیہ وسلم told the people that when he sent any one out as a governor, or a representative, for instance, and he does not go there, or goes and disobeys his commands doing what he likes, then they should depose him and appoint another person in conformity with the command of the prophet صلی اللہ علیہ وسلم.

The ulama (Scholars) deduce from this command that if an amir or a governor is oppressive to the subjects and fails to give them their rights, then they may depose him and appoint another man in his place.

The hadith of Fadalah about the mujahid striving with himself may be seen in the book of Faith # 34.

SECTION III اَلْفَصْلُ الثَّالِثُ

MONASTICISM HAD NO PLACE IN ISLAM

(٣٨٤٩) عَنْ اَبِيْ اُمَامَةَ قَالَ خَرَجْنَا مَعَ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فِيْ سَرِيَّةٍ فَمَرَّ رَجُلٌ بِغَارٍ فِيْهِ شَيْءٌ مِنْ مَاءٍ وَبَقْلٍ فَحَدَّثَ نَفْسَهُ بِاَنْ يُقِيْمَ فِيْهِ وَيَتَخَلّٰى مِنَ الدُّنْيَا فَاَسْتَاْذَنَ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فِيْ ذٰلِكَ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِنِّيْ لَمْ اُبْعَثْ بِالْيَهُوْدِيَّةِ وَلَا بِالنَّصْرَانِيَّةِ وَلٰكِنِّيْ بُعِثْتُ بِالْحَنِيْفِيَّةِ السَّمْحَةِ وَالَّذِيْ نَفْسُ مُحَمَّدٍ بِيَدِهٖ لَغَدْوَةٌ اَوْ رَوْحَةٌ فِيْ سَبِيْلِ اللّٰهِ خَيْرٌ مِنَ الدُّنْيَا وَمَا فِيْهَا وَلَمَقَامُ اَحَدِكُمْ فِي الصَّفِّ خَيْرٌ مِنْ صَلَاتِهٖ سِتِّيْنَ سَنَةً۔ (رواه احمد)

3849. Sayyiduna Abu Umamah رضی اللہ عنہ narrated that they set out on an expedition with Allah's Messenger صلی اللہ علیہ وسلم during which one of their man came upon a cave that had some water and vegetables. It came to his mind that he should retire to it an withdraw from the world. So he sought permission of Allah's Messenger صلی اللہ علیہ

[1] Abu Dawud # 2539.

[2] Abu Dawud # 2537, Musnad Ahmad 4.110

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ﷺ for that, but he said, "I am not sent with Judism or with Christianity (that I should peach to you monasticism and put you to difficulty and away from People). But, I am sent with the easy hanif religion. By him in whose hand is the soul of Muhammad, a morning or an evening expedition in Allah's path is better than the world and what it contains. And, for one of you to stand in the row of battle (or of congregational *salah (prayer)* in the battlefield) is better than his *salah (prayer)* (by himself) for sixty years."[1]

DRIVING FORCE

(٣٨٥٠) وَعَنْ عُبَادَةَ بْنِ الصَّامِتِ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ غَزَا فِي سَبِيْلِ اللّٰهِ وَلَمْ يَنْوِ إِلَّا عِقَالًا فَلَهُ مَانَوٰى۔ (رواه النسائى)

3850. Sayyiduna Ubadah ibn Samit رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "He who fights in the path of Allah with no intention beyond receiving a rope (with which a camel is tethered then he) will get what he intended."[2]

COMMENTARY: If anyone wages *jihad (crusade)* and is driven by a desire to obtain a very base or insignificant thing then it is not a sincere intention. A very little thing like a rope is mentioned to emphasize that *jihad (crusade)* must be fought with no intention whatsoever to get the booty. One must develop sincerity to the extent that not even a semblance of desire for worldly possession drives the warrior. But, it must be remembered that this is the highest degree of sincerity.

As stated earlier, if *jihad (crusade)* is fought with intention to please Allah and to make religion dominant and also with a wish to get some booty then it is allowed. The reward will accrue. Moreover, if in this case, the warrior is also motivated to show off then not the entire reward will be forfeited because of that.

JIHAD (CRUSADE) GETS HIGHER RANKS IN PARADISE

(٣٨٥١) وَعَنْ اَبِي سَعِيْدٍ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ مَنْ رَضِيَ بِاللّٰهِ رَبًّا وَبِالْإِسْلَامِ دِيْنًا وَبِمُحَمَّدٍ رَسُوْلًا وَجَبَتْ لَهُ الْجَنَّةُ فَعَجِبَ لَهَا اَبُوسَعِيْدٍ فَقَالَ اَعِدْهَا عَلَيَّ يَارَسُوْلَ اللّٰهِ فَاَعَادَهَا عَلَيْهِ ثُمَّ قَالَ وَاُخْرٰى يَرْفَعُ اللّٰهُ بِهَا الْعَبْدَ مِائَةَ دَرَجَةٍ فِي الْجَنَّةِ مَابَيْنَ كُلِّ دَرَجَتَيْنِ كَمَا بَيْنَ السَّمَاءِ وَالْاَرْضِ قَالَ وَمَا هِيَ يَارَسُوْلَ اللّٰهِ قَالَ الْجِهَادُ فِيْ سَبِيْلِ اللّٰهِ الْجِهَادُ فِيْ سَبِيْلِ اللّٰهِ۔ (رواه مسلم)

3851. Sayyiduna Abu Sa'eed رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "He who is pleased with Allah as Lord, with Islam as religion and with Muhammad as Messenger, (must know that) paradise is *wajib (obligatory)* for (assured to) him. This pleased Abu Sa'eed رضی اللہ عنہ so he said, "Repeat it to me, O Messenger of Allah." He repeated the words to him. Then he said, "There is another (thing) whereby Allah will raise the slave (of Allah) in paradise one hundred degrees and between every two degrees is a distance like that between heaven and

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[1] Musnad Ahmad 5-266.

[2] Nasai'i # 3138, Darimi # 2416, Musnad Ahmad 5-315.

earth." He asked, "what is that, O Messenger of Allah?" He said, "*Jihad (crusade)* in Allah's path. *Jihad (crusade)* in Allah's path. *Jihad (crusade)* in Allah's path."[1]

GATE OF PARADISE IN SHADES OF SWORDS

(٣٨٥٢) وَعَنْ اَبِي مُوْسٰى قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِنَّ اَبْوَابَ الْجَنَّةِ تَحْتَ ظِلَالِ السُّيُوْفِ فَقَامَ رَجُلٌ رَثُّ الْهَيْئَةِ فَقَالَ يَا اَبَا مُوْسٰى اَنْتَ سَمِعْتَ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ هٰذَا قَالَ نَعَمْ فَرَجَعَ اِلٰى اَصْحَابِهٖ فَقَالَ اَقْرَأُ عَلَيْكُمُ السَّلَامَ ثُمَّ كَسَرَ جَفْنَ سَيْفِهٖ فَاَلْقَاهُ ثُمَّ مَشٰى بِسَيْفِهٖ اِلَى الْعَدُوِّ فَضَرَبَ بِهٖ حَتّٰى قُتِلَ۔ (رواه مسلم)

3852. Sayyiduna Abu Musa رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "the gates of paradise are under the shadow of the swords." (or hearing this,) a man with a shabby, ramshackle outlook stood up and asked, "O Abu Musa, did you hear Allah's Messenger صلی اللہ علیہ وسلم say this?" (Meaning, 'Are you sure?") He said, "Yes!" He got back to his companions and said, "I convey to you the salaam (salutation, my last)." Then, he broke the scabbard of his sword and cast it away (to make it clear that he would not return). He went with his sword towards the enemy and plied it (fighting them) till he was martyred.[2]

COMMENTARY: A warrior is in the battlefield in such a way that the sword of the infidels are pitted against him. They are the means of his admittance to paradise. The moment he is martyred by the sword of an infidel, he enters paradise.

GLAD TIDINGS FOR THE MARTYRS OF UHUD

(٣٨٥٣) وَعَنِ ابْنِ عَبَّاسٍ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لِاَصْحَابِهٖ اِنَّهٗ لَمَّا اُصِيْبَ اِخْوَانُكُمْ يَوْمَ اُحُدٍ جَعَلَ اللّٰهُ اَرْوَاحَهُمْ فِيْ جَوْفِ طَيْرٍ خُضْرٍ تَرِدُ اَنْهَارَ الْجَنَّةِ تَاْكُلُ مِنْ ثِمَارِهَا وَتَاْوِيْ اِلٰى قَنَادِيْلَ مِنْ ذَهَبٍ مُعَلَّقَةٍ فِيْ ظِلِّ الْعَرْشِ فَلَمَّا وَجَدُوْا طِيْبَ مَاْكَلِهِمْ وَمَشْرَبِهِمْ وَمَقِيْلِهِمْ قَالُوْا مَنْ يُبَلِّغُ اِخْوَانَنَا عَنَّا اَنَّنَا اَحْيَاءٌ فِي الْجَنَّةِ لِئَلَّا يَزْهَدُوْا فِي الْجِهَادِ وَلَا يَنْكُلُوْا عِنْدَ الْحَرْبِ فَقَالَ اللّٰهُ تَعَالٰى اَنَا اُبَلِّغُهُمْ عَنْكُمْ فَاَنْزَلَ اللّٰهُ تَعَالٰى وَلَا تَحْسَبَنَّ الَّذِيْنَ قُتِلُوْا فِيْ سَبِيْلِ اللّٰهِ اَمْوَاتًا بَلْ اَحْيَاءٌ عِنْدَ رَبِّهِمْ يُرْزَقُوْنَ اِلٰى اٰخِرِ الْاٰيَةِ۔ (رواه ابوداؤد)

3853. Sayyiduna Ibn Abbas رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said to his sahabah (Prophet's Companions) رضی اللہ عنہم "When your brothers were martyred at the battle of uhud, Allah put their souls in the craws (or gullets) of green birds that now come to the rivers o paradise, eat its fruit and settle down in lamps of gold in the shade of the Throne. (Later,) when they found the delight of their food, drink and rest, they asked (each other), 'who will convey to our brothers about us that we are alive in paradise (enjoying the blessings of our Lord) so that they might not give up a longing for paradise and not turn away from the battle.'

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[1] Muslim # 116-1884, Nasai # 3131.

[2] Muslim # 146-1902, Tirmidhi # 1659. Musnad Ahmad 4. 496.

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So, Allah, the Exalted, said, 'I shall convey it to them from you.." And, Allah, the Exalted, revealed:

وَلَا تَحْسَبَنَّ الَّذِيْنَ قُتِلُوْا فِيْ سَبِيْلِ اللّٰهِ اَمْوَاتًا بَلْ اَحْيَاءٌ عِنْدَ رَبِّهِمْ يُرْزَقُوْنَ

{Think not of those who are slain in Allah's way as dead. Nay, they live finding their sustenance in the presence of their Lord.}[1] (3: 169 and following)

COMMENTARY: The entire verse is:

وَلَا تَحْسَبَنَّ الَّذِيْنَ قُتِلُوْا فِيْ سَبِيْلِ اللّٰهِ اَمْوَاتًا بَلْ اَحْيَاءٌ عِنْدَ رَبِّهِمْ يُرْزَقُوْنَ * فَرِحِيْنَ بِمَآ اٰتٰهُمُ اللّٰهُ مِنْ فَضْلِهٖ وَيَسْتَبْشِرُوْنَ بِالَّذِيْنَ لَمْ يَلْحَقُوْا بِهِمْ مِّنْ خَلْفِهِمْ اَلَّا خَوْفٌ عَلَيْهِمْ وَلَا هُمْ يَحْزَنُوْنَ۔ (ال عمران ۳: ۱۶۹، ۱۷۰)

{Think not of those who are slain in Allah's ways as dead. Nay, they live, finding their sustenance in the presence of their Lord. They rejoice in the bounty provided by Allah: and with regard to those left behind, who have not yet joined them (in their bliss), the (martyrs) glory in the fact that on them is no fear, nor have they (cause to) grieve} (3: 169-170)

THE BEST SECTION OF THE BELIEVERS

(۳۸۵٤) وَعَنْ اَبِيْ سَعِيْدِ ۔ الْخُدْرِيِّ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ الْمُؤْمِنُوْنَ فِي الدُّنْيَا عَلٰى ثَلَاثَةِ اَجْزَاءٍ، اٰمَنُوْا بِاللّٰهِ وَرَسُوْلِهٖ ثُمَّ لَمْ يَرْتَابُوْا وَجَاهَدُوْا بِاَمْوَالِهِمْ وَاَنْفُسِهِمْ فِيْ سَبِيْلِ اللّٰهِ وَالَّذِيْ يَاْمَنُهُ النَّاسُ عَلٰى اَمْوَالِهِمْ وَاَنْفُسِهِمْ ثُمَّ الَّذِيْ اِذَا اشْرَفَ عَلٰى طَمَعٍ تَرَكَهٗ لِلّٰهِ عَزَّوَجَلَّ۔ (رواه احمد)

3854. Sayyiduna Abu Sa'eed Khudri رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "The believers in the world are of three kinds:

1) **Those who believe in Allah and His Messenger and then do not fall in doubt. And they take part in *jihad (crusade)* with their properties and their lives in Allah's path. (They have perfected their faith and purified themselves and have strived to make Allah's creatures prosperous. They are the best and noblest).**
2) **He whom people trust for their properties and their lives. (He may not have striven for their prosperity but he does not hurt people in any way, and he keeps aloof without being greedy. And**
3) **He who when greed arises in him suppresses it for the sake of Allah, Mighty and Glorious (for fear of Him)."[2]**

COMMENTARY: This last kind of believer is such that when he feels a desire or greed for something worldly, he does not pursue it. Rather, he seeks Allah's pleasure. He is one of those who though he mingles with people and finds an urge for worldly things, Allah preserves him from succumbing to greed. This kind of people from a section lower in rank than the first two. There are other kinds of believers apart from these three, but they are without any rank or kind.

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[1] Abu Dawud # 2520, Musnad Ahmad 1-266.

[2] Musnad Ahmad 3-8.

LONGING OF A MARTYR

(٣٨٥٥) وَعَنْ عَبْدِالرَّحْمٰنِ بْنِ اَبِي عَمِيْرَةَ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ مَامِنْ نَفْسٍ مُسْلِمَةٍ يَقْبِضُهَا رَبُّهَا تُحِبُّ اَنْ تَرْجِعَ اِلَيْكُمْ وَاَنَّ لَهَا الدُّنْيَا وَمَا فِيْهَا غَيْرُ الشَّهِيْدِ قَالَ ابْنُ اَبِي عَمِيْرَةَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَاَنْ اُقْتَلَ فِيْ سَبِيْلِ اللّٰهِ اَحَبُّ اِلَيَّ مِنْ اَنْ يَكُوْنَ لِي اَهْلُ الْوَبَرِ وَالْمَدَرِ۔ (رواه النسائی)

3855. Sayyiduna Abdur Rahman ibn Abu Amirah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Apart from the martyr, there is no Muslim soul that its Lord takes away and it wants to return to the world and what it contains." Ibn Abu Amirah narrated further that Allah's Messenger صلی اللہ علیہ وسلم said, "That I should be killed in Allah's path is dearer to me that I should possess (as my slaves and subjects) the villagers (people of the tents) and the townsmen (people of building)."[1]

COMMENTARY: Ahl ul wabar wa al madur are people who live in tents and who live in castles. The former are deserts dwellers where tents are use to reside dwellers where tents are used to reside. The latter are townsmen or city dwellers. Both of them together make up the inhabitants of the entire world. The Prophet's صلی اللہ علیہ وسلم words mean, "If I were made ruler of the world, and its peoples submitted to me, I would still prefer to take part in *jihad (crusade)* and be slain in Allah's path."

EVERY BELIEVER IS A MARTYR

(٣٨٥٦) وَعَنْ حَسْنَاء بِنْتِ مُعَاوِيَةَ قَالَتْ حَدَّثَنَا عَمِّي قَالَ قُلْتُ لِلنَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ فِي الْجَنَّةِ قَالَ النَّبِيُّ فِي الْجَنَّةِ وَالشَّهِيْدُ فِي الْجَنَّةِ وَالْمَوْلُوْدُ فِي الْجَنَّةِ وَالْوَئِيْدُ فِي الْجَنَّةِ۔ (رواه ابوداؤد)

3856. Sayyidah Hasna bint Mu'awiyah رضی اللہ عنہا said that her uncle (Aslam ibn Sulaym رضی اللہ عنہ narrated to them that he asked the Prophet صلی اللہ علیہ وسلم "who will be in paradise.?" The Prophet صلی اللہ علیہ وسلم said, The Prophets will be in paradise. New borns will be in paradise. And, those children who are buried alive will be in paradise."[2]

COMMENTARY: Here the word shahid (martyr) does not merely mean he who is killed in Allah's path. Rather, it refers to mu'min (believer) whether he really is martyred or the word is just applied to him. It is as the noble Quran calls those who have believed as martyrs.

وَالَّذِيْنَ اٰمَنُوْا بِاللّٰهِ وَرُسُلِهٖ اُولٰئِكَ هُمُ الصِّدِّيْقُوْنَ وَالشُّهَدَآءُ عِنْدَ رَبِّهِمْ

{And those who believe in Allah and His Messenger, they are the siddiq (who become true to their life) and the Shuhada (martyrs) in the eyes of their Lord.} (57: 19) (Respectively: the most righteous after the prophet علیہ السلام, and the martyrs.)[3]

In paradise will be the new born of believer and even of disbelievers. Also, every fotus will go to paradise whether belonging to a believer or to a disbeliever.

Those who are buried alive will be in paradise. During pre-Islamic days, people buried

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[1] Nasai'i # 3153, Musnad Ahmad 4-216.

[2] Abu Dawud # 2521.

[3] The Meanings of the Nobal Qu[illegible]

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their living daughters in the earth. Some people who had difficulty to make two ends meet also buried their living sons. Such boys and girls will go to paradise too.
The hadith mentions only four people perhaps the first two are mentioned specially because of their merit and honour, and the last two are mentioned because they will be admitted to paradise without doing any deed or earning the merit.

EXCELLENCE OF PARTICIPATING IN *JIHAD (CRUSADE)* WITH PROPERTY AND LIFE

(٣٨٥٧) وَعَنْ عَلِيٍّ وَاَبِي الدَّرْدَاءِ وَاَبِي هُرَيْرَةَ وَاُمَامَةَ وَعَبْدِاللّٰهِ بْنِ عُمَرَ وَعَبْدِالله بْنِ عَمْرٍو وَجَابِرِ بْنِ عَبْدِاللّٰهِ وَعِمْرَانَ بْنِ حُصَيْنٍ كُلُّهُمْ يُحَدِّثُ عَنْ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَنَّهٗ قَالَ مَنْ اَرْسَلَ نَفَقَةً فِيْ سَبِيْلِ اللّٰهِ اَقَامَ فِيْ بَيْتِهٖ فَلَهٗ بِكُلِّ دِرْهَمٍ سَبْعُمِائَةِ دِرْهَمٍ وَمَنْ غَزَا بِنَفْسِهٖ فِيْ سَبِيْلِ اللّٰهِ وَاَنْفَقَ فِيْ وَجْهِهٖ ذٰلِكَ فَلَهٗ بِكُلِّ دِرْهَمٍ سَبْعُمِائَةِ اَلْفِ دِرْهَمٍ ثُمَّ تَلَا هٰذِهِ الْاٰيَةَ وَاللّٰهُ يُضَاعِفُ لِمَنْ يَّشَاءُ۔ (رواه ابن ماجة)

3857. Sayyiduna Ali رضی اللہ عنہ Abu Darda رضی اللہ عنہ Abu Hurayrah رضی اللہ عنہ Umamah رضی اللہ عنہ Abdullah ibn Umar رضی اللہ عنہ. Abdullah ibn Amr رضی اللہ عنہ Jabir ibn Abdullah رضی اللہ عنہ and Imran ibn lusayn رضی اللہ عنہ – all of them narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "He who sends monetary help or equipment towards Allah's path (meaning *jihad (crusade)*) and himself stays in his home (not participating physically) will have seven hundred dirhams or each dirham (he gives). And he who fights physically (in person in *jihad (crusade)*) in Allah's path and also gives monetary help for His pleasure toward that (battle) will have seven hundred thousand dirhams for each dirham (he gives)." Then he recited this verses:

وَاللّٰهُ يُضٰعِفُ لِمَنْ يَّشَآءُ

{And Allah gives manifold increase to whom He pleases} (2: 261)[1]

COMMENTARY: The Prophet صلی اللہ علیہ وسلم recited the verse to show that there is no limit to the reward. Allah may, if he will, give much more reward than what is mentioned.

KINDS OF MARTYRS

(٣٨٥٨) وَعَنْ فَضَالَةَ بْنِ عُبَيْدٍ قَالَ سَمِعْتُ عُمَرَ بْنِ الْخَطَّابِ يَقُوْلُ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ الشُّهَدَاءُ اَرْبَعَةٌ رَجُلٌ مُؤْمِنٌ جَيِّدُ الْاِيْمَانِ لَقِيَ الْعَدُوَّ فَصَدَقَ اللّٰهَ حَتّٰى قُتِلَ فَذٰلِكَ الَّذِيْ يَرْفَعُ النَّاسُ اِلَيْهِ اَعْيُنَهُمْ يَوْمَ الْقِيَامَةِ هٰكَذَا وَرَفَعَ رَاْسَهٗ حَتّٰى سَقَطَتْ قَلَنْسُوَتُهٗ فَمَا اَدْرِيْ اَقَلَنْسُوَةُ عُمَرَ اَرَادَ اَمْ قَلَنْسُوَةُ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ وَرَجُلٌ مُؤْمِنٌ جَيِّدُ الْاِيْمَانِ لَقِيَ الْعَدُوَّ كَاَنَّمَا ضُرِبَ جِلْدُهٗ بِشَوْكٍ طَلْحٍ مِنَ الْجُبْنِ اَتَاهُ سَهْمُ غَرْبٍ فَقَتَلَهٗ فَهُوَ فِي الدَّرَجَةِ الثَّانِيَةِ وَرَجُلٌ مُؤْمِنٌ خَلَطَ عَمَلًا صَالِحًا وَاٰخَرَ سَيِّئًا لَقِيَ الْعَدُوَّ فَصَدَقَ اللّٰهَ حَتّٰى قُتِلَ فَذَالِكَ فِي الدَّرَجَةِ الثَّالِثَةِ وَرَجُلٌ مُؤْمِنٌ اَسْرَفَ عَلٰى نَفْسِهٖ لَقِيَ الْعَدُوَّ فَصَدَقَ اللّٰهَ حَتّٰى قُتِلَ فَذَالِكَ فِي الدَّرَجَةِ الرَّابِعَةِ۔ رَوَاهُ التِّرْمِذِيُّ وَقَالَ هٰذَا حَدِيْثٌ غَرِيْبٌ۔

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[1] Ibn Majah # 2761.

3858. Sayyiduna Fadalah ibn Ubayd رحمه الله said that he heard Sayyiduna Umar ibn Khattab رضى الله عنه narrate that he had heard Allah's Messenger صلى الله عليه وسلم say, 'Martyrs are of four kinds:

1) **A believing man, strong in faith, meets the enemy and demonstrates his sincerity to Allah till he is killed. For him, men will raise their eyes on the day of resurrection like this," - and he raised his head till his cap dropped. The sub narrator said that he could not say whose cap Fadalah رحمه الله meant: Umar's رضى الله عنه cap or the Prophet's صلى الله عليه وسلم cap. (Anyway, people will vie with each other to have a glimpse of him.)**
2) **A believing man of firm faith meets the enemy but fears him (and trembles) as though pricked by acacia thorns. A sudden arrow (whose shooter is not known) strikes him and kills him. He is of the second kind.**
3) **A believing man who has done good deeds and bad deeds. When he meets the enemy, he remains sincere to Allah till he is killed. He is of the third kind.**
4) **A believing man who has wronged himself (with sin and transgression. When he meets the enemy, he displays his sincerity to Allah till he is killed. He is of the fourth kind."[1]**

COMMENTARY: The words 'he demonstrates, or is sincere to Allah are the translation of (صدق الله). If the word is (صدق) (Sadaqa) then it means that the man's courage was strong and proved that he was true in discharging his responsibility that Allah had placed on him. He was steadfast and did not show his back.

If the word is (صدق) (saddaqah) then it means that he confirmed the truth of Allah though his courage and affirmed His words by participating in *jihad (crusade)* and enduring all kinds of hardships, seeking reward from Allah. This has reference to Allah's words about the mujahids (crusaders) which this man demonstrates to be true.

The kinds of martyrs named in the hadith include a martyr who was righteous as well as brave and courageous. The first kind was this martyr. Or, a martyr was righteous but not courageous as the second kind was. Or, he was courageous but not righteous and pious and this too is of two kinds one of which was a man with bad deeds but not to the point of transgression for him to be termed a fasiq (sinner, indecent). This was the third kind in the hadith. The second division of the 'courageous but not righteous; was such that his bad deeds outweighed his good, so he falls among the fasiq which is the fourth in the hadith.

Apart from the second kind, every other kind in the hadith displays sincerity to Allah and confirm His truth.

This explanation brings out the meaning of sadaqa Allah as:

'confirmation of the assurance of patience and seeking reward.'

This is also known in the second kind though it is not mentioned about him that he confirmed the truth of Allah.

EVEN THROUGH *JIHAD (CRUSADE)* A HYPOCRITE IS NO ENTITLED TO PARADISE

(٣٨٥٩) وَعَنْ عُتْبَةَ بْنِ عَبْدِ السُّلَمِيِّ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ الْقَتْلٰى ثَلَاثَةٌ مُؤْمِنٌ جَاهَدَ بِنَفْسِهٖ وَمَالِهٖ فِيْ سَبِيْلِ اللّٰهِ فَإِذَا لَقِيَ الْعَدُوَّ قَاتَلَ حَتّٰى يُقْتَلَ قَالَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فِيْهِ فَذَالِكَ الشَّهِيْدُ

[1] Tirmidhi # 1644 (1650), Musnad Ahmad # 146

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الْمُمْتَحَنُ فِيْ خَيْمَةِ اللّٰهِ تَحْتَ عَرْشِهٖ لَا يَفْضُلُهُ النَّبِيُّوْنَ إِلَّا بِدَرَجَةِ النُّبُوَّةِ وَمُؤْمِنٌ خَلَطَ عَمَلًا صَالِحًا وَاٰخَرَ سَيِّئًا جَاهَدَ بِنَفْسِهٖ وَمَالِهٖ فِيْ سَبِيْلِ اللّٰهِ إِذَا لَقِيَ الْعَدُوَّ قَاتَلَ حَتّٰى يُقْتَلَ قَالَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فِيْهِ مُمَحِّصَةٌ مَحَتْ ذُنُوْبَهٗ وَخَطَايَاهُ إِنَّ السَّيْفَ مَحَّاءٌ لِلْخَطَايَا وَاُدْخِلَ مِنْ اَيِّ اَبْوَابِ الْجَنَّةِ شَاءَ وَمُنَافِقٌ جَاهَدَ بِنَفْسِهٖ وَمَالِهٖ فَإِذَا لَقِيَ الْعَدُوَّ قَاتَلَ حَتّٰى يُقْتَلَ فَذَاكَ فِي النَّارِ إِنَّ السَّيْفَ لَا يَمْحُو النِّفَاقَ۔ (رواه الدارمي)

3859. Sayyiduna Utbah ibn Abd as Sulami رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Those who are slain (in *jihad (crusade)*) are of three kinds.

(i) A believer who participates (in *jihad (crusade)*) with his own self and his property in Allah's path and when he meets the enemy he fights till he is killed." The Prophet صلی اللہ علیہ وسلم said of him. "He is the martyr who has undergone trial and was patient. He will be in a tent under the Throne (and will attain nearness to Allah). The Prophet علیہ السلام will be higher than him in only their prophetic ranks."

(ii) "A believer whose deeds will be (of both kinds) good and bad and he participates (in *jihad (crusade)*) with his own self and his property in Allah's path and fight when he meets the enemy till he is killed." The Prophet صلی اللہ علیہ وسلم said of him, "Martyrdom purifies, him and erases his sins and lapses. The sword cleans lapses. He will be admitted to paradise by whichever gate he wishes."

(iii) "A hypocrite participates in *jihad (crusade)* with his own self and his property and when he meet the enemy, he fights till he is killed, (but) this man will go to hell. The sword does not erase hypocrisy."[1]

GUARDING FRONTIERS ATONES FOR BAD DEEDS AND DELIVERS FOREVER

(٣٨٦٠) وَعَنِ ابْنِ عَائِذٍ قَالَ خَرَجَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فِيْ جِنَازَةِ رَجُلٍ فَلَمَّا وُضِعَ قَالَ عُمَرُ بْنُ الْخَطَّابِ لَا تُصَلِّ عَلَيْهِ يَا رَسُوْلَ اللّٰهِ فَإِنَّهٗ رَجُلٌ فَاجِرٌ فَالْتَفَتَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ إِلَى النَّاسِ فَقَالَ هَلْ رَاٰهُ اَحَدٌ مِنْكُمْ عَلٰى عَمَلِ الْإِسْلَامِ فَقَالَ رَجُلٌ نَعَمْ يَا رَسُوْلَ اللّٰهِ حَرَسَ لَيْلَةً فِيْ سَبِيْلِ اللّٰهِ فَصَلّٰى عَلَيْهِ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَحَثٰى عَلَيْهِ التُّرَابَ وَقَالَ اَصْحَابُكَ يَظُنُّوْنَ اَنَّكَ مِنْ اَهْلِ النَّارِ وَاَنَا اَشْهَدُ اَنَّكَ مِنْ اَهْلِ الْجَنَّةِ وَقَالَ يَا عُمَرُ إِنَّكَ لَا تُسْئَلُ عَنْ اَعْمَالِ النَّاسِ وَلٰكِنْ تُسْئَلُ عَنِ الْفِطْرَةِ رَوَاهُ الْبَيْهَقِيُّ فِيْ شُعَبِ الْإِيْمَانِ۔

3860. Sayyiduna Ibn Aa'idh رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم alongwith the funeral of a man (to offer his funeral *salah (prayer)*). When it was laid down, Sayyiduna Umar ibn Khattab رضی اللہ عنہ submitted, "Do not offer *salah (prayer)* over him, O Messenger of Allah, because he was a fasiq (Indecent man)." So, Allah's Messenger صلی اللہ علیہ وسلم turned to the people and asked them, "Has anyone of you seen him do any deed of Islam (that might indicate that he was a Muslim)?" A

[1] Darimi # 2411.

man submitted, "Yes, O Messenger of Allah, he stood guard one night in Allah's path." So, Allah's Messenger صلى الله عليه وسلم offered his funeral *salah (prayer)* and scattered dust over him (at the time for his burial). Then he said (addressing the dead man), "your companions suppose that you are among those who will go to hell, but I testify that you are among those who will enter paradise." Then he said (to umar) رضى الله عنه, "O Umar you will not be questioned about deeds of the people, but you will be questioned about the fitrah (the religion of Islam)."[1]

COMMENTARY: Fitrah implies the symbols of Islam and conviction of faith.
The Prophet صلى الله عليه وسلم wished to check Umar رضى الله عنه for his boldness in questioning about the dead man's faith. It was undesirable thing. It is not proper to look at a Muslim's outward life and pass judgement about his hereafter. Rather, evidence is what his standard of faith and belief was and whether there was any shortcoming in his belief or in the basic tents of faith. As for deeds, Allah s independent and very Merciful on his slaves.
Teebi explained the Prophet's words to instruct, "Umar, you should not remind anyone of the dead man's bad deeds at this time. Rather, you should speak of his good deeds." He said elsewhere:

اُذْكُرُوا مَوْتَاكُمْ بِالْخَيْرِ

"Remember your dead people with good (qualities of theirs)."
This particular man had done such a deed as is one of the deeds of Islam. It is enough by itself to prove that the doer is a Muslim.

CHAPTER - II

ARRANGING EQUIPMENT FOR *JIHAD*

بَابُ اِعْدَادِ اٰلَةِ الْجِهَادِ

SECTION I

اَلْفَصْلُ الْاَوَّلُ

PROVIDING STRENGTH AS MUCH AS POSSIBLE FOR *JIHAD (CRUSADE)*

(٣٨٦١) عَنْ عُقْبَةَ بْنِ عَامِرٍ قَالَ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَهُوَ عَلَى الْمِنْبَرِ يَقُوْلُ وَاَعِدُّوْا لَهُمْ مَّا اسْتَطَعْتُمْ مِّنْ قُوَّةٍ۔ اَلَا اِنَّ الْقُوَّةَ الرَّمْيُ اَلَا اِنَّ الْقُوَّةَ الرَّمْيُ اَلَا اِنَّ الْقُوَّةَ الرَّمْيُ۔ (رواه مسلم)

3861. Sayyiduna Uqbah ibn Aamir رضى الله عنه narrated that he heard Allah's Messenger صلى الله عليه وسلم say while he was on the pulpit. "Get ready for them shooting as much strength as you can. Strength is shooting! Strength is shooting (arrows)?"[2]

COMMENTARY: The Quran gives the command in these very words spoken by the Prophet صلى الله عليه وسلم in surah al-Anfal verse # 60. {Prepare against them whatever force you can} The force in his verse is archery.
Baydawi رحمه الله and others say that it is every such thing as gives man prowess to fight in war. Hence, in those days archery was the most powerful from of strength and most easy

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[1] Bayhaqi Shu'ab ul Eeman # 4297.
[2] Muslim # 167-1917, Tirmidhi # 3083, Abu Dawud # 2514, Ibn Majah # 2813, Musnad Ahmad 4-158, Dawud # 2404.

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to use, so it was understood by 'force' or 'strength.'

OBTAIN PROFICIENCY IN THE FORCE USED BY THE ENEMY

(٣٨٦٢) وَعَنْهُ قَالَ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ سَتُفْتَحُ عَلَيْكُمُ الرُّوْمُ وَيَكْفِيْكُمُ اللّٰهُ فَلَا يُعْجِزْ اَحَدُكُمْ اَنْ يَلْهُوَ بِاَسْهُمِهٖ۔ (رواه مسلم)

3862. Sayyiduna Uqban ibn Aamir رضی اللہ عنہ narrated that he heard Allah's Messenger صلی اللہ علیہ وسلم say, "Soon Byzantine will be conquered by you. And, Allah will suffice you (from their mischief). So, none of you should be neglectful in practicing archery."[1]

COMMENTARY: The Byzantines normally used spears in those days, So, the Muslims were instructed to become perfect in archery to combat them. The Prophet صلی اللہ علیہ وسلم also said that they should not give up this practice even after up this practice even after their victory and they should not be arrogant that they had conquered the Byzantines, and stop practicing archery, because it will be necessary always. However, they did not have to resort to archery against the Byzantines because Allah gave them an easy victory.
The Arabic word fort practice of archery is law (Play). It is used in the sense of sport to encourage people to practice it because people are generally more drawn by the name of sport.

IMPORTANCE OF ARCHERY

(٣٨٦٣) وَعَنْهُ قَالَ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ مَنْ عَلِمَ الرَّمْيَ ثُمَّ تَرَكَهٗ فَلَيْسَ مِنَّا اَوْ قَدْ عَصٰى۔ (رواه مسلم)

3863. Sayyiduna Uqbah ibn Aamir رضی اللہ عنہ narrated that he heard Allah's Messenger صلی اللہ علیہ وسلم say, "If anyone learns archery but abandons it, then he is not one of us." Or (he said), "he has indeed disobeyed."[2]

COMMENTARY: One must learn archery and then keep up the practice, for, giving it up after leaning is worse than not learning.

PROPHET'S صلی اللہ علیہ وسلم ENCOURAGEMENT TO SHOOT ARROWS

(٣٨٦٤) وَعَنْ سَلَمَةَ بْنِ الْاَكْوَاعِ قَالَ خَرَجَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَلٰى قَوْمٍ مِنْ اَسْلَمَ يَتَنَاضَلُوْنَ بِالسُّوْقِ فَقَالَ اُرْمُوْا بَنِيْ اِسْمَاعِيْلَ فَاِنَّ اَبَاكُمْ كَانَ رَامِيًا وَاَنَا مَعَ بَنِيْ فُلَانٍ لِاَحَدِ الْفَرِيْقَيْنِ فَاَمْسَكُوْا بِاَيْدِيْهِمْ فَقَالَ مَا لَكُمْ قَالُوْا كَيْفَ نَرْمِيْ وَاَنْتَ مَعَ بَنِيْ فُلَانٍ قَالَ اُرْمُوْا وَاَنَا مَعَكُمْ كُلِّكُمْ۔ (رواه البخاری)

3864. Sayyiduna Salamah ibn Al-Akwa' رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم came to some people of (Banu) Aslam. They were practicing archery in the market place. He said, "Shoot, son of Ismail, for your ancestor was an archer. And, I am with the Banu so and so," one of the two parties (engaged in the practice). They (the others) then ceased (to carry on against them). He asked, 'What is with you?" They said, "How may we carry on shooting when you support the Banu so and so?"

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[1] Muslim # 168-1918, Tirmidhi # 3083, Musnad Ahmad 4-157.

[2] Muslim # 169-1919, Ibn Majah # 2814.

He said, "Shoot! I am with you, all of you!"[1]

SHOOTING BY ABU TALHAH رضی اللہ عنہ FOR THE PROPHET صلی اللہ علیہ وسلم

(٣٨٦٥) وَعَنْ اَنَسٍ قَالَ كَانَ اَبُوْطَلْحَةَ يَتَتَرَّسُ مَعَ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ بِتُرْسٍ وَاحِدٍ وَكَانَ اَبُوْطَلْحَةَ حَسَنَ الرَّمْيِ فَكَانَ اِذَا رَمٰى تَشَرَّفَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَيَنْظُرُ اِلٰى مَوْضِعِ نَبْلِهٖ۔ (رواه البخاری)

3865. Sayyiduna Anas رضی اللہ عنہ narrated that the Abu Talhah رضی اللہ عنہ and the Prophet صلی اللہ علیہ وسلم were using one shield together (in a battle). Abu Talhah رضی اللہ عنہ was an adept archer. (He shot at the enemy very wisely and also protected the Prophet) صلی اللہ علیہ وسلم when he shot (an arrow) the Prophet صلی اللہ علیہ وسلم looked over (the shield) and watched where his arrow landed (and who was struck).[2]

EXCELLENCE OF HORSES

(٣٨٦٦) وَعَنْهُ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَلْبَرَكَةُ فِيْ نَوَاصِي الْخَيْلِ۔ (متفق علیه)

3866. Sayyiduna Anas رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "There is blessing in the forelocks of horses."[3]

COMMENTARY: 'Forelocks' refers to the species. Horses are used in *jihad (crusade)* in which is the good of both the worlds.

(٣٨٦٧) وَعَنْ جَرِيْرِ بْنِ عَبْدِاللّٰهِ قَالَ رَاَيْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَلْوِيْ نَاصِيَةَ فَرَسٍ بِاَصْبَعِهٖ وَهُوَ يَقُوْلُ الْخَيْلُ مَعْقُوْدٌ بِنَوَاصِيْهَا الْخَيْرُ اِلٰى يَوْمِ الْقِيَامَةِ اَلْاَجْرُ وَالْغَنِيْمَةُ۔ (رواه مسلم)

3867. Sayyiduna Jarir ibn Abdullah رضی اللہ عنہ (Bajali) narrated that he saw Allah's Messenger صلی اللہ علیہ وسلم twist the forelock of a horse with his finger and say, "Good is tied to the forelocks of the horses till the day of resurrection. (The honour of participating in *jihad (crusade)* fetches) reward and spoils."[4]

(٣٨٦٨) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنِ احْتَبَسَ فَرَسًا فِيْ سَبِيْلِ اللّٰهِ اِيْمَانًا بِاللّٰهِ وَتَصْدِيْقًا بِوَعْدِهٖ فَاِنَّ شِبْعَهٗ وَرِيَّهٗ وَرَوْثَهٗ وَبَوْلَهٗ فِيْ مِيْزَانِهٖ يَوْمَ الْقِيَامَةِ۔ (رواه البخاری)

3868. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "If any one keeps a horse (to use in Allah's path) with faith in Allah and belief in His promise, then (whatever the horse eats or drinks as) its food and drink and its dung and urine will be (weighed for him) in his scale (of deeds) on the day of resurrection."[5]

COMMENTARY: The man's intentions in keeping the horse is to use it in *jihad (crusade)* against the enemy to please Allah and to obey him and to seek the reward promised by Him.

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[1] Bukhari # 3507.

[2] Bukhari # 2907, Musnad Ahmad 3-286.

[3] Bukhari # 2815, Muslim # 100-1874, Nasai'i # 3571, Musnad Ahmad 2-114.

[4] Muslim # 17-1872, Nasai'i # 3572.

[5] Bukhari # 2853, Nasai'i # 3582, Musnad Ahmad 2-374.

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The animal's food, drink dung and urine would turn into reward for this man.

HORSES WITH SHIKAL DISLIKED

(٣٨٦٩) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ كَانَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَكْرَهُ الشِّكَالَ فِي الْخَيْلِ وَالشِّكَالُ اَنْ يَكُوْنَ الْفَرَسُ فِيْ رِجْلِهِ الْيُمْنٰى بَيَاضٌ وَفِيْ يَدِهِ الْيُسْرٰى اَوْفِيْ يَدِهِ الْيُمْنٰى وَرِجْلِهِ الْيُسْرٰى۔ (رواه مسلم)

3869. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم disliked horses with shikal. And shikal is a horse that has a white mark on its right hind leg and left foreleg, or on its right foreleg and left hind leg.[1]

COMMENTARY: The narrator has defined shikal as stated in the hadith. However, the compiler of the Qamus and other linguists say that shikal is a horse with three white legs and the one remaining leg of the same colour as its whole body. Or, it may be the other may about with one white leg and three legs of the same colour as the body.

Actually, shikal is the tether used to bind the horse. So, the horse is compared to it. Perhaps the prophet صلی اللہ علیہ وسلم did not like it because of the comparison, or he may have known from experience that such horses are not pedigreed.

Some people say that if the whiteness on a horses forehead is large enough not to be concealed by a thumb then its defect is removed and it is not disliked.

HORSE RACING

(٣٨٧٠) وَعَنْ عَبْدِاللّٰهِ بْنِ عُمَرَ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ سَابَقَ بَيْنَ الْخَيْلِ الَّتِيْ اُضْمِرَتْ مِنَ الْحَفْيَاءِ وَاَمَدُهَا ثَنِيَّةُ الْوَدَاعِ وَبَيْنَهُمَا سِتَّةُ اَمْيَالٍ وَسَابَقَ بَيْنَ الْخَيْلِ الَّتِيْ لَمْ تُضْمَرْ مِنَ الثَّنِيَّةِ اِلٰى مَسْجِدِ بَنِيْ زُرَيْقٍ وَبَيْنَهُمَا مِيْلٌ۔ (متفق عليه)

3870. Sayyiduna Abdullah ibn Umar رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم organized race between the horses, that had been made lean through training, from al-Hafya to thaniyat ul wada, a distance of six miles. He also organized a race between the horses that had not gone through such training from the Thaniya (ul Wada) to the mosque of Banu Zurayq, a distance of one mile.

COMMENTARY: The 'training is used for the Arabic word (اضمار) or (المرت). The process is to feed the horse heavily hay and grains, etc, to make it strong and sturdy. Then it is given its normal diet. Then it is put in a place and a horse cloth is placed on it so that it feels hot and perspires. When the perspiration dries, it becomes lean but brisk, so its flesh turns light but its speed is swift.

Hafya is a place a few miles from Madina. Thaniyat ul Wada is a mountain. The people of Madinah go up to it to bid farewell to their travellers.

A SHE CAMEL OF THE PROPHET صلی اللہ علیہ وسلم

(٣٨٧١) وَعَنْ اَنَسٍ قَالَ كَانَتْ نَاقَةٌ لِرَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ تُسَمّٰى الْعَضْبَاءُ وَكَانَتْ لَا تُسْبَقُ فَجَاءَ

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[1] Muslim # 102-1875, Tirmidhi # 1698, Abu Dawud # 2547, Nasai'i # 3567, Ibn Majah # 2790, Musnad Ahmad 2-250.

اَعْرَابِيٌّ عَلٰى قَعُوْدٍ لَهٗ فَسَبَقَهَا فَاشْتَدَّ ذٰلِكَ عَلَى الْمُسْلِمِيْنَ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِنَّ حَقًّا عَلَى اللّٰهِ اَنْ لَّا يَرْتَفِعَ شَيْءٌ مِنَ الدُّنْيَا اِلَّا وَضَعَهٗ۔ (رواه البخارى)

3871. Sayyiduna Anas رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم had a she-camel called Abda, she had never been outpaced by any other (camel). But a villager came (one day) on his young camel (and he raced it against Adba) and put it behind. That was hard on the Muslim, but Allah's Messenger صلى الله عليه وسلم consoled (them), "It is (a verdict of) Allah's right that whatever rises in the world, He lowers it down."[1]

COMMENTARY: Adba is a she came whose ears are slit or split. The ears of the Prophet's صلى الله عليه وسلم she camel were not slit or split, yet it was called Adba. But its ears were naturally short. This she camel was also called Qaswa: But, it is also possible that they were two different she camels

The villagers camel was (قعود) (Qa'ud). It is a young camel making its debut as a riding camel and is worthy of carrying a rider, it may between two years old and six years old.

A camel above six years of age of called (جمل) (jaml)

SECTION II اَلْفَصْلُ الثَّانِيْ

MANUFACTURER OF WEAPONS OF *JIHAD (CRUSADE)* IN PARADISE

(٣٨٧٢) عَنْ عُقْبَةَ بْنِ عَامِرٍ قَالَ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ اِنَّ اللّٰهَ تَعَالٰى يُدْخِلُ بِالسَّهْمِ الْوَاحِدِ ثَلَاثَةَ نَفَرٍ الْجَنَّةَ صَانِعَهٗ يَحْتَسِبُ فِيْ صَنْعَتِهِ الْخَيْرَ وَالرَّامِيَ بِهٖ وَمُنَبِّلَهٗ فَارْمُوْا وَارْكَبُوْا وَاَنْ تَرْمُوْا اَحَبُّ اِلَيَّ مِنْ اَنْ تَرْكَبُوْا كُلُّ شَيْءٍ يَلْهُوْ بِهِ الرَّجُلُ بَاطِلٌ اِلَّا رَمْيَهٗ بِقَوْسِهٖ وَتَادِيْبَهٗ فَرَسَهٗ وَمُلَاعَبَتَهٗ اِمْرَاَتَهٗ فَاِنَّهُنَّ مِنَ الْحَقِّ۔ رَوَاهُ التِّرْمِذِيُّ وَابْنُ مَاجَةَ وَزَادَ اَبُوْدَاوٗدَ وَالدَّارِمِيُّ وَمَنْ تَرَكَ الرَّمْيَ بَعْدَ مَا عَلِمَهٗ رَغْبَةً عَنْهُ فَاِنَّهٗ نِعْمَةٌ تَرَكَهَا اَوْ قَالَ كَفَرَهَا۔

3872. Sayyiduna Uqbah ibn Aamir رضى الله عنه said that he heard Allah's Messenger صلى الله عليه وسلم say, "Surely Allah, the Exalted, admits to paradise three people against one arrow (that is shot at the infidels); the maker whose intention is to earn (sustenance and) reward, the person who shoots it (during *jihad (crusade)*), and the person who hands it (to the shooter whether from the quiver or having retrieved it from a target). So, shoot and ride, but your shooting is dearer to me than your riding. Everything with which a man (plays and) cheers himself is vain, but not his shooting with his bow, his training of his horse and his playing with his wife, because they concern what is right."

The version of Abu Dawud and Darimi also has: "If anyone gives up archery after learning it well because of being fed up with it, then it is a blessing that he has given up." Or, he said, '(a blessing) for which he showed ingratitude."[2]

COMMENTARY: The saying, 'they concern what is right' includes every such thing as

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[1] Bukhari # 2872, Abu Dawud # 4802, Nasai'i # 3592, Musnad Ahmad 3-103.

[2] Musnad Ahmad 4-144, Tirmidhi # 1637, Abu Dawud # 2513, Nasai'i # 3578, Ibn Majah # 2811, Darimi # 2405.

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helps in the path of right and goodness. It may be something to do with knowledge or with action. It may concern competition or contest of any kind.

REWARD FOR ARCHERY

(٣٨٧٣) وَعَنْ اَبِيْ نَجِيْحِ السُّلَمِيِّ قَالَ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ مَنْ بَلَغَ بِسَهْمٍ فِيْ سَبِيْلِ اللّٰهِ فَهُوَلَهٗ دَرَجَةٌ فِي الْجَنَّةِ وَمَنْ رَمٰى بِسَهْمٍ فِيْ سَبِيْلِ اللّٰهِ فَهُوَلَهٗ عِدْلُ مُحَرَّرٍ وَمَنْ شَابَ شَيْبَةً فِي الْاِسْلَامِ كَانَتْ لَهٗ نُوْرًا يَوْمَ الْقِيَامَةِ۔ رَوَاهُ الْبَيْهَقِيُّ فِيْ شُعَبِ الْاِيْمَانِ وَرَوٰى اَبُوْدَاوٗدَ اَلْفَصْلَ الْاَوَّلَ وَالنَّسَائِيُّ الْاَوَّلَ وَالثَّانِيَ وَالتِّرْمِذِيُّ الثَّانِيَ وَالثَّالِثَ وَفِيْ رِوَايَتِهِمَا مَنْ شَابَ شَيْبَةً فِيْ سَبِيْلِ اللّٰهِ بَدَلَ فِي الْاِسْلَامِ۔

3873. Sayyiduna Abu Najih Sulami رضی اللہ عنہ narrated that he heard Allah's Messenger صلی اللہ علیہ وسلم say, "He who shoots an arrow and hits the target in Allah's path will have it as a rank for him in paradise. He who shoots an arrow in Allah's path has it as though he set free someone (be he a male or a female slave). And, he who grows old in Islam (and dies), it is light for him on the day of resurrection." According to a version: instead of 'grows old in Islam,' it is 'grows old in Allah's path.'[1]

COMMENTARY: If anyone grows old having faith and belief in Islam, or gets the signs of old age on him, then these are tokens of his having a happy life in the next world. It is a great blessing and favour of Allah for anyone whose entire life to the end is in obedience to Islam.
It is reported about a great righteous man that one day he saw his own face in a mirror and observed sings of old age. His name was Abu Yazid رحمہ اللہ. On, observing that, he could not help say: ظَهَرَ الشَّيْبُ وَلَمْ يَظْهَرِ الْعَيْبُ وَمَا اَدْرِيْ مَا فِي الْغَيْبِ

"(Praise belongs to Allah) while old age had sown itself, no shortcoming has manifest itself and I know not what is there in the unseen."

STAKES ARE PERMITTED CONTRIBUTION TO *JIHAD (CRUSADE)*

(٣٨٧٤) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا سَبَقَ اِلَّا فِيْ نَصْلٍ اَوْخُفٍّ اَوْ حَافِرٍ۔

(رواه الترمذی وابوداؤد والنسائی)

3874. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger رضی اللہ عنہ said, "Stakes are never permitted for anything, but (for three things): archery. camel-racing and horse racing."[2]

COMMENTARY: The word in the hadith (سبق) (sabaq) refers to the takings from bets. It is evident from this hadith that it is not allowed to bet or use its receipts except for the three things mentioned in this hadith.
However, the jurists expand the scope to other things too that fall in the purview of equipment for *jihad (crusade)*, like donkey, mule, elephant. Some have also included racing between men (on feet) and throwing stones, too.

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[1] Tirmidhi # 1638, Abu Dawud # 3965, Nasai'i # 3143, Musnad Ahmad 4-386, Bayhaqi in Shu'ab ul Eeman # 4341, (not all have the entire hadith).

[2] Tirmidhi # 1700 (1706) Abu Dawud # 2564, Nasai'i # 3585, Ibn Majah # 2878, Musnad Ahmad 2-474.

The aim behind this permission is to encourage participation in *jihad (crusade)* in some form or other. Apart from such things as help in *jihad (crusade)*, betting is disallowed in everything as also using receipts from bets

ABOUT LAYING A WAGES

It must be very clear that placing a bet on winning or losing in any kind of contest or racing is gambling in essence. The reason is that not only ownership but also profit or loss is always uncertain. Indeed, this is what gambling is. However, if a ruler or anyone else in authority or any third person offers to give to the winner some money or (property or) thing, then this is allowed. Similarly, if one of two contestants offers to give money or some thing to the other if he wins, then this is allowed. He may assure the other that if he does not sin, there will be no liability on him.

It will be disallowed if both sides make a bet. This is betting or gambling. But, this too can be lawful if there is a muhalil between the two, as we shall see in the next hadith.

A MUHALLIL INTERVENING IN A CONTEST

(٣٨٧٥) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ اَدْخَلَ فَرَسًا بَيْنَ فَرَسَيْنِ فَاِنْ كَانَ يُؤْمَنُ اَنْ يُسْبَقَ فَلَا خَيْرَ فِيْهِ فَاِنْ كَانَ لَا يُؤْمَنُ اَنْ يُسْبَقَ فَلَا بَأْسَ بِهٖ رَوَاهُ فِيْ شَرْحِ السُّنَّةِ وَفِيْ رِوَايَةِ اَبِيْ دَاوٗدَ قَالَ مَنْ اَدْخَلَ فَرَسًا بَيْنَ فَرَسَيْنِ يَعْنِيْ وَهُوَ لَا يَا مَنُ اَنْ يُسْبَقَ فَلَيْسَ بِقِمَارٍ وَمَنْ اَدْخَلَ فَرَسًا بَيْنَ فَرَسَيْنِ وَقَدْ اَمِنَ اَنْ يُسْبَقَ فَهُوَ قِمَارٌ۔

3875. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "If anyone puts a horse with two (other) horses and he is certain that it will outstrip then there is not any good in it. But, if he is not sure that it will get ahead then there is no harm in it."

According to another version: He said, "If anyone puts a horse with two (other) horses while he is not sure that it will outstrip (the others) then it is not gambling. But, if anyone puts a horse with two (other) horses and is certain that it will overtake (them), then it is gambling."[1]

COMMENTARY: If anyone enters his horse with two others then it is a kind of tahlil (which is to make lawful). It makes betting lawful in a contest. The man who does it by introducing his horse is a muhallil. For example, if Zayd and Bakr by a wager on their horses stipulating that the winner would take the money of the bet or something other than money, then this is gambling. But, if a third person intervenes, say, khalid enters his horse on condition that if his horse beats theirs then he would take from the two some money or some thing but if his horse loses, when he would pay nothing. This is tahlil and Khalid is the muhallil. He is so called because that arrangement becomes lawful with his introduction of his horse.

If his horse overtakes theirs, then he will receive the agreed amount from both of them but, if theirs outstrip his, he will not be liable to pay anything to them. As for the two,

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[1] The first section is in Sharh us *Sunnah (Prophet's صلی اللہ علیہ وسلم practice)* # 2654. The next in Abu Dawud # 2579, Ibn Majah # 2876, Musnad Ahmad 2 505

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whichever horse beats the other, its owner will get the specified amount from the loser and it is allowed.
The ulama (Scholars) say, as this hadith makes clear, the muhallil must enter such a horse a sis as good, or nearly as good as the other two horses. However, if the muhallil's horse over takes the other two and he was aware of its superiority then not only is it disallowed but also his introducing his own horse in the contest will make no difference to the nature of the arrangement, for, it does not make it lawful. But, if he did not know that his horse would win or lose against the others two, then it is allowed and it will be tahlil.
In short, if the horse of the muhallil is such as may win or lose the contest then it will be lawful, if not, th ı it will be unlawful.

JALAB & JANAB ARE DISALLOWED

(٣٨٧٦) وَعَنْ عِمْرَانَ بْنِ حُصَيْنٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا جَلَبَ وَلَا جَنَبَ زَادَ يَحْيٰى فِيْ حَدِيْثِهٖ فِي الرِّهَانِ۔ رَوَاهُ اَبُوْدَاوٗدَ وَالنَّسَائِيُّ وَرَوَاهُ التِّرْمِذِيُّ مَعَ زِيَادَةٍ فِيْ بَابِ الْغَصَبِ۔

3876. Sayyiduna Imran ibn Husayn رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "There is no jalab and no janab."
(One of the narrators), yahya added in his narration: fi ar rihan "(In racing horses for a wager)."[1]

COMMENTARY: Jalab refers to the zakah (Annual due charity) collector positioning himself at a distance from habitation and requiring the people to bring to him their properties for valuation.
Janab is that the property-holders take away their animals far away from the city and require the zakah (Annual due charity) collector to go to them for valuation.
Both these alternatives are disallowed, and makruh (disapproved).
In horse racing jalab is that a contestant gets another to follow his horse (that he rides) to shout at it to make it pick up speed. And, janab is to keep another horse at his horses side to enable him to switch horses when his hourse gets tired.

CHARACTERISTIC OF THE BEST HORSE

(٣٨٧٧) وَعَنْ اَبِيْ قَتَادَةَ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ خَيْرُ الْخَيْلِ الْاَدْهَمُ الْاَ قْرَحُ الْاَرْثَمُ ثُمَّ الْاَقْرَحُ الْمُحَجَّلُ طُلْقُ الْيَمِيْنِ فَاِنْ لَمْ يَكُنْ اَدْهَمَ فَكُمَيْتٌ عَلٰى هٰذِهِ الشِّيَةِ۔ (رواه الترمذی والدارمی)

3877. Sayyiduna Abu Qatadah رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "the best kind of horse is the black horse with some whiteness on its forehead and whiteness near its nose. The next best is the horse with some whiteness on its forehead and white legs except its right foreleg (which may not be white). If he horse is not black then it must be a dark bay horse of those combinations (of white as mentioned).[2]

COMMENTARY: The dark bay horse has black tail and mane. The rest of its body is brown.

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[1] Tirmidhi # 1123, Abu Dawud # 2531, Nasai'i # 3591, Musnad Ahmad # 4-439.
[2] Tirmidhi # 1696, Ibn Majah # 2789, Darimi # 2478, Musnad Ahmad 5-300.

(٣٨٧٨) وَعَنْ اَبِي وَهْبٍ ِ الْجُشَمِيِّ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَلَيْكُمْ بِكُلِّ كُمَيْتٍ اَغَرَّ مُحَجَّلٍ اَوْ اَشْقَرَ اَغَرَّ مُحَجَّلٍ اَوْ اَدْهَمَ اَغَرَّ مُحَجَّلٍ۔ (رواه ابوداؤد والنسائی)

3878. Sayyiduna Abu Wahb Jushamiy رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "You must keep every dark bay horse with a white forehead and white legs. (If you keep a horse, let it be of this description). Next (to that, you may keep) sorrel horse wit h a white forehead and white legs, or black with white forehead and white legs."[1]

COMMENTARY: Sorrel is also reddish brown but the difference between it and bay horse is that the tail and mane of the latter are black coloured while of the sorrel are red.

