

In the Name of Allāh,
the Merciful, the Beneficent

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

9. The Chapters (On Narrations Reported) On Marriage From The Messenger of Allāh ﷺ

(المعجم ٩) أَبْوَابُ النِّكَاحِ

عَنْ رَسُولِ اللَّهِ ﷺ (التحفة ٧)

Chapter 1. What Has Been Related About The Virtues Of Marriage And Encouraging It

(المعجم ١) - بَابُ مَا جَاءَ فِي فَضْلِ

التَّزْوِيجِ وَالْحَثِّ عَلَيْهِ [التحفة ١]

1080. Abū Ayyūb narrated that the Messenger of Allāh ﷺ said: “Four are from the *Sunan* of the Messengers: *Al-Hayā*,^[1] using *‘Aṭar*,^[2] the *Siwāk*, and marriage.” (*Da‘if*)

١٠٨٠ - حَدَّثَنَا سُفْيَانُ بْنُ وَكِيعٍ: حَدَّثَنَا

حَفْصُ بْنُ غِيَاثٍ عَنِ الْحَجَّاجِ، عَنْ مَكْحُولٍ، عَنْ أَبِي الشَّمَالِ، عَنْ أَبِي أَيُّوبَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «أَرْبَعٌ مِنْ سُنَنِ الْمُرْسَلِينَ: الْحَيَاءُ وَالتَّعَطُّرُ وَالسَّوَاكُ وَالنِّكَاحُ».

(He said:) There are narrations on this topic from ‘Uthmān, Thawbān, Ibn Mas‘ūd, ‘Āishah, ‘Abdullāh bin ‘Amr, (Abī Najīh), Jābir, and ‘Akkāf.

[قَالَ:] وَفِي الْبَابِ عَنْ عُثْمَانَ وَثَوْبَانَ

وَأَبِي مَسْعُودٍ وَعَائِشَةَ وَعَبْدَ اللَّهِ بْنِ عَمْرٍو [وَأَبِي نَجِيحٍ وَجَابِرٍ وَعَكَّافٍ.

(Abū ‘Eisā said:) The *Hadīth* of Abū Ayyūb is a *Hasan Gharib Hadīth*.

[قَالَ أَبُو عِيسَى:] حَدِيثُ أَبِي أَيُّوبَ

حَدِيثٌ حَسَنٌ غَرِيبٌ.

حَدَّثَنَا مَحْمُودُ بْنُ خِدَاشٍ الْبَغْدَادِيُّ:

حَدَّثَنَا عَبَادُ بْنُ الْعَوَّامِ عَنِ الْحَجَّاجِ، عَنْ مَكْحُولٍ، عَنْ أَبِي الشَّمَالِ، عَنْ أَبِي أَيُّوبَ عَنِ النَّبِيِّ ﷺ، نَحْوَ حَدِيثِ حَفْصِ.

(Abū ‘Eisā said:) This *Hadīth* was reported by Hushaim, Muḥammad bin Yazīd Al-Wāsiṭī, Abū Mu‘āwiyah, and others, from Al-Hajjāj, from Makhūl, from Abū Ayyūb, and they did not mention “from Abū Ash-Shimāl” in it. (as Ḥaḥḥ bin Ghiyāth did).

The narration of Ḥaḥḥ bin Ghiyāth and ‘Abbād bin Al-‘Awwām (the previous chain) is more correct.

[1] Modesty, self-respect, bashfulness, honor etc.

[2] Fragrant oil or perfume.

[قَالَ أَبُو عِيسَى:] وَرَوَى هَذَا الْحَدِيثَ هُشَيْمٌ وَمُحَمَّدُ بْنُ يَزِيدَ الْوَاسِطِيُّ وَأَبُو مُعَاوِيَةَ وَغَيْرُ وَاحِدٍ عَنِ الْحَجَّاجِ، عَنْ مَكْحُولٍ، عَنْ أَبِي أَيُّوبَ وَلَمْ يَذْكُرُوا فِيهِ عَنْ أَبِي الشَّمَالِ. وَحَدِيثُ حَفْصِ بْنِ غِيَاثٍ وَعَبَادِ بْنِ الْعَوَّامِ أَصَحُّ.