(٣٨٧٩) وَعَنِ ابْنِ عَبَّاسٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يُمْنُ الْخَيْلِ فِي الشُّقْرِ۔ (رواه الترمذی وابوداؤد)

3879. Sayyiduna Ibn Abbas رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said." Blessings in horses are in the sorrel (reddish brown) horses."[2]

DO NOT CLIP OFF FORELOCKS, MANE & TAIL OF HORSES

(٣٨٨٠) وَعَنْ عُتْبَةَ بْنِ عَبْدِ السُّلَمِيِّ اَنَّهٗ سَمِعَ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ لَا تَقُصُّوْا نَوَاصِيَ الْخَيْلِ وَلَا مَعَارِفِهَا وَلَا اَذْنَابَهَا فَاِنَّ اَذْنَابَهَا مَذَابُّهَا وَمَعَارِفُهَا دِفَاءُهَا وَنَوَاصِيْهَا مَعْقُوْدٌ فِيْهَا الْخَيْرُ۔ (رواه ابوداؤد)

3880. Sayyiduna Utbah ibn Abd as Sulamiy رضی اللہ عنہ narrated that he heard Allah's Messenger صلی اللہ علیہ وسلم say, "Do not cut the forelocks, manes and tails of horses. Indeed, their tails are their whisks to drive of flies (and the like), their manes give them warmth and blessing is attached to their forelocks."[3]

CARE FOR HORSES

(٣٨٨١) وَعَنْ اَبِي وَهْبٍ ِ الْجُشَمِيِّ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِرْتَبِطُوا الْخَيْلَ وَامْسَحُوْا بِنَوَاصِيْهَا وَاِعْجَازِهَا اَوْ قَالَ اَكْفَالِهَا وَقَلِّدُوْهَا وَلَا تُقَلِّدُوْهَا الْاَوْتَارَ۔ (رواه ابوداؤد والنسائی)

3881. Sayyiduna Abu Wahb Jushmiy رضی اللہ عنہ said that Allah's Messenger صلی اللہ علیہ وسلم said, "Keep the horses tied, stroke their forelocks and their rumps." (using the worlds (اعجاز) - both are identical in meaning) and put somethings (like a belt) on their necks but do not put bowstrings (on their necks)."[4]

COMMENTARY: To keep horses tied is to keep them ready for *jihad (crusade)* alert and strong. They should be fed well and trained and taken care of.

They should be kept dust free and clean. In this way, horses become familiar with their owners and find comfort.

During the jahiliyah (ignorance period) bowstrings were tied to a horse's neck to preserve it from evil eye. The prophet صلی اللہ علیہ وسلم forbade it to show that a bowstring will not ward

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[1] Abu Dawud # 2543, Nasai'i # 3565, Musnad Ahmad 4-345.

[2] Tirmidhi # 1695, Abu Dawud # 2545, Musnad Ahmad 1-372.

[3] Abu Dawud # 2542, Musnad Ahmad 4-184.

[4] Abu Dawud # 2553, Nasai'i # 3565, Musnad Ahmad 4-145

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off what is destined. Besides, it could injure a horse.

THREE COMMANDS TO PROPHET'S FAMILY

(٣٨٨٢) وَعَنِ ابْنِ عَبَّاسٍ قَالَ كَانَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَبْدًا مَامُورًا مَا اخْتَصَّنَا دُوْنَ النَّاسِ بِشَيْءٍ إِلَّا بِثَلَاثٍ اَمَرَنَا اَنْ نُسْبِغَ الْوُضُوْءَ وَاَنْ لَا نَاْكُلَ الصَّدَقَةَ وَاَنْ لَا نُنْزِيَ حِمَارًا عَلٰى فَرَسٍ۔

(رواه الترمذی والنسائی)

3882. Sayyiduna Ibn Abbas رضی اللہ عنہ narrated, "Allah's Messenger صلی اللہ علیہ وسلم was bound by command. He never distinguished us over other people except in three things. He commanded us (people of his house) to make ablution thoroughly, not to make sadaqah (charity) (zakah (Annual due charity)) and not to pair an ass with a mare."[1]

COMMENTARY: The Prophet صلی اللہ علیہ وسلم acted on and abided by Allah's command. He did not give instructions on his own. He never preferred any one howsoever close to him over the others, not even the people of his house. But, he gave them three commands to observe. He disallowed pairing an ass with a mare because that makes a species extinct. Besides, a good things is replaced by a poorer breed. This is makruh (disapproved).

Here, a question arises that as far as sadaqah (charity) is concerned, we can understand why only the people of the house are disallowed and the rest of the ummah are permitted to receive it.

However, the other two commands are such that the entire ummah should abide by them:

(i) perfecting ablution, and

(ii) not pairing a male donkey with a mare.

Then, why say that only the people of the house are bound by these command.

The answer is that it is of the nature of *wajib (obligatory)* on the Prophet's صلی اللہ علیہ وسلم family. Or, this command is more emphatic in their case.

NOTHING MORE: This hadith rejects clearly the idea of the shi'a that the prophet صلی اللہ علیہ وسلم had bestowed certain extraordinary teachings to his people of the house (ahl ul bayt) as he had not taught the rest of the ummah.

Similarly, a previous hadith (# 3416) strongly rejects this idea of the Shi'a which says about Sayyiduna Ali: رضی اللہ عنہ

هَلْ عِنْدَكُمْ شَيْءٌ لَيْسَ فِي الْقُرْاٰنِ فَقَالَ وَالَّذِيْ فَلَقَ الْحَبَّةَ وَبَرَأَ النَّسَمَةَ مَاعِنْدَنَا إِلَّا مَافِي الْقُرْاٰنِ إِلَّا فَهْمًا يُعْطِي الرَّجُلُ فِي كِتَابِهٖ وَمَافِي الصَّحِيْفَةِ۔ الحديث۔

(Abu Juhayfah رضی اللہ عنہ asked him:) "Do you have anything in black and white that is not found in the Quran?" He said, "By Him who split the seed and created the soul, I am not aware of anything that is not in the quran. However, we are given an understanding of the Quran that Allah grants to any human being. Some things (rulings) are written down with us."(Bukhari # 111, Tirmidhi # 1417)

DISALLOWED TO PAIR ASS WITH MARE

(٣٨٨٣) وَعَنْ عَلِيٍّ قَالَ اُهْدِيَتْ لِرَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ بَغْلَةٌ فَرَكِبَهَا فَقَالَ عَلِيٌّ لَوْ حَمَلْنَا الْحُمِيْرَ عَلَى

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[1] Tirmidhi # 1701 (1707), Abu Dawud # 808, Nasai'i # 3581, Musnad Ahmad 1-225.

الْخَيْلِ فَكَانَتْ لَنَا مِثْلُ هٰذِهٖ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِنَّمَا يَفْعَلُ ذٰلِكَ الَّذِيْنَ لَا يَعْلَمُوْنَ۔

(رواه ابوداؤد والنسائی)

3883. Sayyiduna Ali رضی اللہ عنہ narrated that a female mule was presented to Allah's Messenger صلی اللہ علیہ وسلم. He rode it, so (Sayyiduna) Ali رضی اللہ عنہ submitted, "If we pair asses with mares, we can have animals of this breed." Allah's Messenger صلی اللہ علیہ وسلم said, "Only they do that who know not."[1]

COMMENTARY: People resort to this kind of cross-breeding because they do not realize horses are a superior breed. Or, the Prophet صلی اللہ علیہ وسلم meant that these people are unaware of the rules of Shari'ah (divine law).

This prohibition is by nature nahi karahat, meaning disliked.

SWORD MAY HAVE POMMEL OF SILVER

(۳۸۸٤) وَعَنْ اَنَسٍ قَالَ كَانَتْ قَبِيْعَةُ سَيْفِ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مِنْ فِضَّةٍ۔ (رواه الترمذی وابوداؤد والنسائی والدارمی)

3884. Sayyiduna Anas رضی اللہ عنہ said that the pommel of the sword of Allah's Messenger صلی اللہ علیہ وسلم was of silver.[2]

COMMENTARY: According to Sharh us *Sunnah (Prophet's صلی اللہ علیہ وسلم practice)*, it is allowed to decorate the sword and helmet with some silver. But, it is not allowed to use gold to adorn them.

(۳۸۸۵) وَعَنْ هُوْدِ بْنِ عَبْدِاللّٰهِ بْنِ سَعْدٍ عَنْ جَدِّهٖ مَزِيْدَةَ قَالَ دَخَلَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَوْمَ الْفَتْحِ وَعَلٰى سَيْفِهٖ ذَهَبٌ وَفِضَّةٌ۔ رَوَاهُ التِّرْمِذِيُّ وَقَالَ هٰذَا حَدِيْثٌ غَرِيْبٌ۔

3885. Sayyiduna Hud ibn Abdullah ibn Sa'd رحمہ اللہ reported that his grandfather, Mazidah رضی اللہ عنہ said that on the day of the conquest. Allah's Messenger صلی اللہ علیہ وسلم entered (Makkah) with his sword that had some gold and silver on it.[3]

COMMENTARY: It is not proper to declare on the basis of this hadith that gold may be used on weapons. The reason is that the line of transmission of this hadith is weak.

TO USE DEFENSIVE WEAPONS IN BATTLES IN ALLOWED SIDE BY SIDE WITH TRUST IN ALLAH

(۳۸۸٦) وَعَنِ السَّائِبِ بْنِ يَزِيْدَ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ كَانَ عَلَيْهِ يَوْمَ اُحُدٍ دِرْعَانِ فَدَظَاهَرَ بَيْنَهُمَا۔ (رواه ابوداؤد وابن ماجة)

3886. Sayyiduna Sa'ib ibn Yazid رضی اللہ عنہ said that during the battle of Uhud, the Prophet صلی اللہ علیہ وسلم wore two coats mail, one over the other.[4]

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[1] Abu Dawud # 2565, Nasai'i # 3580, Musnad Ahmad 1-100.

[2] Tirmidhi # 1697, Abu Dawud 2583, Nasai'i # 5374, Darimi # 2457, Musnad Ahmad.

[3] Tirmidhi # 1690 (1696).

[4] Abu Dawud # 2590, Ibn Majah # 2806, Musnad Ahmad 3-322.

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COMMENTARY: It is allowed to employ materials useful in battle, as many as possible both for warfare and defence.

ABOUT THE STANDARDS IN BATTLE

(٣٨٨٧) وَعَنِ ابْنِ عَبَّاسٍ قَالَ كَانَتْ رَايَةُ نَبِيِّ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ سَوْدَاءُ وَلِوَاؤُهُ اَبْيَضُ۔ (رواه الترمذی وابن ماجة)

3887. Sayyiduna Ibn Abbas رضی اللہ عنہ said that the rayah (standard) of the Prophet صلی اللہ علیہ وسلم was black and the liwa (banner or smaller flag) was white.[1]

(٣٨٨٨) وَعَنْ مُوْسَى بْنِ عُبَيْدَةَ مَوْلَى مَحَمَّدِ بْنِ الْقَاسِمِ قَالَ بَعَثَنِي مُحَمَّدُ بْنُ الْقَاسِمِ إِلَى الْبَرَاءِ بْنِ عَازِبٍ لِيَسْأَلَهُ عَنْ رَايَةِ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ كَانَتْ سَوْدَاءُ مُرَبَّعَةً مِنْ نَمِرَةٍ۔ (رواه احمد والترمذی وابوداؤد)

3888. Sayyiduna Musa ibn Ubaydah رحمہ اللہ the freedman of Sayyiduna Muhammad ibn Qasim رحمہ اللہ (a tabi'ee) said, "Muhammad ibn Qasim sent me to Bara ibn Aazib رضی اللہ عنہ to ask him about the standard of Allah's Messenger صلی اللہ علیہ وسلم. He said, 'It was black, square and striped.'"[2]

COMMENTARY: The standard was mostly black, so it looked fully black from after. But it was not full black.
It had white and black stripes and lines. It is said to be nimrah, meaning like leopard that has stripes on its hide.

(٣٨٨٩) وَعَنْ جَابِرٍ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ دَخَلَ مَكَّةَ وَلِوَاؤُهُ اَبْيَضُ۔ (رواه الترمذی وابوداؤد وابن ماجة)

3889. Sayyiduna Jabir رضی اللہ عنہ narrated that when the Prophet صلی اللہ علیہ وسلم entered Makkah, his banner was white.[3]

SECTION III اَلْفَصْلُ الثَّالِثُ

MERIT OF HORSES

(٣٨٩٠) عَنْ اَنَسٍ قَالَ لَمْ يَكُنْ شَيْءٌ اَحَبَّ إِلَى رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ بَعْدَ النِّسَاءِ مِنَ الْخَيْلِ۔ (رواه النسائی)

3890. Sayyiduna Anas رضی اللہ عنہ said that, after women, nothing was dearer to Allah's Messenger صلی اللہ علیہ وسلم then horses (for the purpose of *jihad (crusade)*).[4]

TRUE STRENGTH IN BATTLE IS FROM ALLAH

(٣٨٩١) وَعَنْ عَلِيٍّ قَالَ كَانَتْ بِيَدِ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَوْسٌ عَرَبِيَّةٌ فَرَاٰى رَجُلًا بِيَدِهٖ قَوْسٌ

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[1] Tirmidhi # 1681, (1687), Ibn Majah # 2818.
[2] Tirmidhi # 1680 (1686), Abu Dawud # 2591, Musnad Ahmad 4-297.
[3] Tirmidhi # 1679 (1685), Abu Dawud # 2592, Ibn Majah # 2817, Nasai'i # 2866.
[4] Nasai'i # 3564.

فَارِسِيَّةٌ قَالَ مَا هٰذِهِ اَلْقِهَا وَعَلَيْكُمْ بِهٰذِهِ وَاَشْبَاهِهَا وَرِمَاحِ الْقَنَا فَاِنَّهَا يُؤَيِّدُ اللّٰهُ لَكُمْ بِهَا فِي الدِّيْنِ وَيُمَكِّنُ لَكُمْ فِي الْبِلَادِ۔ (رواه ابن ماجة)

3891. Sayyiduna Ali رضی اللہ عنہ reported that Allah's Messenger صلی اللہ علیہ وسلم had in his hand a bow of Arab origin. He saw a man (one of the sahabah) رضی اللہ عنہ hold a bow of Persian origin in his hand, so he asked, "What is this? Throw it away. You people must keep this kind of bows of this type (and like it), and spears with shafts. Allah will help you in (raising high the) religion with these things and establish you (in enemy land)."[1]

COMMENTARY: Perhaps that sahabi may have imagined that the Persian bow was stronger and more durable, so more useful in battle. The Prophet صلی اللہ علیہ وسلم made it clear to him and all sahabah (Prophet's Companions) رضی اللہ عنہم that real strength lied in Allah's favour and triumph in battle depended on Allah's will. Religion is raised high neither with your strength nor with your weapons.

CHAPTER - III

CONDUCT DURING JOURNEY بَابُ اٰدَابِ السَّفَرِ

In this chapter, ahadith are narrated concerning manners during a journey. These will show how to behave during any kind of journey. It may pertain to an expedition for *jihad (crusade)*, travel for the pilgrimage, or for any other purpose.

There are many forms of conduct for travelling, beginning before the commencement of a journey, during the journey while travelling and while returning from the journey and after returning.

We have explained them. However, the best explanation is found in Ahya ul Uloom.

SECTION I اَلْفَصْلُ الْاَوَّلُ

THE PROPHET صلی اللہ علیہ وسلم PREFERRED TO SET OUT FOR *JIHAD (CRUSADE)* ON THURSDAY

(٣٨٩٢) عَنْ كَعْبِ بْنِ مَالِكٍ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ خَرَجَ يَوْمَ الْخَمِيْسِ فِيْ غَزْوَةِ تَبُوْكَ وَكَانَ يُحِبُّ اَنْ يَّخْرُجَ يَوْمَ الْخَمِيْسِ۔ (رواه البخاری)

3892. Sayyiduna Ka'b ibn Maalik رضی اللہ عنہ said that the Prophet صلی اللہ علیہ وسلم set out on Thursday for the Battle of Tabuk. He (always preferred to set out (on a journey for *jihad (crusade)*) on Thursday.[2]

COMMENTARY: Tabuk is a place between Madinah and Damascus, on the latitude of Khaybar and Al-Ula. It used to be in the territory of Shaam (Syria) but now is in the limits of al-HIjaz. It is 465 miles from Madinah and it took one month to travel to it from Madinah.

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[1] Ibn Majah # 2810.

[2] Bukhari # 2950, Abu Dawud # 2605, Darimi # 2426, Musnad Ahmad 3-455, 456.

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In 9AH, the Prophet صلى الله عليه وسلم brought his army here. This is called the Battle of Tabuk. This was the Prophet's صلى الله عليه وسلم last battle.

The version in Abu Dawud Reads: "It was seldom that the Prophet صلى الله عليه وسلم did not begin his journey for *jihad (crusade)* on Thursday."

There could be many reasons why the Prophet صلى الله عليه وسلم usually began his expedition on Thursday.

(i) The pious deeds of the creatures are taken to Allah on Thursday. So the Prophet صلى الله عليه وسلم wished that the deed of *jihad (crusade)* should be presented to Allah on the same day.

(ii) The Arabic for Thursday is (خميس) (Khamis). This word is also used for an army. So the Prophet صلى الله عليه وسلم drew a good omen from it to get victory.

Anyway it is a *sunnah (Prophet's صلى الله عليه وسلم practice)* to begin a journey of *jihad (crusade)* on Thursday. But, the real thing is to make istikharah and place reliance on Allah.

It most be clear, that our predecessors did not begin their journey after consulting the stars, on the basis of astrology. It is stated about Sayyiduna Ali رضى الله عنه that a man who was sitting near him advised him to embark on a journey on a certain day and he named another day when he should not set out. Sayyiduna Ali رضى الله عنه said to him, "If I had a sword by me now, I would have severed your neck. We were regularly in the company of Abu al-Qasim صلى الله عليه وسلم but we never heard any suggestion that we should set out on any particular day or abstain from travelling on any day."

This also establishes that the traditions attributed to Sayyiduna Ali رضى الله عنه, about the moon in the sign of Zodiac, the scorpion and the 'life' or stages of the moon, are baseless and unsound.

DISALLOWED TO TRAVEL ALONE

(٣٨٩٣) وَعَنْ عَبْدِاللّٰهِ بْنِ عُمَرَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَوْ يَعْلَمُ النَّاسُ مَافِي الْوَحْدَةِ مَا

اَعْلَمُ مَا سَارَ رَاكِبٌ بِلَيْلٍ وَحْدَهٗ۔ (رواه البخارى)

3893. Sayyiduna Abdullah ibn Umar رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "Were the people to know what I know about the risk of being alone (in a journey), no rider would venture to travel alone in the night."[1]

COMMENTARY: The risk of being alone involves religious as well as worldly losses. The lone traveller misses congregational *salah (prayer)* and has no sympathizer with him in times of difficulty. Compared to a traveller on foot, rider faces greater difficulty and this is more likely in the night

ANGEL KEEP AWAY IF A CARAVAN HAS A DOG AND A BELL

(٣٨٩٤) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا تَصْحَبُ الْمَلَائِكَةُ رُفْقَةً فِيْهَا كَلْبٌ وَلَا

جَرَسٌ۔ (رواه مسلم)

3894. Sayyiduna Abu Hurayrah رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said, "The angels do not accompany a group of travellers who have with them a dog

[1] Bukhari # 2998, Ibn Majah # 3768, Musnad Ahmad 2-23.

and a bell."[1]

COMMENTARY: These angels do not include those who record a person's deeds and those who give protection. So, the angels who keep away are the angels of mercy.
The dog, here, does not include the watch dog and the dog that guards the animals of the caravan. Both these kinds are allowed.
The bells that are put round the necks of animals are disallowed because they resemble the bells of gangs that summon worshippers. They are also among the garlands on necks of animals that are unlawful. The next two hadith confirm it.
According Sharh us Sunah, a girl came to Sayyidah Ayshah رضی اللہ عنہا wearing tinkling anklets. She asked her to remove from her that which keeps the angels away.
The Prophet صلی اللہ علیہ وسلم had said, "There is a devil with every bell."

DEVIL'S INSTRUMENTS

(٣٨٩٥) وَعَنْهُ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ الْجَرَسُ مَزَامِيْرُ الشَّيْطَانِ۔ (رواه مسلم)

3895. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "The bell is the devil's flute (or, musical instrument)."[2]

COMMENTARY: The Arabic word Mazamir is the plural or mizmar. It is a flute (double reed pipe, flageot, fife). Zamara is to sing while playing the flute, and so is tazmir. The plural form is used in the hadith because the sound of the instrument seems unending and it reverbs rates. The bell is called the devil's flute (mazamir) because it keeps man away from remembrance of Allah and worship of him.

CAMELS MUST NOT BE GARLANDED

(٣٨٩٦) وَعَنْ اَبِيْ بَشِيْرِ ِالْاَنْصَارِيِّ اَنَّهٗ كَانَ مَعَ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فِيْ بَعْضِ اَسْفَارِهٖ فَاَرْسَلَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ رَسُوْلًا لَا تُبْقَيَنَّ فِيْ رَقَبَةِ بَعِيْرٍ قِلَادَةٌ مِنْ وَتَرٍ اَوْ قِلَادَةٌ اِلَّا قُطِعَتْ۔ (متفق علیه)

3896. Sayyiduna Abu Bashir Ansari رضی اللہ عنہ narrated that he had accompanied Allah's Messenger صلی اللہ علیہ وسلم on one of his journeys. (During it,) Allah's Messenger صلی اللہ علیہ وسلم sent a messenger to proclaim (to the men), "Let no belt (or necklace or garland) of bowstring remain on a camel's neck." (Or,) "No being cut off."[3]

COMMENTARY: The sub narrator was unsure whether he spoke the first sentence or the second (without bowstring).
He instructed that the belt should be cut off so that people may not attach bells to it or may presume that it preserves the animals from misfortune. No such thing can avert Divine decree.

RIDING ANIMALS

(٣٨٩٧) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِذَا سَافَرْتُمْ فِي الْخِصْبِ فَاَعْطُوا الْاِبِلَ حَقَّهَا

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[1] Muslim # 103-2113, Tirmidhi # 1703, Abu Dawud # 2555, Darimi # 2676, Musnad Ahamd 2-262.
[2] Muslim # 104-1214, Abu Dawud # 2556, Musnad Ahmad 2-372.
[3] Bukhari # 3005, Muslim # 105-2115, Abu Dawud # 2552, Muwatta Maalik # 49. 13-39 Musnad Ahmad 5-216.

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مِنَ الْاَرْضِ وَاِذَا سَافَرْتُمْ فِي السَّنَةِ فَاَسْرِعُوا عَلَيْهَا السَّيْرَ وَاِذَا عَرَّسْتُمْ بِاللَّيْلِ فَاجْتَنِبُوا الطَّرِيْقَ فَاِنَّهَا طُرُقُ الدَّوَابِّ وَمَأْوَى الْهَوَامِّ بِاللَّيْلِ وَفِي رِوَايَةٍ اِذَا سَافَرْتُمْ فِي السَّنَةِ فَبَادِرُوْا بِهَا نِقْيَهَا۔ (رواه مسلم)

3897. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "When you travel in time of abundance, et the camels have their right from the ground (to graze for some time during your journey so that they regain their strength). But when you travel in time of drought, go quickly on them (without delaying on the way), When you stop-over in a night, keep to a distance from the roads for the beasts pass from there, and they are (also) frequented by reptiles and poisonous creatures."
Another version says: "when you travel in time of draught (on camels), travel quickly with them while they retain their marrow."[1]

CARE FOR A NEEDY FELLOW TRAVELLER

(۳۸۹۸) وَعَنْ اَبِيْ سَعِيْدِ نِ الْخُدْرِيِّ قَالَ بَيْنَمَا نَحْنُ فِيْ سَفَرٍ مَعَ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِذْ جَاءَهٗ رَجُلٌ عَلٰى رَاحِلَةٍ فَجَعَلَ يَضْرِبُ يَمِيْنًا وَشِمَالًا فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَنْ كَانَ مَعَهٗ فَضْلُ ظَهْرٍ فَلْيَعُدْ بِهٖ عَلٰى مَنْ لَا ظَهْرَ لَهٗ وَمَنْ كَانَ لَهٗ فَضْلُ زَادٍ فَلْيَعُدْ بِهٖ عَلٰى مَنْ لَا زَادَ لَهٗ قَالَ فَذَكَرَ مِنْ اَصْنَافِ الْمَالِ حَتّٰى رَاَيْنَا اَنَّهٗ لَا حَقَّ لِاَحَدٍ مِنَّا فِيْ فَضْلٍ۔ (رواه مسلم)

3898. Sayyiduna Abu Sa'eed Khudri رضی اللہ عنہ reported that while they were travelling (once) with Allah's Messenger صلی اللہ علیہ وسلم, a man appeared (suddenly) on a riding beast and kept turning to right and left. Allah's Messenger صلی اللہ علیہ وسلم said, "If anyone has an extra mount, he should give it to one who does not have any. If any one has surplus provision, he should give it to one who does not have any." He reported that he méntioned many kinds of things (by name) so that they realized that none of them had a right to anything (he possessed) more (than his need and he must give it away to one who had none of it).[2]

COMMENTARY: That man's camel was very tired and hungry and could not stand still at any one place. The man also looked around to find what he needed. The man had nothing for his beast and nothing to eat or feed it and no kind of bedding etc. So the Prophet صلی اللہ علیہ وسلم urged the people to share their surplus with the needy.

RETURN HOME PROMPTLY ON ACCOMPLISHING YOUR OBJECTIVE

(۳۸۹۹) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَلسَّفَرُ قِطْعَةٌ مِنَ الْعَذَابِ يَمْنَعُ اَحَدَكُمْ نَوْمَهٗ وَطَعَامَهٗ وَشَرَابَهٗ فَاِذَا قَضٰى نَهْمَتَهٗ مِنْ وَجْهِهٖ فَلْيُعَجِّلْ اِلٰى اَهْلِهٖ۔ (متفق عليه)

3899. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "Travel is a piece of punishment. It deprives one of you of his sleep, his food

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[1] Muslim # 178-1926, Tirmidhi # 2858, Abu Dawud # 2569, Musnad Ahmad 2-378.

[2] Muslim # 18. 1728, Abu Dawud # 1663, Musnad Ahmad 3-34.

and his drink. Hence, when he achieves his objective for which he had set out, he should head (home) promptly to his family."[1]

COMMENTARY: Travel is a kind of the chastisement of hell. It is as Allah says:

سَأُرْهِقُهُ صَعُوْدًا

{Soon will I visit him with a mount of calamities.} (74: 17)

A journey cannot be imagined without physical exertion and fatigue, and anxieties. This was more marked in the age when such means of conveyance as we know today were unheard of. We cannot imagine what travellers endured in those days.

The hadith mentions only two of the hardships. Actually, there are many difficulties that beset a traveller.

CHILDREN WELCOME THE TRAVELLER ON HIS RETURN

(٣٩٠٠) وَعَنْ عَبْدِاللّٰهِ بْنِ جَعْفَرٍ قَالَ كَانَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ إِذَا قَدِمَ مِنْ سَفَرٍ تُلُقِّيَ بِصِبْيَانِ اَهْلِ بَيْتِهٖ وَاِنَّهٗ قَدِمَ مِنْ سَفَرٍ فَسُبِقَ بِيْ اِلَيْهِ فَحَمَلَنِيْ بَيْنَ يَدَيْهِ ثُمَّ جِيْءَ بِاَحَدِ ابْنَيْ فَاطِمَةَ فَاَرْدَفَهٗ خَلْفَهٗ قَالَ فَاُدْخِلْنَا الْمَدِيْنَةَ ثَلَاثَةً عَلٰى دَابَّةٍ۔ (رواه مسلم)

3900. Sayyiduna Abdullah ibn Ja'far رضی اللہ عنہ narrated, "when Allah's Messenger صلی اللہ علیہ وسلم returned after a journey, he was received by the children of the people of his house. (They would take their children to him.) So, once when he returned after a journey (and was near Madinah), I was presented to him and he picked me up (to sit) in front of him. Then, one of the two sons of Fatimah رضی اللہ عنہا (Hasan رضی اللہ عنہ or Husayn رضی اللہ عنہ was brought and he put him behind him. So, we entered Madinah, the three of us on one beast."[2]

(٣٩٠١) وَعَنْ اَنَسٍ اَنَّهٗ اَقْبَلَ هُوَ وَاَبُوْطَلْحَةَ مَعَ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَمَعَ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ صَفِيَّةُ مُرْدِفَهَا عَلٰى رَاحِلَتِهٖ۔ (رواه البخاری)

3901. Sayyiduna Anas رضی اللہ عنہ narrated that he and Abu Talhah رضی اللہ عنہ came back with Allah's Messenger صلی اللہ علیہ وسلم (from Khaybar). With the Prophet صلی اللہ علیہ وسلم was (Sayyidah) Safiyah رضی اللہ عنہا. He had made her ride behind him on his beast.[3]

COMMENTARY: This was on their return from Khaybar. Sayyidah Safiyah رضی اللہ عنہا was part of the booty and she came to Sayyiduna Dihya Kalbi رضی اللہ عنہ as his share. The Prophet صلی اللہ علیہ وسلم acquired her from him and set her free to marry her. He brought her to Madinah as his co-rider.

THE HOUR AT WHICH THE PROPHET صلی اللہ علیہ وسلم RETURNED HOME

(٣٩٠٢) وَعَنْهُ قَالَ كَانَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا يَطْرُقُ اَهْلَهٗ لَيْلًا وَكَانَ لَا يَدْخُلُ اِلَّا غُدْوَةً

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[1] Bukhari # 3001, Muslim # 179-1927, Ibn Majah # 2882, Darimi # 2670, Muwatta Maalik # 39 (Istizan) Musnad Ahmad 2-496.

[2] Muslim # 66-2428, Abu Dawud # 2566, Ibn Majah # 3773, Musnad Ahmad 1-203.

[3] Bukhari # 6185, Muslim 329. 1

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اَوْ عَشِيَّةً۔ (متفق علیه)

3902. Sayyiduna Anas رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم did not return (home) to his family during the night. Rather, he came (home in the morning or in the evening.[1]

DO NOT RETURN FROM JOURNEY IN THE NIGHT

(۳۹۰۳) وَعَنْ جَابِرٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ إِذَا اَطَالَ اَحَدُكُمُ الْغَيْبَةَ فَلَا يَطْرُقُ اَهْلَهٗ لَيْلًا۔ (متفق علیه)

3903. Sayyiduna Jabir رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "When one of you has been away for long (from his home). Let him not return to his family (from the journey) during the night."[2]

COMMENTARY: According to a tradition in Sharh us *Sunnah (Prophet's* صلی اللہ علیہ وسلم *practice)*, Sayyiduna Ibn Abbas رضی اللہ عنہ said that two men returned home during the night after a journey. They found strangers with each of their wives.

(۳۹۰٤) وَعَنْ جَابِرٍ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ إِذَا دَخَلْتَ لَيْلًا فَلَا تَدْخُلْ عَلٰى اَهْلِكَ حَتّٰى تَسْتَحِدَّ الْمُغِيْبَةُ وَتَمْتَشِطَ الشَّعِثَةُ۔ (متفق علیه)

3904. Sayyiduna Jabir رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "If you return (to your city) during the night, do not enter (your home) to your family till the wife whose husband was absent cleans herself and she with dishevelled hair combs herself."[3]

COMMENTARY: It is not proper to return home (after a journey) during the night. It is better to enter in the evening before night in order not to disturb anyone sleeping. Or, ample time is given to them to prepare themselves for the returnee.

Nawawi رحمہ اللہ said that these things use for one who has been away for a long time but if a traveller returns home after a short absence then it does not mater. (see hadith # 3903). Similarly, if a man returns with an army or a caravan whose arrival has been announced for all to know, then he too may go home in the night. However, Mulla Ali Rari رحمہ اللہ said that even in this case, the man should knock at the door wait for a response before entering his home.

MASNUN TO INVITE PEOPLE ON RETURN

(۳۹۰۵) وَعَنْهُ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَمَّا قَدِمَ الْمَدِيْنَةَ نَحَرَ جَزُوْرًا اَوْ بَقَرَةً۔ (رواه البخاری ومسلم)

3905. Sayyiduna Jabir رضی اللہ عنہ narrated that when the Prophet صلی اللہ علیہ وسلم came to Madinah, he slaughtered a camel or a cow.[4]

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[1] Bukhari # 1800, Muslim # 180. 1928.

[2] Bukhari # 2544, Muslim # 183-715, Tirmidhi # 2712, Abu Dawud 2776, Darimi # 2631, Musnad Ahmad 3-302.

[3] Bukhari # 5246, Muslim # 182-715, Abu Dawud # 2778, Darimi # 2216, Musnad Ahmad 3-103.

[4] Bukhari # 3089, Musnad Ahmad 3-301.

COMMENTARY: It is masnun to invite people to a meal after one returns home from a journey.

PROPHET'S HOUR OF RETURN FROM JOURNEY

(٣٩٠٦) وَعَنْ كَعْبِ بْنِ مَالِكٍ قَالَ كَانَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا يَقْدَمُ مِنْ سَفَرٍ إِلَّا نَهَارًا فِي الضُّحٰى فَإِذَا قَدِمَ بَدَأَ بِالْمَسْجِدِ فَصَلّٰى فِيْهِ رَكْعَتَيْنِ ثُمَّ جَلَسَ فِيْهِ لِلنَّاسِ۔ (متفق علیه)

3906. Sayyiduna Ka'b in Maalik رضی اللہ عنہ said that the Prophet صلی اللہ علیہ وسلم never came back home from a journey but in day time at the hour of duha (forenoon). When he arrived he first went to the mosque and offered two raka'at *salah (prayer)* (tahiyatul masjid or chaast). He sat there afterwards to meet the people.[1]

COMMENTARY: This was what he did generally but we have seen previously that he came in the morning or evening.

GO TO MOSQUE FIRST OF ALL

(٣٩٠٧) وَعَنْ جَابِرٍ قَالَ كُنْتُ مَعَ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فِيْ سَفَرٍ فَلَمَّا قَدِمْنَا الْمَدِيْنَةَ قَالَ لِي ادْخُلِ الْمَسْجِدَ فَصَلِّ فِيْهِ رَكْعَتَيْنِ۔ (رواه البخاری)

3907. Sayyiduna Jabir رضی اللہ عنہ said, "I was with the Prophet صلی اللہ علیہ وسلم on a journey. When we returned to Madinah, he instructed me to enter the mosque and offer two raka'at *salah (prayer)* in it."[2]

COMMENTARY: It is established by the Prophet's صلی اللہ علیہ وسلم deeds as well as words that one returning from a journey must first go to the mosque. It shows respect to the symbols of Allah and one who goes to the mosque visits Allah's house and meets Him who protected him during his journey and brought him to his home safely.

SECTION II اَلْفَصْلُ الثَّانِيْ

BLESSING OF PROPHET'S صلی اللہ علیہ وسلم PRAYER FOR THE UMMAH IN THE MORNING

(٣٩٠٨) عَنْ صَخْرِ بْنِ وَدَاعَةَ الْغَامِدِيِّ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَللّٰهُمَّ بَارِكْ لِأُمَّتِي فِيْ بُكُوْرِهَا وَ كَانَ إِذَا بَعَثَ سَرِيَّةً أَوْ جَيْشًا بَعَثَهُمْ مِنْ أَوَّلِ النَّهَارِ وَكَانَ صَخْرٌ تَاجِرًا فَكَانَ يَبْعَثُ تِجَارَتَهُ أَوَّلَ النَّهَارِ فَأَثْرٰى وَكَثُرَ مَالُهُ۔ (رواه الترمذی و ابوداؤد والدارمی)

3908. Sayyiduna Sakhr ibn Wada'ah al Aamidiy narrated that Allah's Messenger صلی اللہ علیہ وسلم made this supplication: اَللّٰهُمَّ بَارِكْ لِأُمَّتِي فِيْ بُكُوْرِهَا
(O Allah, bless my people in their early morning.)
When he sent out a determent or an army, he sent them at the beginning of the day. Sakhr was a merchant. (He hoped to earn the blessing of this supplication, so) he always sent his merchandise as the day began. He become rich and had much wealth.[3]

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[1] Bukhari # 3088, Muslim # 74-716, Abu Dawud # 2781, Nasai'i # 731.

[2] Bukhari # 3087, Muslim # 72-715.

[3] Tirmidhi # 212, Abu Dawud # 260[illegible] Ahmad 3-416.

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TRAVELLING BY NIGHT

(٣٩٠٩) وَعَنْ اَنَسٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَلَيْكُمْ بِالدُّلْجَةِ فَاِنَّ الْاَرْضَ تُطْوٰى بِاللَّيْلِ۔ (رواه ابوداؤد)

3909. Sayyiduna Anas رضی اللہ عنہ said that Allah's Messenger صلی اللہ علیہ وسلم said, "You must travel by night because the earth is rolled up by night."[1]

COMMENTARY: The Prophet صلی اللہ علیہ وسلم meant that man must not content himself by travelling only during day time. Rather, he must travel somewhat during the night also because the earth is traversed easily by night. The distance seems to shrink and the journey seems shorter.

It does not mean that a traveller must not travel by day. Rather, other ahadith call upon him to begin his journey in the morning, and travel at end of the day. Some distance he may cover during the night, too.

MINIMUM OF THREE MUST TRAVEL TOGETHER

(٣٩١٠) وَعَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ اَبِيْهِ عَنْ جَدِّهٖ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ الرَّاكِبُ شَيْطَانٌ وَالرَّاكِبَانِ شَيْطَانَانِ وَالثَّلَاثَةُ رَكْبٌ۔ رَوَاهُ مَالِكٌ وَالتِّرْمِذِيُّ وَاَبُوْدَاوٗدَ وَالنَّسَائِيُّ۔

3910. Sayyiduna Amr ibn Shu'ayb رحمہ اللہ narrated from his father from his grandfather that Allah's Messenger صلی اللہ علیہ وسلم said, "A lone rider is a devil. Two riders are two devils, but three are (a group of) riders."[2]

COMMENTARY: Three riders are safe from the deceit of the devil. In other words, it is not allowed to less than three riders to undertake a journey Three will be able to offer congregational *salah (prayer)*. If one of the three has to go somewhere, two will be together and if he is delayed, one of the two will try to find him and the other will look after their luggage.

MAKE ONE AMIR OUT OF TWO OR MORE CO-TRAVELLERS

(٣٩١١) وَعَنْ اَبِيْ سَعِيْدِ نِ الْخُدْرِيِّ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اِذَا كَانَ ثَلَاثَةٌ فِيْ سَفَرٍ فَلْيُؤَمِّرُوْا اَحَدَهُمْ۔ (رواه ابوداؤد)

3911. Sayyiduna Abu Sa'eed Khudri رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "If (for example) there are three people on a journey, they should appoint one of them as their amir (leader)."[3]

COMMENTARY: This command applies to a group, the minimum of which is three. But, it also applies to two people travelling together.

The amir will be responsible to settle disputes during the journey. He should be the wel

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[1] Abu Dawud # 2571, Musnad Ahmad 3-305.

[2] Abu Dawud # 2607, Tirmidhi # 1674, Muwatta Maalik # 35 (Isti'zah), Musnad Ahmad 2-186.

[3] Abu Dawud # 2608.

wisher or all members of the group and their sympathizer, but he should not take into his head that he is a leader and powerful. Rather, he should serve the others as their servant. It is as said:

سَيِّدُ الْقَوْمِ خَادِمُهُمْ

(The chief of a people is their servant).

THE BEST CO-TRAVELLERS

(٣٩١٢) وَعَنِ ابْنِ عَبَّاسٍ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ خَيْرُ الصَّحَابَةِ اَرْبَعَةٌ وَخَيْرُ السَّرَايَا اَرْبَعُمِائَةٍ وَخَيْرُ الْجُيُوْشِ اَرْبَعَةُ اٰلَافٍ وَلَنْ يُغْلَبَ اثْنَا عَشَرَ اَلْفًا مِنْ قِلَّةٍ۔ رَوَاهُ التِّرْمِذِيُّ وَابُوْدَاوٗدَ وَالدَّارِمِيُّ وَقَالَ التِّرْمِذِيُّ هٰذَا حَدِيْثٌ غَرِيْبٌ۔

3912. Sayyiduna Ibn Abbas رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "The best number of companions (in a journey) are (at least) four. The best number in a small army is four hundred (warriors). The best number in a large army is four thousand (warriors), and twelve thousand will not be trounced because of smallness of number."[1]

COMMENTARY: The four companions in a journey are preferred because if, say. One of them is near death, he may give final instructions to one and the other two will be witnesses. But, the ulama (Scholars) say that five are better than four, and, in fact, the more the better. Then hadith mentions four to give the minimum number.
An army of twelve thousand will not be defeated because of number, but say suffer defeat for some other reason, like arrogance.

THE PROPHET'S CONDUCT WITH HIS TRAVELLERS

(٣٩١٣) وَعَنْ جَابِرٍ قَالَ كَانَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَتَخَلَّفُ فِي الْمَسِيْرِ فَيُزْجِي الضَّعِيْفَ وَيُرْدِفُ وَيَدْعُوْ لَهُمْ۔ (رواه ابوداؤد)

3913. Sayyiduna Jabir رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم kept to the near when traveling (out of humbleness and desire to help the weak). He encouraged the weak (by urging on their beasts). And, (if any weak one was without a riding beast,) he took up such a one behind him. And, he made supplication for all of them.[2]

ON ARRIVAL AT DESTINATION ALL TRAVELLERS MUST STOP SOMEWHERE

(٣٩١٤) وَعَنْ اَبِيْ ثَعْلَبَةَ الْخُشَنِيِّ قَالَ كَانَ النَّاسُ اِذَا نَزَلُوْا مَنْزِلًا تَفَرَّقُوْا فِي الشِّعَابِ وَالْاَوْدِيَةِ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِنَّ تَفَرُّقَكُمْ فِيْ هٰذِهِ الشِّعَابِ وَالْاَوْدِيَةِ اِنَّمَا ذٰلِكُمْ مِنَ الشَّيْطَانِ فَلَمْ يَنْزِلُوْا بَعْدَ ذٰلِكَ مَنْزِلًا اِلَّا انْضَمَّ بَعْضُهُمْ اِلٰى بَعْضٍ حَتّٰى يُقَالَ لَوْ بُسِطَ عَلَيْهِمْ ثَوْبٌ لَعَمَّهُمْ۔ (رواه ابوداؤد)

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[1] Abu Dawud # 2611, Tirmidhi # 1555, Darimi # 2438.

[2] Abu Dawud # 2639.

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3914. Sayyiduna Abu Tha'labah Khushaniy رضی اللہ عنہ said that when the people (meaning the sahabah) رضی اللہ عنہ stopped at a manzil (a stage of journey), they scattered in a passes and valleys (each away from the other). Allah's Messenger صلی اللہ علیہ وسلم said, "Your breaking up (in this way) in the passes and valleys is only (a suggestion) from the devil (to keep you apart)." After that, they stayed in close proximity to each other whenever they broke journey so much so that it was said, "were a piece of cloth to be spread over them it would cover all of them![1]

AN EXAMPLE OF THE PROPHET صلی اللہ علیہ وسلم MODESTY

(٣٩١٥) وَعَنْ عَبْدِاللّٰهِ بْنِ مَسْعُوْدٍ قَالَ كُنَّا يَوْمَ بَدْرٍ كُلُّ ثَلَاثَةٍ عَلٰى بَعِيْرٍ فَكَانَ اَبُولُبَابَةَ وَعَلِيُّ بْنُ اَبِي طَالِبٍ زَمِيْلَيْ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ فَكَانَتْ اِذَا جَاءَتْ عُقْبَةُ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ نَحْنُ نَمْشِيْ عَنْكَ قَالَ مَا اَنْتُمَا بِاَقْوٰى مِنِّيْ وَمَا اَنَا بِاَغْنٰى عَنِ الْاَجْرِ مِنْكُمَا۔ (رواه فی شرح السنة)

3915. Sayyiduna Abdullah ibn Mas'ud رضی اللہ عنہ narrated that at the battle of Badr, they were three men to a camel. (they took turns to ride it) (Sayyiduna) Abu Lubabah رضی اللہ عنہ and (Sayyiduna) Ali رضی اللہ عنہ were co-travellers with Allah's Messenger صلی اللہ علیہ وسلم. He added that when it was the turn of Allah's Messenger صلی اللہ علیہ وسلم to alight, they would submit, 'we shall walk instead of you." He would say "Neither are you stronger than I am (in this world that I should not walk) not am I less in need of the reward (of the hereafter) then you are."[2]

COMMENTARY: This is an example of the Prophet's صلی اللہ علیہ وسلم modesty and humbleness. He was very mindful of the comfort of his companions. He was innocent as Allah's Messenger and Prophet, yet he expressed need of Allah's reward as His servant.

BACKS OF ANIMALS ARE NOT PULPITS

(٣٩١٦) وَعَنْ اَبِيْ هُرَيْرَةَ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لَا تَتَّخِذُوْا ظُهُوْرَ دَوَابِّكُمْ مَنَابِرَ فَاِنَّ اللّٰهَ تَعَالٰى اِنَّمَا سَخَّرَهَا لَكُمْ لِتُبَلِّغَكُمْ اِلٰى بَلَدٍ لَمْ تَكُوْنُوْا بَالِغِيْهِ اِلَّا بِشِقِّ الْاَنْفُسِ وَجَعَلَ لَكُمُ الْاَرْضَ فَعَلَيْهَا فَاقْضُوْا حَاجَاتِكُمْ۔ (رواه ابوداؤد)

3916. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "Do not take the backs of your beast as pulpits, for, Allah, the exalted, has subjugated them to you only to convey you to a town (or place) where you could not have reached without hardship. He has created the earth for you. So on it get your needs fulfilled."[3]

COMMENTARY: Ride the animals but do not stand on their backs to talk. This command applies when the animal is mean only for riding and no other purpose. If it is kept for other uses, then there is no harm in it. The Prophet صلی اللہ علیہ وسلم had delivered the sermon at the

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[1] Abu Dawud # 2618, Musnad Ahmad 4-193.

[2] Baghawi Sharh us *Sunnah (Prophet's* صلی اللہ علیہ وسلم *practice)* # 2686, Musnad Ahmad 1-422.

[3] Abu Dawud # 2567.

Farewell pilgrimage while he was on his she camel's back, at Arafah.
Allah has created the earth for people to dispense their work on it and to move about thereon.

CARE FOR ANIMALS

(٣٩١٧) وَعَنْ اَنَسٍ قَالَ كُنَّا اِذَا نَزَلْنَا مَنْزِلًا لَا نُسَبِّحُ حَتّٰى نُحَلَّ الرِّحَالَ۔ (رواه ابوداؤد)

3917. Sayyiduna Anas رضی اللہ عنہ said that whenever they alighted at a manzil (during the journey or at the end of it), they did not offer (optional) *salah (prayer)* till they had unloaded the animals.[1]

COMMENTARY: The Arabic words (سبحه) (sabbahah) and (تسبيح) (tasbih) are often applied to supererogatory *salah (prayer)*. Some authorities maintain that here the word (سبح) refers to the *salah (prayer)* of duha (or chaast) for, normally they halted at this hour. Anyway, the sahabah (Prophet's Companions) رضی اللہ عنہم were more careful of the animals though they were very particular about offering *salah (prayer)*.

RIGHTS OF PEOPLE

(٣٩١٨) وَعَنْ بُرَيْدَةَ قَالَ بَيْنَمَا رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَمْشِي اِذْ جَاءَهٗ رَجُلٌ مَعَهٗ حِمَارٌ فَقَالَ يَا رَسُوْلَ اللّٰهِ ارْكَبْ وَتَأَخَّرَ الرَّجُلُ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا اَنْتَ اَحَقُّ بِصَدْرِ دَابَّتِكَ اِلَّا اَنْ تَجْعَلَهٗ لِي قَالَ جَعَلْتُهٗ لَكَ فَرَكِبَ۔ (رواه الترمذی وابوداؤد)

3918. Sayyiduna Buraydah رضی اللہ عنہ narrated that while Allah's Messenger صلی اللہ علیہ وسلم was walking, a man came on his donkey and submitted, "O Messenger of Allah, come, ride!" At the same time he moved behind (to make space in the font for him). But, he said, "No! You have a greater right over the main seat (in front) of your animal unless you surrender that right to me." He submitted, "I have given the right to it to you."[2]

COMMENTARY: This again proves that the Prophet صلی اللہ علیہ وسلم cared for rights of other people and did not mind if he had to sit behind.

DEVIL'S CAMEL & DEVIL'S HOUSE

(٣٩١٩) وَعَنْ سَعِيْدِ بْنِ اَبِيْ هِنْدٍ عَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ تَكُوْنُ اِبِلٌ لِلشَّيَاطِيْنِ وَبُيُوْتٌ لِلشَّيَاطِيْنِ فَاَمَّا اِبِلُ الشَّيَاطِيْنِ فَقَدْ رَاَيْتُهَا يَخْرُجُ اَحَدُكُمْ بِنَجِيْبَاتٍ مَعَهٗ قَدْ اَسْمَنَهَا فَلَا يَعْلُوْا بَعِيْرًا مِنْهَا وَيَمُرُّ بِاَخِيْهِ قَدِ انْقُطِعَ بِهٖ فَلَا يَحْمِلُهٗ وَاَمَّا بُيُوْتُ الشَّيَاطِيْنِ فَلَمْ اَرَهَا كَانَ سَعِيْدٌ يَقُوْلُ لَا اُرَاهَا اِلَّا هٰذِهِ الْاَقْفَاصَ الَّتِي يَسْتُرُ النَّاسُ بِالدِّيْبَاجِ۔ (رواه ابوداؤد)

3919. Sayyiduna Sa'eed ibn Abu Hind رحمہ اللہ (atabi'ee) reported that (Sayyiduna)

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[1] Abu Dawud # 2551.

[2] Tirmidhi # 2773 (2782, Abu Dawud

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Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "som camels become camels of the devils and some houses become possessions of th devils. As for the camels of the devils, indeed, I have seen them. One of you goe out with excellent she-camels that he has fattered. But, he does not ride any of ther and does not offer to carry a tired (Muslim) brother he meet (on the way and wh has no means of conveyance). As for the houses of the devils, I have not seen them. The narrator Sa'eed رحمہ اللہ said, "I suppose they are the cages that the people concea with brocade."[1]

COMMENTARY: The camels are meant to carry people and their belongings and to h people who have no conveyance of their own. But, if anyone keeps them as prize prope never to be used, then he obeys the devil and pleases him. So, the camel is said to belon the devil. This is evidence that it is disallowed to maintain a horse with the some purp of showing off it becomes the devil's horse.

Some people hold that the portion of the hadith from its words; "As for the camels of devil.." (to the end) are words of Abu Hurayrah رضی اللہ عنہ and the Prophet's صلی اللہ علیہ وسلم hadith ends before that at his words. "..possessions of the devil." But, Mulla Ali Qari رحمہ اللہ and some others disagree and say that the Prophet's صلی اللہ علیہ وسلم words end at 'I have seen them,' (The full hadith.)

The houses of the devils are the houses, that are decorated with brocade or their walls. are adorned with brocade. The houses themselves are not condemned but it is disallow to adorn them with brocade. It is extravagance as well as arrogance.

DO NOT OCCUPY MUCH SPACE WHEN ENCAMPING.

٣٩٢٠) وَعَنْ سَهْلِ بْنِ مُعَاذٍ عَنْ اَبِيْهِ قَالَ غَزَوْنَا مَعَ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَضَيَّقَ النَّاسُ الْمَنَازِلَ وَقَطَعُوا

لطَّرِيْقَ فَبَعَثَ نَبِيُّ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مُنَادِيًا يُنَادِيْ فِي النَّاسِ اِنَّ مَنْ ضَيَّقَ مَنْزِلًا اَوْقَطَعَ طَرِيْقًا

لَا جِهَادَ لَهٗ۔ (رواه ابوداؤد)

3920. Sayyiduna Sahl ibn Mu'adh رحمہ اللہ reported from his father that they had gone on an expedition with the Prophet صلی اللہ علیہ وسلم. The people occupied much space (when they encamped) so that they encroached on the road. So, Allah's Messenger صلی اللہ علیہ وسلم sent a crier to announce to the people, 'whoso makes the place crampec or encroaches on the road (to cause difficulty to others) will not earn reward for *jihad (crusade)*."[2]

IDEAL TIME TO RETURN FROM JOURNEY

٣٩٢١) وَعَنْ جَابِرٍ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اِنَّ اَحْسَنَ مَادَخَلَ الرَّجُلُ اَهْلَهٗ اِذَا قَدِمَ مِنْ سَفَرٍ

قَوْلُ اللَّيْلِ۔ (رواه ابوداؤد)

3921. Sayyiduna Jabir رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said. "Surely, the

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[1] Abu Dawud # 2568.

[2] Abu Dawud # 2629, Musnad Ahmad 3-441.

ideal time for a man to go to his family when he comes back from a journey is just as the night approaches."[1]

COMMENTARY: This applies when the journey is short. If it is a long journey, then the previous command applies, not to return home during the night unless, as Nawawi رحمه الله said, the family has been previously informed of their man's expected arrival.
Some people say that to go to his family means to go to his wife and have sexual intercourse with her in the early part of the night and then go to sleep and rest, having thereby given the right of his wife too.

SECTION III اَلْفَصْلُ الثَّالِثُ

MANNER OF PROPHET'S صلى الله عليه وسلم REST IN THE NIGHT DURING A JOURNEY

(٣٩٢٢) عَنْ اَبِيْ قَتَادَةَ قَالَ كَانَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِذَا كَانَ فِيْ سَفَرٍ فَعَرَّسَ بِلَيْلٍ اِضْطَجَعَ عَلٰى يَمِيْنِهٖ وَاِذَا عَرَّسَ قُبَيْلَ الصُّبْحِ نَصَبَ ذِرَاعَهٗ وَوَضَعَ رَأْسَهٗ عَلٰى كَفِّهٖ۔ (رواه مسلم)

3922. Sayyiduna Abu Qatadah رضى الله عنه said that when Allah's Messenger صلى الله عليه وسلم encamped (anywhere in (the last portion of) the night (before dawn), he say down on his right side. And when he encamped a little before dawn, he raised his (right) fore arm and put his head on its palm.[2]

MERIT OF BEGINNING JOURNEY IN THE MORNING

(٣٩٢٣) وَعَنِ ابْنِ عَبَّاسٍ قَالَ بَعَثَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَبْدَاللّٰهِ بْنَ رَوَاحَةَ فِيْ سَرِيَّةٍ فَوَافَقَ ذٰلِكَ يَوْمَ الْجُمُعَةِ فَغَدَا اَصْحَابُهٗ وَقَالَ اَتَخَلَّفُ وَاُصَلِّيْ مَعَ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ ثُمَّ اَلْحَقُهُمْ فَلَمَّا صَلّٰى مَعَ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ رَاٰهُ فَقَالَ مَا مَنَعَكَ اَنْ تَغْدُوَ مَعَ اَصْحَابِكَ فَقَالَ اَرَدْتُ اَنْ اُصَلِّيَ مَعَكَ ثُمَّ اَلْحَقُهُمْ فَقَالَ لَوْ اَنْفَقْتَ مَا فِي الْاَرْضِ جَمِيْعًا مَا اَدْرَكْتَ فَضْلَ غَدْوَتِهِمْ۔ (رواه الترمذى)

3923. Sayyiduna Ibn Abbas رضى الله عنه narrated that the prophet صلى الله عليه وسلم sent (Sayyiduna) Abdullah Ibn Rawahah رضى الله عنه with a Sariyah (small army), that coincided with a Friday. His companions departed in the morning but he stayed behind (saying to himself or confiding with his companion that he had decided) to offer *salah (prayer)* with Allah's Messenger صلى الله عليه وسلم and then join them .when he had offered *salah (prayer)* with Allah' Messenger صلى الله عليه وسلم, he saw him and asked, "What prevented you from going out in the morning with your companions? "He submitted, "I intended to offer *salah (prayer)* with you and then join them. "He said, "were you too spend all that is on earth, you would not be able to earn as much reward as they earned by going out in the morning. "[3]

FORBIDDEN TO USE LEOPARD SKIN

(٣٩٢٤) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا تَصْحَبُ الْمَلَائِكَةُ رُفْقَةً فِيْهَا جِلْدُ

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[1] Abu Dawud # 2777.

[2] Muslim # 313-683, Musnad Ahmad 5-309.

[3] Tirmidhi # 927, Muraad Ahmed 1-224

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أَجْرَةٍ۔ (رواه ابوداؤد)

3924. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "The angles (of mercy) do not accompany caravan that has a leopard skin in it."[1] (it may be used to sit on ,or for any other purpose, but its use has a smack of arrogance.)

AMIR SHOULD ACT AS SERVANT OF FELLOW-TRAVELLERS

(٣٩٢٥) وَعَنْ سَهْلِ بْنِ سَعْدٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ سَيِّدُ الْقَوْمِ فِي السَّفَرِ خَادِمُهُمْ فَمَنْ سَبَقَهُمْ بِخِدْمَةٍ لَمْ يَسْبِقُوْهُ بِعَمَلٍ إِلَّا الشَّهَادَةَ۔ رَوَاهُ الْبَيْهَقِيُّ فِيْ شُعَبِ الْإِيْمَانِ۔

3925. Sayyiduna sahl ibn Saad رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "The chief of the people on a journey is their servant. So he who overtakes them in serving them, no one else can overtake him through any deed, except through martyrdom."[2]

COMMENTARY: The Amir and the ruler must serve the people. He must keep an eye on what is to their advantage. He must make allowances for their apparent and unseen conditions. Some people says that who ever is occupied in service to his people or associates, is truly their chief because of the huge reward he earns though outwardly. He might be the meanest of the lot. The reason is that nothing is more excellent than service to the people, except martyrdom in Allah's path.

CHAPTER - IV

WRITING TO THE INFIDELS & INVITING THEM TO ISLAM

بَابُ الْكِتَابِ إِلَى الْكُفَّارِ وَدُعَائِهِمْ إِلَى الْإِسْلَامِ

Allah has placed the responsibility to propagate Islam and his commands on those people who believe in Him as the true master of this universe and its sovereign, and obey his revealed book. They are charged with bringing back the misled from the wrong path and ways if destruction to the obedience or the one God and to its straight path. They should thus raise aloft the standard of Allah' religion and His name.

Then, if the infidels do not heed the preaching and continue to be rebellious and obstinate and make bold to try to pull down the standard of this religion and obstruct the implementation of the command of Allah, arms should be taken up against them because they mean to spread mischief in the land. They should be fought till they give up obstinacy and rebellion and submit to the supreme rule of Allah, the one. Or, they should become compelled to pay the jizyah to the Islamic State and agree to live as its faithful citizens.

(Jizyah is a head tax imposed by Islam on non-muslims when they are under Muslim rule.)

IT IS *WAJIB (OBLIGATORY)* TO FIRST INVITE THE DISBELIEVER TO ISLAM BEFORE DECLARING WAR ON THEM

Islam has made it binding that war should not be declared against its opponents till they

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[1] Abu Dawud # 4130

[2] Bayhagi in Shuab-ul-Eeman # 8407

are invited to Islam. It is *wajib (obligatory)* to do so and unlawful to fight them before that, provided they have not been previously invited to Islam. But, if they had been invited already then it is *mustahab (desirable)* to repeat the invitation.

There are many ways to invite people to Islam. Writing letter is one of the ways. Generally, heads of state, Kings and chiefs are invited to Islam by writing letters to them. The Prophet صلی اللہ علیہ وسلم wrote to many non-muslim Kings and head of state, calling them to give up the wrong path of destruction and follow the straight path of Islam. Among those to whom he wrote these letters were the Emperor of Rome (Qaysar), the chosroes (Kisra of Persia) and the Negus (Najasi) of Ethiopia.

It is reported that when the Prophet صلی اللہ علیہ وسلم came to Madina after the peace treaty of Hudabiyah, and decided to write these letters, the Sahabah (Prophet's Companions) رضی اللہ عنہم submitted to him that the Kings of Rome and Iran do not regard any epistle as authentic unless a seal is affixed to it. So he instructed that a ring of silver be prepared and that it should have an inscription in three lines (bearing the words Muhammad Messenger of Allah in this order):

(اللہ) Allah
(رسول) Messenger (of)
(محمد) Muhammad.

This is how he sent letters to the kings and put the seal of his name on them.

Tabarani has reported the saying of the Prophet صلی اللہ علیہ وسلم:

بَابُ اَلْكِتَابِ إِلَى الْكُفَّارِ وَدُعَائِهِمْ إِلَى الْإِسْلَامِ۔

(The seal is the greatness of the letter).

SECTION I اَلْفَصْلُ الْاَوَّلُ

PROPHET'S صلی اللہ علیہ وسلم LETTER TO QAYSAR OF ROME

(٣٩٢٦) وَعَنِ ابْنِ عَبَّاسٍ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ كَتَبَ إِلَى قَيْصَرَ يَدْعُوْهُ إِلَى الْإِسْلَامِ وَبَعَثَ بِكِتَابِهِ إِلَيْهِ دِحْيَةَ الْكَلْبِيَّ وَاَمَرَهُ اَنْ يَدْفَعَهُ إِلَى عَظِيْمِ بُصْرٰى لِيَدْفَعَهُ إِلَى قَيْصَرَ فَإِذَا فِيْهِ بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِيْمِ مِنْ مُحَمَّدٍ عَبْدِاللّٰهِ وَرَسُوْلِهِ إِلَى هِرَقْلَ عَظِيْمِ الرُّوْمِ سَلَامٌ عَلٰى مَنِ اتَّبَعَ الْهُدٰى اَمَّا بَعْدُ فَإِنِّي اَدْعُوْكَ بِدَاعِيَةِ الْإِسْلَامِ اَسْلِمْ تَسْلَمْ وَاَسْلِمْ يُؤْتِكَ اللّٰهُ اَجْرَكَ مَرَّتَيْنِ وَإِنْ تَوَلَّيْتَ فَعَلَيْكَ إِثْمُ الْاَرِيْسِيِّيْنَ وَيَا اَهْلَ الْكِتَابِ تَعَالَوْا إِلٰى كَلِمَةٍ سَوَاءٍ بَيْنَنَا وَ بَيْنَكُمْ اَنْ لَانَعْبُدَ إِلَّا اللّٰهَ وَلَانُشْرِكَ بِهٖ شَيْئًا وَلَا يَتَّخِذَ بَعْضُنَا بَعْضًا اَرْبَابًا مِّنْ دُوْنِ اللّٰهِ فَإِنْ تَوَلَّوْا فَقُوْلُوا اشْهَدُوْا بِاَنَّا مُسْلِمُوْنَ۔ مُتَّفَقٌ عَلَيْهِ وَفِيْ رِوَايَةٍ لِمُسْلِمٍ قَالَ مِنْ مُحَمَّدٍ رَسُوْلِ اللّٰهِ وَقَالَ إِثْمُ الْيَرِيْسِيِّيْنَ وَقَالَ بِدِعَايَةِ الْإِسْلَامِ۔ (بخاری ومسلم)

3926. Sayyiduna Ibn Abbas رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم wrote to Qaysar (The Emperor of Rome) inviting him to Islam. He sent (Sayyiduna) Dihyah رضی اللہ عنہ kalbi with his letter to him instructing him to hand it over to the governor of Busra to farward it to Qaysar (Heraclius)

It read: بسم اللہ الرحمن الرحیم

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"In the name of Allah, the compassionate, the merciful."
From Muhammad صلى الله عليه وسلم, servant of Allah and his Messenger, to Heraclius, the chief of Rome (Byzantines).
Peace be on those who seek guidance! To proceed! I invite you to Islam (to give testimony).Accept Islam and you will be safe. Accept Islam. Allah will give you your reward twice over (for believing in your Prophet عليه السلام and for believing in me).But, if you veer (and do not accept Islam)you will bear the sin of your subjects(and your own, too).
{Say: O people of the book ! come now to aword common between us and you that we shall worship none but Allah and that we shall not associates anything with Him, and that none of us shall take others as Lord besides Allah.' If they turn back, then say, 'Bear witness that we are Muslims.'}" (3: 64)
Another version in muslim has 'Muhammad Messenger of Allah' instead of 'Muhammad servant of Allah and His Messenger', and 'sin of al-yarisiyin' instead of 'sin of alarsiyin', and 'bi-di ayatil Islam' instead of 'bidaiyatil Islam.'[1]

COMMENTARY: When the Prophet صلى الله عليه وسلم was sent, the Roman Empire was a sup power in the world. Its capital was Constantinople. Apart from different countries Europe, Syria, Palestine and Egypt were under its dominion.
Qaysar was the title of their Emperor just as the King of Persia (Iran) was Kisra (Chosroe of Ethiopia Najashi (Negus), of Turkey Khaqan, of Qubt firawn (Pharaol),of Egy Aziz,and of Himyar Taba. (تبع),
The Emperor of Rome when the Prophet صلى الله عليه وسلم was commissioned and to whom had written a letter was Heracluis (Hiraq).He was not only a great , glorious King but also was a scholar of Torah and the Injil.
Dihya Kalbi رضى الله عنه, companion of the Prophet صلى الله عليه وسلم,had the great distinction th jibril عليه السلام often came in his form.
Busra (بصرى) was a city in Shaam (Syria). It was a flourishing trade centre. Of the two tra journeys undertaken by the Prophet صلى الله عليه وسلم in his early years, one was made to this city
The letter was carried by Sayyiduna Dihyah Kalbi رضى الله عنه,as an envoy, to the Qaysar in ea 6AH OR 7 AH. Traditions and historical accounts confirm that the Qaysar was high impressed by the letter and did bear witness to the Prophethood of Prophet Muhammad صلى الله عليه وسلم. His heart was brightened with the light of Islam, but fear of his courtiers and l subjects and of losing the throne and the crown put off that light and he did not embra Islam. In fact, he did say to Dihyah رضى الله عنه, "Muhammad is truly the one whom we await.
Ibn Maalik رحمه الله said that this hadith gives an example of how a letter should be written. should begin with Bismillah followed by the writer's name.
Mulla Ali Qari رحمه الله said that the veise of the Quran (27: 30):

إِنَّهُ مِنْ سُلَيْمَانَ وَإِنَّهُ بِسْمِ اللَّهِ الرَّحْمَٰنِ الرَّحِيمِ

Suggests it .

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[1] Bukhair # 7,Muslim# 74. 1773, Muraad Ahmed 1-263. (See also seerah Rasul Allah Engl translate: Life of Muhammad صلى الله عليه وسلم, Ibn khatir p 4941-Dar-ul-Isha at, Karachi) and also sirat nabi (Life the prophet) vlp369f, Darul Islam,Kardin.

Since Heraclius was a non Muslim, the Prophet صلی اللہ علیہ وسلم did not write علیہ السلام (Peace be on you). Rather, be adopted the eloquent style: (سلام علی من اتبع الھدی)
(Peace be on him who follows guidance).
It indicates that a non-Muslim may be addressed initially with a suggestion of salaam.

KISRA'S BAD CONDUCT BROUGHT DESTRUCTION ON HIM

(٣٩٢٧) وَعَنِ ابْنِ عَبَّاسٍ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ بَعَثَ بِكِتَابِهٖ اِلٰى كِسْرٰى مَعَ عَبْدِاللّٰهِ بْنِ حُذَافَةَ السَّهْمِيِّ فَاَمَرَهٗ اَنْ يَدْفَعَهٗ اِلٰى عَظِيْمِ الْبَحْرَيْنِ فَدَفَعَهٗ عَظِيْمُ الْبَحْرَيْنِ اِلٰى كِسْرٰى فَلَمَّا قَرَأَ مَزَّقَهٗ قَالَ ابْنُ الْمُسَيَّبِ فَدَعَا عَلَيْهِمْ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَنْ يُمَزَّقُوْا كُلَّ مُمَزَّقٍ۔ (رواہ البخاری)

3927. Sayyiduna Ibn Abbas صلی اللہ علیہ وسلم narrated that Allah's Messenger صلی اللہ علیہ وسلم sent his letter to Kisra (Chosroes) at the hands of (Sayyiduna) Abdullah ibn Hudhafah صلی اللہ علیہ وسلم Sahmi instructing him to give it to the governor of Bahrain. So, the governor of Bahrain delivered it to Kisra who on reading it tore it to pieces. Ibn Musayyib (a narrator of this hadith) said that Allah's صلی اللہ علیہ وسلم Messenger , then invoked a curse on them that they might be torn to bits.[1]

COMMENTARY: Like the Roman Empire, Persia too was an ancient monarchy and a great Kingdom of Asia. Its borders extended from Sinsh to Iraq and most of the Arab lands, Yemen, Bahrain and Oman (or Uman). Like its neighbours, it was Morally bankrupt. They had two goods, Yazdan and Ahaman, of piety and evil. Their main religion was fire worship. The King was called Khusru (Chosroes) for which the Arabic word was Kisra.
The letter of the Prophet صلی اللہ علیہ وسلم was sent to the one named Parwez. He was the son of Harmuz ibn Nawshirwan.
It was their custom that letters addressed to the King had the King's name before all other matter, but since the letter of صلی اللہ علیہ وسلم Prophet began with Allah's name (Bismillah) followed by the صلی اللہ علیہ وسلم Prophet's name, Khusru Parwez was irritated and asked, "How dare my slave write to me in this manner?" And, in his rage, he tore up the letter. when the envoy of Allah's صلی اللہ علیہ وسلم Messenger reported this conduct to him, he said, "His Kingdom will come to end in like manner". Shortly thereafter, as reported by Tabari, Parwez was Killed by his son Shiruyah on 13th Jumadiul Awwal 7AH (6296) in the night. Six months thereafter, he too died, and this collapse continued so that the ancient dynasty of thousands of years ended suddenly in tatters.

PROPHET صلی اللہ علیہ وسلم WROTE TO EVERY HEAD OF STATE

(٣٩٢٨) وَعَنْ اَنَسٍ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ كَتَبَ اِلٰى كِسْرٰى وَاِلٰى قَيْصَرَ وَاِلَى النَّجَاشِيِّ وَاِلٰى كُلِّ جَبَّارٍ يَدْعُوْهُمْ اِلَى اللّٰهِ وَلَيْسَ بِالنَّجَاشِيِّ الَّذِيْ صَلّٰى عَلَيْهِ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ۔ (رواہ مسلم)

3928. Sayyiduna Anas رضی اللہ عنہ narrated that the صلی اللہ علیہ وسلم Prophet write letters to the Kisra (Chosroes of Iran), to the Qaysar of Rome),to the Najashi (Negus of

[1] Burhain# 2424, Musnad Ahmad 1-43. See also Shibli Numani's Siratun Nabi(Life of the Prophet) vi pp369t, Darul Ishrat Karachi.

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Ethiopia) and to every dominant, proud ruler, inviting them to Allah (meaning to the religion of Islam). But, the Najashi was not the same Najashi whose funeral s..lah (prayer) the صلی اللہ علیہ وسلم Prophet had offered (in absentia, in Madinah).[1]

COMMENTARY: The concluding portion of the hadith makes clear that the letter of the صلی اللہ علیہ وسلم Prophet was sent to a Najashi preceding the Najashi Ashamah who had accorded a warm welcome to the Muslim emigrants to Ethiopia, and had obeyed the Prophet صلی اللہ علیہ وسلم said, "A righteous man, your brother Ashamah is dead. Get up. Offer his funeral *salah (prayer)*." And, he led his funeral *salah (prayer)* in absentia.

However, some scholars say that it is not necessary to make this clarification. The Prophet صلی اللہ علیہ وسلم, they say, had written to both the Najashis. His first letter was to Ashamah and the next to his successor. But, it is not known for certain whether the second Najashi became a Muslim, or not.

We have spoken already about the Qaysar and Kisra. Let us now say something about the Najashi. Ethiopia (or Abyssinia) is to the south of Arabia in Eastern Africa. The King of this place when prophet hood was granted to the Prophet صلی اللہ علیہ وسلم was named Ashamah. They were all Christians.

The Arabic name of their country is Habsh. The Greek version is Ethiopia. It is known presently too as Ethiopia. In their language (Habshi) the King is called Negus for which the Arabic is Najashi.

The Islamic history remember the Ethiopia of that time with respect and honour and gratitude. When the people of Makkah, the Quraysh, had made life difficult for the Muslims, the Prophet صلی اللہ علیہ وسلم permitted muslim to emigrate to Ethiopia and they opened their gates for the Muslims generously.

The first batch of the Muslim to emigrate to Ethiopia was led by Sayyiduna Uthman رضی اللہ عنہ.The second batch followed under the leader ship of Sayyiduna Jafar Tayyar رضی اللہ عنہ elder brother of Sayyiduna Ali رضی اللہ عنہ.The Prophet صلی اللہ علیہ وسلم sent a letter at Jafar,s رضی اللہ عنہ hands address to the Najashi. Some historians say that this was the first of the letters of the prophet صلی اللہ علیہ وسلم not only did it invite the Najashi to Islam but he was advice to shun arrogance as a ruler and treat the Muslims emigrants with humility and humbleness.

The Quraysh of Makkah were not willing to let Muslim live in peace even in Ethiopia. So they sent a high profile delegation. Under the leader ship of an astute man of the statesmanship of Amar Ibn Aas to request and convince the Najashi to throw out the Muslim emigrants. They said to him," Their people have strange beliefs which neither we know nor you."

He interviewed the emigrants and Sayyiduna Jafar Tayyar رضی اللہ عنہ delivered a comprehensive speech outlining the beliefs of Islam. his speech was bold and is a precious asset of Islamic history and an elegant example of literacy composition. He said:

" O King! We were an ignorant people, uncivilised. we worshipped idols and we ate dead animals and perpetrated wicked deeds. We ill treated our neighbours. Brother tormented brother, and the stronger among us devoured the weak. Then Allah caused one. It grow amongst us of whose nobility, truth and trust worthiness. We were aware already. He invited us to Islam and taught us to renounce idol worship, to speak the truth, to desist

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[1] Muslim # 75. 1774, Tirmidhi # 2716.

from bloodshed and from devouring the property of orphans, to let neighbours be at peace and to refrain from vilifying chaste women. He command us to offer *salah (prayer)*, observe fasting and pay zakat. We believed him and refrained from associating anything with Allah. We gave up idol-worship and all abominations. It is for this reason that our people became our enemies and they insist that we should return to the old misguided ways.[1]
The Najashi has deeply impressed by this speech. He gave a categorical answer to the men of Quraysh, saying," I shall not turn back these pure, righteous people or hand them over to the oppressors to oppress them."

AGAIN A LETTER: Toward the end of 6AH,the Prophet صلى الله عليه وسلم returned to Madinah from Hudaybiyah. In Muharram 7AH (corresponding to 629CE),he wrote letters to various Kings and once again to the Najashi of Ethiopia. It was carried by his envoy Amr Ibn Umayyah Damri رضى الله عنه.When he went to his court, he first delivered a speech expressing gratitude for kindness to the Muslim emigrants. He propagated Islam in a very strong manner. Then he said:
"Like me, there are other envoys whom the Prophet صلى الله عليه وسلم has sent to other sovereigns imiting them to Islam. But, the Prophet صلى الله عليه وسلم has more hopes from you than from any other King. He is convinced that you will maintain your piety and righteousness to aim for reward from Allah."
The Najashi who had heard the heart rendering speech of Jaffer Tayyar رضى الله عنه was also moved by Amir رضى الله عنه's preaching. He came down from the throne and sat on the floor. He took the letter, kissed it and touched it to his eyes. Then, he asked the interpreter to read it to him. he heard the letter and was very impressed. He took it in his hands, kissed it and placed it on his head. Then he exclaimed:

اَشْهَدُ اَنْ لَا اِلٰهَ اِلَّا اللّٰهُ وَاَنَّ مُحَمَّدًا رَسُوْلُ اللّٰهِ

(I bear witness that there is no God but Allah and Muhammad is Allah's Messenger.)

Then he said," if I could go myself, I would have gone and met the Prophet صلى الله عليه وسلم."So, he sent his son, Aaraha with presents to the Prophet صلى الله عليه وسلم,but he died on the way and could not meet the Prophet صلى الله عليه وسلم.
After that the Prophet صلى الله عليه وسلم sent Amr Ibn Umayyah Damri رضى الله عنه with another letter. He preserved the letters in a chest of ivory saying,"As long as we have these letters, our people will be safe."
Every Najashi there after respected these letter. Indeed, their blessing enabled all their people, to live in peace.

GUIDANCE TO THOSE WHO ENGAGE IN *JIHAD (CRUSADE)*

(٣٩٢٩) وَعَنْ سُلَيْمَانَ بْنِ بُرَيْدَةَ عَنْ اَبِيْهِ قَالَ كَانَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِذَا اَمَّرَ اَمِيْرًا عَلٰى جَيْشٍ اَوْ سَرِيَّةٍ اَوْصَاهُ فِيْ خَاصَّتِهٖ بِتَقْوَى اللّٰهِ وَمَنْ مَعَهٗ مِنَ الْمُسْلِمِيْنَ خَيْرًا ثُمَّ قَالَ اغْزُوْا بِاسْمِ اللّٰهِ فِيْ سَبِيْلِ اللّٰهِ قَاتِلُوْا مَنْ كَفَرَ بِاللّٰهِ اُغْزُوْا فَلَا تَغُلُّوْ اوَلَا تَغْدِرُوْ اوَلَا تَمَثَّلُوا وَلَا تَقْتُلُوْا وَلِيْدًا وَاِذَا لَقِيْتَ

[1] Instead of translating from the Urdu text, I have reproduced this speech from the life of the Prophet صلى الله عليه وسلم (Siratun Nabi of Sh[illegible] achi).

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عَدُوَّكَ مِنَ الْمُشْرِكِيْنَ فَادْعُهُمْ إِلَى ثَلَاثِ خِصَالٍ اَوْ خِلَالٍ فَاَيَّتُهُنَّ مَا اَجَابُوْكَ فَاقْبَلْ مِنْهُمْ وَكُفَّ عَنْهُمْ ثُمَّ ادْعُهُمْ إِلَى الْإِسْلَامِ فَإِنْ اَجَابُوْكَ فَاقْبَلْ مِنْهُمْ وَكُفَّ عَنْهُمْ ثُمَّ ادْعُهُمْ إِلَى التَّحَوُّلِ مِنْ دَارِهِمْ إِلَى دَارِ الْمُهَا جِرِيْنَ وَ اَخْبِرْهُمْ اَنَّهُمْ إِنْ فَعَلُوْا ذٰلِكَ فَلَهُمْ مَا لِلْمُهَا جِرِيْنَ وَعَلَيْهِمْ مَا عَلَى الْمُهَا جِرِيْنَ فَإِنْ اَبَوْا اَنْ يَّتَحَوَّلُوْا مِنْهَا فَاَخْبِرْهُمْ اَنَّهُمْ يَكُوْنُوْنَ كَاَعْرَابِ الْمُسْلِمِيْنَ يَجْرِيْ عَلَيْهِمْ حُكْمُ اللّٰهِ الَّذِيْ يَجْرِيْ عَلَى الْمُؤْمِنِيْنَ وَلَا يَكُوْنُ لَهُمْ فِي الْغَنِيْمَةِ وَالْفَيْءِ شَيْءٌ إِلَّا اَنْ يُّجَا هِدُوْا مَعَ الْمُسْلِمِيْنَ فَإِنْ هُمْ اَبَوْا فَسَلْهُمُ الْجِزْيَةَ فَإِنْ هُمْ اَجَابُوْكَ فَاقْبَلْ مِنْهُمْ وَكُفَّ عَنْهُمْ فَإِنْ هُمْ اَبَوْا فَاسْتَعِنْ بِاللّٰهِ وَ قَاتِلْهُمْ وَإِذَا حَاصَرْتَ اَهْلَ حِصْنٍ فَاَرَادُوْكَ اَنْ تَجْعَلَ لَهُمْ ذِمَّةَ اللّٰهِ وَذِمَّةَ نَبِيِّهٖ وَلَا تَجْعَلْ لَهُمْ ذِمَّةَ اللّٰهِ وَلَا ذِمَّةَ نَبِيِّهٖ وَلٰكِنِ اجْعَلْ لَهُمْ ذِمَّتَكَ وَ ذِمَّةَ اَصْحَابِكَ فَإِنَّكُمْ إِنْ تُخْفِرُوْا ذِمَمَكُمْ وَذِمَمَ اَصْحَابِكُمْ اَهْوَنُ مِنْ اَنْ تُخْفِرُوْا ذِمَّةَ اللّٰهِ وَذِمَّةَ رَسُوْلِهٖ وَإِنْ حَاصَرْتَ اَهْلَ حِصْنٍ فَاَرَادُوْكَ اَنْ تُنْزِلَهُمْ عَلٰى حُكْمِ اللّٰهِ فَلَا تُنْزِلْهُمْ عَلٰى حُكْمِ اللّٰهِ وَلٰكِنْ اَنْزِلْهُمْ عَلٰى حُكْمِكَ فَإِنَّكَ لَا تَدْرِيْ اَتُصِيْبُ حُكْمَ اللّٰهِ فِيْهِمْ اَمْ لَا۔ (رواه مسلم)

3929. Sayyiduna Sulayman Ibn Buraydah رضی اللہ عنہ reported on the authority of his father (Sayyiduna Buraydah رضی اللہ عنہ) that when Allah's Messenger صلی اللہ علیہ وسلم sent a commander with an army, he would instruct him to fear Allah himself and to be mindful of the good of the Muslims under him. He would also say," Go fight in the name of Allah and in His path. Fight with those who disbelieve in Allah. Do not be unfaithful regarding the spoils, do not be treacherous and do not mutilate anyone and do not kill children. When you meet your enemy among the polytheists, invite them to one of the three things. To whichever of the three they agree, accept it from them and refrain from (fighting with) them. Invite them to Islam. If they agree, accept it from them and refrain from (fighting with) them.

Then, invite them to emigrate from their abodes to the abuse of the muhajir, assuming them that if they do so then they will get the same rights and will have the same responsibilities as the muhajirs (emigrants). If they refuse to emigrate from them then they will be like the Arabs of the desert who are Muslims, and the same injunctions will apply to them as to the believers. but they will have no share in booty or fai unless they take part in *jihad (crusade)*. If they refuse, then demand from them the jizyah and if they agree, accept it from them and refrain from (fighting with) them. If they refuse, seek Allah's help and fight with them. If you besiege a fort and they seek from you the protection of Allah and His Prophet صلی اللہ علیہ وسلم, do not give it to them, but give them your protection and the protection of your friends, then that is better than your breaking the protection of Allah and His Messenger.

And, if you besiege a people in a fort and they call on you to judge them according to Allah's command then do not do it but judge according your own judgement, because you do not know whether you will abide by Allah's command or not in

judging them."[1]

COMMENTARY: This hadith mentions the rule of Shairah regarding *jihad (crusade)* against Islam's enemies. It is to begin with inviting them to Islam.

If they do not accept the call then demand of them payment of the jizyah and to enlist as faithful citizens of the Islamic State. If they decline this proposal too then, as a final resort, make *Jihad (crusade)* against them.

The hadith has the words (ثُمَّ ادْعُهُمْ) (then invite them to Islam),but (ثم) (then) is redundant and not translated. Some authorities explain why it is used but Qadi Iyad (رحمه الله) said that the text is more correct without it. This is so in the book Kitab Abu Ubayd and in Sunan Abu Dawud, etc. Mazri رحمه الله said that though it seems superfluous yet it introduces the following text in the sentence. It is to bring out the first of three things, and it completes the sense at (مع المسلمين) (with the Muslims).The next two options are Jizyah and *Jihad (crusade).*

The Prophet صلى الله عليه وسلم,s instructions that if they accept Islam, invite them to make hijrah, are interpreted by some people to mean that before the conquest of Makkah, it was a part of Islam to make hijrah.

They will have the same rights as the muhajirs (emigrants) of Madinah. They will earn as much reward and have the same merit and get fai too. In the time of the Prophet صلى الله عليه وسلم when the call for *Jihad (crusade)* was made and just as they set out, they became entitled to fai promptly.

If there were a large number of Muslims to participate in *Jihad (crusade),* then it was not *wajib (obligatory)* on all of them to take part in *Jihad (crusade).* The Prophet صلى الله عليه وسلم also said that they had the same responsibilities, and it is what is stated meaning *jihad (crusade).*

The Muslim of the deserts are residents of villages and deserts of the Islamic State. They are not resident of deserts or villages of enemy land.

The same meaning applies to fai as to booty. It is the property that Muslims acquire from the infidels (in battle).However, some people differentiate between the two: ghanimah (or booty) is acquired from the infidels through battle toil and efforts, while fai is the property that is acquired from the infidels without battle and efforts.

If you conclude a covenant with them on behalf of Allah and His Messenger صلى الله عليه وسلم and they violate their commitment, then it will be difficult for you to make a proper decision. Until you receive an inspiration etc .or a judgement from Allah's Messenger صلى الله عليه وسلم.These things are no longer possible because you do not have access to him.

However, if you give them your pledge and covenant and they violate their promise then it would not be difficult for you to decide on a course of action. You will have complete option to besiege them all over again, or to kill them, or to demand from them jizyah, or to put them in prison, or to take any other action you deem fit.

WISDOM IN BEGINNING WARFARE AFTER SUNSET

(٣٩٣٠) وَعَنْ عَبْدِاللّٰهِ بْنِ اَبِيْ اَوْفٰى اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فِيْ بَعْضِ اَيَّامِهِ الَّتِيْ لَقِيَ فِيْهَا الْعَدُوَّ اِنْتَظَرَ حَتّٰى مَالَتِ الشَّمْسُ ثُمَّ قَامَ فِي النَّاسِ فَقَالَ يَاَيُّهَا النَّاسُ لَاتَتَمَنَّوْا لِقَآءَ الْعَدُوِّ وَاسْأَلُوا اللّٰهَ الْعَافِيَةَ

[1] Muslim# 3-1731, Tirmidhi # 1617 (1623), Abu Dawud # 2612, Ibn Majah # 2858, Musnad Ahmed 5-285.

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فَإِذَا لَقِيتُمُوهُمْ فَاصْبِرُوا وَاعْلَمُوا أَنَّ الْجَنَّةَ تَحْتَ ظِلَالِ السُّيُوفِ ثُمَّ قَالَ اللَّهُمَّ مُنْزِلَ الْكِتَابِ وَ مُجْرِيَ السَّحَابِ وَهَازِمَ الْأَحْزَابِ اهْزِمْهُمْ وَانْصُرْنَا عَلَيْهِمْ۔

3930. Sayyiduna Abdullah Ibn Abu Awfa رضی اللہ عنہ narrated that on one his days (meaning, at one of his battles) when Allah's Messengers صلی اللہ علیہ وسلم was facing the enemy, he waited (to begin combat) till the sun had declined. Then he stood up before the people (to address them) (and he said," O you people Do not desire to meet the enemy because that is tantamount to inviting trial and hardship). Rather, pray to Allah for peace and security. But, when you do face them, be patient and know that paradise is under the shade of the words. (So, fight them bravely and be on your mettles.). Then, he pray

اَللّٰهُمَّ مُنْزِلَ الْكِتَابِ وَ مُجْرِيَ السَّحَابِ وَهَازِمَ الْأَحْزَابِ اهْزِمْهُمْ وَانْصُرْنَا عَلَيْهِمْ

(O Allah, You are one who reveals the Book, makes the cloud move, routs the confederates. So, rout them and grant us victory over them.)[1]

COMMENTARY: The wait was to let the heat subside and the evening breeze to offer *salah prayer)* and to supplicate.

According to another hadith: The gates of the heaven are opened at that hour. Deeds of mankind are taken up. So, the Prophet صلی اللہ علیہ وسلم chose that hour to begin *jihad (crusade)* the best of deeds.

THE PROPHET صلی اللہ علیہ وسلم DID NOT ATTACK ENEMY BEFORE MORNING

(٣٩٣١) وَعَنْ أَنَسٍ أَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ كَانَ إِذَا غَزَا بِنَا قَوْمًا لَمْ يَكُنْ يَغْزُو بِنَا حَتّٰى يُصْبِحَ وَيَنْظُرَ إِلَيْهِمْ فَإِنْ سَمِعَ أَذَانًا كَفَّ عَنْهُمْ وَإِنْ لَمْ يَسْمَعْ أَذَانًا أَغَارَ عَلَيْهِمْ قَالَ فَخَرَجْنَا إِلَى خَيْبَرَ فَانْتَهَيْنَا إِلَيْهِمْ لَيْلًا فَلَمَّا أَصْبَحَ وَلَمْ يَسْمَعْ أَذَانًا رَكِبَ وَرَكِبْتُ خَلْفَ أَبِي طَلْحَةَ وَإِنَّ قَدَمِي لَتَمَسُّ قَدَمَ نَبِيِّ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ فَخَرَجُوا إِلَيْنَا بِمَكَاتِلِهِمْ وَمَسَاحِيهِمْ فَلَمَّا رَأَوُا النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالُوا مُحَمَّدٌ وَاللّٰهِ مُحَمَّدٌ وَالْخَمِيسُ فَلَجَأُوا إِلَى الْحِصْنِ فَلَمَّا رَآهُمْ رَسُولُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اللّٰهُ أَكْبَرُ اللّٰهُ أَكْبَرُ خَرِبَتْ خَيْبَرُ إِنَّا إِذَا نَزَلْنَا بِسَاحَةِ قَوْمٍ فَسَاءَ صَبَاحُ الْمُنْذَرِينَ۔ (متفق علیہ)

3931. Sayyiduna Anas narrated that when the صلی اللہ علیہ وسلم Prophet set out with them on an expedition against a people (on a populace of whom facts where not clear), he did not engage in battle till it was morning. He would then observe them and if reheard the adhan, he refrained from them, but if he did not hear the adhan, he launched the attack on them.

He narrated further that when they had set out to Khaybar (with him), they came to them during the night. When it was morning and he did not hear the adhan, he mounted and Anas رضی اللہ عنہ mounted behind Abu Talhah رضی اللہ عنہ so that (they were so close to him that) his foot kept touching the foot of Allah's صلی اللہ علیہ وسلم Prophet.

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[1] Bukhari # 2965, Muslim # 20. 7746, Abu Dawwood # 2631.

Those people came towards them with their baskets and their spades (unaware of the arrival of the صلی اللہ علیہ وسلم Prophet and intending to go to their fields), but when they (suddenly) saw the صلی اللہ علیہ وسلم Prophet, they cried, "Muhammad! By Allah, Muhammad (is here) and the army!" They rushed back to the refuge of the fortress. On seeing them, Allah's صلی اللہ علیہ وسلم Messenger said, Allah is the Greatest! Allah is the Greatest! Allah is the Greatest! Khayber Is Vanquished! Surely, when we descend on the ground or any people, hapless morn shall it be for those who are warned". (These last are quotation from the Quran 37: 177).[1]

COMMENTARY: Even if he knew that he was invading the land of the infidels, the صلی اللہ علیہ وسلم Prophet made it certain that there were no Muslims among them. If he heard the adhan, he deferred the invasion. In those days, Muslims were not known to forsake the adhan.

Khattabi said that this is a strong evidence that adhan (اللہ اکبر اللہ اکبر and so on) is one of the symbols of Islam and it is absolutely disallowed to abandon it. In fact, if people of a locality stop calling the adhan, the ruler must wage battle against them, as a *wajib (obligatory)* on him. He must prevent them from going astray. This is corroborated by the Hanafi jurists.

The Prophet صلی اللہ علیہ وسلم explain why he said "Khaybar is vanquished" by his words, "When we (meaning the Prophets or the entire Musim community) descend on any people, hapless morn shall it be for those who are warned."

The people who are warned are. Of course, the disbelievers. He referred to the invasion and the resultant killing and Allah's punishment causing their morning to be miserable. The Prophet صلی اللہ علیہ وسلم had this verse in mind when he said that:

اَفَبِعَذَابِنَا يَسْتَعْجِلُوْنَ ۔ فَإِذَا نَزَلَ بِسَاحَتِهِمْ فَسَآءَ صَبَاحُ الْمُنْذَرِيْنَ۔ (الصافات ۳۷: ۱۷۶، ۱۷۷)

{Do they wish to hurry on our punishment? But when it descends into the open space before them, evil will be the morning for those who were warned (and needed not)!} (37: 176-177)

Nawawi said that in the light of this hadith ,it is *mustahab (desirable)* to call the takbir (Allahu Akbar, Allah is the Greatest), on reaching the battle field against the enemy. It is also allowed, at such times, to cite a reference from the noble Quran. Indeed, it was a similar case at the conquest of Makkah, when the Prophet صلی اللہ علیہ وسلم had recited:

جَآءَ الْحَقُّ وَزَهَقَ الْبَاطِلُ۔ (الاسراء ۱۷: ۸۱)

{The Truth has come and falsehood has vanished away.} (17: 84)

However, the ulama (Scholars) maintain that it is makruh (disapproved) to cite a reference from the noble Quran as a proverb or idiom, or a part of vain and meaningless conversation. In fact, Mulla Ali Qari said that some of our ulama (Scholars) hold that it is disbelief on the part of one who uses Allah's words from a verse or part of a verse to express what he wished to say instead of using his own words. For example, if a man gives a book to another man named Yahya and does not say "Yahya. Take your book", but says

قُلْ جَآءَ الْحَقُّ وَزَهَقَ الْبَاطِلُ۔ (الاسراء ۱۷: ۸۱)

{O Yahya hold fast the book with strength,} (19: 12) this is wrong.

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[1] Bukhari # 610, Muslim # 120. 1365, Tirmidhi # 1550. Nasa : # 547, Muwatta Maalik # 48 (*Jihad*), Musnad Ahmad 3. 263.

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It is also wrong for anyone to say to another 'Bismillah" when he invites him to eat or to step forward instead of, 'Please, have some food,' or, 'Please step ahead.'
Any kind of use of the words of the Quran in such a situation is wrong.
Moreover, Mulla Ali Qari said that the Prophet صلى الله عليه وسلم did not cite reference from the Quran when he recited the verse (17: 81) but obeyed Allah's command to say:

قُلْ جَآءَ الْحَقُّ وَزَهَقَ الْبَاطِلُ

{Say (O Muhammad) that (the religion of) Truth has come (to prevail) and falsehood has vanished away.} (12: 81)

In the same, he said (رَبِّ زِدْنِي عِلْمًا) in obedience to Allah's command:

وَقُلْ رَّبِّ زِدْنِيْ عِلْمًا۔ (طٰہٰ ۲۰: ۱۱۴)

{And say: "My Lord! Increase me in knowledge."} (20: 114)

In Short, every such quotation that is known from the Prophet صلى الله عليه وسلم was spoken only in obedience to a Divine command. And, it is *mustahab (desirable).*

PROPHET صلى الله عليه وسلم COMMENCED BATTLE AT THE TIME OF ZUHR

(۳۹۳۲) وَعَنِ النُّعْمَانِ بْنِ مُقَرِّنٍ قَالَ شَهِدْتُ الْقِتَالَ مَعَ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَكَانَ إِذَا لَمْ يُقَاتِلْ اَوَّلَ النَّهَارِ اِنْتَظَرَ حَتّٰى تَهُبَّ الْاَرْوَاحُ وَتَحْضُرَ الصَّلَاةُ۔ (رواه البخاری)

3932. Sayyiduna Numan Ibn Muqarrin رضى الله عنه said, I participated in battle (s) with Allah's Messenger صلى الله عليه وسلم. When he did not commence fighting at the beginning of the day (for some reason), he waited till the winds blew and the time of *Salah (prayer)* (of Zuhr) was at hand.[1]

COMMENTARY: The hadith explain that fighting in a battle may be deffered till the hour of Zuhr (*salah (prayer)*) if it was not begin in the morning.
It seems that conditions and reasoning dictated the hour of beginning of fighting, It could begin early morning or after declension of the sun at Zuhr.

SECTION II اَلْفَصْلُ الثَّانِيْ

BATTLE BEGINS AFTER DECLINE OF SUN

(۳۹۳۳) عَنِ النُّعْمَانِ بْنِ مُقَرِّنٍ قَالَ شَهِدْتُّ مَعَ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَكَانَ إِذَا لَمْ يُقَاتِلْ اَوَّلَ النَّهَارِ اِنْتَظَرَ حَتّٰى تَزُوْلَ الشَّمْسُ وَتَهُبَّ الرِّيَاحُ وَيَنْزِلَ النَّصْرُ۔ (رواه ابوداؤد)

3933. Sayyiduna Numan Ibn Muqarrin رضى الله عنه said, I participated (in battle) with Allah's Messenger صلى الله عليه وسلم. When he did not commence fighting at the beginning of the day, he waited till the sun had passed the meridian, the winds blew and (Divine) help came down."[2]
(That was after the *salah (prayer)* of Zuhr when Muslims prayed for them.)

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[1] Bukhari # 3160.

[2] Tirmidhi # 1613 (1619), Abu Damid # 2655, Musnad Ahmad 5. 444 Bukhari # 3160.

THE PROPHET'S صلی اللہ علیہ وسلم HOURS OF COMMENCING BATTLE

(٣٩٣٤) وَعَنْ قَتَادَةَ عَنِ النُّعْمَانِ بْنِ مُقَرِّنٍ قَالَ غَزَوْتُ مَعَ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَكَانَ إِذَا طَلَعَ الْفَجْرُ أَمْسَكَ حَتّٰى تَطْلُعَ الشَّمْسُ فَإِذَا طَلَعَتْ قَاتَلَ فَإِذَا نُتِصَفَ النَّهَارُ أَمْسَكَ حَتّٰى تَزُوْلَ الشَّمْسُ فَإِذَا زَالَتِ الشَّمْسُ قَاتَلَ حَتّٰى الْعَصْرِ ثُمَّ أَمْسَكَ حَتّٰى يُصَلِّيَ الْعَصْرَ ثُمَّ يُقَاتِلُ قَالَ قَتَادَةُ كَانَ يُقَالُ عِنْدَ ذٰلِكَ تَهِيْجُ رِيَاحُ النَّصْرِ وَيَدْعُو الْمُؤْمِنُوْنَ لِجُيُوْشِهِمْ فِيْ صَلَاتِهِمْ۔ (رواه الترمذی)

3934. Sayyiduna Qatadah reported that (Sayyiduna) Numan Ibn Muqarrin narrated: "I participated with Allah's Messenger صلی اللہ علیہ وسلم in the battles, When it was dawn, he waited till the sun rose. When the sun had risen, he began fighting. At the declination of the sun, he creased (fighting), till the sun had passed the meridian. When the sun passed over the meridian, he resumed fighting till Asr (afternoon) when he ceased fighting till he had offered the (*salah (prayer)* of) Asr. Then he resumed fighting."
Qatadah said that it was said about this hour the helping winds blew and the believers made supplication in their *salah (prayer)* for their armies.[1]
(It is prayers after the *salah (prayer)*, or within the *salah (prayer)* like the qunoot about which ahadith are narrated.)

SPECIFIC INSTRUCTION TO THE WARRIORS

(٣٩٣٥) وَعَنْ عِصَامٍ الْمُزَنِيِّ قَالَ بَعَثَنَا رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فِيْ سَرِيَّةٍ فَقَالَ إِذَا رَأَيْتُمْ مَسْجِدًا أَوْ سَمِعْتُمْ مُؤَذِّنًا فَلَا تَقْتُلُوْا أَحَدًا۔ (رواه الترمذی وابوداؤد)

3935. Sayyiduna Isam Muzani رضی اللہ عنہ narrated that Allah's Messenger sent them (for *jihad (crusade)*) in a detachment and instructed them, "When you see a mosque (at a place) or hear a muaddhin (call the adhan), do not kill anyone (there)."[2]

COMMENTARY: When you see any of the symbol of islam in word or deeds do not kill anyone till it is clear to you who the believer is and who the unbeliever.

SECTION III اَلْفَصْلُ الثَّالِثُ

KHALID'S LETTER TO THE IRANIAN LEADER

(٣٩٣٦) عَنْ أَبِيْ وَائِلٍ قَالَ كَتَبَ خَالِدُ بْنُ الْوَلِيْدِ إِلٰى أَهْلِ فَارِسَ بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِيْمِ مِنْ خَالِدِ بْنِ الْوَلِيْدِ إِلٰى رُسْتُمَ وَمِهْرَانَ فِيْ مَلَإِ فَارِسٍ سَلَامٌ عَلٰى مَنِ اتَّبَعَ الْهُدٰى أَمَّا بَعْدُ فَإِنَّا نَدْعُوْكُمْ إِلَى الْإِسْلَامِ فَإِنْ أَبَيْتُمْ فَأَعْطُوا الْجِزْيَةَ عَنْ يَدٍ وَأَنْتُمْ صَاغِرُوْنَ فَإِنَّ مَعِيْ قَوْمًا يُحِبُّوْنَ الْقَتْلَ فِيْ سَبِيْلِ اللّٰهِ كَمَا يُحِبُّ فَارِسُ الْخَمْرَ وَالسَّلَامُ عَلٰى مَنِ اتَّبَعَ الْهُدٰى۔ (رواه فی شرح السنة)

3936. Sayyiduna Abu Wail رضی اللہ عنہ narrated that (Sayyiduna) Khalid Ibn Walid wrote (a letter) to the people of Iran (meaning to their chief and leader):

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[1] Tirmidhi # 1612 (1618)
[2] Tirmidhi # 9549, Abu Dawud # 2635.

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بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِيْمِ

"In the name of Allah, the Beneficent, the Merciful. From Khalid Ibn Walid to Rustum and Mihran, among the cream of Persia (Iran).
Peace be to those who follow the guidance! To proceed! We invite you to (accept) Islam. If you do not accept, then pay the jizyah (as disgraced people) by your hands while you are humbled. If you refuse (to pay jizyah), then I have with me such people as love to be killed in Allah' path just as the Persians love wine (and be lost in intoxication). And , peace be to those who follow the guidance."[1]

CHAPTER - V

FIGHTING IN JIHAD (CRUSADE) بَابُ الْقِتَالِ فِي الْجِهَادِ

This chapter contains those ahadith in which the Prophet صلى الله عليه وسلم has encouraged participation in *jihad (crusade)* and enumerated merits and reward of that.

SECTION I بَابُ الْقِتَالِ فِي الْجِهَادِ

MARTYR'S DESTINATION IS PARADISE

(٣٩٣٧) عَنْ جَابِرٍ قَالَ قَالَ رَجُلٌ لِلنَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَوْمَ اُحُدٍ اَرَاَيْتَ اِنْ قُتِلْتُ فَاَيْنَ اَنَا قَالَ فِي الْجَنَّةِ فَاَلْقٰى تَمَرَاتٍ فِيْ يَدِهٖ ثُمَّ قَاتَلَ حَتّٰى قُتِلَ۔ (متفق عليه)

3937. Sayyiduna Jabir رضى الله عنه narrated that a man asked the Prophet صلى الله عليه وسلم on the day of uhud (in the battlefield), "What do you say if I am killed, where shall I be?" He said, "In paradise". He threw away the few dates that he had in his hand and (plunged among the enemy and) fought till he was killed."[2]

NATURE OF JOURNEY NOT DISCLOSED TILL LAST

(٣٩٣٨) وَعَنْ كَعْبِ بْنِ مَالِكٍ قَالَ لَمْ يَكُنْ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يُرِيْدُ غَزْوَةً اِلَّا وَرّٰى بِغَيْرِهَا حَتّٰى كَانَتْ تِلْكَ الْغَزْوَةُ يَعْنِيْ غَزْوَةَ تَبُوْكَ غَزَاهَا رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فِيْ حَرٍّ شَدِيْدٍ وَاسْتَقْبَلَ سَفَرًا بَعِيْدًا وَمَفَازًا وَعَدُوًّا كَثِيْرًا فَجَلّٰى لِلْمُسْلِمِيْنَ اَمْرَهُمْ لِيَتَاَهَّبُوْا اُهْبَةَ غَزْوِهِمْ فَاَخْبَرَهُمْ بِوَجْهِهِ الَّذِيْ يُرِيْدُ۔ (رواه البخاری)

3938. Sayyiduna Kab Ibn Maalik رضى الله عنه narrated that when ever Allah' Messenger صلى الله عليه وسلم intended to go to battle, he (did not disclose the destination but) appeared to be going elsewhere till it was that battle, meaning the battle of tabuk. Allah's Messenger صلى الله عليه وسلم set out for it in severe heat, having a long journey ahead through desert land and against countless number (this time, therefore.) he let the muslim know clearly what they were expected to do so that they might prepare the

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[1] Sharh ul *Sunnah (Prophet's صلى الله عليه وسلم practice).*

[2] Bukhari # 4046, Muslim # 43. 1899, Nasai # 3145, Musnad Ahmad 3-408.

equipment for their battle. So he informed them where he intended to go.[1]

COMMENTARY: The Arabic word (وزى) (warra) or (توربة) (tawriyah) means to conceal the real objective and to allude to a different intention. So, as a battle maneuver, he did not disclose the destination but let it be surmised where he was going. These tactics were employed to keep of war maneuvers are very necessary to win battle and are part of battle strategy the world over. This is why Islam says:

اَلْحَرْبُ خُدْعَةٌ

(War is Deception)[2]

Thereby it allows use of war strategy and maneuver. Thus, This tactic of the Prophet صلى الله عليه وسلم was also a form of deceiving yet he never opted for it in clear outright words but alluded to it in figurative speech. When he intended to go to battle, through he did not name the place yet he never gave another name for that would be falsehood.

Kab Ibn Maalik رضى الله عنه referred to it as that battle. He spoke of the Battle of Tabuk which has a deep connection with him as is very well known. Kab Ibn Maalik رضى الله عنه did not himself participate in this battle. This thing is famous and is also mentioned in the Noble Quran.

The distance covered for the battle of Tabuk was very long. Tabuk is a place between Damascus (in Syria) and Madinah on the latitude of Khaybar and al-Bilad. It was fourteen manzil (stages) from Madinah in those days. By today's standard it is about 425 miles from Madinah.

During his lifetime the Prophet صلى الله عليه وسلم took part in certain battles. The Battle of Tabuk in 9 AH was his last battle. The Sahabah (Prophet's Companions) رضى الله عنهم faced heavy hardships and many difficulties during this battle.

WAR IS DECEPTION

(٣٩٣٩) وَعَنْ جَابِرٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَلْحَرْبُ خُدْعَةٌ۔ (متفق عليه)

3939. Sayyiduna Jabir رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said "War is deception.[3]

COMMENTARY: In battle, more than numbers, tactics pay off. A shrewd commander can defeat a larger army by his strategies.

Through it is allowed to deceive the infidels in war yet some limits are defined so that Islam's teachings of moral conduct are not violet. The first thing is that one should not break a covenant or protection given to anyone.

The ulama (Scholars) have specified how the enemy may be deceived. For instance, it may appear that the army is retreating or has halted hostilities, but suddenly they may take the enemy unawares and launch an attack into enemy ranks.

However, the words of the hadith (خدعة) could also mean war is unpredictable. So it deceives meaning one army may seem to have an upper hand but suddenly falls apart and is defeated. The results take a summersault.

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[1] Bukhari # 4418, Muslim # 53-569, Musnad Ahmad 3. 406.

[2] See hadith #3939. (Tirmidhi # 1681).

[3] Bukhari #3030, Muslim # 17-1739, Abu Dawud #2636, Tirmidhi # 1675 (1681) Musnad Ahmad 3. 408.

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WOMEN BEING TAKEN ALONG IN *JIHAD (CRUSADE)*

(٣٩٤٠) وَعَنْ اَنَسٍ قَالَ كَانَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَغْزُوْ بِاُمِّ سُلَيْمٍ وَنِسْوَةٌ مِنَ الْاَنْصَارِ مَعَهٗ اِذَا غَزَا يَسْقِيْنَ الْمَاءَ وَيُدَاوِيْنَ الْجَرْحٰى۔ (رواه مسلم)

3940. Sayyiduna Anas رضی اللہ عنہ said that when Allah's Messenger صلی اللہ علیہ وسلم went on *Jihad (crusade)*, he took (Sayyiduna) Umm Sulaym رضی اللہ عنہ and some women of the ansars with him who provided water and tended the wounded (warriors) when he fought.[1]

COMMENTARY: It is allowed to take along old women on an expedition to provide water to the warriors and to tend to the wounded among them.
If any of the warriors wishes to take along a spouse to have sexual intercourse then it is better to take a female slave with him than his wife. (This command applied when it was permitted to keep a female slave with whom sexual intercourse could be had.)

(٣٩٤١) وَعَنْ اُمِّ عَطِيَّةَ قَالَتْ غَزَوْتُ مَعَ رَسُوْلِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ سَبْعَ غَزَوَاتٍ اَخْلُفُهُمْ فِيْ رِحَالِهِمْ فَاَصْنَعُ لَهُمُ الطَّعَامَ وَاُدَاوِى الْجَرْحٰى وَاَقُوْمُ عَلَى الْمَرْضٰى۔ (رواه مسلم)

3941. Sayyidah Umm Atiyah رضی اللہ عنہا said that she had participated with Allah's Messenger in seven battles. She used to stay behind (the warriors in their camps) and she cooked food for them , tended the wounded and cared for the sick.[2]

WOMEN & CHILDREN OF THE ENEMY

(٣٩٤٢) وَعَنْ عَبْدِاللّٰهِ بْنِ عُمَرَ قَالَ نَهٰى رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَنْ قَتْلِ النِّسَآءِ وَالصِّبْيَانِ۔

(متفق علیه)

3942. Sayyiduna Abdullah Ibn Umar رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم forbade the killing of women and children.[3]

COMMENTARY: It is stated in the Hidayah that women, children, blind and decrepit and infirm men should not be killed. If a boy or a madman are engaged in fighting then they may be killed. A queen may be killed and so a boy who is king or chief. If an enemy's king or chief is killed then they are disgraced, so it is proper to kill them.

(٣٩٤٣) وَعَنِ الصَّعْبِ بْنِ جَثَّامَةَ قَالَ سُئِلَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَنْ اَهْلِ الدِّيَارِ يُبَيَّتُوْنَ مِنَ الْمُشْرِكِيْنَ فَيُصَابُ مِنْ نِّسَائِهِمْ وَذَرَارِيِّهِمْ قَالَ هُمْ مِنْهُمْ وَفِيْ رِوَايَةٍ هُمْ مِنْ اٰبَآئِهِمْ۔ (متفق علیه)

3943. Sayyiduna Sab ibn Jaththamah رضی اللہ عنہ narrated that someone asked Allah's Messenger صلی اللہ علیہ وسلم about those women and children of the polytheists who were (In their homes and) killed when their habitations were attacked at night. He said.

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[1] Muslim # 135. 1810, Tirmidhi # 1575, Abu Dawud # 2531.
[2] Muslim # 146. 1812 Ibn Majah 2856, Musnad Ahmad 4. 407.
[3] Bukhari # 3075, Muslim # 27. 1743.

"They are among them."
According to a version: "They are as their fathers."[1]

COMMENTARY: Women and childrens may not be kilied in *jihad (crusade)* deliberately. But, if they are killed incidentally then it is not possible to pick them out from their fighting men.

TREES OF THE ENEMY

(٣٩٤٤) وَعَنِ ابْنِ عُمَرَ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَطَعَ نَخْلَ بَنِي النَّضِيْرِ وَحَرَّقَ وَلَهَا يَقُوْلُ حَسَّانٌ:

3944. Sayyiduna Ibn Umar رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم (had) the palm trees of the Banu Nadir cut down and burnt. Hassan (ibn Thabit) composed this complete about it.

وَهَانَ عَلٰى سَرَاةِ بَنِي لُؤَيٍّ حَرِيْقٌ بِالْبُوَيْرَةِ مُسْتَطِيْرُ

(It was easy to burn down the scattered Buwayrah on the chiefs of Banu liuayy.)
Also this veirse was revealed about it:

وَفِي ذٰلِكَ نَزَلَتْ۔ مَاقَطَعْتُمْ مِّنْ لِّيْنَةٍ اَوْ تَرَكْتُمُوْهَا قَآئِمَةً عَلٰى اُصُوْلِهَا فَبِاِذْنِ اللّٰهِ۔ متفق علیہ۔

{Whatever palm trees you cut down, or left standing upon their roots, it was by Allah's leave.}(59: 5)[2]

COMMENTARY: When the Prophet صلی اللہ علیہ وسلم emigrated to Madinah from Makkah,he had to cope with the jews here. three tribes of the jews resided here: Banu Nadir, Banu Qurayzah Banu Qaynqa. The Prophet صلی اللہ علیہ وسلم concluded a mutual covenant with them covering significant social and economic aspects, to live together in a friendly atmosphere. The jews were given equal rights as citizens and were allowed to practice their religion.
However, the Jews were not faithful to their pledge. In fact, the Banu Nadir conspired to kill the Prophet صلی اللہ علیہ وسلم but Allah made their evil designs known to him through a revelation. So, they were expelled from Madinah and sent to Khaybar. Their gardens of palm trees were burned down and houses were demolished.
Luayy was a descendant of Nadr Ibn Kinanah who was an ancestor of the Prophet صلی اللہ علیہ وسلم.Banu Luayy refers to the nobles of the Quraysh who were the Sahabah (Prophet's Companions) رضی اللہ عنہم of the Prophet صلی اللہ علیہ وسلم and had accompanied him to Madinah when he emigrated to it.
Burayrah was the place where the Jews had their gardens.
When the Prophet صلی اللہ علیہ وسلم instructed that their gardens should be burned down, they protested, "you forbid that mischief should be committed on earth, then why do you do it?"So, the verse of the Quran (59: 5) was revealed confirming the Prophet's صلی اللہ علیہ وسلم action.

ALLOWED TO CATCH THE ENEMY UNAWARES

(٣٩٤٥) وَعَنْ عَبْدِاللّٰه بْنِ عَوْنٍ اَنَّ نَافِعًا كَتَبَ اِلَيْهِ يُخْبِرُهُ اَنَّ ابْنَ عُمَرَ اَخْبَرَهُ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَغَارَ عَلٰى بَنِي الْمُصْطَلِقِ غَارِّيْنَ فِيْ نَعَمِهِمْ بِالْمُرَيْسِيْعِ فَقَتَلَ الْمُقَاتِلَةَ وَسَبَى الذُّرِّيَّةَ۔ (متفق علیہ)

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[1] Bukhari # 3012, Muslim # 26. 1745 Trimidhi # 1570, Abu Dawud # 2072, Ibn Majad # 2839.

[2] Bukhair # 4031, Muslim # 30-1746, Tirmidhi # 1552 (1557), Abu dawud # 2615, Ibn Majah # 2844,Darimi # 2460,Musnad Ahmed 2-8

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3945. Sayyiduna Abdullah Ibn Awn رضی اللہ عنہ reported that Nafi رضی اللہ عنہ (the freedman of Ibn Umar رضی اللہ عنہ) wrote to him telling him that Ibn Umar رضی اللہ عنہ had informed him that the Prophet صلی اللہ علیہ وسلم had attacked the Banu Mustaliq who were cought unawares among their grazing animals at Muraysi. He killed the fighting men and took the (women and) children captives.[1] &[2]

COMMENTARY: The Banu Mustaliq were a branch of the tribe Khuza. Muraysi is a place between Makkah and Madinah over 70 miles from Madinah. It was a watering place with plenty of water. The Banu Mustaliq had control over it.
Their fighting men included those who were able to fight, sane and adults. And the dhurriyah were the women and children.
This hadith is evidence that it is allowed to launch a sudden attack on the enemy when they are heedless. They may be killed and their women, children and properties may be taken over as spoils of wars.

A WAR STRATEGY

(٣٩٤٦) وَعَنْ اَبِي اُسَيْدٍ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لَنَا يَوْمَ بَدْرٍ حِيْنَ صَفَفْنَا لِقُرَيْشٍ وَصَفُّوْا لَنَا اِذَا اَكْثَبُوْكُمْ فَعَلَيْكُمْ بِالنَّبْلِ وَفِيْ رِوَايَةٍ اِذَا اَكْثَبُوْكُمْ فَارْمُوْهُمْ وَاسْتَبْقُوْا نَبْلَكُمْ۔ رَوَاهُ الْبُخَارِيُّ وَحَدِيْثُ سَعْدٍ هَلْ تُنْصَرُوْنَ۔ سَنَذْكُرُ فِيْ بَابِ فَضْلِ الْفُقَرَاءِ وَحَدِيْثُ الْبَرَاءِ بَعَثَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ رَهْطًا فِيْ بَابِ الْمُعْجِزَاتِ اِنْ شَاءَ اللّٰهُ تَعَالٰى۔

3946. Sayyiduna Abu Usayd رضی اللہ عنہ narrated: The Prophet صلی اللہ علیہ وسلم instructed us on the day of badr when we formed ranks against the Quraysh and they formed ranks against us. "When they come nearer to you (within range of your arrows), shoot arrows at them."
According to a version: "When they come nearer to you, shoot at them, but do not use up all your arrows.(Keep some available to you.)[3]

وَحَدِيْثُ سَعْدٍ هَلْ تُنْصَرُوْنَ سَنَذْكُرُ فِيْ بَابِ فَضْلِ الْفُقَرَاءِ وَ حَدِيْثُ الْبَرَاءِ بَعَثَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ رَهْطًا فِيْ بَابِ الْمُعْجِزَاتِ اِنْ شَآءَ اللّٰهُ تَعَالٰى۔

The hadith of Sa'd رضی اللہ عنہ (Are you helped '...)we shall narrate against#5232.
And of Bara رضی اللہ عنہ (Allah's Messenger رضی اللہ عنہ dispatched a detachment ...) against # 5876.

SECTION II اَلْفَصْلُ الثَّانِيْ

FORMING RANKS ON THE BATTLEFIELD

(٣٩٤٧) عَنْ عَبْدِ الرَّحْمٰنِ بْنِ عَوْفٍ قَالَ عَبَّانَا النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ بِبَدْرٍ لَيْلًا۔ (رواه الترمذی)

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[1] Bukhair# 254,Muslim#71. 1730,Abu Dawud#2633, Musnad Ahmed # 2-31.

[2] See also the life of Prophet Muhammad صلی اللہ علیہ وسلم (Ibn Khaybar) p 456 (Darul Isha'at Karachi) There were amassing of their troops.

[3] Bukhair# 2900.

3947. Sayyiduna Abdur Rehman Ibn Awf رضی اللہ عنہ said, "The Prophet صلی اللہ علیہ وسلم mobilized us on the night of Badr."[1] (The Arabic word is (عبانا) abbana)

COMMENTARY: The Arabic word means 'to prepare'. Hence, before the battle of Badr began, the Prophet صلی اللہ علیہ وسلم mobilized the sahabah in the night by equipping them with arms, arranging their rows and positioning everyone of them at a strategic post.

DISTINGUISHING MARK OF WARRIORS

(۳۹٤۸) وَعَنِ الْمُهَلَّبِ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اِنْ بَيَّتَكُمُ الْعَدُوُّ فَلْيَكُنْ شِعَارُكُمْ حٰمٓ لَا يُنْصَرُوْنَ۔ (رواه الترمذی وابوداؤد)

3948. Sayyiduna Muhallab رضی اللہ عنہ said that Allah's Messenger صلی اللہ علیہ وسلم said (at the battle of Trenches), "If the enemy attacks you at night, your code words should be Haa Meem Laa Yunsarun (Haa Meem, they will not be helped)"[2]

COMMENTARY: It is common practice with every army that they have cord words or signs by which their warriors recognize each other. The commander tells them of it beforehand. The war cry or the code words in the battle of trenches meant 'O Revealer of Haa Meem, let not the enemy be helped.'

(۳۹٤۹) وَعَنْ سَمُرَةَ بْنِ جُنْدُبٍ قَالَ كَانَ شِعَارُ الْمُهَاجِرِيْنَ عَبْدُاللّٰهِ وَشِعَارُ الْاَنْصَارِ عَبْدُالرَّحْمٰنِ۔ (رواه ابوداؤد)

3949. Sayyiduna Samurah Ibn Jundub رضی اللہ عنہ said that the code words (or war cry) of the Muhajirs (emigrants) was Abdullah and of the ansars Abdur Rahman (in one of the battles).[3]

(۳۹۵۰) وَعَنْ سَلَمَةَ بْنِ الْاَكْوَعِ قَالَ غَزَوْنَا مَعَ اَبِيْ بَكْرٍ فِيْ زَمَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَبَيَّتْنَا هُمْ نَقْتُلُهُمْ وَكَانَ شِعَارُنَا تِلْكَ اللَّيْلَةَ اَمِتْ اَمِتْ۔ (رواه ابوداؤد)

3950. Sayyiduna Salamah Ibn Akwa رضی اللہ عنہ said, "We proceeded to a battle under Abu Bakr رضی اللہ عنہ in the time of the Prophet صلی اللہ علیہ وسلم (against the enemy).We attacked them by night and killed them. Our code words on That night were: Amit, amit! (Kill! Kill!)"[4]

NO SHOUTING

(۳۹۵۱) وَعَنْ قَيْسِ بْنِ عُبَادٍ قَالَ كَانَ اَصْحَابُ رَسُوْلِ للّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَكْرَهُوْنَ الصَّوْتَ عِنْدَ الْقِتَالِ۔ (رواه ابوداؤد)

3951. Sayyiduna Qays Ibn ubad رضی اللہ عنہ said that the sahabah of Allah's Messenger رضی اللہ عنہ did not like shouting while fighting (except calling Allah's name).[5]

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[1] Tirimidhi#1677(1683).