تخريج: [إسناده ضعيف] وأخرجه الطبراني: ٤/١٨٣، ١٨٤، ح: ٤٠٨٥ من حديث حفص بن غياث به * الحجاج هو ابن أرمطة: ضعيف مدلس، وأبو الشمال مجهول: وللحديث شواهد ضعيفة عند الطبراني والدولابي وغيرهما * وفي الباب عن عثمان [النسائي، ح: ٢٢٤٥ وأحمد: ١/٥٨] وثوبان [يأتي: ٣٠٩٤] وابن مسعود [يأتي: ١٠٨١] وعائشة [ابن ماجه، ح: ١٨٤٦] وعبدالله بن عمرو [أحمد: ٢/١٥٦، ١٥٨، ١٦٥، ١٨٨، ٢١٠] وأبي نجيح وجابر [يأتي: ١٢٥٣] وعكاف [الطبراني في الكبير: ١٨/٨٦، ح: ١٥٨] وله شاهد عند أحمد: ٥/١٦٣ * حديث محمد بن يزيد الواسطي، أخرجه أحمد: ٥/٤٢١.

Comments:

'Nikāh' means marriage or to merge. In the Qur'an this word occurs with the meaning of 'Aqd a bond or contract of marriage. As 'Aqd or marriage is a cause of being husband and wife, so it has been used in the sense of making a relationship. Marriage is a *Sunnah* which Muslims are advised to follow.

1081. 'Abdullāh bin Mas'ūd narrated: "We went with Allāh's Messenger ﷺ, while we were young men who had nothing. He said: 'O young men! You should marry, for indeed it helps in lowering the gaze and protecting the private parts. Whoever among you is not able to marry, then let him fast, for indeed fasting will diminish his sexual desire.'" (*Ṣaḥīḥ*)

(Abū 'Eisā said:) This *Ḥadīth* is *Ḥasan Ṣaḥīḥ*.

(Another chain) with similar narration.

(Abū 'Eisā said:) Others have reported this chain from Al-

١٠٨١ - حَدَّثَنَا مُحَمَّدُ بْنُ غِيْلَانَ: حَدَّثَنَا أَبُو أَحْمَدَ [الزُّبَيْرِيُّ]: حَدَّثَنَا سُفْيَانُ عَنِ الْأَعْمَشِ، عَنْ عُمَارَةَ بْنِ عُمَيْرٍ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ يَزِيدَ، عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: خَرَجْنَا مَعَ رَسُولِ اللَّهِ ﷺ وَنَحْنُ شَبَابٌ لَا تَقْدِرُ عَلَيَّ شَيْءٌ. فَقَالَ: «يَا مَعْشَرَ الشَّبَابِ عَلَيْكُمْ بِالْبَاءَةِ، فَإِنَّهُ أَعْضُ لِلْبَصْرِ وَأَحْصَنُ لِلْفَرْجِ، فَمَنْ لَمْ يَسْتَطِعْ مِنْكُمْ الْبَاءَةَ فَعَلَيْهِ بِالصَّوْمِ، فَإِنَّ الصَّوْمَ لَهُ وَجَاءٌ».

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ.

A'mash similarly. Abū Mu'āwiyah and Al-Muḥāribī reported similarly from Al-A'mash, from 'Alqamah, from 'Abdullāh, from the Prophet ﷺ.

(Abū 'Eisā said: Both of them are *Ṣaḥīḥ*).

حَدَّثَنَا الْحَسَنُ بْنُ عَلِيٍّ الْخَلَّالُ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ: حَدَّثَنَا الْأَعْمَشُ عَنْ عَمَارَةَ، نَحْوَهُ.

[قَالَ أَبُو عِيسَى:] وَقَدْ رَوَى غَيْرُ وَاحِدٍ عَنِ الْأَعْمَشِ بِهَذَا الْإِسْنَادِ، مِثْلَ هَذَا. وَرَوَى أَبُو مُعَاوِيَةَ وَالْمُحَارِبِيُّ، عَنِ الْأَعْمَشِ، عَنْ إِبْرَاهِيمَ، عَنْ عَلْقَمَةَ، عَنْ عَبْدِ اللَّهِ عَنِ النَّبِيِّ ﷺ، نَحْوَهُ.

[قَالَ أَبُو عِيسَى: كِلَاهُمَا صَحِيحٌ].

تخريج: متفق عليه، وأخرجه البخاري، النكاح، باب من لم يستطع الباءة فيصم، ح: ٥٠٦٦. ومسلم، ح: ١٤٠٠ من حديث الأعمش به.

Comments:

The Arabic word '*Al-Ba'ah*' means to make relationship and it is deducted from '*Maba'a*' which means to provide residence. Whoever marries a woman provides her residence. For the sake of making a relationship, it is necessary to marry and to take the responsibility of food and maintenance.

Chapter 2. What Has Been Related About The Prohibition of Celibacy

1082. Qatādah narrated from Al-Ḥasan, from Samurah that the Prophet ﷺ prohibited celibacy. (*Ṣaḥīḥ*)

(Abū 'Eisā said:) Zaid bin Akhzam added in his narration: "And Qatādah recited: And indeed We sent Messengers before you, and made for them wives and offspring."^[1]

(He said:) There are narrations on this topic from Sa'd, Anas bin Mālik, 'Aīshah and Ibn 'Abbās.