[2] Tirimidhi # 1682, Abu Dawud # 2597, Musnad Ahmed 4-65.

[3] Abu Dawud#2595.

[4] Abu Dawud#2638, Musnad Ahmed 4-46.

[5] Abu Dawud#2656.

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COMMENTARY: Generally the warriors raise hue and cry on the battle-field, but the Sahabah (Prophet's Companions) رضی اللہ عنہم refrained from that. They only called for Allah's help.

KILL THE OLD BUT SPARE CHILDREN OF ENEMY

(٣٩٥٢) وَعَنْ سَمُرَةَ بْنِ جُنْدُبٍ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اقْتُلُوا شُيُوخَ الْمُشْرِكِيْنَ وَاسْتَحْيُوْا شَرْخَهُمْ اَیْ صِبْيَانَهُمْ۔ (رواه الترمذی وابوداؤد)

3952. Sayyiduna Samurah ibn Jundub رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said. "Kill the old men of the polytheists (who are enemies) but let off their children.[1]

COMMENTARY: The old men could be the youth who are older than the children, or the strong fighting aged, as strong as youth. But, old infirm men must be spared except those aged who share their experience with their army. It is allowed to kill them.

ALLOWED TO PUT ENEMY PROPERTIES AND FIELDS ON FIRE.

(٣٩٥٣) وَعَنْ عُرْوَةَ قَالَ حَدَّثَنِيْ اُسَامَةُ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ كَانَ عَهِدَ اِلَيْهِ قَالَ أَغِرْ عَلٰى اُبْنٰى صَبَاحًا وَ حَرِّقْ۔ (رواه ابوداؤد)

3953. Sayyidina Urwah رضی اللہ عنہ said "Usamah رضی اللہ عنہ narrated to me that Allah's Messenger صلی اللہ علیہ وسلم had instructed him (when he had sent him on an expedition), Attack Ubna in the morning and burn the place (like horses, fields, trees of the enemy)[2]

COMMENTARY: Ubna is a place in Syria, Usamah ibn Zayd رضی اللہ عنہ was sent there as commander of the Muslim army. It is allowed to devastate enemy land and all kind of their property.

ATTACK ENEMY WHEN HE IS VERY NEAR

(٣٩٥٤) وَعَنْ اَبِيْ اُسَيْدٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَوْمَ بَدْرٍ اِذَا اَكْثَبُوْكُمْ فَارْمُوْهُمْ وَلَا تَسُلُّوا السُّيُوْفَ حَتّٰى يَغْشَوْكُمْ۔ (رواه ابوداؤد)

3954. Sayyiduna Abu Usayd صلی اللہ علیہ وسلم narrated that on the day of Badar Allah's Messenger صلی اللہ علیہ وسلم said, "When they (the enemy) are near you, shoot arrows at them, but do not unsheathe your swords till they are very close to you.[3]

DO NOT KILL LABOURERS OF ENEMY

(٣٩٥٥) وَعَنْ رَبَاحِ بْنِ الرَّبِيْعِ قَالَ كُنَّا مَعَ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فِيْ غَزْوَةٍ فَرَأَى النَّاسَ مُجْتَمِعِيْنَ عَلٰى شَيْءٍ فَبَعَثَ رَجُلًا فَقَالَ انْظُرْ عَلٰى مَا اجْتَمَعَ هٰؤُلَاءِ فَجَاءَ فَقَالَ عَلٰى امْرَأَةٍ قَتِيْلٍ فَقَالَ مَا كَانَتْ هٰذِهِ لِتُقَاتِلَ وَعَلَى الْمُقَدَّمَةِ خَالِدُ بْنُ الْوَلِيْدِ فَبَعَثَ رَجُلًا فَقَالَ قُلْ لِخَالِدٍ لَا تَقْتُلِ امْرَأَةً وَلَا عَسِيْفًا۔ (رواه ابوداؤد)

3955. Sayyiduna Rabah ibn Rabi رضی اللہ عنہ narrated: We were with Allah's Messenger

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[1] Tirmidhi# 1883,Abu Dawud # 2680, Musnad Ahmad 5-12.

[2] Abu Dawud 2612, Ibu Majah # 2843, Musnad Ahmad 5-205.

[3] Abu Dawud # 2684.

صلی اللہ علیہ وسلم **in a battle. He saw some people gathered (at a place) near something. So he sent a man, saying, "See around what have they gathered." He came back and said, Around a woman who is killed." He asked, She was not fighting (then why was she killed)?"Khalid ibn Walid** صلی اللہ علیہ وسلم **was the commander of the forward bloc. He sent that man to instruct him not to Kill any woman or a labourer.**[1]

COMMENTARY: The labourer who is brought to the battle field not to fight but to serve and do miscellaneous work should not be killed.

INSTRUCTIONS TO THE WARRIORS

(٣٩٥٦) وَعَنْ اَنَسٍ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ انْطَلِقُوْا بِسْمِ اللّٰهِ وَبِاللّٰهِ وَعَلٰى مِلَّةِ رَسُوْلِ اللّٰهِ لَا تَقْتُلُوْا شَيْخًا فَانِيًا وَلَا طِفْلًا صَغِيْرًا وَلَا امْرَأَةً وَلَا تَغُلُّوْا وَضُمُّوْا غَنَائِمَكُمْ وَ اَصْلِحُوْا وَاَحْسِنُوْا فَاِنَّ اللّٰهَ يُحِبُّ الْمُحْسِنِيْنَ۔ (رواہ ابوداؤد)

3956. Sayyiduna Anas رضی اللہ عنہ **narrated that Allah's Messenger** صلی اللہ علیہ وسلم **said (to the warriors going to battle),"Go with the name of Allah, with Allah's help and enablement and on the religion of Allah! (Remember!) Do not kill a decrepit old man or a little child or a woman. Do not commit treachery with the spoils but collect your spoils. And keep good ties mutually (or, Keep your affairs correct; or, if expedient, make peace with the enemy). Be Kind to each other, for, indeed, Allah loves the good-doers.**[2]

COMMENTARY: The old man should be spared but if he has fighting ability or is an asset to the enemy as a commander or adviser then he may be done away with.

Similarly, a child is spared unless he is the king or chief of his people, or takes part in battle in any of the roles possible.

So, too, the woman who is not killed is one who has no part in the battle. But, if she is a queen or an adviser then she should be put to death.

MAKKANS THREW CHALLENGE TO DUEL AT BADR

(٣٩٥٧) وَعَنْ عَلِيٍّ قَالَ لَمَّا كَانَ يَوْمُ بَدْرٍ تَقَدَّمَ عُتْبَةُ بْنُ رَبِيْعَةَ وَتَبِعَهُ ابْنُهُ وَ اَخُوْهُ فَنَادٰى مَنْ يُبَارِزُ فَانْتَدَبَ لَهُ شَبَابٌ مِنَ الْاَنْصَارِ فَقَالَ مَنْ اَنْتُمْ فَاَخْبَرُوْهُ فَقَالَ لَا حَاجَةَ لَنَا فِيْكُمْ اِنَّمَا اَرَدْنَا بَنِيْ عَمِّنَا فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قُمْ يَا حَمْزَةُ قُمْ يَا عَلِيُّ قُمْ يَا عُبَيْدَةُ بْنُ الْحَارِثِ فَاَقْبَلَ حَمْزَةُ اِلٰى عُتْبَةَ وَاَقْبَلْتُ اِلٰى شَيْبَةَ وَ اخْتَلَفَ بَيْنَ عُبَيْدَةَ وَالْوَلِيْدِ ضَرْبَتَانِ فَاَثْخَنَ كُلُّ وَاحِدٍ مِنْهُمَا صَاحِبَهُ ثُمَّ مِلْنَا عَلَى الْوَلِيْدِ فَقَتَلْنَاهُ وَاحْتَمَلْنَا عُبَيْدَةَ۔ (رواہ احمد وابوداؤد)

3957. Sayyiduna Ali رضی اللہ عنہ **narrated that at the Battle of Badr, Utbah ibn Rabiah stepped forward. Then his son and his brother (Shaybah ibn Rabiah) followed him. He cried loudly. "Who will have a duel (with us)?" Many young men of the**

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[1] Abu Dawud # 2669, MASNAD Ahmad 3-88.

[2] Abu Dawud # 2614.

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ansar stepped forward (to take up the challenge). He asked, "Who are you ?" They informed him (that they were the ansar of Madinah).He shouted, "We have no need of you. We only intend to face (our cousins) the sons of our paternal uncle (meaning, the Quraysh Muslims who have emigrated from Makkah)".So, Allah's Messenger صلى الله عليه وسلم said "Arise Hamzah! Arise Ali ! Arise Ali! Arise ubaydah ibn Harith!" Hamzah رضى الله عنه met Utbah. Ali رضى الله عنه met Shaybah. (They Killed the two infidels.). Two blows were exchanged between Ubaydah رضى الله عنه and Walid and each wounded the other severely. So, they (Hamzah رضى الله عنه and Ali رضى الله عنه went to Walid and made short work of him and carried away Ubaydah رضى الله عنه (out of the battle field).[1]

ALLOWED TO RETREAT TO GET REINFORCEMENT

(٣٩٥٨) وَعَنِ ابْنِ عُمَرَ قَالَ بَعَثَنَا رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فِيْ سَرِيَّةٍ فَحَاصَ النَّاسُ حَيْصَةً فَأَتَيْنَا الْمَدِيْنَةَ فَاخْتَفَيْنَا بِهَا وَ قُلْنَا هَلَكْنَا ثُمَّ اَتَيْنَا رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقُلْنَا يَارَسُوْلَ اللّٰهِ نَحْنُ الْفَرَّارُوْنَ قَالَ بَلْ اَنْتُمُ الْعَكَّارُوْنَ وَاَنَا فِئَتُكُمْ۔ رَوَاهُ التِّرْمِذِيُّ وَفِيْ رِوَايَةِ اَبِيْ دَاوٗدَ وَقَالَ لَا بَلْ اَنْتُمُ الْعَكَّارُوْنَ قَالَ فَدَنَوْنَا فَتَقَبَّلْنَا يَدَهٗ فَقَالَ اَنَافِئَةُ الْمُسْلِمِيْنَ وَسَنَذْكُرُ حَدِيْثَ اُمَيَّةَ بْنِ عَبْدِاللّٰهِ كَانَ يَسْتَفْتِحُ وَحَدِيْثُ اَبِي الدَّرْدَاءِ اَبْغُوْنِيْ فِيْ ضُعَفَائِكُمْ فِيْ بَابِ فَضْلِ الْفُقَرَآءِ اِنْ شَاءَ اللّٰهُ تَعَالٰى۔

3958. Sayyiduna Ibn Umar رضى الله عنه narrated Allah's Messenger صلى الله عليه وسلم sent us on an expedition. (on reaching there) the people turned their backs. On coming to Madinah, we were ashamed and concealed ourselves (in our homes). "We are mined" (because of pretreatment and the incumbent sin). We met Allah's Messenger صلى الله عليه وسلم and submitted, "O Messenger of Allah, we are deserters." He said , "No, you are contenders (who will attack again). I am your helper." In another version the words are: "Rather you are the contenders who will launch the attack a fresh. So, they came near (him and kissed his hand he said "I am (by myself) a Muslim army."[2]

COMMENTARY: The Prophet صلى الله عليه وسلم assured his Sahabah (Prophet's Companions) رضى الله عنهم that since they had retreated because of their weaker strength and intended to get reinforcement before returning to the battlefield, they had committed no sin.
He declared himself a full-fledged section (or community) because of his greatness and blessing. It is as the Quran says of Prophet Ibrahim عليه السلام:

اِنَّ اِبْرَاهِيْمَ كَانَ اُمَّةً

{surely Ibrahim was an Ummah} (16: 120) (a whole community in himself).
He hereby pointed out to his being a source at strength and light for the Muslims.They got their help from him.

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[1] Abu Dawud # 2665, Musand Ahmad 1-117.
[2] Tirmidhi #1716 (1722) , Abu Dawud # 2647, Musnad Ahmad 2-111.

وَسَنَذْكُرُ حَدِيْثُ اُمَيَّةَ بْنِ عَبْدِاللّٰهِ كَانَ يَسْتَفْتِحُ وَحَدِيْثُ اَبِي الدَّرْدَاء اَبْغُوْنِي فِيْ ضُعَفَائِكُمْ فِيْ بَابِ فَضْلِ الْفُقَرَآءِ اِنْ شَآءَ اللّٰهُ تَعَالٰى

We shall reproduced the hadith of Ummayah Ibn Abdullah رضی اللہ عنہ at #5247. And of Abu Darda رضی اللہ عنہ at # 5246 (respectively (كَانَ يَسْتَفْتِحُ) he asked for help and (ابْغُوْنِي فِيْ ضُعَفَائِكُمْ) look for me among your weak).

SECTION III اَلْفَصْلُ الثَّالِثُ

USE OF CATAPULT AT BATTLE OF TAIF

(۳۹۵۹) عَنْ ثَوْبَانَ بْنِ يَزِيْدَ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ نَصَبَ الْمَنْجَنِيْقَ عَلٰى اَهْلِ الطَّائِفِ۔

(رواہ الترمذی مرسلا)

3959. Thawban Ibn Yazid رضی اللہ عنہ said that at the battle of taif the prophet صلی اللہ علیہ وسلم set up catapults (to attack its people).[1]

[The Arabic Mishkat hasit from Thawr Ibn Yazid رضی اللہ عنہ.]

COMMENTARY: The ancient weapon catapult may be said to be like today's cannon. Stones were hurled at fortresses after they were besieged.

Ta'if is a large city of the Hijaz even today. It is between 40 and 45 miles from Makkah to its south-east However till recently there was no direct road to it. It can be reached after going round mountains and in this way it is 85 miles from Makkah. This road also leads to Mina and Arafat. The Prophet صلی اللہ علیہ وسلم had gone to Taif by this road when he had propagated Islam there. That place was Mathnah which is the original Ta'if. There are two gardens each having a small Mosque, Masjid Ali and Al-Jatha, the valley Awj separates them. It is presumed that the Prophet صلی اللہ علیہ وسلم had set up the catapults against Ta'if here.

[1] Tirmidhi in a mursal form Siratun Nabi (Numani) English translation life of the Prophet صلی اللہ علیہ وسلم VI p429. Tabain V3p1669 bydened, Tirmidhi #2771 (in notes to it from Thawr ibn Yazid)

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CHAPTER - VI

COMMANDS CONCERNING THE PRISONERS

بَابُ حُكْمِ الْأُسَرَاءِ

SECTION I

اَلْفَصْلُ الْاَوَّلُ

DISBELIEVING PRISONERS WHO WILL ENTER PARADISE

(٣٩٦٠) عَنْ اَبِيْ هُرَيْرَةَ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ عَجِبَ اللّٰهُ مِنْ قَوْمٍ يُدْخَلُوْنَ الْجَنَّةَ فِي السَّلَاسِلِ وَفِيْ رِوَايَةٍ يُقَادُوْنَ اِلَى الْجَنَّةِ بِالسَّلَاسِلِ۔ (رواه البخاری)

3960. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "Allah is pleased with those people who will enter paradise in fetters." According to another version : " Who will be taken to paradise in fetters."[1]

COMMENTARY: The prisoners of war who are disbelievers are brought to Islamic state in fetters. Then Allah causes them to believe and admits them to paradise. In this sense they are said to have been admitted to paradise because of their fetters.

ENEMY'S SPY SHOULD BE KILLED

(٣٩٦١) وَعَنْ سَلَمَةَ بْنِ الْاَكْوَعِ قَالَ اَتَى النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَيْنٌ مِنَ الْمُشْرِكِيْنَ وَهُوَ فِيْ سَفَرٍ فَجَلَسَ عِنْدَ اَصْحَابِهٖ يَتَحَدَّثُ ثُمَّ انْفَتَلَ فَقَالَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اطْلُبُوْهُ وَاقْتُلُوْهُ فَقَتَلْتُهٗ فَنَفَّلَنِيْ سَلَبَهٗ۔

(متفق علیه)

3961. Sayyiduna salamah ibn Akwa رضی اللہ عنہ said, : A spy of the idolaters (enemy) came to the Prophet صلی اللہ علیہ وسلم while he was on a journey. He sat down with his Sahabah (Prophet's Companions) رضی اللہ عنہم and then departed. The Prophet صلی اللہ علیہ وسلم (learnt of it and) said (to me), 'Look for him and kill him.' So I killed him and the Prophet صلی اللہ علیہ وسلم let me keep the spoils taken from him."[2]

(٣٩٦٢) وَعَنْهُ قَالَ غَزَوْنَا مَعَ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ هَوَازِنَ فَبَيْنَا نَحْنُ نَتَضَحّٰى مَعَ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِذْ جَآءَ رَجُلٌ عَلٰى جَمَلٍ اَحْمَرَ فَاَنَاخَهٗ وَجَعَلَ يَنْظُرُ وَفِيْنَا ضُعْفَةٌ وَرِقَّةٌ مِنَ الظَّهْرِ وَبَعْضُنَا مُشَاةٌ اِذْ خَرَجَ يَشْتَدُّ فَاَتٰى جَمَلَهٗ فَاَثَارَهٗ فَاشْتَدَّ بِهِ الْجَمَلُ فَخَرَجْتُ اَشْتَدُّ حَتّٰى اَخَذْتُ بِخِطَامِ الْجَمَلِ فَاَنَخْتُهٗ ثُمَّ اخْتَرَطْتُ سَيْفِيْ فَضَرَبْتُ رَاْسَ الرَّجُلِ ثُمَّ جِئْتُ بِالْجَمَلِ اَقُوْدُهٗ وَعَلَيْهِ رَحْلُهٗ وَسِلَاحُهٗ فَاسْتَقْبَلَنِيْ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَالنَّاسُ فَقَالَ مَنْ قَتَلَ الرَّجُلَ قَالُوا ابْنُ الْاَكْوَعِ قَالَ لَهٗ سَلَبُهٗ اَجْمَعُ۔ (متفق علیه)

3962. Sayyiduna Salamah Ibn Akwa رضی اللہ عنہ said, "We set out with Allah's Messenger صلی اللہ علیہ وسلم to fight with the Hawazin (a branch of the tribe Qays). While

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[1] Bukhari # 3010, Abu Dawud # 2677, Musnad Ahmad 2. 302.

[2] Bukhari #3051, Muslim #45. 1754, Abu Dawud #2653, Ibn Majah # 2836, Musnad Ahmad 4. 51.

we were having our lunch in the forenoon with Allah's Messenger صلى الله عليه وسلم a man came on a red camel.(He seemed to be on an espionage mission for the enemy.) He made the camel kneel and kept glancing here and there. We were in a weak condition (very morn out). We had very few riding beasts and some of us were on foot. He (observed us well and) suddenly rushed out to his camel (mounted it) and rode away on it swiftly. I hastened out (from the people and pursued him). I caught the camel's nose-rein, made it kneel, drew my sword and hit the man's head with it. (I killed him thereby.) Then, I led the camel (to the Prophet صلى الله عليه وسلم with his saddle and weapons on it. Allah's Messenger صلى الله عليه وسلم and the people received me and he asked, ' Who killed the man?' They said, 'Ibn Akwa' . So he said 'Let him keep all his spoils.'[1]

JUDGEMENT ABOUT TREACHEROUS JEWS

(٣٩٦٣) وَعَنْ اَبِي سَعِيْدِ نِ الْخُدْرِيِّ قَالَ لَمَّانَزَلَتْ بَنُو قُرَيْظَةَ عَلٰى حُكْمِ سَعْدِ بْنِ مُعَاذٍ بَعَثَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَجَاءَ عَلٰى حِمَارٍ فَلَمَّا دَنَا قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قُوْمُوْا اِلٰى سَيِّدِ كُمْ فَجَآءَ فَجَلَسَ فقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِنَّ هٰؤُلَاءِ نَزَلُوْا عَلٰى حُكْمِكَ قَالَ فَاِنِّيْ اَحْكُمُ اَنْ تُقْتَلَ الْمُقَاتِلَةُ وَ اَنْ تُسْبَى الذُّرِيَّةُ قَالَ لَقَدْ حَكَمْتَ فِيْهِمْ بِحُكْمِ الْمَلِكِ وَفِي رِوَايَةٍ بِحُكْمِ اللّٰهِ۔ (متفق عليه)

3963. Sayyiduna Abu Sa'eed Khudri رضى الله عنه narrated that when the Banu Qurayzah (Jews of Madinah) agreed to make Sa'd ibn Muadh رضى الله عنه the hakam (arbitrator to decide their fate), Allah's Messenger صلى الله عليه وسلم sent for him and he came on an ass. As he approached, Allah's Messenger صلى الله عليه وسلم said, "Stand up in respect to (or, to help) your chief." He came and sat down and Allah's Messenger صلى الله عليه وسلم said, "These people have agreed to have you as their hakam." He said, "I decide that the fighting men (among them) should be killed and their women and offspring should be taken captives." He (the Prophet صلى الله عليه وسلم) said, " You have passed about them a decision (like that) of a king."
According to another version: "A decision like that of Allah."[2]

COMMENTARY: Sayyiduna Sa'd ibn Muadh رضى الله عنه was a prominent, top ranking Sahabi and a well-known Ansar. He was acknowledged as the chief of the ansar of Madinah.
Banu Qurayzah was a tribe of Madinah allied to sa'd رضى الله عنه. Its Jews had his protection. The Jews had infringed their agreement with the Prophet صلى الله عليه وسلم of which we have spoken earlier. They began to conspire against the Muslims and to hurt them and Banu Qurayzah did not lag behind in this regard.
In 5AH, after the battle of the Trenches, the Prophet صلى الله عليه وسلم decided in obedience to Allah's command, to fight with them . He besieged them for twenty-five days when they found no way out, they said that they surrendered to the decision of sa'd رضى الله عنه about them. They had hoped that he would favour them. But he judged according to what they deserved.
Nawawi cites this hadith to say that when a man of merit arrives, he should be respected

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[1] Bukhari # 3051, Muslim # 45. 1754, Abu Dawud # 2654.
[2] Bukhari #3043, Muslim # 64. 1768, Musnad Ahmad 3, 22

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and those present must standup for him. Most of the Ulama (Scholars) say the same thing. Some ulama (Scholars), however, differ and say that sa'd رضی اللہ عنہ had been wounded by an arrow on his thigh in the battle of Trenches, so the Prophet صلی اللہ علیہ وسلم instructed the people to help him alight from the ass.

RULER OF YAMAMAH EMBRACED ISLAM

(٣٩٦٤) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ بَعَثَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ خَيْلًا قِبَلَ نَجْدٍ فَجَاءَتْ بِرَجُلٍ مِنْ بَنِيْ حَنِيْفَةَ يُقَالُ لَهٗ ثُمَامَةُ بْنُ اَثَالٍ سَيِّدُ اَهْلِ الْيَمَامَةِ فَرَبَطُوْهُ بِسَارِيَةٍ مِنْ سَوَارِى الْمَسْجِدِ فَخَرَجَ اِلَيْهِ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ مَاذَا عِنْدَكَ يَا ثُمَامَةُ فَقَالَ عِنْدِىْ يَا مُحَمَّدُ خَيْرٌ اِنْ تَقْتُلْ تَقْتُلْ ذَادَمٍ وَ اِنْ تُنْعِمْ تُنْعِمْ عَلٰى شَاكِرٍ وَاِنْ كُنْتَ تُرِيْدُ الْمَالَ فَسَلْ تُعْطَ مِنْهُ مَاشِئْتَ فَتَرَكَهٗ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ حَتّٰى كَانَ الْغَدُ فَقَالَ لَهٗ مَاعِنْدَكَ يَا ثُمَامَةُ فَقَالَ عِنْدِىْ مَا قُلْتُ لَكَ اِنْ تُنْعِمْ تُنْعِمْ عَلٰى شَاكِرٍ وَاِنْ تَقْتُلْ تَقْتُلْ ذَادَمٍ وَاِنْ كُنْتَ تُرِيْدُ الْمَالَ فَسَلْ تُعْطَ مِنْهُ مَاشِئْتَ فَتَرَكَهٗ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ حَتّٰى كَانَ بَعْدَ الْغَدِ فَقَالَ لَهٗ مَا عِنْدَكَ يَاثُمَامَةُ؟ فَقَالَ عِنْدِىْ مَا قُلْتُ لَكَ اِنْ تُنْعِمْ تُنْعِمْ عَلٰى شَاكِرٍ وَاِنْ تَقْتُلْ تَقْتُلْ ذَادَمٍ وَاِنْ كُنْتَ تُرِيْدُ الْمَالَ فَسَلْ تُعْطَ مِنْهُ مَا شِئْتَ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَطْلِقُوْا ثُمَامَةَ فَانْطَلَقَ اِلٰى نَخْلٍ قَرِيْبٍ مِنَ الْمَسْجِدِ فَاغْتَسَلَ ثُمَّ دَخَلَ الْمَسْجِدَفَقَالَ اَشْهَدُ اَنْ لَا اِلٰهَ اِلَّا اللّٰهُ وَاَشْهَدُاَنَّ مُحَمَّدًا عَبْدُهٗ وَرَسُوْلُهٗ يَا مُحَمَّدُ وَاللّٰهِ مَاكَانَ عَلٰى وَجْهِ الْاَرْضِ وَجْهٌ اَبْغَضُ اِلَيَّ مِنْ وَجْهِكَ فَقَدْ اَصْبَحَ وَجْهُكَ اَحَبَّ الْوُجُوْهِ كُلِّهَا اِلَيَّ وَاللّٰهِ مَاكَانَ مِنْ دِيْنٍ اَبْغَضَ اِلَيَّ مِنْ دِيْنِكَ فَاَصْبَحَ دِيْنُكَ اَحَبَّ الدِّيْنِ كُلِّهٖ اِلَيَّ وَ وَاللّٰهِ مَا كَانَ مِنْ بَلَدٍ اَبْغَضَ اِلَيَّ مِنْ بَلَدِكَ فَاَصْبَحَ بَلَدُكَ اَحَبَّ الْبِلَادِ كُلِّهَا اِلَيَّ وَاِنَّ خَيْلَكَ اَخَذَتْنِيْ وَاَنَا اُرِيْدُ الْعُمْرَةَ فَمَاذَا تَرٰى فَبَشَّرَهٗ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَاَمَرَهٗ اَنْ يَعْتَمِرَ فَلَمَّا قَدِمَ مَكَّةَ قَالَ لَهٗ قَائِلٌ اَصَبَوْتَ فَقَالَ لَا وَ لٰكِنِّيْ اَسْلَمْتُ مَعَ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَلَا وَاللّٰهِ لَا يَاْتِيْكُمْ مِنَ الْيَمَامَةِ حَبَّةُ حِنْطَةٍ حَتّٰى يَاْذَنَ فِيْهَارَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ۔ (رواه مسلم واختصره البخارى)

3964. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah' Messenger صلی اللہ علیہ وسلم sent a group of horsemen to Najd. They brought a man of Banu Hanifah (to Madinah). He was named Thumamah ibn Uthal. He was the chief of the inhabitants of yamamah. They tied him to one of the columns of the mosque (Masjid Nabawi). Allah's Messenger صلی اللہ علیہ وسلم came to him and asked him, " What do you expect. O Thumamah? " (What do you have to say?) He said, "I expect what is good, O Muhammad. If you kill me you will kill one with blood on his head " (Who deserves to be killed. Or, he meant that his blood would be avenged, for his people would not forgives his killing). "If you show kindness to me, you will be doing it to one who is grateful. If you wish to have properly, ask for it, you will be given

whatever you wish."
Allah's Messenger صلى الله عليه وسلم left him till the next day when he asked him again, "What do you expect, O Thumamah?. He said, " I have the same thing to say as I told you earlier. If you are kind to one who is grateful. If you kill me, you will kill one with blood on him. If you want property, you may ask and you will be given what you ask." Again, Allah's Messenger صلى الله عليه وسلم left him as he was.
On the next (third) day. He asked him (as before), " What do you expect, O Thumamah? " He said, " I have (the same answers) as I have told you. If you are kind to me, you will be kind to one who is grateful. But, if you kill me, you will kill one with blood on him. If you wish to have property, you may ask and will be given what you ask."
Allah's Messenger صلى الله عليه وسلم said, "Set Thumamah free." He went away (on being released without saying anything) to the palm trees near the mosque (Masjid Nabawi). There he had a bath and came back to the mosque and testified:

اَشْهَدُ اَنْ لَا اِلٰهَ اِلَّا اللّٰهُ وَاَشْهَدُ اَنَّ مُحَمَّدًا عَبْدُهٗ وَرَسُوْلُهٗ

"(I bear witness that there is no god but Allah. And, I bear witness that Muhammad is His slave and His Messenger)."
(Then he said:) "O Muhammad, I say by Allah. That there was no face on the surface of the earth more the surface of the earth more despised to me than yours. But, now your face is the dearest of all to me (in all the world) . By Allah, no religion was more despised to me than yours, but now your religion is the dearest to me of all (religion). By Allah, no town was more despised to me than yours, but now yours town is the dearest of all to me."
(Then he said:) " Your horsemen had seize me while I intended to perform umrah. So what do you say?"
Allah's Messenger صلى الله عليه وسلم gave him glad tidings (that all his sins were forgiven). Then he instructed him to perform Umrah.
When he reached Makkah, someone said to him, " You have become irreligious. " He said, "No. But ,I have embraced Islam at the hands of Allah's Messenger صلى الله عليه وسلم And, by Allah, not one grain of wheat will come to you from Yamamah unless Allah's Messenger صلى الله عليه وسلم permits me to release it."[1]

(٣٩٦٥) وَعَنْ جُبَيْرِ بْنِ مُطْعِمٍ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ فِيْ اُسَارٰى بَدْرٍ لَوْ كَانَ الْمُطْعِمُ بْنُ عَدِيٍّ حَيًّا ثُمَّ كَلَّمَنِيْ فِيْ هٰؤُلَاءِ النَّتْنٰى لَتَرَكْتُهُمْ لَهٗ۔ (رواه البخارى)

3965. Sayyiduna Jubayr ibn Mut'im narrated that the Prophet صلى الله عليه وسلم said about the prisoners (of war) taken at Badr, " If Muslim ibn Adi was alive and had interceded with me concerning these dirty prisoners, I would have released them for his sake."[2]

COMMENTARY: Jubayr was one of the prisoners taken at badr. He heard this hadith from the Prophet صلى الله عليه وسلم as a disbeliever but narrated it as a Muslim رضى الله عنه.

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[1] Bukhari #4372, Muslim # 59. 1764, Abu Dawud # 2679.
[2] Bukhari #3139, Abu Dawud # 2[illegible]

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His father, Mut'im ibn Adi رضی اللہ عنہ was the grandson of Nawfal ibn Abu Munaf. So he was a near relative of the Prophet صلی اللہ علیہ وسلم grandfather. Mut'im had shown a favour to the Prophet صلی اللہ علیہ وسلم_by giving him protection when he had returned from Ta'if after preaching there and the infidels of Makkah intended Persecute him.
Therefore, the Prophet صلی اللہ علیہ وسلم spoke those words to Jubayr. Thereby, he intended to win over his heart and get him inclined to Islam.

PERSECUTORS WERE LET OFF

(٣٩٦٦) وَعَنْ اَنَسٍ اَنَّ ثَمَانِيْنَ رَجُلًا مِنْ اَهْلِ مَكَّةَ هَبَطُوْا عَلٰى رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مِنْ جَبَلِ التَّنْعِيْمِ مُتَسَلِّحِيْنَ يُرِيْدُوْنَ غِرَّةَ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَاَصْحَابِهٖ فَاَخَذَ هُمْ سِلْمًا فَاسْتَحْيَا هُمْ وَفِيْ رِوَايَةٍ فَاَعْتَقَهُمْ فَاَنْزَلَ اللّٰهُ تَعَالٰى وَهُوَ الَّذِيْ كَفَّ اَيْدِيَهُمْ عَنْكُمْ وَاَيْدِيَكُمْ عَنْهُمْ بِبَطْنِ مَكَّةَ۔ (رواه مسلم)

3966. Sayyiduna Anas رضی اللہ عنہ narrated that (in the year of Hudaybiyah) eighty men of Makkah heavily armed came down from the mountain of tanim against Allah's Messenger صلی اللہ علیہ وسلم hoping to trap them suddenly. But, without fighting he took them captive disgraced and helpless then he let them go alive.
According to another version: He set them free. Allah, The Exalted, revealed:

وَهُوَ الَّذِيْ كَفَّ اَيْدِيَهُمْ عَنْكُمْ وَاَيْدِيَكُمْ عَنْهُمْ بِبَطْنِ مَكَّةَ

{And He is the one who restrained their hands from you and your hands from them in the valley of Makkah after He had let you prevail over them} (48: 24)[1]

THE PROPHET'S صلی اللہ علیہ وسلم ADDRESS TO THE IDOLATERS SLAIN AT BADR

(٣٩٦٧) وَعَنْ قَتَادَةَ قَالَ ذَكَرَ لَنَا اَنَسُ بْنُ مَالِكٍ عَنْ اَبِيْ طَلْحَةَ اَنَّ نَبِيَّ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَمَرَ يَوْمَ بَدْرٍ بِاَرْبَعَةٍ وَعِشْرِيْنَ رَجُلًا مِنْ صَنَادِيْدِ قُرَيْشٍ فَقُذِفُوْا فِيْ طَوِيٍّ مِنْ اَطْوَاءِ بَدْرٍ خَبِيْثٍ مُخْبِثٍ وَكَانَ اِذَا ظَهَرَ عَلٰى قَوْمٍ اَقَامَ بِالْعُرْصَةِ ثَلَاثَ لَيَالٍ فَلَمَّا كَانَ بِبَدْرٍ الْيَوْمُ الثَّالِثُ اَمَرَ بِرَاحِلَتِهٖ فَشُدَّ عَلَيْهَا رَحْلُهَا ثُمَّ مَشٰى وَاتَّبَعَهٗ اَصْحَابُهٗ حَتّٰى قَامَ عَلٰى شَفَةِ الرَّكِيِّ فَجَعَلَ يُنَادِيْهِمْ بِاَسْمَائِهِمْ وَاَسْمَاءِ اٰبَائِهِمْ يَا فُلَانُ ابْنَ فُلَانٍ وَيَا فُلَانُ بْنَ فُلَانٍ اَيَسُرُّكُمْ اَنَّكُمْ اَطَعْتُمُ اللّٰهَ وَرَسُوْلَهٗ فَاِنَّا قَدْ وَجَدْنَا مَا وَعَدَنَا رَبُّنَا حَقًّا فَهَلْ وَجَدْتُمْ مَا وَعَدَ رَبُّكُمْ حَقًّا فَقَالَ عُمَرُ يَا رَسُوْلَ اللّٰهِ مَا نُكَلِّمُ مِنْ اَجْسَادٍ لَا اَرْوَاحَ لَهَا قَالَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَالَّذِيْ نَفْسُ مُحَمَّدٍ بِيَدِهٖ مَا اَنْتُمْ بِاَسْمَعَ لِمَا اَقُوْلُ مِنْهُمْ وَفِيْ رِوَايَةٍ مَا اَنْتُمْ بِاَسْمَعَ مِنْهُمْ وَلٰكِنْ لَا يُجِيْبُوْنَ۔ مُتَّفَقٌ عَلَيْهِ وَزَادَ الْبُخَارِيُّ قَالَ قَتَادَةُ اَحْيَاهُمُ اللّٰهُ حَتّٰى اَسْمَعَهُمْ قَوْلَهٗ تَوْبِيْخًا وَتَصْغِيْرًا وَنِقْمَةً وَحَسْرَةً وَنَدَمًا۔

3967. Sayyiduna Qatadah رضی اللہ عنہ said that Anas ibn Maalik رضی اللہ عنہ narrated to them

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Muslim# 133. 1802, Tirmidhi # 3264, Abu Dawud # 2688, Musnad Ahmad 3. 124.

on the authority of Abu Talhah رضی اللہ عنہ that on the day of Badr, Allah's Prophet صلی اللہ علیہ وسلم gave instructions that twenty-four chiefs of the Quraysh (infidels of Makkah) should be thrown into one of the wells of Badr that was filthy and spread filth. When he vanquished an enemy (it was his practice that) he stayed three nights on the battlefield. So when the three days were over (or it was the third day), he asked for his riding-beast saddled. It was done. Then he went, followed by his Sahabah (Prophet's Companions) رضی اللہ عنہم, till he stood at the opening of the well. Here, he began to call them by their names and the names of their fathers, asking, "O so-and-so son of so-and-so and O so-and-so son of so-and-so, does it please you that you had (perhaps) obeyed Allah and His Messenger? Certainly we have found what our lord had promised us (and falsehood has perished) Did you find to be true what your Lord had promised you? " (Sayyiduna) Umar رضی اللہ عنہ submitted, " O Messenger of Allah. Do you address bodies that have no souls? "The Prophet صلی اللہ علیہ وسلم said, "By Him in whose hand is Muhammad's soul you people do not hear what I say better than they do."

According to another version: " You do not hear better than they do, but (while you can respond), they do not respond."

Bukhari: also has that Qatadah رضی اللہ عنہ said that Allah revided them to make them hear what he said so that they may feel humiliated, grieved and sense the punishment and regret (in this world).[1]

COMMENTARY: Shaykh Abdul Haq Muhaddith Dahlawi and others have cited this hadith to prove that the dead can hear Mast Hanafi scholars deny this possibility. See books of fiqh (Islamic jurisprudence) on this subject like Fath ul- Qadeer.

RETURN OF PRISONERS TAKEN AT HUNAYN

(٣٩٦٨) وَعَنْ مَرْوَانَ وَالْمِسْوَرِ بْنِ مَخْرَمَةَ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَامَ حِيْنَ جَاءَهٗ وَفْدُهَوَازِنَ مُسْلِمِيْنَ فَسَأَلُوْهُ اَنْ يَرُدَّ اِلَيْهِمْ اَمْوَالَهُمْ وَسَبْيَهُمْ فَقَالَ فَاخْتَارُوْا اِحْدَى الطَّآئِفَتَيْنِ اِمَّا السَّبِيَّ وَ اِمَّا الْمَالَ قَالُوْا فَاِنَّا نَخْتَارُ سَبْيَنَا فَقَامَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَاَثْنٰى عَلَى اللّٰهِ بِمَاهُوَاَهْلُهٗ ثُمَّ قَالَ اَمَّابَعْدُ فَاِنَّ اِخْوَانَكُمْ قَدْجَآءُ وْاتَآئِبِيْنَ وَاِنِّي قَدْرَأَيْتُ اَنْ اَرُدَّاِلَيْهِمْ سَبْيَهُمْ فَمَنْ اَحَبَّ مِنْكُمْ اَنْ يُّطَيِّبَ ذٰلِكَ فَلْيَفْعَلْ وَمَنْ اَحَبَّ مِنْكُمْ اَنْ يَكُوْنَ عَلٰى حَظِّهٖ حَتّٰى نُعْطِيَهٗ اِيَّاهُ مِنْ اَوَّلِ مَايُفِيْءُ اللّٰهُ عَلَيْنَا فَلْيَفْعَلْ فَقَالَ النَّاسُ قَدْطَيَّبْنَا ذٰلِكَ يَارَسُوْلَ اللّٰهِ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِنَّا لَانَدْرِيْ مَنْ اَذِنَ مِنْكُمْ مِمَّنْ لَمْ يَأْذَنْ فَارْجِعُوْا حَتّٰى يَرْفَعَ اِلَيْنَا عُرَفَاءُ كُمْ اَمْرَكُمْ فَرَجَعَ النَّاسُ فَكَلَّمَهُمْ عُرَفَاءُ هُمْ ثُمَّ رَجَعُوْا اِلٰى رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَاَخْبَرُوْهُ اَنَّهُمْ قَدْطَيَّبُوْا وَاَذِنُوْا۔ (رواه البخارى)

3968. (Sayyiduna) Marwan رضی اللہ عنہ and Miswar ibn Makhramah رضی اللہ عنہ narrated that a deputation of Hawazin Muslims (after they had embraced Islam) came to Allah's Messenger صلی اللہ علیہ وسلم and requested him to return to them their properties and their captives. He stood up and said, "Choose one of the two:

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[1] Bukhari# 3976, Muslim # 78 78. 2875, Musnad Ahmad 3. 145, See also the life of Prophet Muhammad صلی اللہ علیہ وسلم (Ibn Kathit's Search) p. 318F (DARUL Ishaat, Karachi)

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either the captives or the property." They said, "We choose our captives." So, Allah's Messenger صلى الله عليه وسلم stood up (and delivered this sermon to the Sahabah (Prophet's Companions) رضى الله عنهم) and praised Allah and glorified Him as is His due and said " To proceed ! These (people of Hawazin) your brothers have come after repenting (from disbelief and Polytheism). I deem it proper to return their captives to them. So those of you who are prepared to release the captive may do so. But those who decide to keep them whom they have till I give them some of the next booty that Allah grants us may do so." The people submitted, "We are willing to do that, O Messenger of Allah (to release the captives)." He said, " We cannot make out in this gathering which not. So all of you return (to your homes and consult your leaders). Then your leaders (or chiefs) may inform us about your decision. "So, they went back and their leaders spoke to them. Then they came again to Allah's Messenger صلى الله عليه وسلم and informed him that they had agreed (to release the captives) and had given the permission.[1]

COMMENTARY: To the southeast of Makkah along the road that leads towards ta'if there is a large ground surrounded by a small mountain. Beyond it is a small village. It is said that the Hawazin lived near the spacious ground. It is have that after the conquest of Makkah the battle of hunayn or Hawazin was fought.

The Muslims got a very large booty in this battle and they captured very many women and children. They were given to the Sahabah (Prophet's Companions) رضى الله عنهم, since the property and captives belonged to the sahabah. The Prophet صلى الله عليه وسلم asked for their permission to return to the Hawazin Muslims their families.

PRISONER TAKEN FOR PRISONER

(٣٩٦٩) وَعَنْ عِمْرَانَ بْنِ حُصَيْنٍ قَالَ كَانَ ثَقِيْفٌ حَلِيْفًا لِبَنِي عُقَيْلٍ فَأَسَرَتْ ثَقِيْفٌ رَجُلَيْنِ مِنْ أَصْحَابِ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ رَجُلًا مِنْ بَنِي عُقَيْلٍ فَأَوْثَقُوْهُ فَطَرَحُوْهُ فِي الْحَرَّةِ فَمَرَّ بِهٖ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَنَادَاهُ يَا مُحَمَّدُ يَا مُحَمَّدُ فِيْمَ أُخِذْتُ قَالَ بِجَرِيْرَةِ حُلَفَائِكُمْ ثَقِيْفٍ فَتَرَكَهٗ وَمَضٰى فَنَادَاهُ يَا مُحَمَّدُ يَا مُحَمَّدُ فَرَحِمَهٗ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَرَجَعَ قَالَ مَا شَأْنُكَ قَالَ إِنِّيْ مُسْلِمٌ فَقَالَ لَوْ قُلْتَهَا وَأَنْتَ تَمْلِكُ أَمْرَكَ أَفْلَحْتَ كُلَّ الْفَلَاحِ قَالَ فَفَدَاهُ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ بِالرَّجُلَيْنِ الَّذَيْنِ أَسَرَتْهُمَا ثَقِيْفٌ۔ (رواه مسلم)

3969. Sayyiduna Imran ibn Husayn رضى الله عنه narrated that the Thaqif were allies of Banu Uqayl. So when the Thaqif captured two men from the companions of Allah' Messenger صلى الله عليه وسلم, took a man of Banu Uqayl as captives. They bound him and threw him on the lava plain. Allah's Messenger came that way and he called him, "O Muhammad, O Muhammad! Why have I been seized?" He said , "In retaliation for the crime of your allies the Thaqif." He left him (as he was) and went ahead, but he called again. "O Muhammad, O Muhammad ! Allah's Messenger صلى الله عليه وسلم had mercy on him and came to him again and asked, " What is it?" He said, "I am a Muslim." He said, " If you had said so when you were master of your own affairs,

[1] Bukhari # 3207, Abu dawud # 2693, Musnad Ahmad 4-327

you would have succeeded thoroughly (in both the worlds).

The narrator added: Then, Allah's Messenger صلى الله عليه وسلم ransomed him for the two men whom the Thaqif had captured.[1]

COMMENTARY: Thaqif was a famous tribe of the Arabs. It was a branch of the Banu Hawazin and lived in Ta'if. Banu Uqayl was a tribe allied to them. During the jahiliyah (ignorance period), tribes used to form alliances to cooperate with one another in dealing with others. Friends of one were friends of the other and so the enemies. When Islam was preached, only lawful covenants were allowed and unlawful promise done away with. Only the oath to Islam was enough.

Hurrah or the lava plain was a black, pebbled plain in the surroundings of Madinah in the mountainous area.

The Prophet صلى الله عليه وسلم was very kind to the men who claimed to be a Muslim. A stranger's such claim may only be accepted if it is corroborated by evidence. This man could have meant to have accepted Islam at that time But, the Prophet صلى الله عليه وسلم did not accept his claim and let him go to enemy territory.

SECTION II اَلْفَصْلُ الثَّانِيْ

RELEASE OF PROPHET'S صلى الله عليه وسلم SON-IN LAW AS PRISONER AT BADR

(٣٩٧٠) عَنْ عَآئِشَةَ قَالَتْ لَمَّا بَعَثَ اَهْلُ مَكَّةَ فِيْ فِدَاءِ اُسَرَا ئِهِمْ بَعَثَتْ زَيْنَبُ فِيْ فِدَاءِ اَبِي الْعَاصِ بِمَالٍ وَبَعَثَتْ فِيْهِ بِقَلَادَةٍ لَهَا كَانَتْ عِنْدَ خَدِيْجَةَ اَدْخَلَتْهَا بِهَا عَلٰى اَبِي الْعَاصِ فَلَمَّارَ آهَا رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ رَقَّ لَهَارِقَّةً شَدِيْدَةً وَقَالَ اِنْ رَأَيْتُمْ اَنْ تُطْلِقُوْا لَهَا اَسِيْرَهَا وَتَرُدُّوا عَلَيْهَا الَّذِيْ لَهَا فَقَالُوْا نَعَمْ وَكَانَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَخَذَ عَلَيْهِ اَنْ يُخَلِّيَ سَبِيْلَ زَيْنَبَ اِلَيْهِ وَبَعَثَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ زَيْدَبْنَ حَارِثَةَ وَرَجُلًا مِنَ الْاَنْصَارِ فَقَالَ كُوْنَا بِبَطْنِ بَأْجٍ حَتّٰى تَمُرَّ بِكُمَا زَيْنَبُ فَتَصْحَبَاهَا حَتّٰى تَاْتِيَا بِهَا۔ (رواه احمد وابوداؤد)

3970. Sayyidah Ayshah رضى الله عنها narrated that (when Allah gave victory to the Prophet صلى الله عليه وسلم at Badr over the infidels some of whom where Killed and some brought to Madinah as prisoners for whom the Prophet صلى الله عليه وسلم received ransom to release them,) the Mahkans sent ransom to have their prisoners back. (Sayyidah) Zaynab رضى الله عنها (daughter of the Prophet صلى الله عليه وسلم also sent some property to ransom (her husband) Abu Aas that included her necklace which belonged to (Sayyidah) Khadijah رضى الله عنها and she had presented it to her on her marriage with Abu Aas. When Allah's Messenger صلى الله عليه وسلم saw it, he was moved emotionally (and felt sympathy for his daughter's loneliness and remembered the company of his wife Khadijah رضى الله عنها who used to wear it). He said (to his Sahabah رضى الله عنهم. "If you think it reasonable that you should release her prisoner for her and return to her all that belongs to her (that she has sent for his release)..."They submitted, "Yes". (He was set free). The Prophet صلى الله عليه وسلم took his promise that he would allow Zaynab رضى الله عنها a free, unhindered passage to come to him (to Madinah). He

[1] Muslim # 8. 1641, Abu Dawud #

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sent Zayd ibn Harithah رضی اللہ عنہ and a man of the ansars (supporters) (to Makkah) with instructions to wait in the valley of Yajij (near Tamim) for Zaynab رضی اللہ عنہا to come then they were to bring her back (to Madinah).[1]

COMMENTARY: Sayyidah Zaynab رضی اللہ عنہا was the eldest daughter of the Prophet صلی اللہ علیہ وسلم. Abu Aas was her husband and his Son-in-law. He was the son of Rabi, the grandson of Abdul Uzza ibn Abd shams ibn Abd Manaf. He was a nephew of the mother of the believers, Sayyidah Khadijah رضی اللہ عنہا.

She was the Prophet's صلی اللہ علیہ وسلم first wife. All his children, apart from Ibrahim رضی اللہ عنہ, were born to her. Ibrahim رضی اللہ عنہ died in infancy and his Mother was Sayyidah Mariyah Qubtiyah.

Sayyidah Zaynab رضی اللہ عنہا was married to an infidel, Abu Aas, because at that time it was allowed to a Muslim woman to marry a disbelieving man. The Prophet صلی اللہ علیہ وسلم sent two men to bring her to him from Makkah, but they were not her mahram. This was an exceptional case because she was the Prophet's صلی اللہ علیہ وسلم daughter and no suspicion may be attached to a stranger accompanying her. Of course, it is not allowed otherwise for a non-mahram to travel with a woman.

The valley Yajij is about eight miles away from Makkah. It is also spelt Najij. Earlier copies of Mishkat have it as Najij.

Sayyidah Zaynab رضی اللہ عنہا returned to Madinah, but Abu Aas remained in Makkah as a disbeliever. However, he was scheduled to travel to Syria[2] with a trade caravan. The Muslims of Madinah learnt of it and decided to intercept him when he passed through the limits of Madinah and confiscate his property. Sayyidah Zaynab رضی اللہ عنہا learnt of it and she was upset, She met Allah's Messenger صلی اللہ علیہ وسلم and asked, "Is not a commitment of any Muslim reliable?. It a Muslim offers protection to a disbeliever, will all Muslims be bound to honour that?". He confirmed to her that a Muslim's promise was reliable. She said, "O Messenger of Allah, be witness that I give protection to Abu Aas". So, the Sahabah (Prophet's Companions) رضی اللہ عنہم withdrew their plan to intercept him. However, they did go to the thorough face of Madinah where Abu Aas was expected to arrive without carrying any arms or weapons. They met him and said to him, "Abu Aas, you are a noble, respected man of the Quraysh and an influential Man. You are the cousin of the Messenger صلی اللہ علیہ وسلم of Islam. (on this basis, nothing is better for you than that) you must become a Muslim.(You will retain all this, your property with you.

Abu Aas, said, "Your saying (that it I become a Muslim then because of it my property will be safe with one) is very unreasonable. I seek refuge from such thought that I should soil my Islam with the (impurity of) property. He returned to Makkah and handed over everyone his trust. Then, he invited them to assemble and asked them, "O people of Makkah, have you received your properties?". They confirmed, "Yes, we have got our belongings." Then, Abu Aas declared before them, "I call upon you to be witnesses that I have embraced Islam "And he recited.

أَشْهَدُ أَنْ لَا إِلٰهَ إِلَّا اللّٰهُ وَأَشْهَدُ أَنَّ مُحَمَّدًا رَّسُوْلُ اللّٰهِ

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[1] Abu Dawud # 2692, Musnad Ahmad 6-276.

[2] It was not the same area as today. Its limits have been changing with time. So it is also referred to with its Arabic name Shaam to distinguish from present Syria. (Mujam ul Buldan)

(I bear witness that no one is worthy of worship but Allah and I bear witness that Muhammad is Allah's Messenger صلى الله عليه وسلم.

After that, Abu Aas رضى الله عنه left (in Makkah) his house, properties, friends relatives, etc. – everything and set out to emigrate to Madinah. There, he met Allah's Messenger صلى الله عليه وسلم who welcomed him out of love and re-united Sayyidah Zaynab رضى الله عنها with him.

Opinions different whether the Prophet صلى الله عليه وسلم re-married Abu Aas رضى الله عنه when he arrived in Madinah with Zaynab رضى الله عنه or let their previous marriage continue.

The Prophet صلى الله عليه وسلم had a deep relationship with Abu Aas, particularly after he became a Muslim. He loved him much and was very pleased with him.

He was martyned in the Battle of Yamamah in the days of Abu Bakr رضى الله عنه.[1]

THE DISBELIEVING PRISONERS AT BADR WHO WERE KILLED

(٣٩٧١) وَعَنْهَا اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَمَّا اَسَرَ اَهْلَ بَدْرٍ قَتَلَ عُقْبَةَ بْنَ اَبِيْ مُعَيْطٍ وَالنَّضْرَ بْنَ الْحَارِثِ وَمَنَّ عَلٰى اَبِيْ عَزَّةَ الْجُمَحِيِّ۔ (رواه فى شرح السنة)

3971. Sayyidah Ayshah رضى الله عنها narrated that when Allah's Messenger صلى الله عليه وسلم had taken prisoners at badr he killed Uqbah ibn Abu Mu'ayt and Nadr ibn Harith. But, he showed favour (mamnun) Abu Azzah Jumahi (whom he released without ransom).[2]

COMMENTARY: The ruler of the times is authorized to kill the non-Muslim prisoners in his custody who do not accept Islam. Or he may enslave them. Or, he may set them free because of protection granted to them by any Muslim. However it is not allowed to release them without ransom as favour (which is known as Mamnun), because this permission is abrogated.

(٣٩٧٢) وَعَنِ ابْنِ مَسْعُوْدٍ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَمَّا اَرَادَ قَتْلَ عُقْبَةَ بْنِ اَبِيْ مُعَيْطٍ قَالَ مَنْ لِلصِّبْيَةِ قَالَ النَّارُ۔ (رواه ابوداؤد)

3972. Sayyiduna Ibn Mas'ud رضى الله عنه narrated that when Allah's Messenger صلى الله عليه وسلم decided to kill Uqbah ibn Abu Mu'ayt, he asked, "who (will be responsible) for the children?" He said, "Hell-fire!"[3]

COMMENTARY: The Prophet's صلى الله عليه وسلم words meant that the children would be ruined because no one would look after them. The fire, of course, is not known to care for anyone. Its characteristic is to destroy

Or, the Prophet صلى الله عليه وسلم may have meant to tell him, "Think of yourself. Well is your abode. Do not worry about the children. Allah is their Guardian. He will raise them."

CHOICE GIVEN ABOUT PRISONERS AT BADR

(٣٩٧٣) وَعَنْ عَلِيٍّ عَنْ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَنَّ جِبْرِيْلَ هَبَطَ عَلَيْهِ فَقَالَ لَهٗ خَيِّرْهُمْ يَعْنِي

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[1] See Ma'ariful Hadith (Mawlana Manzoor Numani) English translation pp515f: Sayyidah Zaynab رضى الله عنه, the Prophet's صلى الله عليه وسلم eldest daughter. Dar-ul-Isha'at Karachi.

[2] Sharh ur Junnah # 2711.

[3] Abu Dawud # 2686.

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اَصْحَابَكَ فِيْ اُسَارٰى بَدْرٍ الْقَتْلَ اَوِ الْفِدَاءَ عَلٰى اَنْ يُّقْتَلَ مِنْهُمْ قَابِلًا مِثْلُهُمْ قَالُوْا الْفِدَاءَ وَيُقْتَلُ مِنَّا۔

(رواه الترمذى وقال هذا حديث غريب)

3973. Sayyiduna Ali رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said that Jibril علیہ السلام had descended to him and said to him, "Give choice to your companions about the prisoners at Badr. They may kill them, or take ransom for them (and let them go) on condition that as many of them (the Sahabah (Prophet's Companions) رضی اللہ عنہم) would be killed the next year." (Their number was seventy.) They affirmed, "We shall take ransom and agree to have (a like number, seventy of) us killed (next year)."[1]

COMMENTARY: Seventy of the infidels were killed in the Battle of Badr. And, seventy were taken prisoners and brought to Madinah. The Prophet صلی اللہ علیہ وسلم consulted his Sahabah (Prophet's Companions) رضی اللہ عنہم on what should be done to them. Abu Bakr رضی اللہ عنہ suggested that they should be set free. Most possibly Allah may enable them to repent and embrace Islam. He said, "whatever ransom you receive might be spent on your friends to help them out in their worldly and religious needs."

However, Umar رضی اللہ عنہ said, "Sever their necks because they are chiefs of the infidels. As for some monetary help, Allah has made you independent of that."

The Prophet صلی اللہ علیہ وسلم gave choice to the Sahabah (Prophet's Companions) رضی اللہ عنہم on the condition placed by Jibril's علیہ السلام message that if they opted for ransom then as many of them would be killed the next year. In spite of the stipulation, the Sahabah (Prophet's Companions) رضی اللہ عنہم chose to get the ransom. Hence, the next year in the battle of Uhud, the Muslims faced defeat on one occasion. They released that the Prophet صلی اللہ علیہ وسلم had told them of that in the previous year. The Muslims lost seventy precious lives. These seventy martyrs included Hamzah ibn Abdul Muttalib and Mus'ab ibn Umayr رضی اللہ عنہ the glorious Sahabah.

After the upset of the battle, Umar رضی اللہ عنہ came to the Prophet صلی اللہ علیہ وسلم and saw him and Abu Bakr رضی اللہ عنہ weeping. He asked them, "Why do you weep? Tell me so that I may weep too." The Prophet صلی اللہ علیہ وسلم said, "I may weep over your companion who had opted to get the ransom. " He pointed to a tree (standing near to him) and said, "I have been show their punishment from closer than this tree." According to a version he said "If they were punished then no one, apart from Umar and sa'd ibn Mu'adh, would have been spared." (sa'd رضی اللہ عنہ too, had concurred with Umar رضی اللہ عنہ that the prisoners should not be ransomed but should be killed.)

Anyway, the reasoning of the other Sahabah (Prophet's Companions) رضی اللہ عنہم was that if the prisoners were spared (against ransom), they might become Muslims some time later. Moreover, they themselves hoped to attain martyrdom next year. They also had sympathy for the families of the prisoners. So they suggested that the prisoners should not be killed.

A QUESTION ARISES: If the Muslims were given choice between two things and they chose one of the two, then why were they punished (for choosing one of them)? Clearly,

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[1] Tirmidhi # 1567.

the punishment is against the option.
The answer is that it really was a test and trial for them. The test was to examine them whether they chose that which is dear to Allah or what was dear to their hearts. Therefore, they did not succeed who chose what was dear to their hearts and so were punished.
Allamah toor Pushti, however, regards this hadith (giving choice) as far fetched because it seemingly contradicts what is understood from the Quran. Besides, Tirmidhi has termed this tradition as gharib. But, it is not blameworthy to uphold some thing through a gharib (strange) hadith because sometimes it also is Sahih (accurate).

EXAMINING THE PRISONERS

(٣٩٧٤) وَعَنْ عَطِيَّةَ الْقُرَظِيِّ قَالَ كُنْتُ فِيْ سَبْيِ قُرَيْظَةَ عُرِضْنَا عَلَى النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَكَانُوْا يَنْظُرُوْنَ فَمَنْ اَنْبَتَ الشَّعْرَ قُتِلَ وَ مَنْ لَمْ يُنْبِتْ لَمْ يُقْتَلْ فَكَشَفُوْا عَانَتِيْ فَوَجَدُوهَا لَمْ تُنْبِتْ فَجَعَلُوْنِيْ فِي السَّبْيِ۔ (رواه ابوداؤد وابن ماجة والدارمی)

3974. Sayyiduna Atiya Qurazi رضی اللہ عنہ said, : I was among the captives of Qurayzah we were presented to the Prophet صلی اللہ علیہ وسلم. The Sahabah (Prophet's Companions) رضی اللہ عنہم examined us. Those of us who had begun to grow hair (on their private parts) were slain and those who had not (grown hair) were spared (because they were counted among children and non-fighters). They undressed me to examine my georital organs and found that hair had not grown on my pubes so they cast me among the captives."[1]

COMMENTARY: Allamah Toor Pushti said that it was necessary to examine them for growth of hair to know if they had attained puberty, otherwise they would not have disclosed the truth.

SLAVES WHO BECAME MUSLIMS WERE NOT RETURNED TO DISBELIEVING MASTERS

(٣٩٧٥) وَعَنْ عَلِيٍّ قَالَ خَرَجَ عُبْدَانٌ اِلٰى رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَعْنِيْ يَوْمَ الْحُدَيْبِيَّةِ قَبْلَ الصُّلْحِ فَكَتَبَ اِلَيْهِ مَوَالِيْهِمْ قَالُوْا يَا مُحَمَّدُ وَاللّٰهِ مَا خَرَجُوْا اِلَيْكَ رَغْبَةً فِيْ دِيْنِكَ وَاِنَّمَا خَرَجُوْا هَرَبًا مِنَ الرِّقِّ فَقَالَ نَاسٌ صَدَقُوْا يَا رَسُوْلَ اللّٰهِ رُدَّهُمْ اِلَيْهِمْ فَغَضِبَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَقَالَ مَا اُرَاكُمْ تَنْتَهُوْنَ يَا مَعْشَرَ قُرَيْشٍ حَتّٰى يَبْعَثَ اللّٰهُ عَلَيْكُمْ مَنْ يَضْرِبُ رِقَابَكُمْ عَلٰى هٰذَا وَاَبٰى اَنْ يَرُدَّهُمْ وَقَالَ هُمْ عُتَقَاءُ اللّٰهِ۔ (رواه ابوداود)

3975. Sayyiduna Ali رضی اللہ عنہ narrated that some slaves came to Allah's Messenger صلی اللہ علیہ وسلم on the day of Hudaybiyah before the peace treaty was signed. Their masters wrote to him. "O Muhammad ! By Allah, they have not come to you through a longing for your religion. They have only gone away (from us) to flee from

[1] Tirmidhi # 1584, Abu Dawud # 4404, Ibn Majah # 2541, Nasa'I # 4984, Musnad Ahmad 4. 383, Darimi # 2464.

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slavery." Some people (of the Sahabah (Prophet's Companions) رضی اللہ عنہم) submitted, they have spoken the truth, O Messenger of Allah! Send them back to them." (On that) Allah's Messenger صلی اللہ علیہ وسلم got angry and said , " I do not suppose that you will desist, O company of the Quraysh (!) till Allah sends over you one who cuts off your necks for this (suggestion that these Muslims should be sent back to enemy territory)." He declined to send them back. He said, "They are Allah's Freemen.[1]

COMMENTARY: The Prophet صلی اللہ علیہ وسلم was displeased because the Sahabah gave their personal opinions on an issue that is decided by Shariah and seemed to have given testimony in favour of the masters of the slaves. The rule of Shariah is that the slaves became innocent and free on coming out of enemy land embracing Islam.

SECTION III اَلْفَصْلُ الثَّالِثُ

INDISCRETION ON THE PART OF KHALID IBN WALID رضی اللہ عنہ

(۳۹۷٦) عَنِ ابْنِ عُمَرَ قَالَ بَعَثَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ خَالِدَبْنَ الْوَلِيْدِ إِلَى بَنِي جَذِيْمَةَ فَدَعَاهُمْ إِلَى الْإِسْلَامِ فَلَمْ يُحْسِنُوْا اَنْ يَقُوْلُوْا اَسْلَمْنَا فَجَعَلُوْا يَقُوْلُوْنَ صَبَأْنَا صَبَأْنَا فَجَعَلَ خَالِدٌ يَقْتُلُ وَيَأْسِرُ وَدَفَعَ إِلَى كُلِّ رَجُلٍ مِنَّا اَسِيْرَهُ حَتّٰى إِذَا كَانَ يَوْمٌ اَمَرَ خَالِدٌ اَنْ يَقْتُلَ كُلُّ رَجُلٍ مِنَّا اَسِيْرَهُ فَقُلْتُ وَاللّٰهِ لَا اَقْتُلُ اَسِيْرِيْ وَلَا يَقْتُلُ رَجُلٌ مِنْ اَصْحَابِيْ اَسِيْرَهُ حَتّٰى قَدِمْنَا عَلَى النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَذَكَرْنَاهُ فَرَفَعَ يَدَيْهِ فَقَالَ اَللّٰهُمَّ إِنِّيْ اَبْرَأُ إِلَيْكَ مِمَّا صَنَعَ خَالِدٌ مَرَّتَيْنِ۔ (رواه البخاری)

3976. Sayyiduna Ibn Umar رضی اللہ عنہ said, "The Prophet صلی اللہ علیہ وسلم sent Khalid ibn Walid رضی اللہ عنہ to Banu Jadhimah. He invited them to accept Islam. They could not express themselves well (being frightened) and say, " We have believed " but began to say 'sabana, sabana!' (we have forsaken our religion , we have forsaken our religion) So, Khalid began to kill them and to take prisoners. He handed a prisoner to each of us . Then, one day, Khalid ordered everyone of us to kill his prisoner. But, I said 'by Allah, I shall not kill my prisoner nor will anyone of my companions kill his prisoner, till we come to the Prophet صلی اللہ علیہ وسلم (and get his command).' So (when we came to him) we mentioned this case to him. He raised both his hands and exclaimed twice. "O Allah, I declare that I am absolved before you of what Khalid has done.'[2]

COMMENTARY: Khattabi said that the Prophet صلی اللہ علیہ وسلم absolved himself of Kahlid's indiscretion because Khalid did not consider carefully what those people meant by sabana. It does also imply that they had accepted Islam and changed over to it. Khalid was only considered with a clear declaration of Islam by Aslamna. So he took a rash, strong action.

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[1] Abu Dawud # 2700.

[2] Bukhari #7189, Musnad Ahmad 2. 151.

CHAPTER - VII

PROTECTION بَابُ الْاَمَانِ

SECTION I اَلْفَصْلُ الْاَوَّلُ

PROTECTION EXTENDED BY UMM HANI

(٣٩٧٧) عَنْ اُمِّ هَانِئٍ بِنْتِ اَبِي طَالِبٍ قَالَتْ ذَهَبْتُ اِلٰى رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَامَ الْفَتْحِ فَوَجَدْتُّهٗ يَغْتَسِلُ وَ فَاطِمَةُ ابْنَتُهٗ تَسْتُرُهٗ بِثَوْبٍ فَسَلَّمْتُ فَقَالَ مَنْ هٰذِهِ فَقُلْتُ اَنَا اُمُّ هَانِئٍ بِنْتُ اَبِي طَالِبٍ فَقَالَ مَرْحَبًا بِاُمِّ هَانِئٍ فَلَمَّا فَرَغَ مِنْ غُسْلِهٖ قَامَ فَصَلّٰى ثَمَانِيَ رَكَعَاتٍ مُلْتَحِفًا فِيْ ثَوْبٍ ثُمَّ انْصَرَفَ فَقُلْتُ يَا رَسُوْلَ اللّٰهِ زَعَمَ ابْنُ اُمِّيْ عَلِيٌّ اَنَّهٗ قَاتِلٌ رَجُلًا اَجَرْتُهٗ فُلَانَ بْنَ هُبَيْرَةَ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَدْ اَجَرْنَا مَنْ اَجَرْتِ يَا اُمَّ هَانِئٍ قَالَتْ اُمُّ هَانِئٍ وَذٰلِكَ ضُحًى۔ مُتَّفَقٌ عَلَيْهِ وَفِيْ رِوَايَةٍ لِلتِّرْمِذِيِّ قَالَتْ اَجَرْتُ رَجُلَيْنِ مِنْ اَحْمَائِيْ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَدْ اَمَّنَّا مَنْ اَمَّنْتِ۔

3977. Sayyidah Umm Hani رضی اللہ عنہا (daughter of Abu Talib narrated that in the year of the conquest she went to Allah's Messenger صلی اللہ علیہ وسلم. He was having a bath and (Sayyidah) Fatimah رضی اللہ عنہا, his daughter, had screened him with a garment. She offered her salaam (the greetings) and he asked "who is it ? " She identified herself," I am Umm Hani bint Abu Talib". He said, "Welcome, Umm Hani". Then, after he had had his bath, he stood to offer eight raka'at *salah (prayer)* wrapped in a garment. When, he had finished, she submitted, "O Messenger of Allah, my mother's , son, Ali, has declared that he would kill a man whom I have given protection, so-and-so, son of Hubayrah."Allah's Messenger صلی اللہ علیہ وسلم said , "We have given protection to him whom you have given protection , O Umm Hani." (She said that) it was in the forenoon.[1]

According to another version (in Tirmidhi), she said, "I have give protection to two men who are relatives of my husband." So, Allah's Messenger صلی اللہ علیہ وسلم said, "We have given protection to whom you have given protection,"[2]

COMMENTARY: The name of Umm Hani was Faakhtah رضی اللہ عنہ but some say Aatikah. She was Abu Talib's daughter and real sister of Sayyiduna Ali رضی اللہ عنہ

Hubayrah was her husband. When she embraced Islam in the year of the Conquest of Makkah, he did not accept Islam, so they separated. She had given protection to a son of her husband, Hubayrah, perhaps from another of his wives.

Sayyiduna Ali رضی اللہ عنہ had not approved her action, but the Prophet صلی اللہ علیہ وسلم accepted the protection she had extended.

It is stated in the version of Tirmidhi that the Prophet صلی اللہ علیہ وسلم had his bath in the house of Umm Hani رضی اللہ عنہا but the version of Bukhari and Muslim mean 'his own house; or 'the

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[1] Bukhari # 3171, Muslim # 82-336, Abu Dawud # 1290, Darimi # 1453, Mnwatla Maalik # 28

[2] Tirmidhi # 1585

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house of Sayyidah Fatimah رضی اللہ عنہا.

SECTION II اَلْفَصْلُ الثَّانِیْ

PROTECTION OFFERED BY A WOMAN IS RELIABLE

(۳۹۷۸) عَنْ اَبِیْ هُرَیْرَةَ اَنَّ النَّبِیَّ صَلَّی اللّٰهُ عَلَیْهِ وَسَلَّمَ قَالَ اِنَّ الْمَرْاَةَ لَتَاخُذُ لِلْقَوْمِ یَعْنِیْ تُجِیْرُ عَلَی الْمُسْلِمِیْنَ۔ (رواه الترمذی)

3978. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said ., "A woman has a right to get from the Muslims protection for someone.[1]

COMMENTARY: If a Muslim woman extends protection to a disbeliever or a group of disbelievers then it is the responsibility of all muslims to honour her commitment. They must not violate the protection given by her.

WARNING TO ONE WHO DISHONORS THE PROTECTION EXTENDED BY HIM

(۳۹۷۹) وَعَنْ عَمْرِو بْنِ الْحَمِقِ قَالَ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّی اللّٰهُ عَلَیْهِ وَسَلَّمَ یَقُوْلُ مَنْ اَمَّنَ رَجُلًا عَلٰی نَفْسِهٖ فَقَتَلَهٗ اُعْطِیَ لِوَاءَ الْغَدْرِ یَوْمَ الْقِیَامَةِ۔ (رواه فی شرح السنة)

3979. Sayyiduna Amr in Hamiq رضی اللہ عنہ said that he heard Allah's Messenger صلی اللہ علیہ وسلم say, "If anyone grants protection to someone for his life but after that Kills him, then, on the day of resurrection, he will be handed over a banner of treachery."[2]

COMMENTARY: The banner of treachery implies disgrace before the multitude in the place of gathering. Other ahadith say that he will be given a sign whereby all people will recognize him as one who betrayed his trust.

BE FAITHFUL TO YOUR COVENANT

(۳۹۸۰) وَعَنْ سُلَیْمِ بْنِ عَامِرٍ قَالَ کَانَ بَیْنَ مُعَاوِیَةَ وَبَیْنَ الرُّوْمِ عَهْدٌ وَکَانَ یَسِیْرُ نَحْوَ بِلَادِهِمْ حَتّٰی اِذَا انْقَضَی الْعَهْدُ اَغَارَ عَلَیْهِمْ فَجَاءَ رَجُلٌ عَلٰی فَرَسٍ اَوْ بِرْذَوْنٍ وَهُوَ یَقُوْلُ اللّٰهُ اَکْبَرُ اَللّٰهُ اَکْبَرُ وَفَاءٌ لَا غَدْرٌ فَنَظَرُوْا فَاِذَا هُوَ عَمْرُو بْنُ عَبَسَةَ فَسَاَلَهٗ مُعَاوِیَةُ عَنْ ذٰلِکَ فَقَالَ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّی اللّٰهُ عَلَیْهِ وَسَلَّمَ یَقُوْلُ مَنْ کَانَ بَیْنَهٗ وَبَیْنَ قَوْمٍ عَهْدٌ فَلَا یَحُلَّنَّ عَهْدًا وَلَا یَشُدَّنَّهٗ حَتّٰی یَمْضِیَ اَمَدُهٗ اَوْ یَنْبِذَ اِلَیْهِمْ عَلٰی سَوَاءٍ قَالَ فَرَجَعَ مُعَاوِیَةُ بِالنَّاسِ۔ (رواه الترمذی وابوداؤد)

3980. Sayyiduna Sulaym ibn Aamir رضی اللہ عنہ narrated that a covenant existed between Sayyiduna Muawiyah رضی اللہ عنہ and the Romans(Byzantines). He went towards their country with intent to attack them when the covenant ended, promptly. A man came sinfully on a horse - Arabian or Turkish - calling out, "Allhu Akbar, Allahu Akbar (Allah is the Greatest)! Faithfulness, not treachery!" They saw that he was

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[1] Tirmidhi # 1579(1585).

[2] Sharh us-*Sunnah (Prophet's صلی اللہ علیہ وسلم practice)* #2688, Musnad Ahmad 5-223.

Amr ibn Abasah رضی اللہ عنہ. Sayyiduna Muawiyah رضی اللہ عنہ asked him about that (how was it treachery?) and he said, I had heard Allah's Messenger صلی اللہ علیہ وسلم say, 'If anyone has a covenant with a people, then it is not lawful for him to make it soft or strong (meaning, to break it or alter it) till it expires, Or, he should throw it towards them that they might know that it is rescinded." Then, Sayyiduna Muawiyah رضی اللہ عنہ turned back.[1]

COMMENTARY: Making a covenant soft or strong means that the objective of the covenant must not be foiled at all of course, otherwise it is commendable to strengthen a covenant in the eyes of Shariah. (It was a manouvere on Mu'awiyad's رضی اللہ عنہ part within the validity of the treaty that was tantamount to treachery.)

RESPECT FOR ENVOY

(۳۹۸۱) وَعَنْ اَبِي رَافِعٍ قَالَ بَعَثَنِيْ قُرَيْشٌ اِلٰى رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَلَمَّا رَأَيْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اُلْقِيَ فِيْ قَلْبِيَ الْاِسْلَامُ فَقُلْتُ يَا رَسُوْلَ اللّٰهِ اِنِّيْ وَاللّٰهِ لَا اَرْجِعُ اِلَيْهِمْ اَبَدًا قَالَ اِنِّيْ لَا اَخِيْسُ بِالْعَهْدِ وَلَا اَحْبِسُ الْبُرُدَ وَلٰكِنِ ارْجِعْ فَاِنْ كَانَ فِيْ نَفْسِكَ الَّذِيْ فِيْ نَفْسِكَ الْاٰنَ فَارْجِعْ قَالَ فَذَهَبْتُ ثُمَّ اَتَيْتُ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَاَسْلَمْتُ۔ (رواه ابوداؤد)

3981. Sayyiduna Abu Rafi رضی اللہ عنہ said, "The Quraysh sent me (as their envoy when the treaty of Hudaybiyah was being concluded) to Allah's Messenger صلی اللہ علیہ وسلم. When I saw Allah's Messenger صلی اللہ علیہ وسلم , Islam made home in my heart (voluntarily), so I submitted, 'O Messenger , of Allah, by Allah, I shall not go back to them, ever.' He said, I neither break a covenant, not detain envoys. So, go back now and if you have the same thing in your heart as you have now, come back.' Hence, I returned and later came to the Prophet صلی اللہ علیہ وسلم and embraced Islam.[2]

COMMENTARY: The Prophet صلی اللہ علیہ وسلم advised Abu Rafi رضی اللہ عنہ to fulfil his responsibility first. Then he could return as an independent individual and declare his Islam.

(۳۹۸۲) وَعَنْ نُعَيْمِ بْنِ مَسْعُوْدٍ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ لِرَجُلَيْنِ جَاءَ مِنْ عِنْدِ مُسَيْلَمَةَ اَمَا وَاللّٰهِ لَوْلَا اَنَّ الرُّسُلَ لَا تُقْتَلُ لَضَرَبْتُ اَعْنَاقَكُمَا۔ (رواه احمد و ابوداؤد)

3982. Sayyiduna Nu'aym ibn Mas'ud رضی اللہ عنہ reported that Allah's Messenger رضی اللہ عنہ said to two men who had come from Musaylamah, "By Allah, if it were not killed, I would sever your necks."[3]

COMMENTARY: Musaylamah had laid claim to Prophethood in the time of the Prophet صلی اللہ علیہ وسلم. So he was called Musaylamah Kadhdhab (liar). He had sent Abdullah ibn Nawwahah and Ibn Uthal to the Prophet صلی اللہ علیہ وسلم as his envoys who had testified before

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[1] Tirmishi # 1580 (1586) Abu Dawud # 2759, Musad Ahmad # 13012.

[2] Abu Dawud #2758, Musnad Ahmad 6-8.

[3] Musnad Ahmad 3-487, Abu D

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him that Masaylamah was Allah's Messenger. Therefore, he spoke to them as in the hadith.

COVENANTS OF JAHILIYAH (IGNORANCE PERIOD) HAD TO BE HONOURED IF THEY DID NOT CONTRAVENE THE SHARI'AH (DIVINE LAW)

(٣٩٨٣) وَعَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ اَبِيْهِ عَنْ جَدِّهٖ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ فِيْ خُطْبَتِهٖ اَوْفُوْا بِحَلْفِ الْجَاهِلِيَّةِ فَاِنَّهٗ لَا يَزِيْدُهٗ يَعْنِي الْاِسْلَامُ اِلَّا شِدَّةً وَلَا تُحْدِثُوْا حِلْفًا فِي الْاِسْلَامِ۔ رَوَاهُ التِّرْمِذِيُّ مِنْ طَرِيْقِ حُسَيْنِ بْنِ ذَكْوَانَ عَنْ عَمْرٍو وَقَالَ حَسَنٌ۔

3983. Sayyiduna Amir ibn Shu'ayb رحمه الله reported from his father from his grand father that Allah's Messenger صلى الله عليه وسلم said while delivering a sermon, "Fulfil the oath of jahiliyah (ignorance period), for it (meaning, Islam) does not but give it (the oath) more strength. But, do not enter into new covenants in Islam".[1]

COMMENTARY: Only those oaths undertaken in pre-Islamic period ought to be honoured as are not contrary to Islamic teachings and beliefs, and as do not damage religion, for Allah says'.

وَتَعَاوَنُوْا عَلَى الْبِرِّ وَالتَّقْوٰى وَلَا تَعَاوَنُوْا عَلَى الْاِثْمِ وَالْعُدْوَانِ۔ (المائدة ٥: ٢)

{Cooperate with each other in virtue and piety and cooperate not in sin and transgression} (5: 2).

In short, Islam forbids that such covenants should be honoured as cause mischief and bloodshed. The Prophet صلى الله عليه وسلم had said (لاحلف فى الاسلام) (There is no half in Islam).As for oaths and covenants that call for helping the needy and poor, being kind to relatives, and such like pious work, Islam upholds them and makes them stronger, as the Prophet صلى الله عليه وسلم said,

اَيُّمَا حَلْفٍ كَانَ فِي الْجَاهِلِيَّةِ لَمْ يَزِدْهُ الْاِسْلَامُ اِلَّا شِدَّةً

However, Islam does not approve of new covenents. Mutual help and cooperation is *wajib (obligatory)* in Islam inherently and that is enough.

Teebi said that this prohibition could imply a prohibition of oaths by themselves. But Mulla Ali Qari رحمه الله prefers the second implication (which Teebi رحمه الله too has mentioned) and even Mazhar says so. It also explains the hadith under discussion. It says: If you had taken an oath in the jahiliyah (ignorance period) (before becoming a Muslim) that you will help each other then (as Muslims) you must fulfil your oaths and help each other, provided he who is helped pursues the right course. But, such alliances should not be promoted in Islam as make you heirs of each other; (It was done in pre-Islamic days that any two people could declare on oath that the one serving the other would be his heir.)

The hadith of Sayyiduna Ali on 'lives of all Muslims being equal' is as # 3475 previously (under Retaliation).

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[1] Tirmidhi # 1591, Musnad Ahmad # 6761, Muslim # 202-2530.

SECTION III اَلْفَصْلُ الثَّالِثُ

ENVOYS AND MESSENGERS MUST NOT BE KILLED

(٣٩٨٤) عَنِ ابْنِ مَسْعُوْدٍ قَالَ جَاءَ ابْنُ النَّوَاحَةِ وَ ابْنُ أُثَالٍ رَسُوْلَا مُسَيْلَمَةَ إِلَى النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ لَهُمَا اَتَشْهَدَانِ اَنِّي رَسُوْلُ اللّٰهِ فَقَالَا نَشْهَدُ اَنَّ مُسَيْلَمَةَ رَسُوْلُ اللّٰهِ فَقَالَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اٰمَنْتُ بِاللّٰهِ وَ رَسُوْلِهٖ لَوْ كُنْتُ قَاتِلًا رَسُوْلًا لَقَتَلْتُكُمَا قَالَ عَبْدُاللّٰهِ فَمَضَتِ السُّنَّةُ اَنَّ الرَّسُوْلَ لَا يُقْتَلُ۔ (رواه احمد)

3984. Sayyiduna Ibn Masud رضی اللہ عنہ narrated that Ibn Nawwahah and Ibn Uthal came to the Prophet صلی اللہ علیہ وسلم as enjoys of Musaylamah (the false claimant to prophethood). He asked the two of them, "Do you bear witness that I am Allah's Messenger?. But, they said "No! We testify that Musaylamah is Allah's Messenger." So, the Prophet صلی اللہ علیہ وسلم said, "I have believed in Allah and His Messenger.. And, if it was my practice to Kill envoys and messengers. I would have surely killed both of you."
Abdullah (ibn Masud) رضی اللہ عنہ said, "The *sunnah (Prophet's صلی اللہ علیہ وسلم practice)* came into force that envoys and messengers should not be Killed." (This, even if they commit a great wrong.)

COMMENTARY: These envoys clearly rejected the Prophet's صلی اللہ علیہ وسلم prophethood and messenger ship. They rather declared Musaylamah as a Messenger and prophet of Allah. In his answer declaring his belief in Allah and in his Messenger ship, the Prophet صلی اللہ علیہ وسلم demonstrated his resolve to seek the truth and his attribute of compassion and courage. He indicated that those false people would suffer Divine punishment. He also declared through his words that Musaylamah was false and had lied in claiming prophethood.

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CHAPTER - VIII

DIVISION OF SPOILS & BEING TREACHEROUS IN THIS REGARD
SECTION I

بَابُ قِسْمَةِ الْغَنَائِمِ وَالْغُلُوْلِ فِيْهَا
اَلْفَصْلُ الْاَوَّلُ

SPOILS ARE LAWFUL FOR MUSLIMS

(٣٩٨٥) عَنْ اَبِيْ هُرَيْرَةَ عَنْ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ فَلَمْ تَحِلَّ الْغَنَائِمُ لِاَحَدٍ مِنْ قَبْلِنَا ذٰلِكَ بِاَنَّ اللّٰهَ رَاٰى ضَعْفَنَا وَعَجْزَنَا فَطَيَّبَهَا لَنَا۔ (متفق علیه)

3985. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم, "The spoils were not lawful to anyone before us. Allah looked on our weakness and helplessness and made them lawful for us.[1]

COMMENTARY: Teebi رحمہ اللہ says his hadith is actually a conclusion of hadith # 4033. The whole is not mentioned here. Why it begins with Arabic "(So,) spoils were not lawful."

SPOILS BELONG TO HIM WHO SLAYS THE INFIDEL IN BATTLE

(٣٩٨٦) وَعَنْ اَبِيْ قَتَادَةَ قَالَ خَرَجْنَا مَعَ رَسُوْلِ اللّٰهِ عَامَ حُنَيْنٍ فَلَمَّا الْتَقَيْنَا كَانَتْ لِلْمُسْلِمِيْنَ جَوْلَةٌ فَرَاَيْتُ رَجُلًا مِنَ الْمُشْرِكِيْنَ قَدْ عَلَا رَجُلًا مِنَ الْمُسْلِمِيْنَ فَضَرَبْتُهُ مِنْ وَّرَائِهٖ عَلٰى حَبْلِ عَاتِقِهٖ بِالسَّيْفِ فَقَطَعْتُ الدِّرْعَ وَاَقْبَلَ عَلَيَّ فَضَمَّنِيْ ضَمَّةً وَجَدْتُ مِنْهَا رِيْحَ الْمَوْتِ ثُمَّ اَدْرَكَهُ الْمَوْتُ فَاَرْسَلَنِيْ فَلَحِقْتُ عُمَرَ بْنَ الْخَطَّابِ فَقُلْتُ مَا بَالُ النَّاسِ قَالَ اَمْرُ اللّٰهِ ثُمَّ رَجَعُوْا وَجَلَسَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ مَنْ قَتَلَ قَتِيْلًا لَهٗ عَلَيْهِ بَيِّنَةٌ فَلَهٗ سَلَبُهٗ فَقُلْتُ مَنْ يَّشْهَدُ لِيْ ثُمَّ جَلَسْتُ فَقَالَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مِثْلَهٗ فَقُمْتُ مَنْ يَّشْهَدُ لِيْ ثُمَّ جَلَسْتُ ثُمَّ قَالَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مِثْلَهٗ فَقُلْتُ فَقَالَ مَا لَكَ يَا اَبَا قَتَادَةَ فَاَخْبَرْتُهٗ فَقَالَ رَجُلٌ صَدَقَ وَسَلَبُهٗ عِنْدِيْ فَاَرْضِهٖ مِنِّيْ فَقَالَ اَبُوْ بَكْرٍ لَاهَا اللّٰهِ اِذًا لَا يَعْمِدُ اِلٰى اَسَدٍ مِنْ اُسْدِ اللّٰهِ يُقَاتِلُ عَنِ اللّٰهِ وَرَسُوْلِهٖ فَيُعْطِيَكَ سَلَبَهٗ فَقَالَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ صَدَقَ فَاَعْطِهٖ فَاَعْطَانِيْهِ فَابْتَعْتُ بِهٖ مَخْرَفًا فِيْ بَنِيْ سَلِمَةَ فَاِنَّهٗ لَاَوَّلُ مَالٍ تَاَثَّلْتُهٗ فِي الْاِسْلَامِ۔ (متفق علیه)

3986. Sayyiduna Abu Qatadah رضی اللہ عنہ narrated: We set out with Allah's Messenger صلی اللہ علیہ وسلم in the year of Hunayn (after the conquest of Makkah). When we Muslims faced the infidels, the Muslims seemed (outwardly) to suffer a reverse. I saw that an idolater had overpowered a Muslim, so I struck the idolater with my sword from behind on his shoulder-blade and cut his chain armour. Now, he turned to me and squeezed me with such force that I was dying, but he died and his grip over me gave way. Then I met Umar ibn Khattab رضی اللہ عنہ and asked him "What is

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[1] Bukhari # 3124, Muslim # 32-1747, Musnad Ahmad 2-317.

wrong with the people?" (They are fleeing.) He said, "It is Allah's decree. Then the Muslims (regrouped and) returned. The Prophet صلى الله عليه وسلم sat down and said, "If anyone Kills an infidel and has a witness to it, even one witness, then he will get his spoils." I thought to myself, "Who will testify for me ?" and sat down. Again, the Prophet صلى الله عليه وسلم said the same and I stood up. He asked, "What is it with you Abu Qatadah ?" I told him (that I had Killed an idolater). A man said, "He speaks the truth. I have his spoils , Make him agreeable to exchange that for something else. Or get us to settle willingly." Abu Bakr رضى الله عنه said "By Allah, let him not do so. A brave warrior of Allah does not fight for Allah and His Messenger only to surrender his spoils to you." The Prophet صلى الله عليه وسلم said, "Abu Bakr is right. Five the idolater's belongings to Abu Qatadah." So, he gave me all the belongings of the idolater. I bought (against that) a garden situated among the Banu Salimah. This was the first property that I collected after accepting Islam.[1]

COMMENTARY: In this battle, the enemy appeared initially to be getting the upper hand and Muslims deserted the battlefield for some time. But, the Prophet صلى الله عليه وسلم stood his ground on a mule held by Abbas ibn Muttalib رضى الله عنه. While the Muslims were in utter disorder, the Prophet صلى الله عليه وسلم not only faced the enemy bravely but also decided to step forward to fight the enemy. He kept saying:

اَنَا النَّبِيُّ لَا كَذِبْ، اَنَا ابْنُ عَبْدِالْمُطَّلِبْ

I am the Prophet, no lies. I am the son of Abdul Muttalib.

These two men held the Prophet صلى الله عليه وسلم back. Then Allah caused the Muslims to be patient. They attacked the enemy and uprooted them completely to triumph in the battle.

DISTRIBUTION OF SPOILS

(٣٩٨٧) وَعَنِ ابْنِ عُمَرَ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَسْهَمَ لِلرَّجُلِ وَلِفَرَسِهٖ ثَلَاثَةَ اَسْهُمٍ سَهْمًا لَهٗ وَسَهْمَيْنِ لِفَرَسِهٖ۔ (متفق عليه)

3987. Sayyiduna Ibn Umar رضى الله عنه said that Allah's Messenger صلى الله عليه وسلم apportioned (from the spoils) three shares for a warrior and his horse: one being for him and two for his horse.[2]

COMMENTARY: Most of the ulama (Scholars) go by this hadith but some of them give two portions to a warrior with horse. Imam Abu Hanifah رضى الله عنه also goes by it (2 portions) because a hadith # 4006 in Section II, discloses that the Prophet صلى الله عليه وسلم observed such distribution. The same thing is known from Sayyiduna Ali رضى الله عنه and Abu Musa رضى الله عنه and Abu Musa رضى الله عنه Ashary, and the Hidayah attributes this ruling to Ibn Abbas رضى الله عنه and to Ibn Umar رضى الله عنه whose second tradition is given preference to this one..

SLAVES & WOMEN HAVE NO SHARE IN SPOILS

(٣٩٨٨) وَعَنْ يَزِيْدَ بْنِ هُرْمُزَ قَالَ كَتَبَ نَجْدَةُ الْحَرُوْرِيُّ اِلَى ابْنِ عَبَّاسٍ يَسْأَلُهٗ عَنِ الْعَبْدِ وَ الْمَرْأَةِ يَحْضُرَانِ

[1] Bukhari # 4321, <islim # 47-1751, Tirmidhi # 1562, Abu Dawid # 2117.

[2] Bukhari # 2863. Muslim # 57-1762, Tirmidhi # 1554, Abuy Dawud # 2733 Ibn Majah # 2854, Dawud # 2472, Musnad Ahmed 2-41.

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الْمَغْنَمَ هَلْ يُقْسَمُ لَهُمَا فَقَالَ لِيَزِيْدَ اُكْتُبْ اِلَيْهِ اَنَّهُ لَيْسَ لَهُمَا سَهْمٌ اِلَّا اَنْ يُحْذَيَا۔ وَفِيْ رِوَايَةٍ كَتَبَ اِلَيْهِ ابْنُ عَبَّاسٍ اَنَّكَ كَتَبْتَ تَسْأَلُنِيْ هَلْ كَانَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَغْزُوْا بِالنِّسَاءِ وَهَلْ كَانَ يَضْرِبُ لَهُنَّ بِسَهْمٍ فَقَدْ كَانَ يَغْزُوْا بِهِنَّ يُدَاوِيْنَ الْمَرْضٰى وَيُحْذَيْنَ مِنَ الْغَنِيْمَةِ وَ اَمَّا السَّهْمُ فَلَمْ يُضْرَبْ لَهُنَّ بِسَهْمٍ۔ (رواه مسلم)

3988. Sayyiduna Yazid ibn Hurmuz reported that Najdah Hururi wrote to (Sayyiduna) ibn Abbas رضی اللہ عنہ asking him, " If a slave and a women are present at the distribution of the spoils, may they be given a share? " He instructed Yazaid to wrote on his behalf to Najdah, "No share is specified for them but some amount may be given to them (on the moment)."
According to another version . Ibn Abbas رضی اللہ عنہ wrote to him, "You have written asking me whether Allah's Messenger صلی اللہ علیہ وسلم took women along to battles and did he give them a share (of the spoils). Yes, he did take them along for *jihad (crusade)* to tend to the sick (and the wounded). They were given something from the spoils but he fixed no share for them."[1]

COMMENTARY: Najdah was the chief of the Khawarij, the opponents of Ali رضی اللہ عنہ. Haruri is from Harura, a village near Kufah. The first meeting of the Khawarij is reported to have been held here.
Most Ulama (Scholars), including and Hanafis, agree that women, children and slaves may be given a small, unspecified (token) portion. The Hadiyah says that if a slave fight in the battle then he is given something and a women if she has attended to the sick and wounded.

SOME WARRIORS MAY BE GIVEN MORE THAN THEIR SHARES

(٣٩٨٩) وَعَنْ سَلَمَةَ بْنِ الْاَكْوَعِ قَالَ بَعَثَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ بِظَهْرِهٖ مَعَ رَبَاحٍ غُلَامِ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَاَنَا مَعَهٗ فَلَمَّا اَصْبَحْنَا اِذَا عَبْدُ الرَّحْمٰنِ الْفَزَارِيُّ قَدْ اَغَارَ عَلٰى ظَهْرِ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقُمْتُ عَلٰى اَكَمَةٍ فَاسْتَقْبَلْتُ الْمَدِيْنَةَ فَنَادَيْتُ ثَلَاثًا يَا صَبَاحَاهُ ثُمَّ خَرَجْتُ فِيْ اٰثَارِ الْقَوْمِ اَرْمِيْهِمْ بِالنَّبْلِ وَاَرْتَجِزُ اَقُوْلُ اَنَا ابْنُ الْاَكْوَعِ وَالْيَوْمُ يَوْمُ الرُّضَّعِ۔ فَمَازِلْتُ اَرْمِيْهِمْ وَاَعْقِرُ بِهِمْ حَتّٰى مَاخَلَقَ اللّٰهُ مِنْ بَعِيْرٍ مِنْ ظَهْرِ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِلَّا خَلَّفْتُهٗ وَرَاءَ ظَهْرِيْ ثُمَّ اتَّبَعْتُهُمْ اَرْمِيْهِمْ حَتّٰى اَلْقَوْا اَكْثَرَ مِنْ ثَلَاثِيْنَ بُرْدَةً وَّثَلَاثِيْنَ رُمْحًا يَسْتَخِفُّوْنَ وَلَا يَطْرَحُوْنَ شَيْئًا اِلَّا جَعَلْتُ عَلَيْهِ آرَامًا مِنَ الْحِجَارَةِ يَعْرِفُهَا رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَاَصْحَابُهٗ حَتّٰى رَاَيْتُ فَوَارِسَ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَلَحِقَ اَبُوْقَتَادَةَ فَارِسُ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ بِعَبْدِ الرَّحْمٰنِ فَقَتَلَهٗ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ خَيْرُ فُرْسَانِنَا الْيَوْمَ اَبُوْقَتَادَةَ وَخَيْرُ رُجَّالَتِنَا سَلَمَةُ قَالَ ثُمَّ اَعْطَانِيْ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ

[1] Muslim # 139-1812, Abu Dawud # 2727.

وَسَلَّمَ سَهْمَيْنِ سَهْمَ الْفَارِسِ وَسَهْمَ الرَّاجِلِ فَجَمَعَهُمَالِيْ جَمِيْعًا ثُمَّ اَرْدَفَنِيْ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَرَاءَهُ عَلَى الْعَضْبَاءِ رَاجِعِيْنَ اِلَى الْمَدِيْنَةِ۔ (رواه مسلم)

3989. Sayyiduna Salmah ibn Akwa رضی اللہ عنہ narrated: (after the peace agreement at Hudaybiyah), Allah's Messenger صلی اللہ علیہ وسلم sent his riding-beasts ahead with Rabah, who was his slave. I travelled with him. (We spent the night on the way.) In the morning. Abdur Rahman Fazari (a sworn enemy of the Muslims) raided (and took away) the riding beasts of Allah's Messenger صلی اللہ علیہ وسلم. I climbed a hillock and called out thrice facing Madinah ' Ya Sabahah' (a morning raid). Then, I followed the people shooting arrows at them, humming the rajaz: (اَنَا ابْنُ الْاَكْوَعِ وَالْيَوْمُ يَوْمُ الرُّضَّعِ) (I am the son of Akwa' Today is the day of ruin for you).

I shot at them killing their beasts, compelling them to go on foot. Soon, I was ahead of every riding-beast of Allah's Messenger صلی اللہ علیہ وسلم created by Allah. I continued to follow them shooting at them , so they cast aside more than thirty cloaks and thirty lances to make themselves light (of burden). I put stones on everything they cast aside to let Allah's Messenger صلی اللہ علیہ وسلم and his companions observe them. Then I saw Allah's Messenger's صلی اللہ علیہ وسلم horsemen (coming) and (I saw) Abu Qatadah, the horseman of Allah's Messenger صلی اللہ علیہ وسلم. He nabbed Abdur Rahman and slew him. Allah's Messenger صلی اللہ علیہ وسلم said, " Our best horseman (of all our horsemen) today is Abu Qatadah and the best of our footmen is Salamah."

Then (as he divided the property of those infidels) he gave me two portions: a horseman's and a footman's. He gave me the two portions together and make me sit behind him on (his she camel) Adba, We set back towards Madinah.[1]

COMMENTARY: When a traveller found anything that he could not carry at that time, he put a stone there as a marking. Later, he picked it up.

Since Salamah ibn Akwa رضی اللہ عنہ was the man behind the achievement, the Prophet صلی اللہ علیہ وسلم gave him a horseman's share too apart from a footman's. The ruler has authority to allot an extra share to anyone.

(۳۹۹۰) وَعَنِ ابْنِ عُمَرَ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ كَانَ يُنَفِّلُ بَعْضَ مَنْ يَبْعَثُ مِنَ السَّرَايَا لِاَنْفُسِهِمْ خَاصَّةً سِوٰى قِسْمَةِ عَامَّةِ الْجَيْشِ۔ (متفق علیہ)

3990. Sayyiduna Ibn Umar رضی اللہ عنہ narrated that of the warriors that Allah's Messenger صلی اللہ علیہ وسلم sent on an expedition, he gave spoils for themselves above the division set out for the entire army.[2]

COMMENTARY: The Prophet صلی اللہ علیہ وسلم gave something more to some by way of encouragement to them.

(۳۹۹۱) وَعَنْهُ قَالَ نَفَّلَنَا رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ نَفَلًا سِوٰى نَصِيْبِنَا مِنَ الْخُمُسِ فَاَصَابَنِيْ شَارِفٌ وَالشَّارِفُ الْمُسِنُّ الْكَبِيْرُ۔ (متفق علیہ)

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[1] # 132-1807, Musnad Ahmad 4-52.

[2] Bukhari # 3135, Muslim # 40. 1350, Abu Dawud # 2746.

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3991. Sayyiduna Ibn Umar رضی اللہ عنہ narrated that (once) Allah's Messenger صلی اللہ علیہ وسلم gave them more than their due share from the Khums (one-fifth). He (Ibn Umar رضی اللہ عنہ) got an shaarif. It is an old and large she-camel.[1]

ABOUT ANIMALS RETAKEN FROM ENEMY

(٣٩٩٢) وَعَنْهُ قَالَ ذَهَبَتْ فَرَسٌ لَهُ فَأَخَذَهَا الْعَدُوُّ فَظَهَرَ عَلَيْهِمُ الْمُسْلِمُوْنَ فَرُدَّ عَلَيْهِ فِي زَمَنِ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَفِيْ رِوَايَةٍ اَبَقَ عَبْدٌ لَهُ فَلَحِقَ بِالرُّوْمِ فَظَهَرَ عَلَيْهِمُ الْمُسْلِمُوْنَ فَرَدَّ عَلَيْهِ خَالِدُ ابْنُ الْوَلِيْدِ بَعْدَ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ۔ (رواه البخاری)

3992. Sayyiduna Ibn Umar رضی اللہ عنہ said that his horse wandered off and was seized by the enemy. When the Muslims defeated them (and collected spoils from them), it was returned to him (and it was not counted among the spoils). This had happened in the time of Allah's Messenger صلی اللہ علیہ وسلم

According to another version: One of his slaves fled and joined the Byzantines. When the Muslims gained victory over them Khalid ibn walid gave him back to him. This took place after the death of the Prophet صلی اللہ علیہ وسلم.[2]

COMMENTARY: Ibn Maalik رحمہ اللہ says on the evidence of this hadith that if the disbelievers take away a Muslim's fleeing slave then they do not become his owners. Hence, when the Muslims defeat them and that slave comes to their hands as part of the spoils, is becomes *wajib (obligatory)* to return him to his owner, before or after the spoils are divided. According to Ibn Hammam رحمہ اللہ, Imam Abu Hanifah رحمہ اللہ says the same thing about a Muslim slave of a Muslim or a dhimmi, but his two students Imam Abu Yusuf رحمہ اللہ and Imam Muhammad رحمہ اللہ hold that the disbelievers will become his owners. Imam Maalik رحمہ اللہ and Imam Ahmad رحمہ اللہ say the same thing as they say. If the slave had apostated before fleeing and is seized by the disbelievers, then all the imams say that they (the disbelievers) will become his owners.

Also, if a camel of a Muslim or a dhimmi runs away and the disbelievers seize it, they will become its owners.

BANU ABD SHAMS & BANU NAWFAL HAD NO SHARE IN KHUMS FROM KHYBAR

(٣٩٩٣) وَعَنْ جُبَيْرِ ابْنِ مُطْعِمٍ قَالَ مَشَيْتُ اَنَا وَ عُثْمَانُ بْنُ عَفَّانَ اِلَى النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقُلْنَا اَعْطَيْتَ بَنِي الْمُطَّلِبِ مِنْ خُمُسِ خَيْبَرَ وَتَرَكْتَنَا وَنَحْنُ بِمَنْزِلَةٍ وَاحِدَةٍ مِنْكَ فَقَالَ اِنَّمَا بَنُوْهَا شِمٍ وَ بَنُو الْمُطَّلِبِ شَيْءٌ وَاحِدٌ قَالَ جُبَيْرٌ وَلَمْ يَقْسِمِ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لِبَنِيْ عَبْدِ شَمْسٍ وَبَنِيْ نَوْفِلٍ شَيْئًا۔

(رواه البخاری)

3993. Sayyiduna Jubayr ibn Mut'im رضی اللہ عنہ narrated that he and Uthman ibn Affan went to the Prophet صلی اللہ علیہ وسلم and submitted, "You have given the Banu Muttalib a share from the fifth of Khaybar, but you did not give us anything though in

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[1] Muslim # 38-1750.

[2] Bukhari # 3076, Ibn Majah # 2847.

relationship to you we are all alike." He said, "The Banu Hashim and the Banu Muttalib are the same."
Jubayr رضی اللہ عنہ said, "The Prophet صلی اللہ علیہ وسلم did not apportion anything to the Banu Abd Shams (who were Uthman رضی اللہ عنہ and others)."[1]

COMMENTARY: They were alike in relationship because they were all descended from Abd Manaf. Hashim, Muttalib, Nawfal and Abd Shams were the four sons of Abd Manaf, their grand father fourth up in the line, in this way:

- Jubayr رضی اللہ عنہ ibn Mut'im ibn Adi ibn Nawfal ibn Abd Manaf.
- Uthman رضی اللہ عنہ ibn Affan ibn Abu al-Aas ibn Amir ibn Abd Shams ibn Abd Manaf.
- Muhammad صلی اللہ علیہ وسلم ibn Abdullah ibn Abdul Muttalib ibn Hashim ibn Abd Manaf.

However, the Prophet صلی اللہ علیہ وسلم told them that he knew only that the Banu Hashim and banu Muttalib were members of one rank and like the same thing, being supporters, friends and sympathizers of one another. They were never against one another during the jahiliyah (ignorance period) and even in Islam, but the Banu Abd Shams and the Banu Nawfal were antagonists to the Banu Hashim and the Banu Muttalib. When the Prophet صلی اللہ علیہ وسلم called the Makkans to Islam and the unity of Allah. And his messenger ship, the Banu Abd Shams and the Banu Nawfal opposed him tooth and nail. They did not even desist from hurting him and forming an alliance against him. They vowed to have nothing to do with the Banu Hashim as long as they did not over Muhammad صلی اللہ علیہ وسلم to them. On the other hand, the Banu Muttalib cooperated with the Banu Hashim in every possible way. They were united with them.
The Banu Abd Shams (of Uthman رضی اللہ عنہ and others) and the Banu Nawfal (of Jubayr رضی اللہ عنہ and others) were relations of the Prophet رضی اللہ عنہ but they had no unity with the Banu Hashim. Apparently, They were dis-united.

ABOUT FA'I

(٣٩٩٤) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَيُّمَا قَرْيَةٍ اَتَيْتُمُوْهَا وَاَقَمْتُمْ فِيْهَا فَسَهْمُكُمْ فِيْهَا وَاَيُّمَا قَرْيَةٍ عَصَتِ اللّٰهَ وَرَسُوْلَهٗ فَاِنَّ خُمُسَهَا لِلّٰهِ وَلِرَسُوْلِهٖ ثُمَّ هِيَ لَكُمْ۔ (رواه مسلم)

3994. Sayyiduna Abu Hurayrah رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, " If you go to a habitation and stay there, then you have a portion in it. If any habitation disobeys Allah and His Messenger, then one fifth of it belongs to Allah and His Messenger and the rest is for you."[2]

COMMENTARY: Going to a town or habitation is to go to wage *jihad (crusade)* there and the inhabitants flee from there or reconcile with you, surrendering their place and themselves to you, and you reside there.
You have a portion in it. You do not have all of it but you will share even with the warriors who did not come with you but stayed home, because this kind of property (that is

[1] # 4229.
[2] Muslim # 47-1756

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acquired without fighting) is called fa'i. Fa'I is not distributed only among those who came out of their houses to fight. (It is for all warriors.)

As for those inhabitants who disobey Allah and His Messenger صلى الله عليه وسلم, they are those who neither accept Islam nor come to an understanding, but they show obstinacy. They fight with you. When you defeat them, the booty that you acquire from them is called Ghanimah (booty, spoils). One-fifth of it will be set aside for Allah and His Messenger صلى الله عليه وسلم.The remaining will be divided among the participant in the battle.

Thus, Khums (or one-fifth) is taken out only from ghanimah, not from fa'i. In this sense, this hadith rejects the opinion of Imam Shafi'I رحمه الله.

Some Hanafi scholars have interpreted this hadith to mean: The first portion implies that the Muslim conquered a place without the participation of Allah's Messenger صلى الله عليه وسلم. In this second condition, he did receive the Khums. The rest was shared by the warriors who participated in the battle.

WARNING TO THE DISHONEST WITH BOOTY

(٣٩٩٥) وَعَنْ خَوْلَةَ الْاَنْصَارِيَةِ قَالَتْ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ اِنَّ رِجَالًا يَتَخَوَّضُوْنَ فِيْ مَالِ اللّٰهِ بِغَيْرِ حَقٍّ فَلَهُمُ النَّارُ يَوْمَ الْقِيَامَةِ۔ (رواه البخارى)

3995. Sayyidah Khawlah al-Ansariyah رضى الله عنها narrated that she heard Allah's Messenger صلى الله عليه وسلم say, "Surely some people use Allah's property (like booty, fa'I and zakah (Annual due charity) wrongfully (without authority and entitlement). They will go to hell on the day of resurrection."

COMMENTARY: If they used it regarding it to be lawful (and their right), then they will abide in hell for ever. If they used it but did not regard it to be their right, then they will dwell in hell till Allah punishes them in it.

(٣٩٩٦) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَامَ فِيْنَا رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ ذَاتَ يَوْمٍ فَذَكَرَ الْغُلُوْلَ فَعَظَّمَهٗ وَعَظَّمَ اَمْرَهٗ ثُمَّ قَالَ لَا اُلْفِيَنَّ اَحَدَكُمْ يَجِيْئُ يَوْمَ الْقِيَامَةِ عَلٰى رَقَبَتِهٖ بَعِيْرٌ لَهٗ رُغَاءٌ يَقُوْلُ يَا رَسُوْلَ اللّٰهِ اَغِثْنِيْ فَاَقُوْلُ لَا اَمْلِكُ لَكَ شَيْئًا قَدْ اَبْلَغْتُكَ لَا اُلْفِيَنَّ اَحَدَكُمْ يَجِيْئُ يَوْمَ الْقِيَامَةِ عَلٰى رَقَبَتِهٖ فَرَسٌ لَهٗ حَمْحَمَةٌ فَيَقُوْلُ يَا رَسُوْلَ اللّٰهِ اَغِثْنِيْ فَاَقُوْلُ لَا اَمْلِكُ شَيْئًا قَدْ اَبْلَغْتُكَ لَا اُلْفِيَنَّ اَحَدَكُمْ يَجِيْئُ يَوْمَ الْقِيَامَةِ عَلٰى رَقَبَتِهٖ شَاةٌ لَهَا ثُغَاءٌ يَقُوْلُ يَا رَسُوْلَ اللّٰهِ اَغِثْنِيْ فَاَقُوْلُ لَا اَمْلِكُ لَكَ شَيْئًا قَدْ اَبْلَغْتُكَ لَا اُلْفِيَنَّ اَحَدَكُمْ يَجِيْئُ يَوْمَ الْقِيَامَةِ عَلٰى رَقَبَتِهٖ نَفْسٌ لَهَا صِيَاحٌ فَيَقُوْلُ يَا رَسُوْلَ اللّٰهِ اَغِثْنِيْ فَاَقُوْلُ لَا اَمْلِكُ لَكَ شَيْئًا قَدْ اَبْلَغْتُكَ لَا اُلْفِيَنَّ اَحَدَكُمْ يَجِيْئُ يَوْمَ الْقِيَامَةِ عَلٰى رَقَبَتِهٖ رِقَاعٌ تَخْفِقُ فَيَقُوْلُ يَا رَسُوْلَ اللّٰهِ اَغِثْنِيْ فَاَقُوْلُ لَا اَمْلِكُ لَكَ شَيْئًا قَدْ اَبْلَغْتُكَ لَا اُلْفِيَنَّ اَحَدَكُمْ يَجِيْئُ يَوْمَ الْقِيَامَةِ عَلٰى رَقَبَتِهٖ صَامِتٌ فَيَقُوْلُ يَا رَسُوْلَ اللّٰهِ اَغِثْنِيْ فَاَقُوْلُ لَا اَمْلِكُ لَكَ شَيْئًا قَدْ اَبْلَغْتُكَ۔ مُتَّفَقٌ عَلَيْهِ وَهٰذَا لَفْظُ مُسْلِمٍ وَهُوَ اَتَمُّ۔

3996. Sayyiduna Abu Hurayrah رضى الله عنه narrated that Allah's Messenger stood up

among them and mentioned treachery in spoils. He described it as a grave sin and spoke very seriously on it. Then he said, "Beware! I should not see any of you on the day of resurrection coming with a camel rumbling on his neck (to the gathering place) saying, 'O Messenger of Allah, help me!' I shall say, " I cannot help you in any way. I had indeed conveyed to you the message.' And I should not see any of you on the day of resurrection, carrying a horse whinnying on his neck coming (to the gathering ground), saying 'O Messenger of Allah, help me!' I shall say, 'I cannot help you in any way. I had indeed conveyed to you the message.' And, I should not see any of you on the day of resurrection, carrying on his neck a bleating sheep (coming to the gathering place), saying, 'O Messenger of Allah, help me!' I shall say, ' I cannot help you in any way. Indeed, I had conveyed to you the message.' And, I should not see any of you on the day of resurrection carrying a person (slave, male or female) yelling on his neck (coming to the gathering ground), saying, 'O Messenger of Allah, help me!' I shall say, 'I can do nothing for you. Indeed, I had conveyed the message to you.' And , I should not see any of you on the day of resurrection with flapping cloth on his neck (coming to the gathering ground), saying, 'O Messenger of Allah, help me!' I shall say, 'I cannot help you in any way. Indeed, I had conveyed the message to you.' And, I should not see any of you on the day of resurrection carrying gold and silver on his neck (coming towards the place of gathering), saying, 'O Messenger of Allah, help me!' I shall say,' I cannot do anything for you. Indeed, I had conveyed to you the message.'[1]

(The man would be carrying on his neck whatever he had misappropriated from the booty in spite of being warned by the Prophet صلى الله عليه وسلم.)

WARNING AGAINST MISAPPROPRIATING PROPERTY ON WHICH MUSLIMS HAVE A RIGHT

(٣٩٩٧) وَعَنْهُ قَالَ اَهْدٰى رَجُلٌ لِرَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ غُلَامًا يُقَالُ لَهُ مِدْعَمٌ فَبَيْنَمَا مِدْعَمٌ يَحُطُّ رَجُلًا لِرَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِذَا اَصَابَهُ سَهْمٌ عَائِرٌ فَقَتَلَهُ فَقَالَ النَّاسُ هَنِيْئًا لَهُ الْجَنَّةُ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ كَلَّا وَالَّذِيْ نَفْسِيْ بِيَدِهٖ اِنَّ الشَّمْلَةَ الَّتِيْ اَخَذَهَا يَوْمَ خَيْبَرَ مِنَ الْمَغَانِمِ لَمْ تُصِبْهَا الْمَقَاسِمُ لَتَشْتَعِلُ عَلَيْهِ نَارًا فَلَمَّا سَمِعَ ذٰلِكَ النَّاسُ جَاءَ رَجُلٌ بِشِرَاكٍ اَوْ شِرَاكَيْنِ اِلَى النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ شِرَاكٌ مِنْ نَارٍ اَوْ شِرَاكَانِ مِنْ نَارٍ۔ (متفق علیه)

3997. Sayyiduna Abu Hurayrah رضى الله عنه narrated that a man presented to Allah's Messenger صلى الله عليه وسلم a slave who was called Mid'am. While Mid'am was unsaddling a camel belonging to Allah's Messenger صلى الله عليه وسلم (perhaps on a battlefield), an arrow from an unknown source struck him and he was killed. The people exclaimed, "Congratulations to Mid'am.(He is martyred while in the service of Allah's Messenger صلى الله عليه وسلم.) He will go to paradise!" Allah's Messenger صلى الله عليه وسلم said, however, "Not so! By Him in whose hand is my soul, the cloak he took away on the day of khaybar from the spoils before they were divided will flare up with fire on him." On hearing that, someone came with a Sandal-strap or two

[1] Bukhari # 3073, Muslim # 24. 183 ... hmad 2. 426.

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sandal-straps to the Prophet صلى الله عليه وسلم, saying, "A sandal-strap of fire!" Or, two sandal-straps of fire!"[1]
(In short, people brought different things which they had considered to be two insignificant, even sandal-straps and laces.)

COMMENTARY: This hadith warns people who misappropriate property to which Muslims have a right. Examples are awqaf (trusts, endowments), bayt ul-maal (state Treasury), etc. It is possible to compensate one person for right usurped but it is impossible to redeem rights of several people and return their properties.

(٣٩٩٨) وَعَنْ عَبْدِاللّٰهِ بْنِ عَمْرٍو قَالَ كَانَ عَلٰى ثَقَلِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ رَجُلٌ يُقَالُ لَهٗ كِرْكِرَةُ فَمَاتَ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ هُوَ فِي النَّارِ فَذَهَبُوْا يَنْظُرُوْنَ فَوَجَدُوْا عَبَاءَةً قَدْ غَلَّهَا۔ (رواه البخاری)

3998. Sayyiduna Abdullah Ibn Amr رضى الله عنه narrated that a man named Kirkirah was deputed to watch over the belongings of the prophet صلى الله عليه وسلم. When he died, Allah's Messenger صلى الله عليه وسلم said, "He is in hell." The people went and (on examining his property) found a striped blanket that he had misappropriated from the spoils.[2]

COMMENTARY: Yahya رحمه الله said that when the Sahabah (Prophet's Companions) رضى الله عنهم heard the Prophet صلى الله عليه وسلم, they understood that Kirkirah had taken something from the spoils on his own. So, they examined his belongings.

FOOD & DRINK MAY BE CONSUMED FROM SPOILS

(٣٩٩٩) وَعَنِ ابْنِ عُمَرَ قَالَ كُنَّا نُصِيْبُ فِيْ مَغَازِيْنَا الْعَسَلَ وَالْعِنَبَ فَنَأْكُلُهٗ وَلَا نَرْفَعُهٗ۔ (رواه البخاری)

3999. Sayyiduna Ibn Umar رضى الله عنه narrated: We used to get, (as spoils) in our battles, honey and grapes which we would consume and not carry them (to the Prophet صلى الله عليه وسلم).[3]

COMMENTARY: It means that the Prophet صلى الله عليه وسلم approved their action. The ulama (Scholars) agree that as long as the warriors are on the battle field they man consume eatables and drinks to the extent necessary from the spoils before they are divided.

(٤٠٠٠) وَعَنْ عَبْدِاللّٰهِ ابْنِ مُغَفَّلٍ قَالَ اَصَبْتُ جِرَابًا مِنْ شَحْمٍ يَوْمَ خَيْبَرَ فَالْتَزَمْتُهٗ فَقُلْتُ لَا اُعْطِيْ الْيَوْمَ اَحَدًا مِنْ هٰذَا شَيْئًا فَالْتَفَتُّ فَاِذَا رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَتَبَسَّمُ اِلَيَّ۔ (متفق عليه)

4000. Sayyiduna Abdullah ibn Mughaffal رضى الله عنه said, "On the day of Khaybar, I found a packet of fat. (I picked it up and put it to my bossom and) I thought to myself that I would not give it to anyone anything from it today. As I turned round I saw Allah's Messenger صلى الله عليه وسلم smiling at me (over what I did)."[4]

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[1] Bukhari # 6707, Muslim # 183. 115.
[2] Bukhari # 3074.
[3] Bukhari # 3154.
[4] Bukhari # 3453, Muslim # 72. 1772.

COMMENTARY: It is as stated previously that the warriors are permitted to take provision from the spoils before division as much as is necessary.

وَذُكِرَ حَدِيْثُ اَبِيْ هُرَيْرَةَ مَا اُعْطِيْكُمْ فِيْ بَابِ رِزْقِ الْوُلَاةِ

And the hadith of Abu Hurayrah رضی اللہ عنہ about giving by the Prophet صلی اللہ علیہ وسلم is # 3745.

SECTION II اَلْفَصْلُ الثَّانِيْ

BOOTY IS ALLOWED TO THIS UMMAH ONLY

(٤٠٠١) وَعَنْ اَبِيْ اُمَامَةَ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اِنَّ اللّٰهَ فَضَّلَنِيْ عَلَى الْاَنْبِيَاءِ اَوْ قَالَ فَضَّلَ اُمَّتِيْ عَلَى الْاُمَمِ وَاَحَلَّ لَنَا الْغَنَائِمَ۔ (رواه الترمذی)

4001. Sayyiduna Abu Umamah رضی اللہ عنہ reported that the Prophet صلی اللہ علیہ وسلم said, "Surely Allah has given me more excellence over the (other) Prophets علیہ السلام. Or, he said, "He has given more excellence to my ummah over the (other) ummahs. And he has made the spoils lawful to us."[1]

COMMENTARY: Among the various merits of this ummah is that booty or spoils ar made lawful to them.