(المعجم ٢) - بَابُ مَا جَاءَ فِي النَّهْيِ
عَنِ التَّبَتُّلِ (التحفة ٢)

١٠٨٢ - حَدَّثَنَا أَبُو هِشَامٍ الرَّفَاعِيُّ وَزَيْدُ بْنُ أَحْزَمَ [الطَّائِيُّ] وَإِسْحَاقُ بْنُ إِبْرَاهِيمَ [الصَّوَّافِ] الْبَصْرِيُّ، قَالُوا: حَدَّثَنَا مُعَاذُ بْنُ هِشَامٍ عَنْ أَبِيهِ، عَنْ قَتَادَةَ، عَنِ الْحَسَنِ، عَنْ سَمْرَةَ أَنَّ النَّبِيَّ ﷺ نَهَى عَنِ التَّبَتُّلِ.

[قَالَ أَبُو عِيسَى:] وَرَادَ زَيْدُ بْنُ أَحْزَمَ فِي حَدِيثِهِ وَقَرَأَ قَتَادَةُ ﴿وَلَقَدْ أَرْسَلْنَا رُسُلًا مِنْ

[1] *Ar-Ra'd* 13:38.

(Abū 'Eisā said:) The *Hadīth* of Samurah is a *Hasan Gharīb Hadīth*. Al-Ash'ath bin 'Abdul-Mālik reported this *Hadīth* from Al-Ḥasan, from Sa'd bin Hishām, from 'Aishah, from the Prophet ﷺ and it is similar.

And it is said that both narrations are *Ṣaḥīḥ*.

قَبْلِكَ وَجَعَلْنَا لَكُمْ أَزْوَاجًا وَذُرِّيَّةً ﴿﴾
[الرعد: ٣٨].

[قَالَ:] وَفِي الْبَابِ عَنْ سَعْدِ وَأَنْسِ بْنِ مَالِكٍ وَعَائِشَةَ وَابْنِ عَبَّاسٍ.

[قَالَ أَبُو عِيْسَى:] حَدِيثُ سَمُرَةَ حَدِيثٌ حَسَنٌ غَرِيبٌ، وَرَوَى الْأَشْعَثُ بْنُ عَبْدِ الْمَلِكِ هَذَا الْحَدِيثَ عَنِ الْحَسَنِ، عَنْ سَعْدِ ابْنِ هِشَامٍ، عَنْ عَائِشَةَ عَنِ النَّبِيِّ ﷺ نَحْوَهُ. وَيُقَالُ: كِلَا الْحَدِيثَيْنِ صَحِيحٌ.

تخريج: [صحيح] وأخرجه ابن ماجه، النكاح، باب النهي عن التبتل، ح: ١٨٤٩ عن زيد بن أجزم به وله شواهد عند البخاري، ح: ٥٠٧٣ ومسلم، ح: ١٤٠٢ وغيرهما * وفي الباب عن سعد [يأتي: ١٠٨٣] وأنس بن مالك [البخاري، ح: ٥٠٦٣ ومسلم، ح: ١٤٠١ وأحمد: ١٥٨/٣، ٢٤٥] وعائشة [النسائي، ح: ٣٢١٥] وابن عباس [أبو داود، ح: ١٧٢٩ وأحمد: ٣١٢/١] * حديث الأشعث بن عبد الملك، أخرجه النسائي: ٥٩/٦، ح: ٣٢١٥.

1083. Sa'eed bin Al-Musayyab narrated from Sa'd bin Abī Waqqās: "The Messenger of Allāh ﷺ refused 'Uthmān bin Ma'zūn (when he asked) regarding celibacy, and if he had permitted it for him, then we would have castrated ourselves." (*Ṣaḥīḥ*)

(Abū 'Eisā said:) This *Hadīth* is *Hasan Ṣaḥīḥ*.

١٠٨٣ - حَدَّثَنَا الْحَسَنُ بْنُ عَلِيٍّ الْخَلَّالُ وَغَيْرُهُ وَاحِدٌ قَالُوا: حَدَّثَنَا عَبْدُ الرَّزَّاقِ: حَدَّثَنَا مَعْمَرٌ عَنِ الزُّهْرِيِّ، عَنْ سَعِيدِ بْنِ الْمُسَيْبِ، أَنَّ سَعْدَ بْنَ أَبِي وَقَاصٍ قَالَ: رَدَّ رَسُولُ اللَّهِ ﷺ عَلَى عُثْمَانَ بْنِ مَطْعُونِ التَّبْتَلِ، وَلَوْ أَدْنَى لَهُ لَأَخْتَصَمْنَا.