KILLER GETS PROPERTY OF THE SLAIN

(٤٠٠٢) وَعَنْ اَنَسٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَوْمَئِذٍ يَعْنِيْ يَوْمَ حُنَيْنٍ مَنْ قَتَلَ كَافِرًا فَلَهٗ سَلَبُهٗ فَقَتَلَ اَبُوْ طَلْحَةَ يَوْمَئِذٍ عِشْرِيْنَ رَجُلًا وَاَخَذَ اَسْلَابَهُمْ۔ (رواه الدارمی)

4002. Sayyiduna Anas رضی اللہ عنہ narrated that Allah's Messenger said on that the day of Hunayn, "He who kills a disbeliever will get his (the slain man's) belongings." That day, Abu Talhah رضی اللہ عنہ killed twenty men (of the enemy), and he got all their belongings.[2]

(٤٠٠٣) وَعَنْ عَوْفِ ابْنِ مَالِكٍ نِ الْاَشْجَعِيِّ وَخَالِدِ بْنِ الْوَلِيْدِ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَضٰى فِي السَّلَبِ لِلْقَاتِلِ وَلَمْ يُخَمِّسِ السَّلَبَ۔ (رواه ابوداؤد)

4003. Sayyiduna Awf Ibn Maalik Ashja رضی اللہ عنہ and Khalid ibn Walid رضی اللہ عنہ said that Allah's Messenger صلی اللہ علیہ وسلم passed a ruling that the things taken from the man killed should be given to him who kills him. And, he did not take out Khams (one-fifth) from it (as is done from the spoils).[3]

(٤٠٠٤) وَعَنْ عَبْدِاللّٰهِ بْنِ مَسْعُوْدٍ قَالَ نَفَّلَنِيْ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَوْمَ بَدْرٍ سَيْفَ اَبِيْ جَهْلٍ وَكَانَ قَتَلَهٗ۔ (رواه ابوداؤد)

4004. Sayyiduna Abdullah ibn Mas'ud رضی اللہ عنہ said that on the day of Badr, Allah's Messenger صلی اللہ علیہ وسلم gave him the sword of Abu Jahl in excess (of his share). He

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[1] Tirmidhi # 1553 Musnad Ahmad 5. 248

[2] Abu Dawud # 2718, Darimi # 2884, Musnad Ahmad 3. 114

[3] Abu Dawud # 2721, Musnad A

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had killed him.[1]

COMMENTARY: In the Battle of Badr, Abu Jahl was killed by two young boys of the ansars. Sayyiduna Ibn Mas'ud رضی اللہ عنہ also had a hand in killing him with the boys. He had severed his head from his torso. So, the Prophet صلی اللہ علیہ وسلم gave him the sword, one of the belonging of Abu Jahl.

(Bukhari and Muslim reported from Abdur Rahman ibn Awf رضی اللہ عنہ that two boys stood on either side of him and asked him to point out Abu Jahl to them. When he did so, they rushed to him and slew him and recounted their achievement to the Prophet صلی اللہ علیہ وسلم who gave them Abu Jahl's spoils. They were Mu'adh ibn Amr رضی اللہ عنہ and Mu'ad ibn Afra رضی اللہ عنہ. Ibn Mas'ud رضی اللہ عنہ severed his head when he was panting for breath.)[2]

SLAVE MAY BE GIVEN SOME BOOTY

(٤٠٠٥) وَعَنْ عُمَيْرٍ مَوْلَى أَبِي اللَّحْمِ قَالَ شَهِدْتُ خَيْبَرَ مَعَ سَادَتِيْ فَكَلَّمُوْا فِيَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَكَلَّمُوْهُ أَنِّيْ مَمْلُوْكٌ فَأَمَرَ بِيْ فَقُلِّدْتُ سَيْفًا فَإِذَا أَنَا أَجُرُّهُ فَأَمَرَ لِيْ بِشَيْءٍ مِنْ خُرْثِيِّ الْمَتَاعِ وَعَرَضْتُ عَلَيْهِ رُقْيَةً كُنْتُ أَرْقِيْ بِهَا الْمَجَانِيْنَ فَأَمَرَنِيْ بِطَرْحِ بَعْضِهَا وَحَبْسِ بَعْضِهَا۔ رَوَاهُ التِّرْمِذِيُّ وَأَبُوْدَاوٗدَ إِلَّا أَنَّ رِوَايَتَهُ انْتَهَتْ عِنْدَ قَوْلِهِ الْمَتَاعِ۔

4005. Sayyiduna Umayr رضی اللہ عنہ, the freedman of Abu Al-lahm رضی اللہ عنہ narrated: I did participate in the Battle of Khaybar with my masters. They had spoken about me with Allah's Messenger (that I could be assigned fighting or service). They told him that I was a slave. He gave command about me and a sword was girded on me and I trailed it (being young and short-statured and I was instructed to join the warriors. After the battle,) Allah's Messenger صلی اللہ علیہ وسلم ordered that I should be given some petty, miscellaneous things from the booty.

Then, I presented to him a spell that I used to chant over the insane and blow on them. (I asked him about it.) And, he instructed me to discard some of it and to retain the rest.[3]

COMMENTARY: Perhaps, some words of the spell were irreligious. So, the Prophet صلی اللہ علیہ وسلم instructed him to Discard them.

DIVISION OF SPOILS FROM KHAYBAR

(٤٠٠٦) وَعَنْ مُجَمِّعِ بْنِ جَارِيَةَ قَالَ قُسِمَتْ خَيْبَرُ عَلَى أَهْلِ الْحُدَيْبِيَّةِ فَقَسَمَهَا رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ ثَمَانِيَةَ عَشَرَ سَهْمًا وَكَانَ الْجَيْشُ أَلْفًا وَخَمْسَ مِائَةٍ فِيْهِمْ ثَلَاثُمِائَةِ فَارِسٍ فَأَعْطَى الْفَارِسَ سَهْمَيْنِ وَالرَّاجِلَ سَهْمًا۔ رَوَاهُ أَبُوْدَاوٗدَ وَقَالَ حَدِيْثُ ابْنِ عُمَرَ أَصَحُّ وَالْعَمَلُ عَلَيْهِ وَأَنَّ الْوَهْمَ فِيْ حَدِيْثِ مُجَمِّعٍ أَنَّهُ قَالَ ثَلَاثُمِائَةِ فَارِسٍ وَإِنَّمَا كَانُوْا مِائَتَيْ فَارِسٍ۔

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[1] Abu Dawud # 2722.

[2] The life of Prophet Muhammad صلی اللہ علیہ وسلم (Ibn Kathir) p 316 – Darul-Isha'at, Karachi.

[3] Tirmidhi # 1557 (1563), Dawud (only the first portion) # 2730, Ibn Majah # 2855, Darimi # 2475, Musnad Ahmad 5-223.

4006. Sayyiduna Mujammi ibn Jariyah رضی اللہ عنہ narrated that (the spoils and land at) Khaybar was divided among those who had been at Hudaybiyah. Allah's Messenger صلی اللہ علیہ وسلم divided it into eighteen portions. The army (at Hudaybiyah) numbered one thousand five hundred warriors three hundred of whom were horsemen. He gave two portions to a horsemen and one to each footman.[1]
(Abu Dawud who has transmitted it says that the hadith of Ibn Umar is more sound and most ulama (Scholars) follow it. There is ambiginity in this tradition of Mujammi because he gives the number of horsemen as three hundred while there were only two hundred.) [However, Abu dawud does not mention Ibn Umar but names Abu Mu'awiyah both Arabii and English translation in their text: # 3987 is by Ibn Umar رضی اللہ عنہ.]

COMMENTARY: Imam Abu Hanifah رحمہ اللہ and others follow this hadith that allots two shares to a horse rider from the booty.
Those who hold that a horse-rider gets three shares do not find will call for twenty-one shares while there were eighteen shares.
Further, even Ibn Abbas رضی اللہ عنہ and Ibn Umar رضی اللہ عنہ have narrated traditions similar to this tradition of Mujammi. Those who insist that horse-riders had three shares cite the hadith # 3987 of this chapter. They say that Ibn Umar's Hadith is on one sound. But, see comments to it for the reason Imam Abu Hanifah رحمہ اللہ does not follow it.
As for the conclusion of Abu Dawud pointing to an error, the fact is that different accounts are given of the number of the Muslim army at Hudaybiyah Apart from Mujammi, there is one which gives the number as one thousand four hundred men, one thousand two hundred footmen and two hundred horsemen.

REWARD FOR THOSE WHO MAKE MORE EFFORTS IN *JIHAD (CRUSADE)*

(٤٠٠٧) وَعَنْ حَبِيْبِ بْنِ مَسْلَمَةَ الْفِهْرِيِّ قَالَ شَهِدْتُ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ نَفَّلَ الرُّبُعَ فِي الْبَدأَةِ وَالثُّلُثَ فِي الرَّجْعَةِ۔ (رواه ابوداؤد)

4007. Sayyiduna Habib ibn Maslamah Fihri رضی اللہ عنہ said, "I observed (in a battle) that the Prophet صلی اللہ علیہ وسلم gave an extra one-fourth of the booty (to those who fought) in the beginning; and one-third more towards the return (to those who fought)".[2]

COMMENTARY: If a detachment of a Muslim army preceded the main body to engage the enemy, the Prophet صلی اللہ علیہ وسلم gave them one-fourth of the booty as a special case. Then when the remaining booty of three-fourths was divided, they again got their share with the whole army.
In the same way, when the main body returned from the battlefield and a detachment stood their ground to keep the enemy engaged, they were given, as a reward, one-third of the booty over and above their share in the remaining booty distributed to the whole army. This one-third was given to them as a reward because their task was very risky and required exceptional courage and bravery since the main army was not behind them to

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[1] Abu Dawud # 2736, Musnad Ahmad 3-430 (Abu Dawud # 2730.)
[2] Abu Dawud # 2749, Musnad Ahmad 4-160

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support them. As for the engagement before the rest of the forces arrived, that was not as risky since there was the knowledge of their advance and coming.
Therefore, the additional booty was in recognition of the exceptional struggle and effort and courage of the detachment.

(٤٠٠٨) وَعَنْهُ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ كَانَ يُنَفِّلُ الرُّبُعَ بَعْدَ الْخُمُسِ وَالثُّلُثَ بَعْدَ الْخُمُسِ اِذَاقَفَلَ۔ (رواه ابوداؤد)

4008. Sayyiduna Habib ibn Maslamah Fihri صلى الله عليه وسلم gave an additional one-fourth of the booty, after retaining the one-fifth, to the detachment (that initiated fighting before the arrival of the main body). And , he gave one-third of the booty, after retaining the one-fifth (Khums), to the detyachment (to engage the enemy) after (the main body) returned.[1]

COMMENTARY: This hadith clarifies the previous by saying that before giving the reward of one-fourth to the initiators of battle and one-third to those who kept the enemy engaged while returning, the Khums was deducted from the booty. Once the one-fourth and one-third reward was given, the booty was divided among the entire army.

NO EXCEPTIONAL SHARE FROM FA'I

(٤٠٠٩) وَعَنْ اَبِي الْجُوَيْرِيَةِ الْجَرْمِيِّ قَالَ اَصَبْتُ بِاَرْضِ الرُّوْمِ جَرَّةً حَمْرَاءَ فِيْهَادَنَا نِيْرُ فِيْ اِمْرَةِ مُعَاوِيَةَ وَعَلَيْنَا رَجُلٌ مِنْ اَصْحَابِ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مِنْ بَنِيْ سُلَيْمٍ يُقَالُ لَهٗ مَعْنُ بْنُ يَزِيْدَ فَاَتَيْتُهٗ بِهَا فَقَسَمَهَا بَيْنَ الْمُسْلِمِيْنَ وَاَعْطَانِيْ مِنْهَا مِثْلَ مَا اَعْطٰى رَجُلًا مِنْهُمْ ثُمَّ قَالَ لَوْ لَا اِنِّيْ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ لَا نَفَلَ اِلَّا بَعْدَ الْخُمُسِ لَاَعْطَيْتُكَ۔ (رواه ابوداؤد)

4009. Sayyiduna Abu al-Juwayriyah Jarmiy صلى الله عليه وسلم said, "When Muawiyah رضى الله عنه was the amir, I found a red jar containing dinars in the land of the Byzantine. Our commander was one of the Sahabah (Prophet's Companions) رضى الله عنهم of Allah's Messenger صلى الله عليه وسلم belonging to the Banu Sulaym by the name of Ma'n ibn Yazid رضى الله عنه. I took the jar to him and he divided it among the Muslims (the warriors of Islam). He give me the same amount as the portion of any other man (not more). He then said, Had I not heard Allah's Messenger صلى الله عليه وسلم say: Booty is divided only after the Khums (one-fifth) is retained, I would have given it to you meaning more than others).[2]

COMMENTARY: Sayyiduna Ma'n رضى الله عنه meant to say that the Prophet صلى الله عليه وسلم said that a warrior can be given an extra amount above his share only from that property from which the Khums has to be retained. That happens only from the spoils after battle against the infidels and which is called ghanimah (spoils. booty).
As for this red jar it was Fa'i. No additional amount is paid when Fa'i is divided. So this

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[1] Abu Dawud # 2753, Musnad Ahmad 3-470.
[2] Au Dawud # 2725.

man too was not given anything extra.

EXCLUSIVE GIFT TO NON-PARTICIPANTS OF BATTLE

(٤٠١٠) وَعَنْ اَبِيْ مُوْسَى الْاَ شْعَرِيِّ قَالَ قَدِمْنَا فَوَا فَقْنَا رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ حِيْنَ افْتَتَحَ خَيْبَرَ فَاَسْهَمَ لَنَا اَوْ قَالَ فَاَعْطَانَا مِنْهَا وَمَاقَسَمَ لِاَحَدٍ غَابَ عَنْ فَتْحِ خَيْبَرَ مِنْهَا شَيْئًا اِلَّا لِمَنْ شَهِدَ مَعَهٗ اِلَّا اَصْحَابَ سَفِيْنَتِنَا جَعْفَرًا وَاَصْحَابَهٗ اَسْهَمَ لَهُمْ مَعَهُمْ۔ (رواه ابوداؤد)

4010. Sayyiduna Abu Musa Al-Ashary رضی اللہ عنہ narrated, We returned (from Ethiopia) and met Allah's Messenger صلی اللہ علیہ وسلم when he had just conquered Khaybar . He allotted to us a portion (from the spoils of Khaybar)." Or, he narrated, "He gave us some portion (from it).But, he did not give anything to any such person who was not present at the conquest of Khaybar. He gave shares (from the booty) only to those who were present with him (at the Battle of Khaybar) and to those who were in our ship, namely Jafar رضی اللہ عنہ and his companions. He gave to them (of the ship) as he gave to the others (who had participated in the Battle of Khaybar)."[1]

COMMENTARY: Sayyiduna Abu Musa Ashari رضی اللہ عنہ had come to Makkah from Yemen in the very beginning of the preaching of Islam and he embraced Islam. Then he had emigrated to Abyssinia (Ethiopia) where Sayyiduna Jafar ibn Abu Talib رضی اللہ عنہ and other Sahabah رضی اللہ عنہ had emigrated from Makkah. When they learnt there that the Prophet صلی اللہ علیہ وسلم had emigrated from Makkah to Madinah, they too boarded ships to depart from Ethopia for Madinah.

They arrived almost simultaneously with Prophet صلی اللہ علیہ وسلم conquest of Khaybar.

Some people say that they were given shares in the spoils from Khaybar, though they had arrived after the battle, because they had come before the spoils were collected and divided. This is suggested by those ulama (Scholars) who hold that if a warrior does not take part in a battle but is present when the spoils are collected and are in the process of distribution then he too will get a share with the warriors. Imam Shafi رضی اللہ عنہ gave one verdict on these lines.

As for the ulama (Scholars) who do not subscribe to this contention, they say that the grant of shares of the spoils from Khaybar was a gift of a special kind from the Prophet صلی اللہ علیہ وسلم. It was granted with the permission of the participants of the Battle of Khaybar.

This second opinion is more correct.

PROPHET صلی اللہ علیہ وسلم DID NOT OFFER FUNERAL *SALAH (PRAYER)* OF DISHONEST IN SPOILS

(٤٠١١) وَعَنْ يَزِيْدَ بْنِ خَالِدٍ اَنَّ رَجُلًا مِنْ اَصْحَابِ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ تُوُفِّيَ يَوْمَ خَيْبَرَ فَذَكَرُوْا لِرَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ صَلُّوْا عَلٰى صَاحِبِكُمْ فَتَغَيَّرَتْ وُجُوْهُ النَّاسِ لِذٰلِكَ فَقَالَ اِنَّ صَاحِبَكُمْ غَلَّ فِيْ سَبِيْلِ اللّٰهِ فَفَتَّشْنَا مَتَاعَهٗ فَوَجَدْنَا خَرَزًا مِنْ خَرَزِ يَهُوْدَ لَايُسَاوِيْ دِرْهَمَيْنِ(رواه

[1] Abu Dawud # 2725.

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مالك و ابوداؤد والنسائى)

4011. Sayyiduna Yazid ibn Khalid رضى الله عنه narrated that a man among the companions رضى الله عنه of Allah's Messenger صلى الله عليه وسلم died on the day of Khaybar. They conveyed the news to Allah's Messenger صلى الله عليه وسلم. He said, "Offer the *salah (prayer)* over your companion." The people changed colour on hearing that (for they understood that he would not offer the *salah (prayer)*). He said, "Your companion was dishonest about booty in Allah's path." They examined his belongings and found some beads of Jewsses (that they wear round their necks). They were worth not even two dirhams.[1]

WARNING TO ONE WHO PROCRASTINATES IN COLLECTING BOOTY FOR DISTRIBUTION

(٤٠١٢) وَعَنْ عَبْدِاللّٰهِ بْنِ عَمْرٍو وقَالَ كَانَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِذَا اَصَابَ غَنِيْمَةً اَمَرَ بِلَالًا فَنَادٰى فِي النَّاسِ فَيَجِيْئُوْنَ بِغَنَائِمِهِمْ فَيُخَمِّسُهُ وَيُقَسِّمُهُ فَجَاءَ رَجُلٌ يَوْمًا بَعْدَ ذٰلِكَ بِزِمَامٍ مِنْ شَعْرٍ فَقَالَ يَا رَسُوْلَ اللّٰهِ هٰذَا فِيْمَا كُنَّا اَصَبْنَاهُ مِنَ الْغَنِيْمَةِ قَالَ اَسَمِعْتَ بِلَالًا نَادٰى ثَلَاثًا قَالَ نَعَمْ فَمَا مَنَعَكَ اَنْ تَجِيْئَ بِهٖ فَاعْتَذَرَ قَالَ كُنْ اَنْتَ تَجِيْئَ بِهٖ يَوْمَ الْقِيَامَةِ فَلَنْ اَقْبَلَهٗ عَنْكَ۔ (رواه ابوداؤد)

4012. Sayyiduna Abdullah ibn Amr رضى الله عنه narrated that whenever Allah's Messenger صلى الله عليه وسلم decided to gather together the booty, he would command (Sayyiduna) Bilal رضى الله عنه to announce to the people so that they brought their spoils (to be collected before the Prophet صلى الله عليه وسلم. Then he put apart the one-fifth and divided the rest (among the warriors). One day, a man came (after the division) with a halter of hair and submitted, "O Messenger of Allah, this is what came to our hands as part of the spoils." He asked, "Had you heard Bilal make the announcement three times?" He said, "Yes". He asked , "Then, what prevented you from bringing it (to me)?" He put forward some excuse (for the delay). So, he (Allah's Messenger صلى الله عليه وسلم said, "Now, remain as you are (and keep it with you). Bring it on the day of resurrection by yourself. (And explain to Allah the delay.) I shall not take it from you."[2]

COMMENTARY: The Prophet صلى الله عليه وسلم did not take it because all the warriors had a might over it. Since they had dispersed, it was impossible to deliver to everyone his right.

PUNISHMENT TO THE DISHONEST WITH BOOTY

(٤٠١٣) وَعَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ اَبِيْهِ عَنْ جَدِّهٖ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَاَبَابَكْرٍ وَعُمَرَ حَرَّقُوْا مَتَاعَ الْغَالِّ وَضَرَبُوْهُ۔ (رواه ابوداؤد)

4013. Sayyiduna Amr ibn Shu'ayb رحمه الله reported from his father that his grand

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[1] Muwatta Maalik # 33 (*Jihad*), Abu Dawud # 2710, M=Nasaii # 1959, Ibn Majah # 2848, Musnad Ahmad 4-114.

[2] Abu Dawud # 2712, Musnad Ahmad 2-213.

father (Abdullah ibn Amr رضی اللہ عنہ) narrated that Allah's Messenger صلی اللہ علیہ وسلم, Abu Bakr رضی اللہ عنہ and Umar رضی اللہ عنہ used to burn the property of one who was dishonest with booty. And, they used to beat him.[1]

COMMENTARY: Imam Ahmad رحمہ اللہ and some others abide by this hadith in its strict sense. He says all his belongings in his house must be burned but not his animal and the copies of the Quran.Also that property which he had misappropriated must not be burned because it does not belong to him. It is the property of the warriors.
The other three imams, however, say that his belongings and property should not be burned. Rather, he should be awarded a discretionary punishment by the ruler or judge.They say of this hadith that it is based on serious warning and as a deterrent.

COVERING UP THE DISHONEST IS AS BAD

(٤٠١٤) وَعَنْ سَمُرَةَ بْنِ جُنْدُبٍ قَالَ كَانَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ مَنْ يَكْتُمْ غَالًّا فَإِنَّهُ مِثْلُهُ۔ (رواه ابوداؤد)

4014. Sayyiduna Samurah ibn Jundub رضی اللہ عنہ reported that Allah's Messenger صلی اللہ علیہ وسلم said often," He who conceal the dishonesty of one who is treacherous about the booty (and stiffles it before the rulers) is like him (as far as the sin he commits is concerned)[2]

BOOTY SHOULD NOT BE SOLD BEFORE IT IS DIVIDED

(٤٠١٥) وَعَنْ اَبِيْ سَعِيْدٍ قَالَ نَهٰى رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَنْ شِرَى الْمَغَانِمِ حَتّٰى تُقْسَمَ۔ (رواه الترمذی)

4015. Sayyiduna Abu Sa'eed رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم forbade buying booty before it was divided (because till then no one, even the seller, is its owner)[3]

(٤٠١٦) وَعَنْ اَبِيْ اُمَامَةَ عَنِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَنَّهٗ نَهٰى اَنْ تُبَاعَ السِّهَامُ حَتّٰى تُقْسَمَ۔ (رواه الدارمی)

4016. Sayyiduna Abu Umamah رضی اللہ عنہ reported from the Prophet صلی اللہ علیہ وسلم that he forbade sale of shares (of booty) before they were divided.[4]

COMMENTARY: If anyone offers to sell his share of the booty before it is divided, it is not allowed because that portion is not his property and also because he does not know what he will get, how much and of what nature. Thus, it is unlawful because it is unknown and not determined.

USING BOOTY UNRIGHTFULLY IS PUNISHABLE.

(٤٠١٧) وَعَنْ خَوْلَةَ بِنْتِ قَيْسٍ قَالَتْ سَمِعْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ اِنَّ هٰذِهِ الْمَالَ خَضِرَةٌ حُلْوَةٌ فَمَنْ اَصَابَهٗ بِحَقِّهٖ بُوْرِكَ لَهٗ فِيْهِ وَرُبَّ مُتَخَوَّضٍ فِيْمَا شَاءَتْ بِهٖ نَفْسُهٗ مِنْ مَالِ اللّٰهِ وَرَسُوْلِهٖ لَيْسَ

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[1] Abu Dawud # 2715.
[2] Abu Dawud#2715.
[3] Tirmidhi#1563,Musnad Ahmed 3-42,Ibn Majah#2196
[4] Dariui#2476.

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لَهٗ يَوْمَ الْقِيَامَةِ اِلَّا النَّارُ۔ (رواه الترمذی)

4017. Sayyidah Khawlah bint Qays رضی اللہ عنہا narrated that she heard Allah's Messenger صلی اللہ علیہ وسلم say, "Surely, this weath is green and sweet (and is delightful to the heart and to the sight). He who gets it rightfully (in a lawful manner) finds blessing in it for him. But, many an encroacher there is who craves for himself from the wealth of Allah and His Messenger (meaning from the booty, using it as the heart wishes).
There is nothing for him on the day of resurrection but the fire (of hell)."[1]
Qays رضی اللہ عنہ was the wife of Sayyiduna Hamzah ibn Abdul Muttalib. رضی اللہ عنہ

DHUL FIQAR, SWORD

(٤٠١٨) وَعَنِ ابْنِ عَبَّاسٍ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ تَنَفَّلَ سَيْفَهٗ ذَا الْفِقَارِ يَوْمَ بَدْرٍ۔ رَوَاهُ ابْنُ مَاجَةَ وَزَادَ التِّرْمِذِيُّ وَهُوَ الَّذِيْ رَاٰى فِيْهِ الرُّؤْيَا يَوْمَ اُحُدٍ۔

4018. Sayyiduna Ibn Abbas رضی اللہ عنہ said that the Prophet صلی اللہ علیہ وسلم took the sword, Dhulfiqar, on the day of Badr, over and above his share of the booty.
It was about it that he had a vision at the battle of Uhud[2]

COMMENTARY: This sword was part of the spoils at Badr. The Prophet صلی اللہ علیہ وسلم liked it and he took it for himself in excess of the share from the spoils. This thing is allowed only to him and to no one else. The sword word was identified as dhul faqaar (ذوالفقار) and it belonged to a disbeliever by the name of Munabbih ibn Hajj (pilgrimage)aj. He was killed in the Battle of Badr by the Muslims.
The Prophet صلی اللہ علیہ وسلم used this sword with many others during his battles. The Qamoos says that it belonged to Aas the son of Munabbih. Sayyiduna Ali رضی اللہ عنہ gave that sword to Sayyiduna Ali رضی اللہ عنہ.
The word فقار(faqaar) means the vertebrae of the back or the bones of the spin. This sword had small beautiful hollows for more easy cleaving of coats at mail. According to Lane's Arabic-English Lexicon it is called by some Dhul-fiqaar, but Khattabi رضی اللہ عنہ said that it is vulgar and dhulfaqaar is correct.)
As for the vision at Uhud, the Prophet صلی اللہ علیہ وسلم dreamt that he shook the sword dhulfaqaar and it split from the Middle. He shook it again and it became (stronger and) better than it had been. The dream is thus interpreted that after initial reverses the Muslims regrouped and came out victorious in the Battle of Uhud.

NOTHING OF BOOTY MAY BE USED BEFORE DIVISION

(٤٠١٩) وَعَنْ رُوَيْفِعِ بْنِ ثَابِتٍ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ مَنْ كَانَ يُؤْمِنُ بِاللّٰهِ وَالْيَوْمِ الْاٰخِرِ فَلَا يَرْكَبْ دَابَّةً مِنْ فَيْءِ الْمُسْلِمِيْنَ حَتّٰى اِذَا اَعْجَفَهَا رَدَّهَا فِيْهِ وَمَنْ كَانَ يُؤْمِنُ بِاللّٰهِ وَالْيَوْمِ الْاٰخِرِ فَلَا يَلْبَسْ ثَوْبًا مِنْ فَيْءِ الْمُسْلِمِيْنَ حَتّٰى اِذَا اَخْلَقَهٗ رَدَّهٗ فِيْهِ۔ (رواه ابوداؤد)

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[1] Tirmidhi # 2374(2381),Musnad Ahmad 6-378, Bukhari # 3118. (Sayyidah Khawlah bint
[2] Tirmidhi # 1501 (1567) complete, Ibn Majah # 2808 (only first portion), Musnad Ahmad 1-271.

4019. Sayyiduna Ruwayfi' in Thabit رضی اللہ عنہ narrated that the Prophet صلی اللہ علیہ وسلم said, "He who believes in Allah and the Last Day should not ride a beast belonging to the booty of the Muslims (unless for a cause sanctioned by Shari'ah (divine law)) and then return it when he has (Fatigued and) made it very weak. He who believes in Allah and the Last Day should not wear a garment belonging to the booty of the Muslims and return it (to the booty) when he has worn it out "[1]

COMMENTARY: The riding beast must not be taken from the booty before division (or the garment or any other thing). The words about returning after use in a bad state do not imply that they may be used if taken care of. The point is they should not be taken at all.

EATABLES IN THE BOOTY

(٤٠٢٠) وَعَنْ مُحَمَّدِ بْنِ اَبِي الْمُجَالِدِ عَنْ عَبْدِاللّٰهِ بْنِ اَبِيْ اَوْفٰى قَالَ قُلْتُ هَلْ كُنْتُمْ تُخَمِّسُوْنَ الطَّعَامَ فِيْ عَهْدِ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اَصَبْنَا طَعَامًا يَوْمَ خَيْبَرَ فَكَانَ الرَّجُلُ يَجِيْئُ فَيَأْخُذُ مِنْهُ مِقْدَارَ مَايَكْفِيْهِ ثُمَّ يَنْصَرِفُ۔ (رواہ ابوداؤد)

4020. Sayyiduna Muhammad In Abu Al-Mujalid رضی اللہ عنہ reported from Abdullah ibn Abu Awfa رضی اللہ عنہ that the Muhammad ibn Abu Al-Mujalid رضی اللہ عنہ asked him, "Did you take out the one-fifth (Khums) from eatables too in the time of Allah's Messenger صلی اللہ علیہ وسلم?". Sayyiduna Abdullah رضی اللہ عنہ said "At the Battle of Khaybar we also collected the eatables (as booty). A man would come, take as much of it as sufficed him and then go away.[2]

COMMENTARY: Khums was not taken out from eatables but the principle was observed that only so much was taken from it as was necessary and enough.

(٤٠٢١) وَعَنِ ابْنِ عُمَرَ اَنَّ جَيْشًا غَنِمُوْا فِيْ زَمَنِ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ طَعَامًا وَعَسَلًا فَلَمْ يُؤْخَذْ مِنْهُمُ الْخُمُسَ۔ (رواہ ابوداؤد)

4021. Sayyiduna Ibn Umar رضی اللہ عنہ said that in the time of Allah's Messenger صلی اللہ علیہ وسلم an army got food and honey (on returning from *jihad (crusade)* as part of booty). No Khums (one-fifth) was taken from them (whether they were consumed by the men or preserved)[3]

(٤٠٢٢) وَعَنِ الْقَاسِمِ مَوْلٰى عَبْدِالرَّحْمٰنِ عَنْ بَعْضِ اَصْحَابِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ كُنَّا نَأْكُلُ الْجَزُوْرَ فِي الْغَزْوِ وَلَا نَقْسِمُهُ حَتّٰى اِذَا كُنَّا نَرْجِعُ اِلٰى رِحَالِنَا وَاَخْرَجْنَا مِنْهُ مَمْلُوْنَةً۔ (رواہ ابوداؤد)

4022. Sayyiduna Qasim رضی اللہ عنہ the free man of Abdur Rehman رضی اللہ عنہ reported from one of the Sahabah (Prophet's Companions) رضی اللہ عنہم the Prophet صلی اللہ علیہ وسلم that he said, "We would eat a camel during a battle without dividing it. (During the battle we would slaughter a camel and eat its flesh to satiate ourselves.)

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[1] Abu Dawud # 2159.

[2] Abu Dawud # 2704.

[3] Abu Dawud # 2701.

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When we returned home, we would have camel flesh in our saddle-bags.[1]

COMMENTARY: Ibn Hammam رضی الله عنه said that when the Muslims return (after *jihad (crusade)*) and cross over the borders of the enemy while coming to the Darul Islam, it is not allowed to them to feed their animals hay or fodder from the booty, or themselves consume its eatables, because the particular need associated with *jihad (crusade)* does not remain. Also, if anyone has any of these things that came to him before the division and it is surplus to his needs then he must deposit it with the booty.

THE TREACHEROUS WILL BE DISGRACED ON THE DAY OF RESURRECTION.

(٤٠٢٣-٤٠٢٤) وَعَنْ عُبَادَةَ بْنِ الصَّامِتِ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ كَانَ يَقُوْلُ اَدُّوا الْخِيَاطَ وَ الْمِخْيَطَ وَ اِيَّاكُمْ وَالْغُلُوْلَ فَاِنَّهٗ عَارٌ عَلٰى اَهْلِهٖ يَوْمَ الْقِيَامَةِ۔ رَوَاهُ الدَّارِمِيُّ وَرَوَاهُ النَّسَائِيُّ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ اَبِيْهِ عَنْ جَدِّهٖ۔

4023. Sayyiduna Ubadah in Samit رضی الله عنه narrated that the Prophet صلی الله علیه وسلم used to say, "Deliver (even so much) as thread and needle, and do not be dishonest about booty (or anything at all), because dishonesty will bring disgrace to the dishonest on the day of resurrection."[2]

4024. Amr ibn Shuayb رضی الله عنه reported it from his father (Shuayb علیه السلام who from the grandfather (Adullah ibn Amr رضی الله عنه – the same hadith.[3]

DISHONESTY IS PUNISHABLE EVEN IF ABOUT LITTLE THINGS.

(٤٠٢٥) وَعَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ اَبِيْهِ عَنْ جَدِّهٖ قَالَ دَنَا النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مِنْ بَعِيْرٍ فَاَخَذَ وَبَرَةً مِنْ سَنَامِهٖ ثُمَّ قَالَ يَا اَيُّهَا النَّاسُ اِنَّهٗ لَيْسَ لِيْ مِنْ هٰذَا الْفَيْءِ شَيْءٌ وَلَا هٰذَا وَرَفَعَ اِصْبَعَهٗ اِلَّا الْخُمُسَ وَالْخُمُسُ مَرْدُوْدٌ عَلَيْكُمْ فَاَدُّوا الْخِيَاطَ وَ الْمِخْيَطَ فَقَامَ رَجُلٌ فِيْ يَدِهٖ كُبَّةٌ مِنْ شَعْرٍ فَقَالَ اَخَذْتُ هٰذِهٖ لِاُصْلِحَ بِهَا بَرْدَعَةً فَقَالَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَمَّا مَا كَانَ لِيْ وَلِبَنِيْ عَبْدِالْمُطَّلِبِ فَهُوَ لَكَ فَقَالَ اَمَّا اِذَا بَلَغْتَ مَا اَرٰى فَلَا اَرَبَ لِيْ فِيْهَا وَ نَبَذَهَا (رواه ابوداؤد)

4025. Sayyiduna Amr ibn Shuayb رضی الله عنه reported from his father who from the grandfather that the Prophet صلی الله علیه وسلم came near a cvamel (taken as fa'i) and took a hair from its hump, and said, "O people, I have no portion from this fa'I, not even this" and he raised the finger that had the hair. But I get the one-fifth and the one-fifth reverts to you (for your good, your weapons, etc.).
So (if you have them then) deliver needless and threads (too)." A man got up with a ball of hair in his hand and submitted, "I had taken it to men the cloth under a pack saddle." The Prophet صلی الله علیه وسلم said, "You may have what is mine and the Banu Abd Muttlalib's." (But I cannot say about the shares of other people, whether they will forgive you or not.) The man exclaimed, "If it goes to that extent (of sin) as I see, then I have no need for it." He threw it away.[4]

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[1] Au Dawud # 2706.

[2] Nadith 4033): In Majah # 2850, Darimi # 2487,Musnad Ahmad 5-318.

[3] (Hadith 4024): Nasa'I # 3688.

[4] Abu Dawud # 2694. Musnad Ahmad 2-184.

KHUMS WAS SPENT FOR THE GOOD OF THE MUSLIMS.

(٤٠٢٦) وَعَنْ عَمْرِو بْنِ عَبَسَةَ قَالَ صَلَّى بِنَا رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِلٰى بَعِيْرٍ مِّنَ الْمَغْنَمِ فَلَمَّا سَلَّمَ اَخَذَ وَبَرَةً مِنْ جَنْبِ الْبَعِيْرِ ثُمَّ قَالَ وَلَا يَحِلُّ لِيْ مِنْ غَنَائِمِكُمْ مِثْلُ هٰذَا اِلَّا الْخُمُسَ وَالْخُمُسُ مَرْدُوْدٌ فِيْكُمْ۔

(رواه ابوداؤد)

4026. Sayyiduna Amr ibn Abasah رضی اللہ عنہ said, "Allah's Messenger صلی اللہ علیہ وسلم (once) led us in *salah (prayer)* using a camel that had been taken in booty as a sutrah. When (on finishing) he offered the salaam (salutation), he took a hair from the side of the camel and said, "I do not have even this much share from your booty apart from the one-fifth, and the one-fifth too reverts to you the be spent on your needs).[1]

COMMENTARY: If the camel's side refers to its hump then it is the same occasion to which the previous hadith (#4025) refers, other wise it is different case.

UTHMAN رضی اللہ عنہ & OTHERS WERE DENIED SHARE IN KHUMS

(٤٠٢٧) وَعَنْ جُبَيْرِ بْنِ مُطْعِمٍ قَالَ لَمَّا قَسَمَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ سَهْمَ ذَوِى الْقُرْبٰى بَيْنَ بَنِيْ هَاشِمٍ وَبَنِي الْمُطَّلِبِ اَتَيْتُهٗ اَنَا وَعُثْمَانُ بْنُ عَفَّانَ فَقُلْنَا يَا رَسُوْلَ اللّٰهِ هٰؤُلَاءِ اِخْوَانُنَا مِنْ بَنِيْ هَاشِمٍ لَا نُنْكِرُ فَضْلَهُمْ لِمَكَانِكَ الَّذِيْ وَضَعَكَ اللّٰهُ مِنْهُمْ اَرَاَيْتَ اِخْوَانَنَا مِنْ بَنِي الْمُطَّلِبِ اَعْطَيْتَهُمْ وَتَرَكْتَنَا وَاِنَّمَا قَرَابَتُنَا وَقَرَابَتُهُمْ وَاحِدَةٌ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِنَّمَا بَنُوْ هَاشِمٍ وَبَنُو الْمُطَّلِبِ شَيْءٌ وَاحِدٌ هٰكَذَا وَ شَبَّكَ بَيْنَ اَصَابِعِهٖ رَوَاهُ الشَّافِعِيُّ وَفِيْ رِوَايَةٍ اَبِيْ دَاوٗدَ وَالنَّسَائِيِّ نَحْوَهٗ وَفِيْهِ اَنَا وَبَنُو الْمُطَّلِبِ لَا نَفْتَرِقُ فِيْ جَاهِلِيَّةٍ وَلَا اِسْلَامٍ وَاِنَّمَا نَحْنُ وَهُمْ شَيْءٌ وَاحِدٌ وَشَبَّكَ بَيْنَ اَصَابِعِهٖ۔

4027. Sayyiduna Jubayr ibn Mut'im رضی اللہ عنہ said, "When Allah's Messenger صلی اللہ علیہ وسلم divided the shares (from the booty) of the relatives among the Banu Hashim and the Banu AL-Muttalib, I and Uthman ibn Affan met him (on behalf of the Banu Nawful and Banu Abd Shams respectively).We submitted, "O Messenger of Allah, these our brothers of the Banu Hashim we do not deny their excellence because of your position in which Allah has placed you among them. (You and they have a common grandfather) But, do tell us why is it that you have allotted to our brothers of Banu Muttalib a share (from the portion for the relatives) but have not given us anything though our relationship is at par with them." Allah's Messenger صلی اللہ علیہ وسلم interwined his fingers and said, "The Banu Hashim and the Banu Muttalib are only one like this!" (He pointed to his finger).
Another version is like this and also has: "I and the Banu Al-Muttalib did not separate during jahiliyah (ignorance period) and in Islamic period, and we and they are only one," and he intervined his fingers.(see also hadith #3993.)[2]

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[1] Abu Dawud # 2755.

[2] Shafir (first portion) Abu Dawud # 2980, Nasaii # 4137 (the whole)

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SECTION III اَلْفَصْلُ الثَّالِثُ

THE KILLING OF ABU JAHL

(٤٠٢٨) عَنْ عَبْدِالرَّحْمٰنِ بْنِ عَوْفٍ قَالَ اِنِّيْ لَوَاقِفٌ فِي الصَّفِ يَوْمَ بَدْرٍ فَنَظَرْتُ عَنْ يَمِيْنِيْ وَعَنْ شِمَالِيْ فَاِذَا اَنَا بِغُلَامَيْنِ مِنَ الْاَنْصَارِ حَدِيْثَةٍ اَسْنَانُهُمَا فَتَمَنَّيْتُ اَنْ اَكُوْنَ بَيْنَ اَضْلَعَ مِنْهُمَا فَغَمَزَنِيْ اَحَدُهُمَا فَقَالَ اَيْ عَمِّ هَلْ تَعْرِفُ اَبَا جَهْلٍ قُلْتُ نَعَمْ فَمَا حَاجَتُكَ اِلَيْهِ يَا ابْنَ اَخِيْ قَالَ اُخْبِرْتُ اَنَّهُ يَسُبُّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَالَّذِيْ نَفْسِيْ بِيَدِهٖ لَئِنْ رَاَيْتُهُ لَا يُفَارِقُ سَوَادِيْ سَوَادَهُ حَتّٰى يَمُوْتَ الْاَعْجَلُ مِنَّا قَالَ فَتَعَجَّبْتُ لِذٰلِكَ قَالَ وَغَمَزَنِي الْاٰخَرُ فَقَالَ لِيْ مِثْلَهَا فَلَمْ اَنْشَبْ اَنْ نَظَرْتُ اِلٰى اَبِيْ جَهْلٍ يَجُوْلُ فِي النَّاسِ فَقُلْتُ اَلَا تَرَيَانِ هٰذَا صَاحِبُكُمَا الَّذِيْ تَسْاَلَانِيْ عَنْهُ قَالَ فَابْتَدَرَاهُ بِسَيْفَيْهِمَا فَضَرَبَاهُ حَتّٰى قَتَلَاهُ ثُمَّ انْصَرَفَا اِلٰى رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَاَخْبَرَاهُ فَقَالَ اَيُّكُمَا قَتَلَهُ فَقَالَ كُلُّ وَاحِدٍ مِنْهُمَا اَنَا قَتَلْتُهُ فَقَالَ هَلْ مَسَحْتُمَا سَيْفَيْكُمَا فَقَالَا لَا فَنَظَرَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِلَى السَّيْفَيْنِ فَقَالَ كِلَاكُمَا قَتَلَهُ وَقَضٰى رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ بِسَلَبِهٖ لِمُعَاذِبْنِ عَمْرِو بْنِ الْجَمُوْحِ وَالرَّجُلَانِ مُعَاذُبْنُ عَمْرِوبْنِ الْجَمُوْحِ وَمُعَاذُبْنُ عَفْرَاءَ۔ (متفق علیه)

4028. Sayyiduna Abdur Rahman ibn Awf رضی اللہ عنہ said, "At the Battle of Badr, I stood (against the enemy) in the row.I saw to my right and my left, (two ansar boys)seeing myself between two young boys of the ansar, I wished that I had been between stronger men than the boys. One of them poked me and asked, 'O uncle, do you recognize Abu Jahl?' I said, 'Yes. What do want with him, nephew?' He said, I have learnt that he reviles Allah's Messenger صلی اللہ علیہ وسلم. By him in whose hand my soul is, if I see him, my body shall not separate from his till the one of us who has to die, dies first,' I was amazed at that. Then, the other boy poked me and said as the first had spoken. Soon, I spied Abu Jahl moving among the people and I pointed out, 'Here is the man you asked about!' They rushed to him swiftly with their swords and struck him till they killed him. Then, they went and informed Allah's Messenger صلی اللہ علیہ وسلم. He asked,' Which of you has killed him?' Each of them said, 'I have killed him.' Then, Allah's Messenger صلی اللہ علیہ وسلم decided that whatever was taken from him should go to Mu'adh ibn Amr ibn Jamuh. These two boys were Mu'adh ibn Amr ibn Jamuh and Mu'adh ibn Afra رضی اللہ عنہ.[1]

COMMENTARY: The version of Bukhari names Mu'adh ibn Afra as Mu'adh ibn Afra رضی اللہ عنہ Another tradition (4029) (to follow) names them as two sons of Afra. The ulama (Scholars) explain this difference by saying that both boys had a common mother but different fathers. Their mother's name was Afra. The father of one of them was Amr ibn Jamuh and the other, according to Qastalani, was Harith. So, one of them is ascribed to his

[1] Bukhari # 3141, Muslim, Musnad Ahmad 1-793.

father and the other to his mother.
The Prophet صلى الله عليه وسلم gave the spoils one of them who had decapacitated Abu Jahl. He was immobile and the other killed him, so the first deserved the spoils.
According to an earlier hadith (# 4004) Ibn Mas'ud رضى الله عنه killed Abu Jahl. Perhaps, Abu Jahl was panting for breath and he cut off his neck. So, he too got some share of the spoils, a sword.
Moreover some students of Imam Maalik رحمه الله assert that the ruler has authority to give the possessions of the slain man to whomsoever he choose. In this way, bi=oth the foregoing question are meaningless.

(٤٠٢٩) وَعَنْ اَنَسٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَوْمَ بَدْرٍ مَنْ يَنْظُرُ لَنَا مَاصَنَعَ اَبُوْجَهْلٍ فَانْطَلَقَ ابْنُ مَسْعُوْدٍ فَوَجَدَهُ قَدْ ضَرَبَهُ ابْنَا عَفْرَاءَ حَتّٰى بَرَدَ قَالَ فَاَخَذَ بِلِحْيَتِهِ فَقَالَ اَنْتَ اَبُوْجَهْلٍ فَقَالَ وَهَلْ فَوْقَ رَجُلٍ قَتَلْتُمُوْهُ وَفِيْ رِوَايَةٍ قَالَ فَلَوْ غَيْرَ اَكَّارٍ قَتَلَنِيْ۔ (متفق عليه)

4029. Sayyiduna Anas رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم asked on the day of Badr, "Who will find out for us how has Abu Jahl fared?" Ibn Mas'ud went and found out that the two sons of Afra had struck him and he was on the point of death. He held him by his beard and asked, "Are you not Abu Jahl?" He retorted, "Have you killed anyone of a higher rank?" (He claimed thereby to be a great man among the Quraysh.)
According to another version: He said, "How I wish one other than a farmer had killed me!"[1]

COMMENTARY: Abu Jahl meant to say that he would not have been humiliated if any of them had killed him but he was pained that the ansar boys, the cultivators who tended to fields, had killed him. They had fields and gardens of date trees.

GIVING SOMETHING TO SOMEONE DOES NOT MEAN HE IS PIOUS

(٤٠٣٠) عَنْ سَعْدِ بْنِ اَبِيْ وَقَّاصٍ قَالَ اَعْطٰى رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ رَهْطًا وَاَنَا جَالِسٌ فَتَرَكَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مِنْهُمْ رَجُلًا هُوَ اَعْجَبُهُمْ اِلَيَّ فَقُمْتُ فَقُلْتُ مَالَكَ عَنْ فُلَانٍ وَاللّٰهِ اِنِّيْ لَاَرَاهُ مُؤْمِنًا فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَوْمُسْلِمًا ذَكَرَ ذٰلِكَ سَعْدٌ ثَلَاثًا وَاَجَابَهُ بِمِثْلِ ذٰلِكَ ثُمَّ قَالَ اِنِّيْ لَاُعْطِي الرَّجُلَ وَغَيْرُهُ اَحَبُّ اِلَيَّ مِنْهُ خَشْيَةَ اَنْ يُكَبَّ فِي النَّارِ عَلٰى وَجْهِهٖ۔ مُتَّفَقٌ عَلَيْهِ، وَفِيْ رِوَايَةٍ لَهُمَا قَالَ الزُّهْرِيُّ فَنَرٰى اَنَّ الْاِسْلَامَ الْكَلِمَةُ وَالْاِيْمَانَ الْعَمَلُ الصَّالِحُ۔

4030. Sayyiduna Sa'd ibn Abu Waqqas رضى الله عنه narrated that he was with Allah's Messenger صلى الله عليه وسلم when he gave something to a group of people but overlooked one who seemed to him (Sa'd) to be more religious (than the others). So, he stood up and asked, "Why did you by pass so and-so?. By Allah, I think of him to be a Mumin (believer)." Allah's Messenger said, "Or, Muslim!" Sid رضى الله عنه mentioned that three times and he corrected him in like manner, and said, "I give something to someone

[1] Muslim # 118-1800.

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though I like another more than he, lest he be thrown upside down in hell."
According to another version, Zuhri رضی اللہ عنہ considered that Islam is the profession of belief and faith is righteous deeds.[1]

COMMENTARY: The Prophet صلی اللہ علیہ وسلم corrected Sad رضی اللہ عنہ. Eeman or faith (of a Mumin or believer) has to do with his heart and it is deep down and cannot be gauged because there is no obvious sign of it. It is a person's internal condition and no one can judge to what degree he has developed it. In contrast, Islam is an outward trait like obedience and submission. If anyone's outward deeds are good, then you may say that he is a good Muslim, but no one can say of him with certainty that he is a true believer.
The Prophet صلی اللہ علیہ وسلم corrected Sad رضی اللہ عنہ when he testified that the man had true faith.
The Prophet صلی اللہ علیہ وسلم also made known that if anyone is given anything than he is not necessarily liked or superior. Also, it does not follow that he is more religious.
Rather, sometimes a person whose faith is weak has to be encouraged and won over, so that he may not despair and fall into disblelief and be thrown on his face into hell.
So, anyone who is given property does not qualify because of that to be a believer. O Sad, do not demand any property for anyone because you regard him be a perfect believer. No one can say so of another person with certainty.
The fact is that Zuhri ought to have said that Islam is (an expression of) righteous deeds, obedience to commands of Shari'ah (divine law) while eeman or faith is a confirmation at heart.But, he described Islam as Kalimah or testimony and eeman as righteous deeds. This is because declaration of Islam is to utter the Kalimah Shahadah (testimony with specific words) with the tongue. He who recites the Kalimah Shahadah (the expression of the testimony of faith) has sort of confirmed his Islam and that is enough to regard him as a Muslim in appearance.
This is what the Prophet صلی اللہ علیہ وسلم had said to Sa'd رضی اللہ عنہ "You can be certain that this man is a Muslim because he had recited the Kalimah Shahadah with his tongue and confirmed his Islam which is enough evidence that he is a Muslim. This is what Zuhri رضی اللہ عنہ meant when he said that Islam is the profession of belief. Anyone who recites the Kalimah Shahadah is a Muslim in law.
Now, let us look at his words that eeman (faith) is righteous deeds. We must first try to understand how righteous deeds are performed? Clearly, it depends on confirmation at heart. He who performs righteous deeds sincerely shows that faith has made home in his heart. He performs good deeds because of confirmation by his heart and his perfect faith. This is why Zuhri رضی اللہ عنہ explained eeman (faith) as righteous deeds.

UTHMAN رضی اللہ عنہ WAS GIVEN SHARE THOUGH HE DID NOT PARTICIPATE

(٤٠٣١) وَعَنِ ابْنِ عُمَرَ أَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَامَ يَعْنِيْ يَوْمَ بَدْرٍ فَقَالَ إِنَّ عُثْمَانَ انْطَلَقَ فِيْ حَاجَةِ اللّٰهِ وَحَاجَةِ رَسُوْلِهٖ وَإِنِّيْ أُبَايِعُ لَهٗ فَضَرَبَ لَهٗ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ بِسَهْمٍ وَلَمْ يَضْرِبْ لِأَحَدٍ غَابَ غَيْرَهٗ۔ (رواہ ابوداؤد)

4031. Sayyiduna Ibn Umar رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم stood up meaning on the day of Badar (to deliver a sermon). He said, "Surely, Uthman has

[1] Byjgaru # 1478, Muslim # 131-150.

gone to attend to work on behalf of Allah and His Messenger. So, I shall take the oath of allegiance for him." Then, Allah's Messenger صلى الله عليه وسلم allotted a share (from the booty from the Battle of Badr) for him. But, he did not ever allot a share for anyone else who was not present[1]

COMMENTARY: When the Prophet صلى الله عليه وسلم came to Badr with his Sahabah رضى الله عنه, his daughter Sayyidah Ruqiyah رضى الله عنها wife of Uthman رضى الله عنه was seriously ill. So, the Prophet sent him back to Madinah to look after her, and, when the booty was being distributed, the share of Uthman رضى الله عنه was included because he had gone to participate in the battle, but had to return.

ONE CAMEL IS LIKE TEN SHEEP.

(٤٠٣٢) وَعَنْ رَافِعِ بْنِ خَدِيْجٍ قَالَ كَانَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَجْعَلُ فِيْ قَسْمِ الْمَغَانِمِ عَشْرًا مِنَ الشَّاءِ بِبَعِيْرٍ۔ (رواه النسائى)

4032. Sayyiduna Rafi in Khadij رضى الله عنه said that while dividing the booty, Allah's Messenger صلى الله عليه وسلم counted ten sheep as equivalent to one camel.[2]

FIRE FROM HEAVEN WOULD BURN BOOTY BEFORE ISLAM.

(٤٠٣٣) وَعَنْ اَبِيْ هُرَيْرَةَ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ غَزَانَبِيٌّ مِنَ الْاَنْبِيَاءِ فَقَالَ لِقَوْمِهٖ لَا يَتَّبِعْنِيْ رَجُلٌ مَلَكَ بُضْعَ اَمْرَأَةٍ وَهُوَ يُرِيْدُ اَنْ يَّبْنِيَ بِهَا وَلَمَّا يَبْنِ بِهَا وَلَا اَحَدٌ بَنٰى بُيُوْتًا وَلَمْ يَرْفَعْ سُقُوْفَهَا وَلَا رَجُلٌ اُشْتَرٰى غَنَمًا اَوْ خَلِفَاتٍ وَهُوَ يَنْتَظِرُ اَوْلَادَهَا فَغَزَا فَدَنَا مِنَ الْقَرْيَةِ صَلَاةَ الْعَصْرِ اَوْ قَرِيْبًا مِنْ ذٰلِكَ فَقَالَ لِلشَّمْسِ اِنَّكِ مَأْمُوْرَةٌ وَاَنَا مَأْمُوْرٌ اَللّٰهُمَّ احْبِسْهَا عَلَيْنَا فَحُبِسَتْ حَتّٰى فَتَحَ اللّٰهُ عَلَيْهِ فَجَمَعَ الْغَنَائِمَ فَجَاءَتْ يَعْنِي النَّارُ لِتَأْكُلَهَا فَلَمْ تَطْعَمْهَا فَقَالَ اِنَّ فِيْكُمْ غُلُوْلًا فَلْيُبَايِعْنِيْ مِنْ كُلِّ قَبِيْلَةٍ رَجُلٌ فَلَزِقَتْ يَدُ رَجُلٍ بِيَدِهٖ فَقَالَ فِيْكُمُ الْغُلُوْلُ فَجَاءُوْا بِرَأْسٍ مِثْلِ رَأْسِ بَقَرَةٍ مِنَ الذَّهَبِ فَوَضَعَهَا فَجَائَتِ النَّارُ فَاَكَلَتْهَا وَزَادَفِيْ رِوَايَةٍ فَلَمْ تَحِلَّ الْغَنَائِمُ لِاَحَدٍ قَبْلَنَا ثُمَّ اَحَلَّ اللّٰهُ لَنَا الْغَنَائِمَ رَاٰى ضُعْفَنَا وَعَجْزَنَا فَاَحَلَّهَا لَنَا۔ (متفق عليه)

4033. Sayyiduna Abu Hurayrah رضى الله عنه narrated that Allah's Messenger صلى الله عليه وسلم said. "A Prophet among the Prophets صلى الله عليه وسلم (Yusha ibn Noon عليه السلام set out to engage in *jihad (crusade)*. He stipulated that no man should accompany him who had:

- **Married a woman with whom he wished to have sexual relations but had not done till then;**
- **built a house but had not put the roof on it till then;**
- **bought sheep or pregnant she-camels and they were about to deliver young.**

Then he set out to battle. He came near the town at the hour of (the *Salah (prayer)*

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[1] Abu Dawud # 2726.

[2] Nasa # 4391, Musnad Ahmad 3-464.

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of) asr or about that. He addressed the sun, "You are under command and I am under command (you to complete your revolution and I to conquer this town). And he prayed, O Allah, detain it over us!, So it was detained till Allah gave him victory. He collected the spoils and it came-meaning, the fire-to devour the spoils, but did not do so. He said, therefore, , there has been dishonesty about the spoils among you. So, a man from each tribe must pledge allegiance to me.' (They began to do that, each giving his hand till) one man's hand stuck in his hand. He said "There is dishonesty about the spoils among you (Meaning, your tribe) .' They brought to him a head of gold like an OX'S head. He put it down (in the pile) and the fire came and burned the spoils."

According to a version: (He said:) "Spoils were not lawful to anyone before us. Then Allah made the spoils lawful to us. He saw our weakness and helplessness and allowed us the spoils."[1]

COMMENTARY: Prophet Yushaعليه السلام did not take along those people on the expedition because their minds were occupied elsewhere and they would not have been able to fight in the battle correctly. This shows that the warriors must put off from their minds other concerns and devote entirely to fighting with the enemy.

It is stated in Mawahib lidunyah that, according to the hadith, the sun was never stopped in its movement(in the entire life of the solar system) for anyone except the Prophet. Sayyiduna Yusha ibn Noonعليه السلام [2].

According to Muwahib lidunyah, the sun's movement was stopped for the Prophet صلى الله عليه وسلم twice: on the night of the ascension to the heavens (miraj) and on the day of the Battle of the Trenches when the infidels engaged him in the Battle and the *salah (prayer)* of asr was delayed. The sun had set but was reversed till he could offer the *salah (prayer)* of asr on time.

Once again the sun was reversed for Sayyiduna Ali رضى الله عنه at the command of the Prophet صلى الله عليه وسلم. This had happened when the Prophet صلى الله عليه وسلم was resting and had put his head on the laps of Sayyiduna Ali رضى الله عنه. A revelation came down to him and he could not raise his head because of that so that the time of asr had lapsed without Ali رضى الله عنه offering the *salah (prayer)* of asr. So the Prophet صلى الله عليه وسلم prayed for him and the sun returned on its tracks. But, the ulama (Scholars) have questioned the truth of this account.

As for the spoils, past ummahs were not permitted to use the booty. They put all of it in the desert in a pile. A fire descended from heaven and burned down the pile. This was a sign of acceptance.

DISHONEST WITH BOOTY WILL NOT ENTER PARADISE

(٤٠٣٤) وَعَنِ ابْنِ عَبَّاسٍ قَالَ حَدَّثَنِيْ عُمَرُ قَالَ لَمَّا كَانَ يَوْمُ خَيْبَرَ اَقْبَلَ نَفَرٌ مِنْ صَحَابَةِ النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالُوْا فُلَانٌ شَهِيْدٌ وَ فُلَانٌ شَهِيْدٌ حَتّٰى مَرُّوْا عَلٰى رَجُلٍ فَقَالُوْا فُلَانٌ شَهِيْدٌ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ كَلَّا اِنِّيْ رَاَيْتُهٗ فِي النَّارِ فِيْ بُرْدَةٍ غَلَّهَا اَوْعَبَاءَةٍ ثُمَّ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ

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[1] Bukhari # 3124, Muslim # 32. 1547, Musnad Ahmad 2-317.

[2] See stories of the Prophets Ibn Kattur p.245 (Darul Ishaat , Karachi) The hadith of Imam Ahmad (325) as narrated. But, it is also known that the sun was withheld for Prophet Muhammad صلى الله عليه وسلم (perhaps after his hadith about Prophet Yushaعليه السلام.

وَسَلَّمَ يَا ابْنَ الْخَطَّابِ اِذْهَبْ فَنَادِ فِي النَّاسِ اَنَّهُ لَا يَدْخُلُ الْجَنَّةَ اِلَّا الْمُؤْمِنُوْنَ ثَلَاثًا قَالَ فَخَرَجْتُ فَنَادَيْتُ اَلَا اَنَّهُ لَا يَدْخُلُ الْجَنَّةَ اِلَّا الْمُؤْمِنُوْنَ ثَلَاثًا۔ (رواه مسلم)

4034. Sayyiduna Ibn Abbas رضی اللہ عنہ said that (Sayyiduna) Umar رضی اللہ عنہ narrated to him that on the day of Khaybar (when the battle was over), some of the sahabah (Prophet's Companions) رضی اللہ عنہم of the Prophet صلی اللہ علیہ وسلم came forward and discussed among themselves, : So-and-so is a martyr. So-and-so is a martyr." However, when they came to one and said of him that he too was a martyr, Allah's Messenger صلی اللہ علیہ وسلم said, "Certainly not! I did see him in hell because of a mantle or a cloak that he stole (from the spoils)." Then Allah's Messenger صلی اللہ علیہ وسلم said, "O Ibn Khattab go and announce to the people, three times, "only the believer will go to paradise (straightaway)."
He (Umar رضی اللہ عنہ) said that he went to them and announced three times, "Know! Only the believers will enter paradise!"[1]

COMMENTARY: Ibn Maalik رحمہ اللہ said that in the terminology of Shariah and common parlance a believer is the person who believes in the Prophet صلی اللہ علیہ وسلم and his Shariah Hence, one who is dishonest is like one who rejects the Prophet صلی اللہ علیہ وسلم and his Shariah because belief demands obedience to the commands of Shariah and he does not abide by them. But, it does not mean that a dishonest person is not a believer because he acts in contravention of confirmation of the Prophet صلی اللہ علیہ وسلم. Hence, the announcement meant to sound a strong warning. Also, it implies that a dishonest person would not enter paradise without first being subject to punishment. The God-fearing and righteous believers will be the only ones to enter paradise without any punishment, straightaway. The sinning believers will first undergo appropriate punishment and then enter paradise.
The Prophet صلی اللہ علیہ وسلم words that he saw him in hell are only an indication because aperson will be consigned to hell only after the day of judgement. The Prophet صلی اللہ علیہ وسلم's words, therefore, mean that the man belonged to hell. It is like the saying of the Prophet صلی اللہ علیہ وسلم about Bilal رضی اللہ عنہ before Bilal رضی اللہ عنہ died that he is in paradise.
The Prophet صلی اللہ علیہ وسلم's words about that man could also mean that he had perpetrated a sin which makes hell *wajib (obligatory)* for him. Is is as the Quran says:

اِنَّ الْاَبْرَارَ لَفِيْ نَعِيْمٍ

{Surely the pious shall be in bliss} (82: 13)
This cannot be said to mean that the pious people are already in paradise. Rather, they possess such praiseworthy characteristics as will lead them to paradise.

[1] Muslim # 182-114, Tirmidhi # 1574, Musnad Ahmad 1 30, Darimi # 2489

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CHAPTER - IX

THE JIZYAH

بَابُ الْجِزْيَةِ

WHAT IS JIZYAH: Jizyah is an exclusive term of the Islamic law. It applies to the tribute payable by the non-Muslim resident of Islamic State (the dhimmis). It is levied according to an agreed formula.

The word jizyah is from jaza (جزاء) meaning a compensation. Hence, this form of tribute is called jizyah because it is a compensation for residing in an Islamic State and not observing Islam but living a life of disbelief. It assures the payers of protection of their lives, property and honour.

SECTION I — اَلْفَصْلُ الْاَوَّلُ

MAJUSIS MAY BE MADE TO PAY JIZYAH

(٤٠٣٥) عَنْ بَجَالَةَ قَالَ كُنْتُ كَاتِبًا لِجَزْءِ بْنِ مُعَاوِيَةَ عَمِّ الْاَحْنَفِ فَاَتَانَا كِتَابُ عُمَرَ بْنِ الْخَطَّابِ قَبْلَ مَوْتِهٖ بِسَنَةٍ فَرِّقُوْا بَيْنَ كُلِّ ذِيْ مَحْرَمٍ مِنَ الْمَجُوْسِ وَلَمْ يَكُنْ عُمَرُ اَخَذَ الْجِزْيَةَ مِنَ الْمَجُوْسِ حَتّٰى شَهِدَ عَبْدُالرَّحْمٰنِ بْنُ عَوْفٍ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَخَذَهَا مِنْ مَجُوْسِ هَجَرَ۔ (رواه البخارى)

4035. Sayyiduna Bajalah رحمه الله said that he was a clerk working for Jaz ibn Mu'awiyah رحمه الله, the paternal uncle of Ahnaf رضى الله عنه. They received a letter of Umar ibn Khattab رضى الله عنه one year before his death. In it, he gave instructions, "Separate every such married couple among the Majusis (Magians) who were mahrams (of one another, meaning those who were among degrees prohibited to marry one another)."

Umar رضى الله عنه had not been levying the jizyah on the Majusis till Abdur Rahman ibn Awf رضى الله عنه bore testimonly that Allah's Messenger صلى الله عليه وسلم had levied it on the Majusis of Hajar.[1]

(thereafter, Umar رضى الله عنه took the jizyah from the Majusis.)

COMMENTARY: Mahram is a close relative with whom marriage is prohibited, like mother, daughter, sister and so on. The Majusis were accustomed to marry their mahram relatives. Umar ibn Khattab رضى الله عنه gave orders that all marriages between mahrams should be revoked. Of course, Islam forbids interference in the religious matters of its non-Muslim citizens who are under the states protection. They must be allowed to practice their religion freely. Moreover, this kind of marriage (between mahrams) was permitted in their religion. However, the ruler of an Islamic State is authorized to prevent any such practice as is doubtlessly and directly opposed to the symbols of Islam its basic principles and laws. This practice of the Majusi was also to moral values and was a very blamedworthy and ugly custom.

The majority of the ulama (Scholars) hold that jizyah must be levied on the Majusis. Rather,

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[1] Bukhari # 3156,3157, Abu Dawud # 3043, Tirmidhi # 1586 (1592).

the Hanafis contend that the jizyah must also be collected from the non Arab idolaters. However, Imam Shafi'I رحمه‌الله
Has a note of dissent this subject.
Hajar (هجر) is a place located in Yemen near Bahrain, according to some people. However, modern day authorities say that the eastern coast of the Arabian peninsula that is presently called Ahsa (احصاء) was known previously as Hajar.[1] It is also called Bahrain.
The hadith of Sayyiduna Buraydah رضی‌الله‌عنه about when the Prophet صلی‌الله‌علیه‌وسلم appointed an army commander...' is narrated previously (#3929).

SECTION II اَلْفَصْلُ الثَّانِیْ

AMOUNT OF JIZYAH

(٤٠٣٦) عَنْ مُعَاذٍ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَمَّا وَجَّهَهٗ اِلَى الْيَمَنِ اَمَرَهٗ اَنْ يَّا خُذَ مِنْ كُلِّ حَالِمٍ يَعْنِيْ مُحْتَلِمٍ دِيْنَارًا اَوْ عَدْلَهٗ مِنَ الْمَعَافِرِيِّ ثِيَابٌ تَكُوْنُ بِالْيَمَنِ۔ (ابوداؤد)

4036. Sayyiduna Muadh رضی‌الله‌عنه narrated that when Allah's Messenger صلی‌الله‌علیه‌وسلم sent him to Yemen (as judge and ruler), he instructed him to take from every halim (there)-meaning, everyone who had attained puberty-one dinar, or Muafiri worth one dinar-meaning, garments of Yemen origin.[2]

COMMENTARY: Ibn Hammam رضی‌الله‌عنه said that jizah is not levied on a woman or a child (and so not on an insane, a blind and a paralysed person). Also, an old man who is not capable of any work or of fighting and the handicapped that cannot do any work are exempted and not required to pay the jizyah.
This hadith does not distinguish between the rich and poor and both are required to pay the same amount of jizyah .Imam Shaf'i'I رضی‌الله‌عنه cites this hadith and abides by it.
However the Hanaf is impose forty eight dirhams every year on the rich, payable at four dirhams a month. The middle class have to pay twenty-four dirhams every year, payable at two dirhams a month. The poor of the lowest strata who earn a livelihood are levied twelve dirhams every year at one dirham each month. These levies are *wajib (obligatory)*.
The Hidayah writes that this schedule of levies is known from Sayyiduna Umar رضی‌الله‌عنه and Sayyiduna Uthman رضی‌الله‌عنه. None of the ansars or the muhajrin had shown disagreement to it.
As for this hadith making one dinar payable by every adult towards the jizyah, it is bound with peace and reconciliation. Since Yemen was taken over without battle and its people had surrendered through mutual reconciliation, so a conciliatory approach was adopted to apply the jizyah.
We may also presume that since the Yemenis were financially weak, so the same amount of jizyah was made *wajib (obligatory)* on them as is applied to the poor.

JIZYAH IS NOT *WAJIB (OBLIGATORY)* ON MUSLIMS

(٤٠٣٧) وَعَنِ ابْنِ عَبَّاسٍ قَالَ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَا تَصْلُحُ قِبْلَتَانِ فِيْ اَرْضٍ وَاحِدَةٍ وَلَيْسَ

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[1] According to Mu'jam ul-Buldan (by Dr Ghulam Jilani Barq), hajar is (i) a village in the Himyar language, and (ii) a cluster of villages in the Arabic language. (p357)Chambers world Gazetteer: Hajar, coastal mountain range in N Oman SE Arabian peninsula extends about 480 km NW-SE parallel to coast of bulf of Oman.
[2] Tirmidhi # 623, Abu Dawud

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عَلَى الْمُسْلِمِ جِزْيَةٌ۔ (رواه احمد والترمذی وابوداؤد)

4037. Sayyiduna Ibn Abbas رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم said, "There cannot be two qiblas in one land and no jizyah may be levied on a Muslim."[1]

COMMENTARY: There should not be two religious in any one area on the basisof fraternity. Muslims are instructed hereby that they should not tale up residence in enemy territory. They must not disgrace themselves by living there.

Similarly, the Islamic State should not allow disbelievers to reside within its territory without paying the jizyah. Even after that, they must not be allowed to do anything against Islamic beliefs. If this is not done, then in both these cases Islam and disbelief will be deemed to be at par, but such a thing is not tolerated by Islam. In fact, Islam expects Muslims to reside wherever they are with dignity and strength and honour.

Enemies of Islam must be treated as weak and non-entities,

Some ulama (Scholars) say that this hadith hints at exiling the Jews and Christians from the Arabian Peninsula for, they are the peoples of the Book and also of the qiblah. They have different qiblahs and each of theirs is also different from the Muslims qiblah. In this way, there will not be two qiblahs in this area. Only Muslims would live there.

If a non-Muslim resides in a Muslim land as a dhimmi, but before paying the jizyah, he becomes a Muslim, then he will not be asked to pay a jizyah because he is a Muslim. Muslims have not to pay a jizyah.

REMISSION AGAINST JIZYAH

(٤٠٣٨) وَعَنْ اَنَسٍ قَالَ بَعَثَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ خَالِدَ بْنَ الْوَلِيْدِ اِلٰى اُكَيْدِرِ دُوْمَةَ فَاَخَذُوْهُ فَاَتَوْا بِهٖ فَحَقَنَ لَهٗ دَمَهٗ وَصَالَحَهٗ عَلَى الْجِزْيَةِ۔ (رواه ابوداؤد)

4038. Sayyiduna Anas رضی اللہ عنہ narrated that Allah's Messenger صلی اللہ علیہ وسلم sent Khalid ibn Walid to Ukaydir of Dumah. They seized him and brought him (to Allah's Messenger صلی اللہ علیہ وسلم. He forgave him and spared his life, and made peace with him against the jizyah he ought to pay.[2]

COMMENTARY: Dumah was the place whose King was Ukaydir. It was near Tabuk in Syria. Ukaydir was a Christian. The Prophet صلی اللہ علیہ وسلم had commanded Khalid to seize him alive. So, he was brought alive and he agreed to pay the jizyah. Later, when Allah guided him, he became a perfect Muslim.

TITHES ON NON-MUSLIMS

(٤٠٣٩) وَعَنْ حَرْبِ بْنِ عُبَيْدِ اللّٰهِ عَنْ جَدِّهٖ اَبِیْ اُمِّهٖ عَنْ اَبِيْهِ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ اِنَّمَا الْعُشُوْرُ عَلَى الْيَهُوْدِ وَالنَّصَارٰى وَلَيْسَ عَلَى الْمُسْلِمِيْنَ عُشُوْرٌ۔ (رواه احمد و ابوداؤد)

4039. Sayyiduna Harb ibn Ubaydullah narrated on the authority of his (maternal) grandfather, from his father that Allah's Messenger صلی اللہ علیہ وسلم said, "The ushr (not

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[1] Tirmidhi # 633, Abu Dawud # 3953, Musnad Ahmad 1-223.

[2] Abu Dawud # 3037.

the land tax of one-tenth) is to be levied only on Jews and Christians. It is not to be levied on the Muslims.[1]

COMMENTARY: The ushr mentioned in this hadith concerns trade merchandise. It does not refer to *wajib (obligatory)* sadaqah (charity) (on produce of land), because the ushr (tithe, one-tenth) on land produce is *wajib (obligatory)* on the Muslims.

Khattabi رضی اللہ عنہ said that the form of ushr that is *wajib (obligatory)* on the Jews and Nasara (Christians) is the one on which peace was concluded with them when they were made dhimmis (non Muslim residents of a Muslim State). If no agreement was concluded with them when they were accepted as dhimmis (non Muslim residents of a Muslim State) then nothing will be *wajib (obligatory)* on them apart from jizyah. This is to which Imam Shafi'I رضی اللہ عنہ abides.

The contention of the Hanafis is that if the Jews and the Christians impose any kind of tax or duties on the trade merchandise of the Muslims at their borders, then it is also rightful on the part of the Muslims to impose a like levy when the Jews and Christians bring their merchandise to their borders.

If they do not levy any kind of impost, then the Muslims must do likewise.

DHIMMIS (NON MUSLIM RESIDENTS OF A MUSLIM STATE) MAY BE COMPELLED TO CONCLUDE TREATY

(٤٠٤٠) وَعَنْ عُقْبَةَ بْنِ عَامِرٍ قَالَ قُلْتُ يَا رَسُوْلَ اللّٰهِ إِنَّا نَمُرُّ بِقَوْمٍ فَلَا يُضَيِّفُوْنَا وَلَا هُمْ يُؤَدُّوْنَ مَالَنَا عَلَيْهِمْ مِنَ الْحَقِّ وَلَا نَحْنُ نَأْخُذُ مِنْهُمْ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ إِنْ أَبَوْا إِلَّا أَنْ تَأْخُذُوْا كُرْهًا فَخُذُوْا۔ (رواه الترمذی)

4040. Sayyiduna Uqbah ibn Amir narrated that he submitted that he submitted, "O Messenger of Allah. (during our journey for *Jihad (crusade)*) we pass by a people who do not offer us hospitality nor let us have what is due to us from them (as imposed by Islam, like giving us a loan getting us what we need).We do not take anything from them (by force, so we are very desperate)."On that, Allah's Messenger صلی اللہ علیہ وسلم said," If they persist in denying unless you take by force. You may do so."[2]

COMMENTARY: The people against whom the complaint was ledged were dhimmis (non Muslim residents of a Muslim State). (They had not accepted Islam but had submitted to pay the jizyah and live us obedient subject of Islamic State) It had been agreed with them that they would be hospitable to the Muslims going through their land to engage in *jihad (crusade)*. They did not abide by the agreement and also refused to sell to them the provision they needed. So, the Prophet صلی اللہ علیہ وسلم allowed them to take what they needed by force.

However, it must be understood that if no agreement has been made with the dhimmis (non Muslim residents of a Muslim State) before hand then it is not allowed to the Muslims to take anything from them by force, without their willingness, if the Muslims are not desperate.

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[1] Abu Dawud # 3846, Musnad Ahmad 3-474.

[2] Tirmidhi # 1589

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SECTION III اَلْفَصْلُ الثَّالِثُ

DHIMMIS (NON MUSLIM RESIDENTS OF A MUSLIM STATE) MAY BE BOUND TO BE HOSPITABLE TO MUSLIMS AND PAY THE JIZYAH

(٤٠٤١) وَعَنْ اَسْلَمَ اَنَّ عُمَرَ بْنَ الْخَطَّابِ ضَرَبَ الْجِزْيَةَ عَلٰى اَهْلِ الذَّهَبِ اَرْبَعَةَ دَنَانِيْرَ وَعَلٰى اَهْلِ الْوَرَقِ اَرْبَعِيْنَ دِرْهَمًا مَعَ ذٰلِكَ اَرْزَاقُ الْمُسْلِمِيْنَ وَضِيَافَةُ ثَلَاثَةِ اَيَّامٍ۔ (رواه مالك)

4041. Sayyiduna Aslam said that (during his caliphate,) Sayyiduna Umar ibn Khattab imposed a jizyah of four dinars on those (dhimmis (non Muslim residents of a Muslim State))who possessed (abundant)gold, and of forty dirhams on those (dhimmis (non Muslim residents of a Muslim State))who possessed silver. Apart from that, he also fixed (on them) provisions for the Muslims and hospitality for three days.[1]

COMMENTARY: The condition of Hospitality for three days elaborates on the stipulation of provisions for the Muslims.

When the non-Muslims were given the status of dhimmis (non Muslim residents of a Muslim State) and the jizyah was imposed on them (at the rates mentioned),it was also agreed that they would provide hospitality to the Muslims for three days.

It is stated in Shah-un-*Sunnah (Prophet's* صلى الله عليه وسلم *practice)* that it is allowed to impose more than one dinar as jizyah on the dhimmis (non Muslim residents of a Muslim State) and to stipulate that they would be hospitable to Muslims who pass by them. The expenses of the hospitality would not be deducted from the jizyah. Rather, hospitality is additional to tha jizyah when concluding the agreement with them. Details may be seen in the Mirqat, etc.

CHAPTER - X

(AL-SULH) PEACE بَابُ الصُّلْحِ

Sulh is the noun of *salah (prayer)* صلاح and sulooh صلوح. It is the opposite of (fasaad فساد) destruction or spoiling.

The head of state is authorized by Islam to conclude a treaty of peace with the enemy nations in Keeping with the monotheistic belief to maintain and promote universal peace, to propagate Islam to protect and provide security and freedom to human beings and to meet the political and Military demands.

Accordingly, in 6AH, the Prophet صلى الله عليه وسلم made peace with his staunchest enemy, the Makkan disbelievers. It is known as Sulh Hudaybiyah or the peace Treaty of Hudaybiyah. Its term was determined for ten years. Hadith as well as history record unanimously that it is this very peace treaty of Hudaybiyah that made the propagation of Islam very easy. At the same time, the world learnt that Islam is the true standard-bearer of human values and peace. It was observed that Muslims faithfully abided and honoured the terms of the treaty in spite of the provocations of Makah idolaters.

Barely three years had passed when the polytheists of Makkah helped the Banu Bakr in

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[1] Muwatta Malik#43 (Zakah).

their war with the Banu Khuzaah the allies of the Prophet صلى الله عليه وسلم and thus broke the peace treaty.

SECTION I اَلْفَصْلُ الْاَوَّلُ

PEACE TREATY OF HUDAYBIYAH

(٤٠٤٢) عَنِ الْمِسْوَرِ بْنِ مَخْرَمَةَ وَ مَرْوَانَ بْنِ الْحَكَمِ قَالَا خَرَجَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَامَ الْحُدَيْبِيَةِ فِيْ بِضْعِ عَشْرَةَ مِائَةٍ مِنْ اَصْحَابِهٖ فَلَمَّا اَتٰى ذَا الْحُلَيْفَةِ قَلَّدَ الْهَدْيَ وَاَشْعَرَ وَ اَحْرَمَ مِنْهَا بِعُمْرَةٍ وَ سَارَ حَتّٰى اِذَا كَانَ بِالثَّنِيَّةِ الَّتِي يُهْبَطُ عَلَيْهِمْ مِنْهَا بَرَكَتْ بِهٖ رَاحِلَتُهٗ فَقَالَ النَّاسُ حَلْ حَلْ خَلَاَتِ الْقَصْوَاءِ خَلَاَتِ الْقَصْوَاءِ فَقَالَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ مَاخَلَاَتِ الْقَصْوَاءِ وَمَا ذَاكَ لَهَا بِخُلُقٍ وَلٰكِنْ حَبَسَهَا حَابِسُ الْفِيْلِ ثُمَّ قَالَ وَالَّذِيْ نَفْسِيْ بِيَدِهٖ لَا يَسْاَلُوْنِيْ خُطَّةً يُعَظِّمُوْنَ فِيْهَا حُرُمَاتِ اللّٰهِ اِلَّا اَعْطَيْتُهُمْ اِيَّاهُمْ ثُمَّ زَجَرَهَا فَوَثَبَتْ فَعَدَلَ عَنْهُمْ حَتّٰى نَزَلَ بِاَقْصَى الْحُدَيْبِيَةِ عَلٰى ثَمَدٍ قَلِيْلِ الْمَاءِ يَتَبَرَّضُهُ النَّاسُ تَبَرُّضًا فَلَمْ يُلْبِثْهُ النَّاسُ حَتّٰى نَزَحُوْهُ وَ شُكِيَ اِلٰى رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ الْعَطَشُ فَانْتَزَعَ سَهْمًا مِنْ كِنَانَتِهٖ ثُمَّ اَمَرَهُمْ اَنْ يَجْعَلُوْهُ فِيْهِ فَوَ اللّٰهِ مَازَالَ يَجِيْشُ لَهُمْ بِالرِّيِّ حَتّٰى صَدَرُوْا عَنْهُ فَبَيْنَاهُمْ كَذٰلِكَ اِذْ جَائَ بُدَيْلُ بْنُ وَرْقَاءَ الْخُزَاعِيُّ فِيْ نَفَرٍ مِنْ خُزَاعَةَ ثُمَّ اَتَاهُ عُرْوَةُ بْنُ مَسْعُوْدٍ وَسَاقَ الْحَدِيْثَ اِلٰى اَنْ قَالَ اِذْجَاءَ سُهَيْلُ بْنُ عَمْرٍو فَقَالَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِكْتُبْ هٰذَا مَاقَاضٰى عَلَيْهِ مُحَمَّدٌ رَسُوْلُ اللّٰهِ فَقَالَ سُهَيْلٌ وَاللّٰهِ لَوْ كُنَّا نَعْلَمُ اَنَّكَ رَسُوْلُ اللّٰهِ مَاصَدَدْنَاكَ عَنِ الْبَيْتِ وَلَا قَاتَلْنَاكَ وَلٰكِنْ اُكْتُبْ مُحَمَّدُ بْنُ عَبْدِاللّٰهِ قَالَ فَقَالَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَاللّٰهِ اِنِّيْ لَرَسُوْلُ اللّٰهِ وَاِنْ كَذَّبْتُمُوْنِيْ اُكْتُبْ مُحَمَّدَ ابْنَ عَبْدِاللّٰهِ فَقَالَ سُهَيْلٌ وَعَلٰى اَنْ لَا يَاْتِيَكَ مِنَّا رَجُلٌ وَاِنْ كَانَ عَلٰى دِيْنِكَ اِلَّا رَدَدْتَهٗ عَلَيْنَا فَلَمَّا فَرَغَ مِنْ قَضِيَّةِ الْكِتَابِ قَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لِاَصْحَابِهٖ قُوْمُوْا فَانْحَرُوْا ثُمَّ احْلِقُوْا ثُمَّ جَاءَ نِسْوَةٌ مُؤْمِنَاتٌ فَاَنْزَلَ اللّٰهُ تَعَالٰى يٰاَيُّهَا الَّذِيْنَ اٰمَنُوْا اِذَا جَآءَكُمُ الْمُؤْمِنَاتُ مُهَاجِرَاتٌ اٰلَا يَةَ فَنَهَاهُمُ اللّٰهُ تَعَالٰى اَنْ يَرُدُّوْهُنَّ وَ اَمَرَهُمْ اَنْ يَرُدُّوا الصَّدَاقَ ثُمَّ رَجَعَ اِلَى الْمَدِيْنَةِ فَجَاءَ اَبُوْبَصِيْرٍ رَجُلٌ مِنْ قُرَيْشٍ وَهُوَمُسْلِمٌ فَاَرْسَلُوْا فِيْ طَلَبِهٖ رَجُلَيْنِ فَدَفَعَهٗ اِلَى الرَّجُلَيْنِ فَخَرَجَا بِهٖ حَتّٰى اِذَا بَلَغَا ذَا الْحُلَيْفَةِ نَزَلُوْا يَاْكُلُوْنَ مِنْ تَمْرٍ لَهُمْ فَقَالَ اَبُوْبَصِيْرٍ لِاَحَدِ الرَّجُلَيْنِ وَاللّٰهِ اِنِّيْ لَاَرٰى سَيْفَكَ هٰذَا يَا فُلَانُ جَيِّدًا اَرِنِيْ اَنْظُرْ اِلَيْهِ فَاَمْكَنَهٗ مِنْهُ فَضَرَبَهٗ حَتّٰى بَرَدَ وَفَرَّ الْاٰخَرُ مِنْهُ حَتّٰى اَتَى الْمَدِيْنَةَ فَدَخَلَ الْمَسْجِدَ يَعْدُوْ فَقَالَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَقَدْ رَاٰى هٰذَا ذُعْرًا فَقَالَ قُتِلَ وَاللّٰهِ صَاحِبِيْ وَاِنِّيْ لَمَقْتُوْلٌ فَجَاءَ اَبُوْبَصِيْرٍ فَقَالَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَيْلُ اُمِّهٖ مِسْعَرُ

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حَرْبٍ لَوْ كَانَ لَهُ اَحَدٌ فَلَمَّا سَمِعَ ذٰلِكَ عَرَفَ اَنَّهُ سَيَرُدُّهُ اِلَيْهِمْ فَخَرَجَ حَتّٰى اَتٰى سِيْفَ الْبَحْرِ قَالَ وَانْفَلَتَ اَبُوْجَنْدَلِ بْنُ سُهَيْلٍ فَلَحِقَ بَاَبِيْ بَصِيْرٍ فَجَعَلَ لَا يَخْرُجُ مِنْ قُرَيْشٍ رَجُلٌ قَدْ اَسْلَمَ اِلَّا لَحِقَ بِاَبِيْ بَصِيْرٍ حَتّٰى اَجْتَمَعَتْ مِنْهُمْ عِصَابَةٌ فَوَ اللّٰهِ مَايَسْمَعُوْنَ بِعِيْرٍ خَرَجَتْ لِقُرَيْشٍ اِلَى الشَّامِ اِلَّا اعْتَرَضُوْا لَهَا فَقَتَلُوْهُمْ وَاَخَذُوْا اَمْوَالَهُمْ فَاَرْسَلَتْ قُرَيْشٌ اِلَى النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ تُنَاشِدُهُ اللّٰهَ وَالرَّحِمِ لَمَّا اَرْسَلَ اِلَيْهِمْ فَمَنْ اَتَاهُ فَهُوَ اٰمِنٌ فَاَرْسَلَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اِلَيْهِمْ۔ (رواه البخاری)

4042. (Sayyiduna) Miswar ibn Makhramah رضی اللہ عنہ and Marwah ibn Hakam رضی اللہ عنہ (both) narrated that in the year of Hudaybiyah, the Prophet صلی اللہ علیہ وسلم went out (Madinah) with some more than one thousand of his Sahabah رضی اللہ عنہ when he came to Dhul Hulayfah (about six miles south of Madinah, also called Abyar Ali), he garlanded and marked the hadyi (or the sacrificial animals), assumed the ihram (sheet of fabric) for umrah and set forth (from there). When he was at Thaniyah (the mountain pass) by which one descends to Makkah, his she-camel (Qaswa) Knelt down (with him). The people began to (rod it and to) say hal, hal حل (Go on, go on) ! Qaswa! Is reluctant! " But, the Prophet صلی اللہ علیہ وسلم said, "Qaswa' is not reluctant. Such is not her habit. But .He who had held back the elephant, has held her back."
Then, he said, "By Him in whose hand is my soul, they shall not ask me for anything whereby they honour that which Allah has made sacred (His Haram) but I shall give it to them." Then, he got the she-camel to get up and she was quick at it. Turning aside from the road leading to Makkah, he went to the extreme limit of Hudaybiyah at a pool with little water. (Here, he alighted). The people took the water in small quantities but it was consumed soon. (though they took the minimum possible). They complained to Allah's Messenger صلی اللہ علیہ وسلم at thirst, so he took out an arrow from his quiver and instructed them to immerse it in the pool. By Allah, water gushed out to them (in a never ending quantity) till the time they departed from it.
While they were in this state, Budayl ibn Waraqa Khuza'I came with some men of Khuzaah (on behalf of the infidels to strike peace). Urwah ibn Masud (also) arrived after him.
(Here, Bukhari presents the lengthy conversation between the Prophet صلی اللہ علیہ وسلم and these two men, but the compiler of Masabih has omitted all that for the sake of brevity. Then the narration continues
Suhayl ibn Amr came afterwards (as their last envoy). The Prophet صلی اللہ علیہ وسلم then said (to Sayyiduna Ali رضی اللہ عنہ ,,"Write. This to what Muhammad Allah's Messenger has made peace..." Suhayl interrupted, "By Allah, if we accepted you as Allah's Messenger then we would neither turn you away from the Kabah nor fight with you. Write: Muhammad ibn Abdullah." The Prophet صلی اللہ علیہ وسلم asserted, "By Allah, I am Allah's Messenger even if you believe me. (But in view of the need of the hour, I accept your demand.) Write (Ali!) Muhammad ibn Abdullah." Suhayl also said, "(Write also If any person belonging to you comes to us, we shall not send him back to you but) if anyone of us comes to you, even if he follows your religion, you will return him to us." (The Prophet صلی اللہ علیہ وسلم agreed to that too.)

(Again, the compiler of the Masabih has abridged the narration from Bukhari. Any way) When he finished writing down the agreement, Allah's Messenger صلى الله عليه وسلم said to his Sahabah (Prophet's Companions) رضى الله عنهم, "Arise and sacrifice (the hady; and then shake (your head)."

After that, a number of believing women (of Makkah) came. Allah, the Exalted, revealed:

يَآ اَيُّهَا الَّذِيْنَ اٰمَنُوْٓا اِذَا جَآءَكُمُ الْمُؤْمِنَاتُ مُهَاجِرَاتٍ الخ۔ (الممتحنه ٦٠: ١٠)

{O you who believe, when believing women come to you as emigrants...}(60: 10)

Allah, the Exalted, forbade them (through this verse) to return them, but He ordered them to give back their dower.

The Prophet صلى الله عليه وسلم then came to Madinah. (Some days thereafter,) Abu Basir رضى الله عنه, one of the Quraysh and a Muslim, came to him (from Makkah). The Quraysh had sent two men after him. The Prophet صلى الله عليه وسلم returned him to the two men (in terms of the treaty). They took him (to Makkah). Abdul Hulayfah, they (stopped over and) alighted (if being their first stage of the journey) and ate the dates that they had. Abu Basir صلى الله عليه وسلم said to one or them, "O you! By Allah, your sword seems very good to me. Let me see it. " He handed it over to him and (in an instant) he struck him (so severely that he fell) and he died. The other man (was terrified and) fled from him. He reached Madinah and ran into the Mosque (Masjid Nabawi). The Prophet صلى الله عليه وسلم remarked, "This man is in a terrified state." He said, "(Yes!) By Allah, my companion has been killed and I am near to being killed,"

Then, Abu Basir صلى الله عليه وسلم also arrived. The Prophet صلى الله عليه وسلم said, "Alas for his mother!" (An expression of amazement.) "He will stir up war! Only if he had some relatives (to help him and give him shelter)." When he heard the Prophet صلى الله عليه وسلم, Abu Basir صلى الله عليه وسلم understood that the Prophet صلى الله عليه وسلم would again hand him over (to the Makkans). So, went out (of Madinah) and came to (a place near) the seashore.

(The narrator added Abu Jandal ibn Suhayl رضى الله عنه also escaped (from the idolaters) and teamed up with Abu Basir رضى الله عنه. Then, this was emulated by every Man of Quraysh who embraced Islam. He united with Abu Basir رضى الله عنه (and escaped from the Quraysh). Soon they were a sizeable team. Whenever they learnt of a caravan of the Quraysh proceeding to Syria, they intercepted it. They Kill the men and seized the merchandise (or whatever they carried). So, the Quraysh sent someone to the Prophet صلى الله عليه وسلم. (They had realized that they had erred in placing that condition and were paying for that.) They pleaded with him adjurning him by Allah and the ties of Kinship between them and the Prophet صلى الله عليه وسلم to command them (Abu Basir رضى الله عنه and others) to stop (harassing them). They agreed that (he should not return to them) anyone who came (to Madinah) to him and he would be safe.

The Prophet sent necessary instructions to them (They should not intercept the caravans of the Quraysh but should come to him in Madinah.)[1]

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[1] Bukhari # 2731, Abu Dawud # 2765, Musnad Ahmad 4. 331.

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COMMENTARY: Hydaybiyah is about sixteen miles to the west of Makkah. The mountain Jabl ash-Shamisi is locatred here giving it its other name Shamisiyah. Most of this place is within the limits of the Haram.

The Sahabah (Prophet's Companions) رضی اللہ عنہم who had accompanied the Prophet صلی اللہ علیہ وسلم were more than one thousand, any number up to one thousand five hundred. They set out as one thousand and four hundred and people joined them on the way to raise the number to one thousand and five hundred.

When a pilgrim assumes the ihram for Hajj (pilgrimage) or umrah and is prevented from observing it, then it is called ihsar (احصار). In such a case, he must slaughter the animal he has with him for sacrifice and shave his head. This person is called mushir. Imam Shafii رحمہ اللہ says that he must slaughter his animal at the place where he is stopped, even if it is not within the Prophet's صلی اللہ علیہ وسلم action because Hudaybiyah is not within the limit of Haram. Imam Abu Hanifah رحمہ اللہ, however, says that it cannot be sacrificed outside the Haram. He says about Hudaybiyah that not all of it outside the limits of the Haram. Most of it is within the limits and clearly the hadyi was slaughtered inside the limits of the Haram.

Referring to the believing women who had come to the Prophet صلی اللہ علیہ وسلم and of whom the Quran says that they should not be sent back and their dowers should be returned, it is that when their disbelieving husbands come and if they had paid them the dower then that must be returned to those men. According to Tafsir Madarik and others, this command applied only to that particular case. It was abrogated afterwards. The women were not sent back because the treaty stipulated that only men who came to the Prophet صلی اللہ علیہ وسلم from Makkah were to be returned, not the women.

The Prophet صلی اللہ علیہ وسلم words about there being someone to help Abu Basir رضی اللہ عنہ could also mean: "Would that someone advised him not to come to me!"

However Abu Basir رضی اللہ عنہ understand that the Prophet صلی اللہ علیہ وسلم would abide by the treaty and hand him over to the Qurayrah. So, he found out an alternative arrangement.

Abu Jandal رضی اللہ عنہ was the son of the same Suhayl who had come as envoy and negotiator on behalf of the Quraysh. He had locked Abu Jandal رضی اللہ عنہ who had embraced Islam before hand in Makkah but he escaped from the confinement and came to Hudaybiyah at first. Here the Prophet صلی اللہ علیہ وسلم convinced him that he could not contravene the treaty and consoled with him. So he went back to Makkah and fled from there a second time, to join Abu Basir رضی اللہ عنہ.

THREE CONDITIONS OF PEACE TREATRY OF HUDAYBIYAH

(٤٠٤٣) وَعَنِ الْبَرَاءِ بْنِ عَازِبٍ قَالَ صَالَحَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ الْمُشْرِكِيْنَ يَوْمَ الْحُدَيْبِيَةِ عَلٰى ثَلَاثَةِ اَشْيَاءَ عَلٰى اَنَّ مَنْ اَتَاهُ مِنَ الْمُشْرِكِيْنَ رَدَّهٗ اِلَيْهِمْ وَمَنْ اَتَا هُمْ مِّنَ الْمُسْلِمِيْنَ لَمْ يَرُدُّوْهُ وَعَلٰى اَنْ يَدْخُلَهَا مِنْ قَابِلٍ وَيُقِيْمُ بِهَا ثَلَاثَةَ اَيَّامٍ وَلَا يَدْ خُلَهَا اِلَّا بِجُلُبَّانِ السَّلَاحِ وَالسَّيْفِ وَالْقَوْسِ وَنَحْوِهٖ فَجَاءَ اَبُوْجُنْدَلٍ يَحْجُلُ فِيْ قُيُوْدِهٖ فَرَدَّهٗ اِلَيْهِمْ۔ (متفق علیہ)

4043. Sayyiduna Bar'a ibn Aazib رضی اللہ عنہ said that the Prophet صلی اللہ علیہ وسلم concluded the treaty with the polytheists on the day of Hudaybiyah concerning three things (in particular).

(i) **If anyone of the Polytheists (of Makkah) came to the Prophet صلى الله عليه وسلم (after embracing Islam), he should send him back to the polytheists, and if any of the Muslims came to the polytheists, they would not return him.**
(ii) **The Prophet صلى الله عليه وسلم should (not enter Makkah that year but) enter Makkah the next year and stay only three days in it. And,**
(iii) **He should carry only such weapons as sword and bows in their (cases or appropriate) coverings.**

At this point, Abu Jandal رضى الله عنه came to him in his fetters because of which he hobbled. But, the Prophet صلى الله عليه وسلم sent him back.[1]

COMMENTARY: The weapons were to kept in their leather casings. The Muslims were disallowed to enter Makkah with unsheathed weapons.

We have spoken about Abu Jandal رضى الله عنه in the previous hadith. The Prophet صلى الله عليه وسلم exhorted him to show patience and him for reward in the hereafter. Allah will surely create for you and other weak and helpeos men like you a way out."

Outwardly, the peace treaty seemed to be to the disadvantage of the Muslims. For one thing, at that time, they were not strong and, well- equipped. Besides, they had not come from Madinah with an intention to fight. They had to respect the sanctity of the Haram, and Allah had not revealed to them to fight with the pagans. There were many other reasons too.

Nevertheless actually the treaty proved to be very profitable to the Muslims. There were ample opportunities to propagate Islam. Many far flung places became receptive to Islam. Then Allah caused them to liberate Makkah and its people came within the bounds of Islam.

It became clear that by accepting the conditions of the people of Makkah, the Prophet صلى الله عليه وسلم had demonstrated his desire for peace and love for humanity and he also emerged as one with an exceptional political farsightedness. He showed, most of all, that he was sincere and obedient to Allah to the utmost.

(٤٠٤٤) وَعَنْ اَنَسٍ اَنَّ قُرَيْشًا صَالَحُوا النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَاشْتَرَطُوْا عَلَى النَّبِيِّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَنَّ مَنْ جَاءَنَا مِنْكُمْ لَمْ نَرُدَّهُ عَلَيْكُمْ وَمَنْ جَاءَكُمْ مِنَّا رَدَدْتُمُوْهُ عَلَيْنَا فَقَالُوْا يَا رَسُوْلَ اللّٰهِ اَنَكْتُبُ هٰذَا قَالَ نَعَمْ اِنَّهُ مَنْ ذَهَبَ مِنَّا اِلَيْهِمْ فَاَبْعَدَهُ اللّٰهُ وَمَنْ جَاءَنَا مِنْهُمْ سَيَجْعَلُ اللّٰهُ لَهُ فَرَجًا وَمَخْرَجًا۔ (رواه مسلم)

4044. Sayyiduna Anas رضى الله عنه narrated that the Quraysh concluded the peace treaty with the Prophet صلى الله عليه وسلم. They placed the condition that if anyone went to them from his side, they would not turn him back. But, if anyone went to him from their side, he would send him back (to them). They (the sahabah (Prophet's Companions) رضى الله عنهم) asked him (on seeing the apparent disparity). "O Messenger of Allah, shall we write this down?)" (Do you consent to this condition?)" He said, "Yes. He who goes away from us (has certainty apostated. So,) Allah has removed him far from His mercy. But, he of them who comes to us, Allah shall surely appoint for him a way out and an escape."[2]

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[1] Bukhari # 2700, Muslim # 92-1783, Abu Dawud # 1832.
[2] Muslim # 93-1784.

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PLEDGE FROM WOMEN

(٤٠٤٥) وَعَنْ عَائِشَةَ قَالَتْ فِيْ بَيْعَةِ النِّسَاءِ اِنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ كَانَ يَمْتَحِنُهُنَّ بِهٰذِهِ الْاٰيَةِ يَآ اَيُّهَا النَّبِيُّ اِذَا جَآءَكَ الْمُؤْمِنَاتُ يُبَايِعْنَكَ فَمَنْ اَقَرَّتْ بِهٰذَا الشَّرْطِ مِنْهُنَّ قَالَ لَهَا قَدْ بَايَعْتُكِ كَلَا مًا يُكَلِّمُهَا بِهٖ وَاللّٰهِ مَا مَسَّتْ يَدُهٗ يَدَ امْرَأَةٍ قَطُّ فِي الْمُبَايَعَةِ۔ (متفق علیه)

4045. Sayyidah Ayshah رضی اللہ عنہا narrated about the oath of allegiance received from women that Allah's Messenger صلی اللہ علیہ وسلم examined them (who came from Makkah and professed Islam) in the light of this verse:

يَآ اَيُّهَا النَّبِيُّ اِذَا جَآءَكَ الْمُؤْمِنٰتُ يُبَايِعْنَكَ

{O Prophet, when believing women come to you to pledge allegiance to you } (9: 12) When a woman declared her acceptance of this condition, he said to her : I have accepted your pledge." He only communicated orally to her. (She said) "By Allah, his hand never touched a woman's hand when a pledge of allegiance was taken."[1]

COMMENTARY: The Prophet صلی اللہ علیہ وسلم used to get the women to declare that they would abide by the commands of this verse, the gist of the entire verse is that the Muslim women must pledge to abide by its commands: they would not associate anything with Allah.

They would not steal,

They would not commit adultery,

They would not kill their children (as female infants were buried alive during pre Islamic days),

They would not slander or accuse anyone falsely, and

They would not disobey (any command of Allah and his Messenger صلی اللہ علیہ وسلم)

In this sense this verse elaborates on the verse (60: 10) as reproduced in the hadith # 4042. The way the Prophet صلی اللہ علیہ وسلم took the pledge from women is the *sunnah (Prophet's* صلی اللہ علیہ وسلم *practice)*. It must be followed and it is not necessary to introduce formal procedures as some Shaykhs do. They take a vessel full of water and dip their hand into it and ask the woman to dipher hand too. Or, some of them hold a piece of cloth at,on e end and the woman is required to hold it at the other end. It is better and enough to follow the Prophet's صلی اللہ علیہ وسلم method.

The compiler of the Masabih has placed this hadith in this chapter(الصلح) (Peace) because at Hudaybiyah, it had become necessary to get the oath of allegiance from the Sahabah (Prophet's Companions) رضی اللہ عنہم that is known as Bay't Ridwan. The Quran refers to in the verse of al-Fath (48: 18). This is why the hadith of pledge of allegiance from women is placed here though no such pledge was taken from them at Hudaybiyah.

SECTION II اَلْفَصْلُ الثَّانِيْ

SOME OTHER CONDITIONS OF THE TREATY OF HUDAYBIYAH

(٤٠٤٦) عَنِ الْمِسْوَرِ وَ مَرْوَانَ اَنَّهُمُ اصْطَلَحُوْا عَلٰى وَضْعِ الْحَرْبِ عَشَرَ سِنِيْنَ يَأْمَنُ فِيْهِنَّ النَّاسُ وَعَلٰى اَنَّ بَيْنَنَا عَيْبَةً مَكْفُوْفَةً وَاَنَّهٗ لَا اِسْلَالَ وَلَا اِغْلَالَ۔ (رواه ابوداؤد)

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[1] Bukhari # 2713, Muslim # 88-1866.

4046. (Sayyiduna) Miswar رضی اللہ عنہ and Marwah رضی اللہ عنہ said that (among other things, the Quraysh of Makkah) made peace (at Hudaybiyah, agreeing) to a no-war pledge for ten years so that the people could have security. (It was also agreed,) there should be a firm locked honest (pact) to banish theft and treachery (unobserved or openly).[1]

COMMENTARY: The locked honest pact' - (غِشَاءٌ مُكَفْوَفَةٌ) - implies clearing hearts of deceit and cunning against each other and being faithful to the treaty. There should be no stealing by stealth and no usurpation of rights, etc.

PROMISES MADE TO NON-MUSLIMS MUST BE HONOURED.

(٤٠٤٧) وَعَنْ صَفْوَانَ بْنِ سُلَيْمٍ عَنْ عِدَّةٍ مِنْ أَبْنَاءِ أَصْحَابِ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ عَنْ آبَائِهِمْ عَنْ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ قَالَ أَلَا مَنْ ظَلَمَ مُعَاهِدًا أَوِ انْتَقَصَهُ أَوْ كَلَّفَهُ فَوْقَ طَاقَتِهِ أَوْ أَخَذَ مِنْهُ شَيْئًا بِغَيْرِ طِيْبِ نَفْسٍ فَأَنَا حَجِيْجُهُ يَوْمَ الْقِيَامَةِ۔ (رواه ابوداؤد)

4047. Sayyiduna Safwan ibn Sulaym رضی اللہ عنہ narrated on the authority of a number of the sons of the Sahabah رضی اللہ عنہ of Allah's Messenger صلی اللہ علیہ وسلم that their (respected) fathers (the Sahabah رضی اللہ عنہ said that Allah's Messdenger صلی اللہ علیہ وسلم said, "If anyone wrongs a (non-Muslim) person with whom a covenant has been concluded (like a dhimmi), or violates his rights, or burdens him beyond what he can tolerate (like imposing an unjust jizyah on a dhimmi, or an excessive ushr on an infidel who has brought his trade merchandise for sale), or he takes away from him something without his willing permission, then I shall argue against this person in the day of resurrection.[2]

PLEDGE OF ALLEGIANCE FROM A GROUP OF WOMEN

(٤٠٤٨) وَعَنْ أُمَيْمَةَ بِنْتِ رُقَيْقَةَ قَالَتْ بَايَعْتُ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فِيْ نِسْوَةٍ فَقَالَ لَنَا فِيْمَا اسْتَطَعْتُنَّ وَأَطَقْتُنَّ قُلْتُ اللّٰهُ وَرَسُوْلُهُ أَرْحَمُ بِنَا مِنَّا بِأَنْفُسِنَا قُلْتُ يَا رَسُوْلَ اللّٰهِ بَايِعْنَا تَعْنِيْ صَافِحْنَا قَالَ إِنِّيْ لَا أُصَافِحُ النِّسَاءَ وَلَا يُصَافِحْنَ الرِّجَالَ إِلَّا بِمَحْرَمٍ قَالَ إِنَّمَا قَوْلِيْ لِمِائَةِ امْرَأَةٍ كَقَوْلِيْ لِامْرَأَةٍ وَاحِدَةٍ رَوَاهُ۔

4048. Sayyidah Umaymah bintRuqayqah narrated, "I swone allegiance to the Prophet صلی اللہ علیہ وسلم alongwith some women (all together in a group). He said, (I get the pledge from you) as far as you can and as much as is in your power. (Thus, the Prophet صلی اللہ علیہ وسلم was kind to us women to bind us only to the extent of our ability.) I submitted. 'Allah and His Messenger صلی اللہ علیہ وسلم are merciful to us more than we can be to ourselves.' I then requested, 'O Messenger of Allah, receive our pledge - meaning, shake hands with us.' He said. 'My words to one hundred women are like my words to one woman.' (He means that an oral oath is enough for a woman and it is not necessary to get it individually from every woman separately. They may all pledge together.)[3]

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[1] Abu Dawud # 2766, Musnad Ahmad 4. 325.

[2] Abu Dawud # 3052.

[3] Tirmidhi # 1397. Nasa'I # 4181, Ibn Majah # 2874, Musnad Ahmad 6. 357m Muwatta Maalik.

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COMMENTARY: The compiler of Mishkat has not named the books that transmit this hadith. However, they are located by others and mentioned in the marginal notes.

SECTION III اَلْفَصْلُ الثَّالِثُ

PEACE TREATY WRITTEN BY THE PROPHET صلى الله عليه وسلم

(٤٠٤٩) عَنِ الْبَرَاءِ بْنِ عَازِبٍ قَالَ اعْتَمَرَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فِي ذِي الْقَعْدَةِ فَاَبٰى اَهْلُ مَكَّةَ اَنْ يَدَعُوْهُ يَدْخُلُ مَكَّةَ حَتّٰى قَاضَاهُمْ عَلٰى اَنْ يَدْخُلَ يَعْنِي مِنَ الْعَامِ الْمُقْبِلِ يُقِيْمُ بِهَا ثَلَاثَةَ اَيَّامٍ فَلَمَّا كَتَبُوا الْكِتَابَ كَتَبُوْا هٰذَا مَاقَاضٰى عَلَيْهِ مُحَمَّدٌ رَسُوْلُ اللّٰهِ وَقَالُوْا لَا نُقِرُّ بِهَا فَلَوْ نَعْلَمُ اَنَّكَ رَسُوْلُ اللّٰهِ مَامَنَعْنَاكَ وَلٰكِنْ اَنْتَ مُحَمَّدُ بْنُ عَبْدِاللّٰهِ فَقَالَ اَنَا رَسُوْلُ اللّٰهِ وَاَنَا مُحَمَّدُ بْنُ عَبْدِاللّٰهِ ثُمَّ قَالَ لِعَلِيِّ بْنِ اَبِي طَالِبٍ امْحُ رَسُوْلَ اللّٰهِ قَالَ لَا وَاللّٰهِ لَا اَمْحُوْكَ اَبَدًا فَاَخَذَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَلَيْسَ يُحْسِنُ يَكْتُبُ فَكَتَبَ هٰذَا مَا قَاضٰى عَلَيْهِ مُحَمَّدُ ابْنُ عَبْدِاللّٰهِ لَايَدْخُلُ مَكَّةَ بِالسِّلَاحِ اِلَّا السَّيْفَ فِي الْقِرَابِ وَاَنْ لَا يَخْرُجَ مِنْ اَهْلِهَا بِاَحَدٍ اَنْ اَرَادَ اَنْ يَتْبَعَهُ وَاَنْ لَا يَمْنَعَ مِنْ اَصْحَابِهِ اَحَدًا اِنْ اَرَادَ اَنْ يُقِيْمَ بِهَا فَلَمَّا دَخَلَهَا وَمَضَى الْاَجَلُ اَتَوْا عَلِيًّا فَقَالُوْا قُلْ لِصَاحِبِكَ اخْرُجْ عَنَّا فَقَدْ مَضَى الْاَجَلُ فَخَرَجَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ۔ (متفق علیه)

4049. Sayyiduna Bara ibn Aazib رضی الله عنه narrated that in Dhulqadah, Allah's Messenger صلى الله عليه وسلم went to perform an umrah, However, the Makkans did not allow him to enter Makkah unless he made an agreement with them to come next year and stay three days. So, while penning down the treaty, they wrote: "This is what Muhammad Messenger of Allah has agreed." The Makkans protested, "We do not consent to that. If we believed you to be Allah's Messenger, we should not have prevented you. You are Muhammad ibn Abdullah." (So, write accordingly.) He said, "I am Allah's Messenger as well as Muhammad ibn Abdullah," and he instructed Sayyiduna Ali ibn Abu Talib رضی الله عنه to erase Messenger of Allah, but he agreed. "No, by Allah, I shall never erase it." Allah's Messenger صلى الله عليه وسلم took it (from Ali). Though he did not know how to write, yet he (erased the words 'Allah's Messenger' and) wrote "This is what Muhammad ibn Abdullah has agreed" (and it had these conditions:) "The weapon that he will carry on entry into Makkah will be only a sword in the sheath. If any of the people of Makkah decides to go out with him, he shall not take him along. But if any of his companions wishes to stay behind in Makkah, he will not stop him."

Then after he came (to Makkah) and the agreed period was over, they went to Sayyiduna Ali رضی الله عنه and said, "Tell your friend to leave us. Indeed the time is over." So, the Prophet صلى الله عليه وسلم departed (from Makkah)[1]

COMMENTARY: Sayyiduna Ali رضی الله عنه did not take the Prophet صلى الله عليه وسلم instructions to

[1] Bukhari # 2699, Muslim # 90-1793, Darimi # 2507, Musnad Ahmad 4. 2911.

erase the words as a command (*wajib (obligatory)* to be obeyed), otherwise he would not have refused to do so. Besides, it was not a refusal from him, at the base of it was his deep love for and extreme belief in, the Prophet صلى الله عليه وسلم that was his lone asset of life... He could not bring himself to delete the greatest (reality and) truth in life that his own pen had inscribed on the pages of the document. In fact, his aim of life and essence of faith was to imprint this truth on the heart and mind of everyone on earth.

The ulama (Scholars) differ on whether the Prophet صلى الله عليه وسلم himself penned down this peace treaty as this hadith tells us. Most of them assert that he did not write it and in fact, could not write at all because Allah, the Exalted, has called him ummi (unlettered). An ummi can neither read nor write.

Other scholars say that the Prophet صلى الله عليه وسلم did actually write it. Though he is called an ummi when his Prophethood and messenger ship were universally confirmed beyond doubt and he was clearly known to be Allah's Messenger, Allah enabled him to write. Or, his writing at time was a miracle. These scholars cite this hadith.

However, the first-mentioned ulama (Scholars) say that he is said to have written in the same sense as one says, "The king built that city." Clearly, this means that he had it built. So, here, too, the Prophet صلى الله عليه وسلم had the document written.

CHAPTER - XI

THE EXPULSION OF THE JEWS FROM (THE PENINSULA OF) ARABIA

بَابُ اِخْرَاجِ الْيَهُوْدِ مِنْ جَزِيْرَةِ الْعَرَبِ

The word Jazira is a piece or tract of land surrounded by water on all sides.

The jaziratul-Arab is the region surrounded by the Indian Ocean, Gulf Sea,Tigris and Euphrates.It extends from Aden to Syria,from Jeddah to the coasts of Iraq.(According to Al-Mawrid a peninsula is shibul jazirah and a jazirah is an island,so it is a semi-island)

SECTION I — اَلْفَصْلُ الْاَوَّلُ

EXPULSION OF JEWS FROM ARABIA

(٤٠٥٠) عَنْ اَبِيْ هُرَيْرَةَ قَالَ بَيْنَا نَحْنُ فِي الْمَسْجِدِ خَرَجَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ انْطَلِقُوْا اِلٰى يَهُوْدَ فَخَرَجْنَا مَعَهٗ حَتّٰى جِئْنَا بَيْتَ الْمِدْرَاسِ فَقَامَ النَّبِيُّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَقَالَ يَا مَعْشَرَ يَهُوْدَ اَسْلِمُوْا تَسْلَمُوْا اِعْلَمُوْا اَنَّ الْاَرْضَ لِلّٰهِ وَلِرَسُوْلِهٖ وَاِنِّيْ اُرِيْدُ اَنْ اُجْلِيَكُمْ مِنْ هٰذِهِ الْاَرْضِ فَمَنْ وَجَدَ مِنْكُمْ بِمَالِهٖ شَيْئًا فَلْيَبِعْهُ۔ (متفق عليه)

4050. Sayyiduna Abu Hurayrah رضى الله عنه narrated that while they were sitting in the mosque, the Prophet صلى الله عليه وسلم came out to them (from his home) and said, "Come to the Jews." So, they went out with him till they came to their place of religious education. The Prophet صلى الله عليه وسلم stood (there) and said, "O company of Jews accept Islam and you will be safe (from worldly anxieties and punishment in the hereafter) Know! The land belongs to Allah and His Messenger (for Allah is the Creator and the Messenger is His vicegerent on earth). So, (if you refuse to accept

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Islam) then I intend to expel you from this land (Arabia). If anyone of you has (immovable) property of any kind (that he cannot carry away), let him sell it."[1]

(٤٠٥١) وَعَنِ ابْنِ عُمَرَ قَالَ قَامَ عُمَرُ خَطِيْبًا فَقَالَ اِنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ كَانَ عَامَلَ يَهُوْدَ خَيْبَرَ عَلٰى اَمْوَالِهِمْ وَ قَالَ نُقِرُّكُمْ مَا اَقَرَّكُمُ اللّٰهُ وَقَدْ رَأَيْتُ اِجْلَائَهُمْ فَلَمَّا اَجْمَعَ عُمَرُ عَلٰى ذٰلِكَ اَتَاهُ اَحَدُ بَنِي اَبِي الْحُقَيْقِ فَقَالَ يَا اَمِيْرَ الْمُؤْمِنِيْنَ اَتُخْرِجُنَا وَقَدْ اَقَرَّنَا مُحَمَّدٌ وَعَامَلَنَا عَلَى الْاَمْوَالِ فَقَالَ عُمَرُ اَظَنَنْتَ اِنِّي نَسِيْتُ قَوْلَ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ كَيْفَ بِكَ اِذَا اُخْرِجْتَ مِنْ خَيْبَرَ تَعْدُوْ بِكَ قَلُوْصُكَ لَيْلَةً بَعْدَ لَيْلَةٍ فَقَالَ هٰذِهِ كَانَتْ هُزَيْلَةً مِنْ اَبِي الْقَاسِمِ فَقَالَ كَذَبْتَ يَا عَدُوَّ اللّٰهِ فَاَجْلَا هُمْ عُمَرُ وَاَعْطَاهُمْ قِيْمَةَ مَا كَانَ لَهُمْ مِنَ الثَّمَرِ مَالًا وَاِبِلًا وَعُرُوْضًا مِنْ اَقْتَابٍ وَ حِبَالٍ وَ غَيْرِ ذٰلِكَ۔ (رواه البخاری)

4051. Sayyiduna Ibn Umar رضی اللہ عنہ narrated: Umar رضی اللہ عنہ stood up (one day) to deliver a sermon. He said, "(As you know,) Allah's Messenger صلی اللہ علیہ وسلم had decided that the Jews of Khaybar should work on their property (and keep and own their gardens but give us half of their produce and income and they would also pay the Jizyah). HE had also said, "We would let you stay (in Khaybar) as long as Allah lets you stay." Indeed, now I perceive that there is good in expelling them.
When Umar رضی اللہ عنہ decided on that, a man of there Banu Abul Huqayq (an old man and their chief) came to him and said, "O Amir ul-Mumin, will you expel us while Muhammad صلی اللہ علیہ وسلم had let us stay and had retained us in our (gardens and) property?" Umar رضی اللہ عنہ asked, "Do you suppose that I have forgotten the saying of Allah's Messenger صلی اللہ علیہ وسلم asking you, 'How would you feel when you are expelled from Khaybar and your camel runs along with you, night after night?" He said, 'Abul Qasim had said that in a light-heated manner.' Umar رضی اللہ عنہ said, 'You like O enemy of Allah.'
Then, he expelled them. He compensated them for their fruits by giving them the equivalent in money. Camels and miscellaneous things like saddles, ropes, etc.[2]

PROPHET'S INSTRUCTIONS TO OUST THE POLYTHEISTS FROM ARABIA

(٤٠٥٢) وَعَنِ ابْنِ عَبَّاسٍ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَوْصٰى بِثَلَاثَةٍ قَالَ اَخْرِجُوا الْمُشْرِكِيْنَ مِنْ جَزِيْرَةِ الْعَرَبِ وَاَجِيْزُوا الْوَفْدَ بِنَحْوِمَا كُنْتُ اُجِيْزُهُمْ قَالَ ابْنُ عَبَّاسٍ وَسَكَتَ عَنِ الثَّالِثَةِ اَوْ قَالَ فَاُنْسِيْتُهَا۔ (متفق علیہ)

4052. Sayyiduna Ibn Abbas رضی اللہ عنہ narrated that Allah's Messenger رضی اللہ عنہ gave (them) three instructions (at the time of his death). He said, "Expel the polytheist's from Arabia (meaning, Makkah and Madinah). Threat the envoys and messengers as I treat them."
The narrator said that Ibn Abbas رضی اللہ عنہ observed silence concerning the third

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[1] Bukhari # 3167, Muslim # 61-1765.
[2] Bukhari # 2730.

instruction or Ibn Abbas رضی اللہ عنہ said, "I have forgothen it."[1]

COMMENTARY: Qadi Iyad رضی اللہ عنہ suggested that the third thing could be the Prophet's صلی اللہ علیہ وسلم saying :

لا تتخذ واقبری وثنا یعبد

(Do not take my grave as an idol that is worshipped.)
Muwatta Imam Maalik

EXPULSION OF JEWS AND CHRISTIANS FROM ARABIA

(٤٠٥٣) وَعَنْ جَابِرِبْنِ عَبْدِاللّٰهِ قَالَ اَخْبَرَنِي عُمَرُبْنُ الْخَطَّابِ اَنَّهُ سَمِعَ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يَقُوْلُ لَاُخْرِجَنَّ الْيَهُوْدَ وَالنَّصَارٰى مِنْ جَزِيْرَةِ الْعَرَبِ حَتّٰى لَا اَدَعَ فِيْهَا اِلَّا مُسْلِمًا۔ رَوَاهُ مُسْلِمٌ وَفِيْ رِوَايَةٍ لَئِنْ عِشْتُ اِنْ شَاءَ اللّٰهُ لَاُخْرِجَنَّ الْيَهُوْدَ وَالنَّصَارٰى مِنْ جَزِيْرَةِ الْعَرَبِ۔

4053. Sayyiduna Jabir ibn Abdullah رضی اللہ عنہ narrated that (Sayyiduna) Umar ibn Khattab رضی اللہ عنہ informed him that he had heard Allah's Messenger صلی اللہ علیہ وسلم say, "I shall certainly expel the Jews and the Christians from Arabia so that I shall leave no one in it but Muslims."
Another version is (he said): "If I live then insha Allah, I shall certainly expel the Jews and the Christians from Arabia."[2]

SECTION II اَلْفَصْلُ الثَّانِيْ

لَيْسَ فِيْهِ اِلَّا حَدِيْثُ ابْنُ عَبَّاسٍ لَا يَكُوْنُ قِبْلَتَانِ وَقَدْ مَرَّ فِيْ بَابِ الْجِزْيَةِ۔

There is no hadith in it except the one of Ibn Abbas رضی اللہ عنہ on there being no two qiblas (#4037), mentioned already under jizyah.

SECTION III اَلْفَصْلُ الثَّالِثُ

UMAR رضی اللہ عنہ WAS INSTRUMENTAL IN EXPELLING JEWS AND CHRISTIANS FROM ARABIA.

(٤٠٥٤) عَنِ ابْنِ عُمَرَ اَنَّ عُمَرَ ابْنَ الْخَطَّابِ اَجْلَى الْيَهُوْدَ وَالنَّصَارٰى مِنْ اَرْضِ الْحِجَازِ وَكَانَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ لَمَّا ظَهَرَ عَلٰى اَهْلِ خَيْبَرَ اَرَادَ اَنْ يُخْرِجَ الْيَهُوْدَ مِنْهَا وَكَانَتِ الْاَرْضُ لَمَّا ظُهِرَ عَلَيْهَا لِلّٰهِ وَرَسُوْلِهٖ وَلِلْمُسْلِمِيْنَ فَسَاَلَ الْيَهُوْدُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَنْ يَتْرُكَهُمْ عَلٰى اَنْ يَكْفُوا الْعَمَلَ وَلَهُمْ نِصْفُ الثَّمَرِ فَقَالَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ نُقِرُّكُمْ عَلٰى ذٰلِكَ مَاشِئْنَا فَاُقِرُّوا حَتّٰى اَجْلَاهُمْ عُمَرُ فِيْ اِمَارَتِهٖ اِلٰى تَيْمَاءَ وَاَرِيْحَاءَ۔ (متفق علیہ)

4054. Sayyiduna Ibn Umar رضی اللہ عنہ reported that Umar ibn Khattab رضی اللہ عنہ expelled the Jews and the Christians from the land of the Hijaz. Indeed, when Allah's

[1] Bukhari # 3053, Muslim # 20. 1637.
[2] Muslim # 63-1767.

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Messenger صلى الله عليه وسلم had prevailed over the people of Khaybar, he had intended to expel the Jews from it, for when any land is conquered, it belongs to Allah, His Messenger and the Muslims (and only Allah's religion holds supreme).. But, the Jews requested the Messenger of Allah to spare them on condition that they should tend to the fields and cultivate them against half of the produce. So Allah's Messenger صلى الله عليه وسلم said, "We shall let you stay (at Khaybar) on that condition (which you propse) for as long as we wish" So, they were permitted to stay (at Khaybar) till Umar ousted them during his caliphate to Tayma and Ariha.[1]

CHAPTER - XII

THE FAI

بَابُ الْفَيْءِ

What is fai: Fai is the property that the Muslims acquire from the infidels without engaging in battle. All of it belongs to the Muslims. Neither is the Khums (or one-fifth) taken from it, nor is it divided among the warriors. In the time of the Prophet صلى الله عليه وسلم, when an army returned with Fai, the Prophet صلى الله عليه وسلم used his discretion to give it to whomsoever he wished. He gave and withheld as he deemed best, and also bestowed much to some and little to others.

As for the property acquired by the Muslims from the infidels after battle, it is called ghanimah; or booty (or spoils). One-fifth is taken from it. Then it is divided among the warriors, the footman getting one share and the horseman getting two shares.

SECTION I — اَلْفَصْلُ الْاَوَّلُ

WHERE IS FAI SPENT

(٤٠٥٥) عَنْ مَالِكِ بْنِ اَوْسِ بْنِ الْحَدَثَانِ قَالَ قَالَ عُمَرُ بْنُ الْخَطَّابِ اِنَّ اللّٰهَ قَدْ خَصَّ رَسُوْلَهُ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فِيْ هٰذَا الْفَيْءِ بِشَيْءٍ لَمْ يُعْطِهِ اَحَدًا غَيْرَهُ ثُمَّ قَرَأَ مَا اَفَآءَ اللّٰهُ عَلٰى رَسُوْلِهٖ مِنْهُمْ اِلٰى قَوْلِهٖ قَدِيْرٌ فَكَانَتْ هٰذِهٖ خَالِصَةً لِرَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ يُنْفِقُ عَلٰى اَهْلِهٖ نَفَقَةَ سَنَتِهِمْ مِنْ هٰذَا الْمَالِ ثُمَّ يَاْخُذُ مَا بَقِيَ فَيَجْعَلُهٗ مَجْعَلَ مَالِ اللّٰهِ۔ (متفق علیه)

4055. Sayyiduna Maalik ibn Aws ibnHadathan رضى الله عنه reported that Umar ibn Khattab رضى الله عنه said "Surely Allah bestowed on His Messenger صلى الله عليه وسلم an exclusive share in this Fai as He gave to no one else." Then, he recited.

مَا اَفَآءَ اللّٰهُ عَلٰى رَسُوْلِهٖ مِنْهُمْ ..... قَدِيْرٌ

{And whatsoever Allah has restored to His Messenger from them, for this you urged not any horse or any riding camel, but Allah gives authority to His Messengers over whomsoever He will. And Allah has power over everything.} (59: 6).

"It was only for Allah's Messenger صلى الله عليه وسلم. He gave his family their annual allowance from this property and took the remainder to (use and) spend as he used

[1] Bukhari # 3152, Muslim # 6-1551.

Allah's property."[1]

COMMENTARY: The verse cited is the sixth of Surah al-Hashr. Allah tells the Muslims in this verse that He let His Messenger صلى الله عليه وسلم have all the property of the Banu Nadir to manage and administer at his discretion. It was acquired without Fighting and strenuous effort.

The Bano Nadir was commended to get out of Madinah but they did not comply. So the Prophet صلى الله عليه وسلم and his Sahabah رضى الله عنه set pit against them on fast since they were about two miles from Madinah. But, there was no need to fight because the Banu Nadir gave up after a short siege. They departed with whatever they could carry on their camels up to Khaybar. All their properties were seized for the Prophet صلى الله عليه وسلم, all of it being regarded as Fai. The foregoing verse was revealed to let the Muslims know that whatever was taken was not divisible. It was not ghanimah (booty). It belonged to the Prophet صلى الله عليه وسلم and he could use it as he wished.

The Hanafis' Follow the same ruling as outlined in the foregoing lines. However, Teebi رضى الله عنه said that according to Imam Shafi رضى الله عنه Fai is divided into twenty-Five portions, twenty-one of which are used by the Prophet صلى الله عليه وسلم for his own self. The remaining four are used for his relatives who are orphans, the needy and the travellers.

It is stated in Tafsir Mu-a-lim ut Tanzil that the ulama (Scholars) differ on the management and administration of Fai after the death of the Prophet صلى الله عليه وسلم. Some say that it is the persuasive of the Islamic State. Imam Shafi رضى الله عنه gave two opinions:

(i) It is the right of the warriors and is divided among them.

(ii) It is used for the general good of the Muslims.

As for giving his family one year's allowances we know from other ahadith that the Prophet صلى الله عليه وسلم never kept aside anything for the morrow for himself. He never accumulated anything for himself at any time.

Also, he never gave his wives as annual allowances regularly.It was only sometimes that he gave them.

Imam Nawawi رضى الله عنه said that we learn from this that it is allowed to keep aside necessities of life for one year. It does not go against tawakkul (trust in Allah).

(٤٠٥٦) وَعَنْ عُمَرَ قَالَ كَانَتْ اَمْوَالُ بَنِي النَّضِيْرِ مِمَّا اَفَاءَ اللّٰهُ عَلٰى رَسُوْلِهٖ مِمَّا لَمْ يُوْجِفِ الْمُسْلِمُوْنَ عَلَيْهِ بِخَيْلٍ وَلَا رِكَابٍ فَكَانَتْ لِرَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ خَاصَّةً يُنْفِقُ عَلٰى اَهْلِهٖ نَفَقَةَ سَنَةٍ ثُمَّ يَجْعَلُ مَا بَقِيَ فِي السَّلَاحِ وَالْكُرَاعِ عُدَّةً فِيْ سَبِيْلِ اللّٰهِ۔ (متفق عليه)

4056. Sayyiduna Umar رضى الله عنه said that the properties of Banu Nadir were of the kind that Allah had granted to His Messenger صلى الله عليه وسلم (without effort) for which the Muslims did not have to ride on horses or camels. Hence, they belonged specifically to Allah's Messenger صلى الله عليه وسلم. (From this) he gave provision (and expenses) to his members of the household for one year. He allocated the remainder to buy weapons and horses to be used (in *jihad (crusade)*) in Allah's path.[2]

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[1] Bukhari # 3094, Muslim # 49-1775.

[2] Bukhari # 2904, Muslim # 48. 1754.

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SECTION II اَلْفَصْلُ الثَّانِيْ

DIVISION OF FAI BY THE PROPHET صلی اللہ علیہ وسلم

(٤٠٥٧) عَنْ عَوْفِ بْنِ مَالِكٍ اَنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ كَانَ اِذَا اَتَاهُ الْفَيْءُ قَسَمَهُ فِيْ يَوْمِهٖ فَاَعْطَى الْاَهْلَ حَظَّيْنِ وَاَعْطَى الْاَعْزَبَ حَظًّا فَدُعِيْتُ فَاَعْطَانِيْ حَظَّيْنِ وَكَانَ لِيْ اَهْلٌ ثُمَّ دُعِيَ بَعْدِيْ عَمَّارُ بْنُ يَاسِرٍ فَاُعْطِيَ حَظًّا وَاحِدًا۔ (رواہ ابوداؤد)

4057. Sayyiduna Awf ibn Maalik رضی اللہ عنہ narrated, "When Allah's Messenger صلی اللہ علیہ وسلم received the Fai, he divided it that very day (among the needy). He gave two portions to a married man and one portion to an unmarried man. I was called and was given two portions, because I was a man with a family and Ammar ibn Yasir was called after me and given one portion."[1]

(٤٠٥٨) وَعَنِ ابْنِ عُمَرَ قَالَ رَاَيْتُ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اَوَّلُ مَاجَائَهٗ شَيْءٌ بَدَأَ بِالْمُحَرَّرِيْنَ۔

(رواہ ابوداؤد)

4058. Sayyiduna Ibn Umar رضی اللہ عنہ narrated, "I observed that the first thing Allah's Messenger صلی اللہ علیہ وسلم did promptly when Fai came to him was to give some of it to those who had been (recently) set free (from slavery)."[2]

COMMENTARY: The recently set free slaves deserved to be given from Fai straightaway because they had no proper refuge and support.
Some people say that the words of the hadith 'have been (recently) set free' refer to the Mukatib (who buy their own freedom). Some others say that it means: منفردین لطاعۃ اللہ (those who are singular in obedience to Allah)

(٤٠٥٩) وَعَنْ عَائِشَةَ اَنَّ النَّبِيَّ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ اُتِيَ بِظَبْيَةٍ فِيْهَا خَرَزٌ فَقَسَمَهَا لِلْحُرَّةِ وَالْاَمَةِ قَالَتْ عَائِشَةُ كَانَ اَبِيْ يُقْسِمُ لِلْحُرِّ وَالْعَبْدِ۔ (رواہ ابوداؤد)

4059. Sayyidah Ayshah رضی اللہ عنہا said that a pouch containing beads was brought to the Prophet صلی اللہ علیہ وسلم. He divided them among the freewomen and female slaves. She said that her father (when he received anything) divided them between freemen and (male) slaves.[3]

COMMENTARY: The Prophet صلی اللہ علیہ وسلم gave the beads to women only. But Abu bakr رضی اللہ عنہ gave them to men too.

FA'I IS DIVIDED EQUALLY TO ALL

(٤٠٦٠) وَعَنْ مَالِكِ بْنِ اَوْسِ بْنِ الْحَدَثَانِ قَالَ ذَكَرَ عُمَرُ بْنُ الْخَطَّابِ يَوْمًا الْفَيْءَ فَقَالَ مَا اَنَا بِاَحَقَّ بِهٰذَا الْفَيْءِ مِنْكُمْ وَمَا اَحَدٌ مِنَّا بِحَقٍّ بِهٖ مِنْ اَحَدٍ اِلَّا اَنَا عَلٰى مَنَازِلِنَا مِنْ كِتَابِ اللّٰهِ عَزَّوَجَلَّ وَقَسْمِ رَسُوْلِهٖ صَلَّى اللّٰهُ

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[1] Abu Dawud # 2953.
[2] Abu Dawud # 2951.
[3] Abu Dawud # 2952.

عَلَيْهِ وَسَلَّمَ فَالرَّجُلُ وَقِدَمُهُ وَالرَّجُلُ وَبَلَاؤُهُ وَالرَّجُلُ وَعِيَالُهُ وَالرَّجُلُ وَحَاجَتُهُ۔ (رواه ابوداؤد)

4060. Sayyiduna Maalik ibn Aws ibn Hadathan رحمه الله narrated that one day Umar ibn Khattab رضی الله عنه mentioned the fa'i. He said, "I am not more deserving of this fa'I than you are. And none of us is more deserving of it than anyone else. However we are placed at our (position and) ranks as determined by the book of Allah, Mighty and Glorious, and the division made by His Messenger صلی الله علیه وسلم. Hence, there is this one who proceeded (in accepting Islam) and there is one who endures hardships (for religion), and there is one who has a family, and there is one who has his needs."[1]

COMMENTARY: Sayyiduna Umar ibn Khattab رضی الله عنه set doubts at rest that he was no more deserving of fa'I lest people thought that as a caliph of the Prophet صلی الله علیه وسلم who was most deserving of this property, the right passed down to him.It was not so. He also made it clear that no one could more deserving than anyone else. So this statement applied to all people as a general maxim.

The only principle to determine that was difference in ranks to find out the most deserving; this is clearly defined in Allah's Book in His words:

لِلْفُقَرَآءِ وَالْمُهَاجِرِيْنَ

{(It is) for the poor emigrants who were expelled from their homes and their possessions...

(upto) Our Lord, You are Gracious, Merciful} (59: 8-10) 3 verses.

And, also

وَالسَّابِقُوْنَ الْاَوَّلُوْنَ مِنَ الْمُهَاجِرِيْنَ وَالْاَنْصَارِ

{And the foremost, the first of the Muhajirs (emigrants) and the ansars....

(upto) That is a mighty triumph} (9: 100)

The ranks of the Muslims differ and everyone should be given more or less than another depending on their ranks and standing.

These differences in ranks are mentioned in Allah's Book as well as the Prophet's صلی الله علیه وسلم division. He gave a greater share to the participants رضی الله عنه of the Battle of Badr. So, too, the Sahabah (Prophet's Companions) رضی الله عنهم who pledged at the Ba'yt Ridwan was preferred over the others.

Then, in his speech, Umar رضی الله عنه mentioned the different categories of people who get preference in the distribution of Fai. They are mentioned in the hadith.

(٤٠٦١) وَعَنْهُ قَالَ قَرَأَ عُمَرُ بْنُ الْخَطَّابِ اِنَّمَا الصَّدَقَاتُ لِلْفُقَرَآءِ وَالْمَسَاكِيْنَ حَتّٰى بَلَغَ عَلِيْمٌ حَكِيْمٌ فَقَالَ هٰذِهِ لِهٰؤُلَاءِ ثُمَّ قَرَأَ وَاعْلَمُوْآ اَنَّمَا غَنِمْتُمْ مِّنْ شَيْءٍ فَاَنَّ لِلّٰهِ خُمُسَهٗ وَلِلرَّسُوْلِ حَتّٰى بَلَغَ وَابْنِ السَّبِيْلِ ثُمَّ قَالَ هٰذَا لِهٰؤُلَاءِ ثُمَّ قَرَأَ مَا اَفَآءَ اللّٰهُ عَلٰى رَسُوْلِهٖ مِنْ اَهْلِ الْقُرٰى حَتّٰى بَلَغَ لِلْفُقَرَآءِ ثُمَّ قَرَأَ وَالَّذِيْنَ جَآءُوْا مِنْ بَعْدِهِمْ ثُمَّ قَالَ هٰذِهِ اسْتَوْعَبَتِ الْمُسْلِمِيْنَ عَامَّةً فَلَئِنْ عِشْتُ فَلَيَاْتِيَنَّ الرَّاعِيَ وَهُوَ بِسَرْوِ حِمْيَرَ يُصِيْبُهُ مِنْهَا لَمْ يَعْرَقْ

[1] Abu Dawud # 2850.

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فِيْهَا جَبِيْنُهُ۔ (رواه فی شرح السنة)

4061. Sayyiduna Maalik ibn Aws Hadathan رضی اللہ عنہ narrated that (Sayyiduna) Umar ibn Khattab رضی اللہ عنہ (once) recited:

إِنَّمَا الصَّدَقٰتُ لِلْفُقَرَآءِ وَالْمَسَاكِيْنِ..... عَلِيْمٌ حَكِيْمٌ

(Surah at Tawbah, verse so)
He said, "This verse is about these people" (who are eligible for Zakat). Then, he recited:

وَاعْلَمُوْٓا اَنَّمَا غَنِمْتُمْ مِّنْ شَيْءٍ فَاَنَّ لِلّٰهِ خُمُسَهٗ وَلِلرَّسُوْلِ..... وَابْنِ السَّبِيْلِ

(8: 41-al-Anfal, verse 41).
He said, "This verse is about these people" (who are the eligible for the Khums (one fifth)) Again, he recited:

مَآ اَفَآءَ اللّٰهُ..... لِلْفُقَرَآءِ

(al Hashr, 59: 7-8) And, he then recited:

وَالَّذِيْنَ جَآءُوْا مِنْۢ بَعْدِهِمْ

(al Hashr, 59: 10)
He said, "This verse embraces all the Muslims. If I live (no Muslim will be there in my territories that will not get his share), even the sheered will get his share of Fai at Sarw and Himyar without an inkling of Sweat on his forehead." (Meaning that he will not have to work for it even a little.)[1]

COMMENTARY: At the last word recited by him, Sayyiduna Umar رضی اللہ عنہ said, "This verse embraces all the Muslims." He meant that the kinds of people mentioned in it as eligible to get do cover. All the Muslim .As against this, the first two verses mention only those who deserve the Khums (one fifth).

Sayyiduna Umar رضی اللہ عنہ was not in favour of drawing Khums (one fifth) from the Fai as is taken out from ghanimah ((booty). He held that all of the Fai must be spent on the good of the Muslims in accordance with the difference of ranks outlined in the Quran and hadith. It is their right. Most of the ulama (Scholars), with the notable exception of Imam Shafi رضی اللہ عنہ subscribe to this contention.

Moreover, Sayyiduna Umar رضی اللہ عنہ also held that Fai should be divided in keeping with ranks of the Muslims. However, Sayyiduna Abu Bakr رضی اللہ عنہ was of the opinion that every Muslim has an equal share. He did not consider it necessary to esteem anyone's ancient Islam or lineage, etc. He would say, "These things will be valued in the hereafter. If anyone has become a Muslim before others and if anyone has shown more courage in religion and endured more hardship, then these deeds were done for Allah's sake. So, only Allah will give reward for that. These things should not be made standard for more monetary benefits.

As for Sayyiduna Umar رضی اللہ عنہ, he respected differences in ranks. So when he divided the property, he gave more to Sayyidah Ayshah رضی اللہ عنہا than he gave to Sayyidah Hafsah رضی اللہ

[1] Sharh us-Sannah # 2740.

عنها. He explained to her, "Daughter I give more to Ayshah because she was dearer to the Prophet صلى الله عليه وسلم. And her father was dearer to him than your father.
Similarly, he gave more to Usamah ibn Zayd رضى الله عنه than to his son Abdullah ibn Umar رضى الله عنه, saying that the Prophet صلى الله عليه وسلم loved him more that Ibn Umar رضى الله عنه and that Usamah's رضى الله عنه Father was dearer to him than Ibn Umar's father.
Himyar is a place in Yemen. It is known after the tribe that resides here and bears this name.
Sarw was a place in Himyar. (But Mu'jamut Buldan says that sarw(سرو) is the name of different manzils (stages of journey) in Yemen. Sarw al-ala, Sarw al-mandad, Sarw Sabin, Sarw al-Mala and Sarw ar-ra'l (between Tay and Ard Kalb).
In conclusion, Umar رضى الله عنه expressed hope and determination that if he lived and his caliphate grew larger, he would not fail to let every Muslim in his territories, even in far flung areas, have his share of Fa'i. They will not have to make any efforts.

THREE THINGS EXCLUSIVELY FOR THE PROPHET صلى الله عليه وسلم

(٤٠٦٢) وَعَنْهُ قَالَ كَانَ فِيمَا احْتَجَّ بِهِ عُمَرُ اَنْ قَالَ كَانَتْ لِرَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ ثَلَاثُ صَفَايَا بَنُوْ النَّضِيْرِ وَ خَيْبَرُ وَفَدَكُ فَاَمَّا بَنُوْ النَّضِيْرِ فَكَانَتْ حُبْسًا لِنَوَائِبِهِ وَاَمَّا فَدَكُ فَكَانَتْ حُبْسًا لِاَبْنَاءِ السَّبِيْلِ وَاَمَّا خَيْبَرُ فَجَزَّاَهَا رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ ثَلَاثَةَ اَجْزَاءٍ جُزْئَيْنِ بَيْنَ الْمُسْلِمِيْنَ وَجُزْءٍ نَفَقَةً لِاَهْلِهِ فَمَا فَضَلَ عَنْ نَفَقَةِ اَهْلِهِ جَعَلَهُ بَيْنَ فُقَرَاءِ الْمُهَاجِرِيْنَ(رواه ابوداؤد)

4062. Sayyiduna Maalik ibn Aws ibn Hadathan رضى الله عنه said that among the arguments presented by Umar رضى الله عنه was his contention that for Allah's Messenger صلى الله عليه وسلم three kinds of property were exclusive. (They were). The Banu Nadir, Khaybar and Fadak. The properties of the Banu Nadir were solely at his disposal (after they were exiled, to spend on hospitality to guests, for providing weapons, buying horses, and so on). The revenue from Fadak was (spent) for travellers (who had exhausted their funds during travel). And (the revenues from) Khaybar were divided into three portions by Allah's Messenger صلى الله عليه وسلم: two or which he set aside for the Muslims and one for his family. If anything remained after providing his family, he spent that on the poor Muhajirs (emigrants) (emigrants).[1]

COMMENTARY: (When the Prophet صلى الله عليه وسلم died) Sayyiduna Abbas رضى الله عنه and Ali رضى الله عنه came } To Umar رضى الله عنه for the property at Fadak. He did not accept their demand. He explained to them as stated in the hadith about the properties to which the Prophet صلى الله عليه وسلم had exclusive right. Other Sahabah (Prophet's Companions) رضى الله عنهم was present at the time and no one questioned his explanation, so this was the base of his evidence. Then, Umar رضى الله عنه appointed both of them as trustees over the revenue from Fadak to use it in the same way as the Prophet صلى الله عليه وسلم had spent it on different heads of account.
The Arabic word Safaya in the text refers to the prerogative of the Prophet صلى الله عليه وسلم to take anything from the spoils over and above the one-fifth(Khams), like a slave, sword, horse, etc. After him, no other ruler is allowed to do so.

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[1] Abu Dawud # 2967.

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Fadak was an inhabitation in the neighbourhood of Khaybar. It was at a distance of two days from Madinah, a fertile land known for its dates and other fruits. Allah's Messenger صلى الله عليه وسلم got it through negotiations for peace. The residents had half of its lands while the Prophet صلى الله عليه وسلم got the remaining half. He used its income and produce as mentioned in the hadith.

The Prophet صلى الله عليه وسلم divided the revenue of Khaybar in three portions because it was to collection of many villages and towns. Some were taken after fighting and some surrendered peacefully. The collection from the former was booty, So the Prophet صلى الله عليه وسلم took the one-fifth from it. The recipts from the latter were Fa'I, so they were at his sole discretion. He used the Fa'i for his family and the welfare of the Muslim community.

SECTION III اَلْفَصْلُ الثَّالِثُ

THE BACKGROUND OF FADAK

(٤٠٦٣) عَنِ الْمُغِيْرَةِ بْنِ شُعْبَةَ قَالَ اِنَّ عُمَرَ بْنَ عَبْدِالْعَزِيْزِ جَمَعَ بَنِي مَرْوَانَ حِيْنَ اسْتُخْلِفَ فَقَالَ اِنَّ رَسُوْلَ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ كَانَتْ لَهٗ فَدَكُ فَكَانَ يُنْفِقُ مِنْهَا وَ يَعُوْدُ مِنْهَا عَلٰى صَغِيْرِ بَنِي هَاشِمٍ وَيُزَوِّجُ مِنْهَا اَيِّمَهُمْ وَاَنَّ فَاطِمَةَ سَأَلَتْهُ اَنْ يَجْعَلَهَا لَهَا فَاَبٰى فَكَانَتْ كَذٰلِكَ فِيْ حَيَاتِ رَسُوْلِ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ حَتّٰى مَضٰى لِسَبِيْلِهٖ فَلَمَّا اَنْ وُلِّيَ اَبُوْبَكْرٍ عَمِلَ فِيْهَا بِمَا عَمِلَ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَلَمَّا اَنْ وُلِّيَ عُمَرُ بْنُ الْخَطَّابِ عَمِلَ فِيْهَا بِمِثْلِ مَا عَمِلَ حَتّٰى مَضٰى لِسَبِيْلِهٖ ثُمَّ اقْتَطَعَهَا مَرْوَانُ ثُمَّ صَارَتْ لِعُمَرَ بْنِ عَبْدِالْعَزِيْزِ فَرَأَيْتُ اَمْرًا مَنَعَهٗ رَسُوْلُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ فَاطِمَةَ لَيْسَ لِيْ بِحَقٍّ وَاِنِّيْ اُشْهِدُكُمْ اَنِّيْ رَدَدْتُّهَا عَلٰى مَا كَانَتْ يَعْنِيْ عَلٰى عَهْدِ رَسُوْلِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ وَاَبِيْ بَكْرٍ وَعُمَرَ۔ (رواه ابوداؤد)

4063. Sayyiduna Mughirah ibn Shubah said that when Umar ibn Abdul Aziz رحمه الله became caliph, he gathered the children of Marwan and said, "Allah's Messenger صلى الله عليه وسلم had an exclusive right on Fadak. He spent its revenues (income and produce) on his family, the poor and the needy. He showed kindness to the young children of the Banu Hashim and bore the expenses of the marriage of the unmarried women (and men). Sayyidah Fatimah رضى الله عنها had asked him to give it (Fadak) to her, but he refused. It continued in that way during the lifetime of Allah's Messenger صلى الله عليه وسلم till he went his way (meaning, he died (مَضٰى لِسَبِيْلِهٖ) when (after his death) Abu Bakr رضى الله عنه was made Khalifah (caliph), he did with it as Allah's Messenger صلى الله عليه وسلم had been doing (during his lifetime. He spent on the same heads as he had done). When Umar ibn Khattab رضى الله عنه was made Khalifah, he did with it as they had done till he (too) went his way. Then (in the time Uthman رضى الله عنه as Khalifa, or in his own rule as king,) Marwan appropriated it for himself (as his property and of his heirs). Then, after that, it has come to Umar ibn Abdul Aziz (ibn Marwan). But, I conclude that I do not deserve to possess that which Allah's Messenger صلى الله عليه وسلم had denied (his daughter, Sayyidah) Fatimah رضى الله عنها. Hence, I ask you to bear witness that I have restored it (Fadak) to its condition at which it was meaning in the days of Allah's Messenger صلى الله عليه وسلم , Abu Bakr رضى الله

عنه and Umar رضی اللہ عنہ. (Its revenue will be spent in the same way as they had been spending and allocating it.)[1]

COMMENTARY: As stated earlier (particularly hadith # 4062), the properties of Banu Nadir, Fadak and Khaybar were exclusively for the Prophet صلی اللہ علیہ وسلم. Since he had died while they were in his possession, some of his ahlulbayt (people of his house and family) claimed in heritance and demanded their portion of these properties some of them dispute over them among themselves too. But, this was a passing phase based on a misunderstanding. However, some perverse minds of succeeding generations have begun to nead mischief in this dispute. They invent long stories and have misled many people.. So, we deem it proper to select relative material from the sihah sittah (six authentic books) to throw some light on this disagreement (to remove the misunderstanding).

Sahih Bukhari has the hadith of Maalik ibn Aws ibn Hadathan رحمہ اللہ . He was called by Umar ibn Khattab رضی اللہ عنہ. While he was there, his slave Yarfa رضی اللہ عنہ announced the arrival of Uthman ibn Affan رضی اللہ عنہ, Abdur Rahman ibn Awf رضی اللہ عنہ, Zubayr ibn Awam and sa'd ibn Abu Waqar رضی اللہ عنہ. Umar رضی اللہ عنہ instructed him to let them in. After a while, he announced the arrival of Abbas رضی اللہ عنہ and Ali رضی اللہ عنہ and they too were led to Umar رضی اللہ عنہ. Abbas رضی اللہ عنہ said to him, "O Amir ul-Muminin, decide between us. Ali quarrels with me about the property of Banu Nadir which Allah had allotted to His Messenger صلی اللہ علیہ وسلم as fa'i." Then Abbas رضی اللہ عنہ and Ali رضی اللہ عنہ raised their voices and argued with one another. Those people who were around recommended to Umar رضی اللہ عنہ that he should get the two men to reconcile. Umar رضی اللہ عنہ asked them to show patience and adjured them by Allah to affirm whether Allah's Messenger صلی اللہ علیہ وسلم had not said, "We Prophets are not inherited. What ever we leave behind is sadaqah (charity) (charity)." They turned to Ali رضی اللہ عنہ and Abbas رضی اللہ عنہ and asked them whether they knew that and they too confirmed, "Yes!" He then reminded them that Allah had granted the fa'I exclusively to His Messenger صلی اللہ علیہ وسلم and to no one else and he recited the verse (59: 6). He added, "He did not take it at the exclusion of you people but gave it to all of you... He gave his family their annual allowances and spent on Allah's cause from it. He continued to do it all his life. Don't you Know?" They affirmed, "Yes! He asked Ali رضی اللہ عنہ and Abbas رضی اللہ عنہ too. They confirmed, too. He went on to remind them that after the Prophet's death, Abu Bakr رضی اللہ عنہ administered and managed that property in the same way as he had done. He said to them that they had not approved of Abu Bakr's رضی اللہ عنہ actions at that time, saying, It was not as you had been saying. But he was a pious and a righteous man, pursuing the right course." When he died and I succeeded him, I have managed that property as they had done and Allah knows that I am honest in this regard. Now, after about two years you have come to me with the same demand. Abbas you had come asking for share from your nephew's property and he for his wife's share from her father's property. I had reminded you of his words, "We Prophets do not inherit. "He said that he then offered to hand over the property to them if they pledged to manage it as Allah's Messenger صلی اللہ علیہ وسلم and Abu Bakr رضی اللہ عنہ had done and as he had been doing. He said, "You agreed to abide by that condition and I handed it over to you." He asked them it that was so and they said,

[1] Abu Dawud # 2972.

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"Yes!" He asked (Sayyiduna) Ali رضی اللہ عنہ and Abbas رضی اللہ عنہ and they too said, "Yes!"
He said, "If you ask for a different decision, I will not do that. If you are unable administer it, then let me have it back, I shall do it for you."[1]
Zuhri رضی اللہ عنہ said that he asked Urwah ibn Zubayr رضی اللہ عنہ about this hadith and he confirmed that it is very correctly reported. He had heard Sayyidah Ayshah رضی اللہ عنہا say that after the Prophet's صلی اللہ علیہ وسلم death, some of his wives approached Uthman رضی اللہ عنہ to ask Abu Bakr رضی اللہ عنہ for their inheritance from the Fa'I that Allah had bestowed on the Prophet صلی اللہ علیہ وسلم. When she learnt of it, she reminded them of the Prophet's صلی اللہ علیہ وسلم saying that the Prophet's صلی اللہ علیہ وسلم do not leave behind anything to inherit. What they leave behind is Sadaqah (charity). They remembered and withdrew their demand.
Urwah رضی اللہ عنہ said that when Umar رضی اللہ عنہ handed over the property of Banu Nadir to Ali رضی اللہ عنہ and Abbas رضی اللہ عنہ concerning which they had wrangled, Ali رضی اللہ عنہ took it away from Abbas رضی اللہ عنہ after some days. Then it went to Hasanibn Ali رضی اللہ عنہ and then to Husayn ibn Ali رضی اللہ عنہ. After that, it went to Ali ibn Husyan رضی اللہ عنہ and Hasan ibn Husayn رضی اللہ عنہ. They administed it by turns. Then it went to Zayd ibn Hasan. "Honestly this (property) is a Sadaqah (charity). It is not anyone's legacy or personal property."[2]
Sayyidah Ayshah رضی اللہ عنہا also narrated that Sayyidah Fatimah رضی اللہ عنہا and Abbas رضی اللہ عنہ met Abu Bakr رضی اللہ عنہ asking for a share in the lands of Fadak and property of Khyber as inheritance. He remanded them of the Prophet's صلی اللہ علیہ وسلم words that the Prophets leave no heirs. What the Prophets صلی اللہ علیہ وسلم leaves no heirs. What they leave is Sadaqah (charity) from which the Prophet's family gets their provision. He also said, "By Allah, it is dearer to me to look after the relatives of the Prophet صلی اللہ علیہ وسلم than to look after my own family."[3]
The compiler of Jami' ul Usul has pointed about the hadith of Bukhari about Ali رضی اللہ عنہ and Abbas رضی اللہ عنہ meeting Umar رضی اللہ عنہ (#3094) that they were not unaware of the Prophet's صلی اللہ علیہ وسلم saying. They only wanted him to separate the administration of the property between both of them to manage each on his own. But Umar رضی اللہ عنہ did not agree to do that. (The intention of each of them was honest.)
Sayyidah Ayshah رضی اللہ عنہا also narrated that Sayyidah Fatimah رضی اللہ عنہا met Abu Bakr رضی اللہ عنہ and asked for her inheritance from the Prophet صلی اللہ علیہ وسلم from the Fa'I property. He told her that it was not possible in view of the Prophet's صلی اللہ علیہ وسلم saying:

لَا نُوْرَثُ مَاتَرَكْنَاهُ صَدَقَةٌ

(We are not inherited and what we leave behind is Sadaqah (charity).)[4]
According to a version, he also said, "The property is under my management. After me, it will be managed by the next Khalifah." Sayyidah Fatimah رضی اللہ عنہا was much displeased with Abu Bakr رضی اللہ عنہ so much so that she stopped exchange of salutations with him till her death which was within six months of the Prophet's صلی اللہ علیہ وسلم demise.

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[1] Bukhari # 3094, Muslim # 49-1757, Abu Dawud # 2693, Musnad Ahmad 1-47, Nasa'I (Fa'i)
[2] Bukhari # 4034.
[3] Bukhari # 4035, 4036.
[4] Bukhari # 3092.

Sayyidah Ayshah رضی اللہ عنہا also narrated that Sayyidah Fatimah رضی اللہ عنہا constantly made her demands of her share of the Prophet's صلی اللہ علیہ وسلم land and gardens in Khaybar and Fadak and her Sadaqah (charity) in Madinah (property of Banu Nadir). But Abu Bakr رضی اللہ عنہ told her all the time that he would not stop to do what the Prophet had been doing; otherwise he would be guilty of giving up the *Sunnah (Prophet's صلی اللہ علیہ وسلم practice).*

After him, Umar رضی اللہ عنہ handed over the Sadaqah (charity)(left by the Prophet صلی اللہ علیہ وسلم) in Madinah to Ali رضی اللہ عنہ and Abbas رضی اللہ عنہ to manage it. He retained management of the lands of Fadak and Khaybar. It was the Sadaqah (charity) left by Allah's Messenger صلی اللہ علیہ وسلم with which his rights were attached. He also made it known that only he would manage these places who would be the Khalifah and ruler. This arrangement continues to this day.

In short, these ahadith and others of the same purport in the six books of hadith are explicit that the words "We leave no legacy and are not inherited). What we leave behind is Sadaqah (charity)," mean: Whatever the Prophet صلی اللہ علیہ وسلم has left belongs to all Muslims. That has to use for their good. Management and administration will rest with the surviving and ruling caliph. All the Sahabah (Prophet's Companions) رضی اللہ عنہم, including Sayyiduna Abbas رضی اللہ عنہ, agrees to it unanimously.

As for the property not being handed over to (Sayyiduna) Abbas رضی اللہ عنہ and (Sayyiduna Ali رضی اللہ عنہ in the beginning, their original demand was on the ownership of all that property. Later, they agreed to act as administrators and managers, and to spend and use exactly as the Prophet صلی اللہ علیہ وسلم had done.

However, the question remains why there was discord between them when all of them were aware of the Prophet's صلی اللہ علیہ وسلم saying about no one inheriting from the Prophets.

The answer is that they were finding combined management difficult, so they wished for management of divided property. But Umar رضی اللہ عنہ did not agree to that because that would have resembled ownership if not at that time, then after some time, for sure. Their argument was that each would manage his own portion without consulting the other more efficiently.

However, the conduct of Sayyidah Fatimah رضی اللہ عنہا is more puzzling then that of Abbas رضی اللہ عنہ and Ali رضی اللہ عنہ. She could not have been unaware of the Prophet's صلی اللہ علیہ وسلم saying that they are not inherited. Yet it we grant that she truly did not know about it, then why did she not accept it when she was told of it and all the Sahabah (Prophet's Companions) رضی اللہ عنہم confirmed it? Kirmani رضی اللہ عنہ explains that her displeasure was human nature. As for not exchanging greetings with Abu Bakr رضی اللہ عنہ, it was only that she was unwilling to meet him on purpose and she avoided him. (It is not the same as severing ties of relationship.)

Besides, some traditions say that when she was displeased, Abu Bakr رضی اللہ عنہ went to her home one day. In spite of the severe heat, he stood at her door and continued to apologize to her. He said, "By Allah, the relatives of the Prophet صلی اللہ علیہ وسلم are dearer to me than mine own relatives (to give them their rights). But, I do not know what else I may do after hearing this hadith and having the testimony of the other Sahabah on it." On that, Sayyidah Fatima's رضی اللہ عنہا displeasure was removed.

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GLOSSARY

Aalim: a scholar.
AAQILAH: relatives descended from one common father and they pay diyat.
Aariyah: a loan or a gift and this loan is of such a thing as cannot be turned into a debt, like a horse.
Aathar: hadith traced to the *sahabah (companions)* رضی اللہ عنہ
Adhan: call to (congregational) salah, announced of time of salah.
AHL ULARD: cultivators of land against kharaj.
Ahl us Suffah: the *Sahabah (companions)* رضی اللہ عنہ who restricted themselves to a platform in the *masjid Nabawi* to learn religion and be close to the Prophet صلی اللہ علیہ وسلم
Ahlus sunnah (practice of Holy Prophet صلی اللہ علیہ وسلم**) wa al-Jama'ah:** the sunnis who follow the Quran and the sunnah (practice of Holy Prophet صلی اللہ علیہ وسلم).
Allahu Akbar: Allah is the Greatest.
Amma ba'd: to proceed, 'and after that.' Those words one spoken after praise of Allah on beginning on address or a sermon.
An bijaniyah: a woolen garment without markings. It is a product of the city *Anbijan* and is of a dark black colour, (And comes under (پنج); one of the meanest hind of course garments.)
Aqiqah: the ceremony of shaving the head of a new born usually on the seventh day of its birth and sacrificing a sheep or two on the occasion.
ARAQA: palm trees loaned for a year.
ASABAT: relative (male) whose shares of inheritance are not determined.
ashab us Suffah see *ahl us Suffah.*
ASHRAH MUBASHSHIRAH: ten who were given glad tidings of paradise (during their life time).
Ashrah: ten days
Ashwah mubash sharun: the ten who are given the glad tidings of admittance to paradise: *Abu Bakr, Umar, Uthman, Ali, Talhah Zubayr, Abdur Rahman ibn Awf, Sa'd ibn Abu Waqqas,, Sa'eed ibn Zayd* and *Abu Ubaydah ibn Jarrah.*
ATHARI: that which stumbles on water by the accident like trees on banks of rivers and man need not water them.
Atirah: a pre Islamic practice or offering made to idols in Rayab's first ten days.
Atood (عتود): a one year old lamb that is fat and well built, but according to some above six months.
AWLIYA (PL OF WALI): Friends of Allah, saintly men.
Awliya (pl of wali): saints, friends of Allah.
Awrat awrah: the portion of the body that must be kept coverd.
Azm: (a kind of ikhtiyari temptation)
Barzakh: the intervening period between this world and the next.
BARZAKH: intermediary period between life and resurrection.
Basmalah: The bismillah ur Rahman ir Rahim (بسم اللہ الرحمن الرحیم)
Bayt Allah: House of Allah
Bid'ah: innovation
Bid'ati: innovator.
BINT LABUN: She camel
BINT MAKHAD: She camel in 2nd year
Bukhariyah: a sect in Islam. It has three group within it.
DA'A MIS (دعامیص) PL OF DA'MUS: roamers of paradise who will not be debarred from any dwelling.
Dar ul Islam: territory of Islam

Dar ul-harb: enemy territory.
Dar ul-Kufr: land of disbelievers.
Daruri: (kind of evil promptings)
De'eef: weak
Dhabihah: slaughter of animal according the prescribed pattern.
DHAW UL ARHAM: relatives other than dhaw ul furud and asabat.
DHAW UL FURUD: heirs whose shares and predetermined by the Quran and *sunnah* or general consensus.
Dhikr: remembrance of Allah
Dhimmi: non Muslim under protection of the Islamic state.
DHIMMI: a non Muslim living under protection of the Islamic state against a regular tribute.
Dubba,al: a gourd (to prepare and store intoxicants like wine and nabidh).
Eed: the festival on 1st Shawal after completing a month of fasting in Ramadan, and on 10th Dhul Hijjah when certain animals are slaughtered.
Eeman: faith
Fadlaat: superfluous like long nails, hair, etc.
Faqih: jurist, jurisprudent, a learned man.
Fara: an offering of the first born of an animal to the idols in pre-Islam.
Fara'id: law of in hesitance, ordinance of Allah, (also pl of fard (obligatory)).
Fard (obligatory) ayn: an obligation on each individual separately.
Fard (obligatory) Kifayah: Collective duty on all Muslims together which if discharged by one, the rest of the group are absolved.
Fard (obligatory) Kifayah: collective obligation which if discharged by some then all are absolved of it.
Fard (obligatory): absolutely obligatory duty.
Fard (obligatory)'ayn: individual duty on each Muslim.
Farruj: an auter garment with a slit on the back.
Fitnah: trial, persecution, strife, mischief.
Fitrah: innate nature, true disposition, Islam, constitution.
Ghayr muwakkadah sunnah (practice of Holy Prophet صلى الله عليه وسلم): what is not stressed by the Prophet صلى الله عليه وسلم.
Ghazi: warrior, one who raids into enemy territory.
Ghurr muhajjalun: Muslims will be so called on the day of resurrection because their limb covered by ablution will shine. (see hadith 290 explanation, Muzahir ul Haq)
Hadath akbar: greater impurities
Hadath: impurities contracted by voiding ordure.
Hadd: prescribed punishment.
Hadith: saying, deed or tracit approval of the Prophet صلى الله عليه وسلم.
Hafiz of hadith: one who has committed to memory very many ahadith.
Hafiz: one who has committed to memory the Qur'an (or the hadith).
Hafiz: one who has committed the Quran to memory.
Hajis: (kind of donuri temptation)
Hajj: pilgrimage (to Makkah) at Arafah prescribed to those who are able to make it once in their lifetime.
Halal: lawful,

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Hama oost (همه اوست): pantheism, identifying God with the universe, or regarding the universe as a manifest action of God.
Hamm: (kind of ikhtiyari temptation)
Hantam: greenish glazed pitcher formerly used to prepare and store wine.
Haram: sacred mosque of Makkah or of Madinah.
Haram: forbidden, unlawful.
HARBI: hostile, bellicose
Harisah: cooked meat and wheat. a sweet pastry made of flour, melted butter and sugar, a kind of hash.
Haya: modesty.
Hijab: veil.
Hijrah: emigration, to give up something for Allah's sake.
HIQQAH: She camel in 4th year
Huffaz: (pl of hafiz).
Huffaz: (plural of *hafiz*)
I'tikaf: to confine oneself in the mosque to worship Allah for even a little while or for the ten days at the conclusion of Ramadan. Women observe it at home.
Iblis: the devil who was a jinn who refused to prostrate to Aadam and Allah cast him out.
IBN MAKHAD: (male) camel in 2nd year.
Iddirari: (kind of evil promptings)
IDHKAR: sweet smelling plant excluded for plants forbidden to be cut in the *Haram.*
Iftirash: spreading feet sideways (to the right) in the first *qa'dah* (to sit).
Ihsan: kindness, favour.
Ijtihad: independent judgement or reasoning where the 'Qur'an and Sunnah (practice of Holy Prophet صلى الله عليه وسلم) are silent.
Ikhtiyhari: (kind of evil promptings)
Ilham: inspiration, a pious thought.
Illiyun (illiyin): record book with those angels who write down pious deeds.
IMSAK: fasting, keep way from pleasures, stop, cease.
Insha Allah: if Allah will
Iqamah: call to the congregational salah when it is about to begin.
Ishtimal: a single garment whose ends are put over both shoulders and drawn under opposite armpits and tied together at the chest.
Ism a'azam (اسم اعظم): the great name of Allah.
Isra: the night journey of the Prophet صلى الله عليه وسلم from Makkah to Jerusalem
ISTARJA: to say 'we belong to Allah and to him we shall return (انا لله وانا اليه رجعون)
Istikharah: The Prophet صلى الله عليه وسلم taught his ummah to seek Allah's guidance to come to a decision in their affairs, particularly difficult and complex affair. Two raka'at of salah are offered and a supplication made in a suggested form.
Istinja: to cleanse oneself after passing stool or urine
JABAH: forehead
Jabariyyah: those who deny freewill, predetermines, and hold that the creature is helpless.
JABHAH.AL: horses, mules, slaves.
Jadh'ah (جذعة): a sheep or ram less than one year but more than six months.
JADHA'AH: She camel in 5th year
Jahiliyah: Pre-Islamic days of ignorance.

Jalsah istirahat: sitting before *qiyam* (standing) in the first and third raka'ah after the second prostration.
Jalsah: the sitting between two prostrations in the salah.
Jihad: fighting for the sake of Allah and his religion, struggling for the cause of Allah.
jizyah: a tribute payable by the dhimmis to the Islamic state.
Kaba'ir al: major sins
Kahin: soothsayer
Kalimah Shahadah: an expression of testimony.
Kalimah tauheed see kalimah.
Kalimah tayyibah see kalimah.
Kalimah: an expression; the declaration of unity of Allah and the messengership of Prophet Muhammad صلى‌الله‌عليه‌وسلم.
Khabath: dress, excrement, ordure, Ka'th.
KHALIFAH: Pregnant camel. Caliph
Khamisah: a sheet of cloth of silk cum wool or wool, of black clour and with stripes on it. Or, a square garment with marking (unstiched).
Khanqah: recluse, hospice, sufi gathering place,
Kharaj: a tax or tribute. Originally, a land tribute received from non Muslims.
KHARAJ: a tribute on land from non Muslims.
KHARQ AADAT: contrary to custom, exception to cause and effect process.
Khasr (خصر): to place hands on waist (ribs, Aips) in salah.
Khatab: one who delivers the Khutbah (sermon)
Khatir (kind of evil pampting)
Khawarij: 'the revolters.' A rebel sect of the Muslims, neither sunni nor shi'a. The Ibadis, today are their remnants.
Khinzalb: the devil who disturbs in the salah interrupting it and the recitation, confusing the worshipper.
KHIYAR ITQ: option to free
Khusuf (خسوف): eclipse, lunar eclipse
Khut bah: sermon.
Kusuf (كسوف): eclipse, solar eclipse
Lahiq (لاحق): one who has missed some or all raka'at behind an imam.
Luqtah: troves, lost property whose finder must trace the owner and hand it over to him.
Madhi: prostratic fluid, urethral discharge.
Madrasah: religious school.
Maharim: pl of mahram. Mu'tazillah 'the separatists,' a seet of the Muslims. They held that the Quran was created not eternal. It is subdivided into twenty sects.
Mahram: a relative with whom marriage is disallowed like a parent, brother, sister, son, daughter,etc.
Makrah tahrimi: disliked to the point of being unlawful.
Makruh (unbecoming) tanzihi: undesirable, nearer lawful than unlawful.
Makruh (unbecoming): disliked, disapproved, undesirable.
Mani: semen discharge during sexual excitement.
Mansun: legalized, based on the Prophet's صلى‌الله‌عليه‌وسلم practice.
Masah: wipe (in ablution, the head), or socks.

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Masbuq: one who joins the congregation late and has missed one raka'ah or more which he redeems after the imam has completed his salah and offered salutation.
Miraj: the Prophet's صلى الله عليه وسلم ascension to seven heavens on 27th Rajab.
Miswak: tooth stick, cleaning stick for teeth.
Mithl: like, equal.
Mu'ahid: a disbeliever who enters into a covenant with Muslims; anyone who covenant with another.
Mu'akkadah: emphasized.
Mu'awwidhatan: the last two surahs of the Qur'an; al falaq and an-Naas (113, 114).
Mu'tazillah: Wasil ibn 'Ata had separated from Hasan Busri and founded the sect by this name.
Mudd: a measure of weight nearly two thirds of a kilogram.
Mufassal: tiwal mufassal are the surah from Qaaf to of Bury. Awsat, mufassal from al-buruj to lam yakun. Qisar mufassal from lam yakun to an-Naas (in a of the Quran)
Muhajir: emigrant, one who abandons that which is dis-allowed.
Muhkamat: perspicuous, of established meaning (verses of the Quran) (3:7)
Mujahid: one who strives, a warrior.
Mulhim: angel who inspires, it is deputed over every person.
Murji'ah: a sect who believe that men are not doers or what they do just as inanimate objects are not perpetrators of their actions, so they cannot abstain from whatever they do It has three groups.
Musalla (المصلى): place of salah (of eed, etc)
Mushabbihah: one of the sects in Islam, the Assimilators.
Musinnah: a camel in its sixth year, a cow, buffalo or ox in their third year, and a sheep or ram in its second year.
Mustahab mu'akkad: emphasized desirability.
Mustahab: recommended, desirable.
Mutashabihat: allegorical verses of the Quran (3:7)
Mutawatir: a continuously transmitted hadith by very main chain of narrators and it is never doubted.
Muwakkadah, sunnah (practice of Holy Prophet صلى الله عليه وسلم): emphatically enjoined by the Prophet صلى الله عليه وسلم.
Muwakkal: consort, familiar spirit.
Muzaffat al: a receptacle for wine smeared with pitch or tar.
Nafl: a supererogatory deed, that which is not fard (obligatory).
Nafs ammarah: the soul that incites.
Nahi tanzihi: a restraining interdict.
Najasah imkmiyah: legal ceremonial impurity najasah haqiqah: real, material substantial impurities.
Najasah mughallazah: greater impurities.
Najasah mukhaffafah: smaller impurities.
Najasah: impurity.
Najiyah: a sect in Islam, the ahl us sunnah (practice of Holy Prophet صلى الله عليه وسلم) wa al-jama'ah, the one destined for paradise, the 'saved.'
Naqqr'an: a hollowed stump of a palm tree in which wine and nabidh were stored.
Nawruz: the Persian new year.

Nisab: the minimum wealth that makes its owner liable to pay the zakah.
Nisf un nahar: midday.
Niyah: intention.
OOQIYA: 40 dirhams 127 grams (measure of weight)
Qa'dah: the sitting in the salah at the end of the second and the last raka'ah.
Qadariyah: a group of people who reject predestination and assert that man chooses whatever he does, Delivers in freewill.
Qari: reciter of the Quran.
Qasr: shortening of salah by a traveller.
Qawmah: standing erect after ruku (or bowing) before going into sajdah (prostration).
Qawwal: singer of qawwali.
Qawwali: mystical songs sung in chorus.
Qiblah: direction of BaytAllah which a worshipper faces when he offers the salah.
Qira'at: recital of the Quran.
QIRAT (قراط): measure of weight % of a dirham. Figuratively, beyond measure.
Qiyamah: the day of resurrection, the Last Hour, standing.
Qiyas: verdict or judgement of the scholars.
Raka'ah: unit of salah.
Raka'at (pl or raka'ah)
Rawafid: the Shi'ah
Risalah: prophethood.
Ruku: bowing.
RUQIYAH: recitation over a patient of Quranic verses
Sa': a measure of weight about three kilograms (four mudd). Used to measure corn.
SA': a measure of capacity, about three kilograms according to Hanafis 326. 15 grams and others 2172 grams
SADAQATUR FITR: charity prescribed on eed ul fitr after fasting one month in Ramadan.
Sadl: to place a sheet of cloth on one's head or shoulders and let its ends hang down. On to put it on oneself and leave the hands inside even while bowing or prostrating in the salah.
Sagha'ir: (plural of saghirah).
Saghirah: minor sin.
Sahabah (companions): (pl of Sahabi)
Sahabi: a companion of the Prophet صلى الله عليه وسلم a companion.
Sahib nisab: possessor of nisab (q.v.)
Sahib nisab: an owner of the minimum amount of wealth that makes him liable to pay the zakah.
Sahih: authentic, sound.
Sajdah: Prostration.
Salaam: greeting; peace.
Salah: regular prayer prescribed or optional; invocating blessings on the Prophet صلى الله عليه وسلم.
Sama (سماع): mystical songs, musical rendering vocal or with instruments.
Satr: hijjab, the portion of the body that has to be covered from another, for a man waist down to knee. For a woman from neck to feet.
SATR: the portion of the body me must conceal from others, for men, it is from the waist (naval) to knees. For women, her entire body.
SAWM: fasting
Shab bara'ah: fifteenth of Sha'ban.
Shari'ah (divine law): code of religious law.

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Shaykh: a learned man, an old man.
Shi'ah: they hold that Sayyiduna Ali رضی الله عنه was the first Khalifah and that the three before him had usurped the khalifah and deprived him of his right.
Siwak: (see miswak)
SIYAM: fasting
Subh Ka'dhib: reddish blackness, false down.
Subh sadiq: down, daybreak.
Subhan Allah: Allah is without blemish, glorified is Allah.
Suffah: see ahlus Suffah.
Sunnah (practice of Holy Prophet صلی الله علیه وسلم) muwakkadah see under muwakkadah and ghayr muwakkadah.
Sunnah (practice of Holy Prophet صلی الله علیه وسلم): whatever is said and done by the Prophet صلی الله علیه وسلم; path or way or custom.
Sunni: who follow the Qur'an and the sunnah (practice of Holy Prophet صلی الله علیه وسلم), 'one of the path.'
Sutrah: is that which is placed in front of one who offers the salah to allowed passers by go beyond it without committing the wrong of moving about before him.
Ta'ala: the exalted (Allah).
Tabi'i: an epigone, successor of the sahabah (companions).
Tabi'un: the generation succeeding the sahabah (companions).
Taharah: purity, cleanness.
Taharra (تحری): to seek that which is more deserving of two thing according to opinion predominating in one's mind (like when confused in salah about how much of it is offered).
Tahiyatul wudu: the salah offered after performing ablution is so called. This means, 'greetings of ablution.'
Tahlil: to recite the kalimah (لا الٰہ الا اللہ) three is no god but Allah.
TAHLIL: to declare Allah's unit; the kalimah 'there is no God but Allah;
TAHMID: to praise Allah.
Takbir: to declare Allah u Akbar, also iqamah.
Taqdir: predestination.
Taqrir: when something was done or said before the Prophet صلی الله علیه وسلم and he did not say anything then it implies his acceptance of that.
Tartil: a science of recital of the Qur'an with proper diction and pauses.
Tasawwuf: is to gain an intimate awareness of Allah and is a term of the sufis, Sufism, mysticism.
Tasbih: rosary, pronouncing subhan Allah.
TASBIH: glorifying Allah; rosary.
Taslim: to offer salaam (the greeting), the salah is concluded with it.
Tawatar: handed down through successive generations of narrators none of who could be accused of lying.
Tawbah: repentance
Tawhid: unity of Allah.
Tawrak: sitting posture in the second qa'dah of salah.
Tayammum: dry ablution which is done when (normal) ablution cannot be done.
Tayammum: dry ablution with sand or earth when water cannot be had or cannot be used.
Thaniy (الثَّنِيّ): a goat in its second year, an ox or crow in its third year a camel in its sixth year.

TIKBIR: to extol Allah; Allahu Akbar.
Tuhur: purity, purifier.
Ulama (Scholars) (pl of aalim): scholars.
Umm walad: a female slave who bears a child for her master and earns her freedom on his death.
Ummi: One who does not known how to write and to decipher what is written, has never been to a school or madrasah, nor acquired knowledge from anyone. The word ummi is ascribed to 'umm' which means mother, so the meaning would be that such a person is like a child born to a mother and no one has ever taught him to write and to read. Some people say that ummi is ascribed to umm ul Qura which is the epithet of Makkah, the essence of the whole earth.
Umrah: the lesser pilgrimage, optional..
Uqbatish shaytan: devils manner of sitting on the heels.
Ushri (land): are lands whose owners become Muslim or those which the state disburses among its army. A tenth or a tithe is paid to the Muslim state.
Wadi: secretion of the prostrate.
Wajib (expedient): obligatory, lesser than fard (obligatory).
Wali: saint, friend of Allah.
WASQ: camel load equal sixty Sa'.
Waswas: the devil departed over every person and tempts him
Waswasah: temptation or an evil thought to commit sin or disbelief.
WIQS: animal below nisab
WISAL: continuous fasting for two or more days.
Zakah: prescribed charity payable per annum by those who own the *nisab* at 2.5% to the poor and needy.
Zihar: to compare one's wife to one's back, meaning to a *mahram* relative like a mother, and this causes a separation husband and wife until an expiation is paid.

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