[قَالَ أَبُو عِيْسَى:] هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ.

تخريج: متفق عليه، وأخرجه البخاري، النكاح، باب ما يكره من التبتل والخصاء، ح: ٥٠٧٣ من حديث الزهري به ومسلم، ح: ١٤٠٢ من حديث معمر به.

Comments:

Celibacy is not allowed in Islām. The Arabic word '*At-Tabbattul*' means to stay away from women. A woman who has no interest in men is called '*Batūl*' in the Arabic language. Fātimah was called *Batūl* because she was always busy in the remembrance of Allāh ﷻ.

Chapter 3. What Has Been Related About: If You Are Pleased With Someone's Religion Then Marry Him

1084. Abū Hurairah narrated that the Messenger of Allāh ﷺ said: "When someone whose religion and character you are pleased with proposes to (someone under the care) of one of you, then marry to him. If you do not do so, then there will be turmoil (*Fitnah*) in the land and abounding discord (*Fasād*)." (*Da'īf*)^[1]

(He said:) There are narrations on this topic from Abū Hātim Al-Muzanī and 'Āishah.

(Abū 'Eisā said:) As for the *Hadīth* of Abū Hurairah; 'Abdul-Ḥamīd bin Sulaimān has been contradicted in this narration. Al-Laith bin Sa'd reported it from Ibn 'Ajlān, from Abū Hurairah, from the Prophet ﷺ, as a *Mursal* narration.

(Abū 'Eisā said:) Muḥammad said: "The narration of Al-Laith is more appropriate, and the narration of 'Abdul-Ḥamīd is not considered preserved."

تخریج: [إسناده ضعيف] وأخرجه ابن ماجه، النكاح، باب الأکفاء، ح: ١٩٦٧ من حديث عبدالحميد بن سليمان به وهو ضعيف وشيخه مدلس وعنن ومع ذلك صححه الحاكم: ١٦٤/٢، ١٦٥ فتعقبه الذهبي * وفي الباب عن أبي حاتم المزني [يأتي: ١٠٨٥] وعائشة [الديلمي، ح: ٣١٥٤ بلا سند، أو يشير إلى حديث عائشة، أخرجه البخاري، ح: ٤٠٠٠].

Comments:

Wealth and physical beauty carry no weight in acquiring higher status or preference in Muslim society.

(المعجم ٣) - بَابُ مَا جَاءَ فِيْمَنْ تَرْضَوْنَ دِينَهُ فَرَوْجُوهُ (التحفة ٣)

١٠٨٤ - حَدَّثَنَا قُتَيْبَةُ: حَدَّثَنَا عَبْدُ الْحَمِيدِ ابْنُ سُلَيْمَانَ عَنِ ابْنِ عَجَلَانَ، عَنِ ابْنِ وَثِيْمَةَ النَّضْرِيِّ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِذَا خَطَبَ إِلَيْكُمْ مَنْ تَرْضَوْنَ دِينَهُ وَخُلُقَهُ، فَرَوْجُوهُ، إِلَّا تَفَعَّلُوا تَكُنْ فِتْنَةٌ فِي الْأَرْضِ وَفَسَادٌ عَرِيضٌ».

[قَالَ:] وَفِي الْبَابِ عَنْ أَبِي حَاتِمِ الْمَزْنِيِّ وَعَائِشَةَ.

[قَالَ أَبُو عِيسَى:] حَدِيثُ أَبِي هُرَيْرَةَ، قَدْ خُولِفَ عَبْدُ الْحَمِيدِ بِنُ سُلَيْمَانَ فِي هَذَا الْحَدِيثِ، فَرَوَاهُ اللَّيْثُ بِنُ سَعْدٍ عَنِ ابْنِ عَجَلَانَ، عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ ﷺ، مُرْسَلًا.

[قَالَ أَبُو عِيسَى:] قَالَ مُحَمَّدٌ: وَحَدِيثُ اللَّيْثِ أَشْبَهُ، وَلَمْ يَعْذُ حَدِيثَ عَبْدِ الْحَمِيدِ مَحْفُوظًا.

^[1] It was graded *Hasan* by Shaikh Al-Albānī in *Irwa' Al-Ghālil* (no. 1868) and *Aṣ-Ṣaḥīḥah* (no. 1022)

1085. Abū Ḥātim Al-Muzanī narrated that the Messenger of Allāh ﷺ said: “When someone whose religion and character you are pleased with comes to you then marry (her to) him. If you do not do so, then there will be turmoil (*Fitnah*) in the land and discord (*Fasād*). If you do not do so, then there will be turmoil (*Fitnah*) in the land and discord (*Fasād*).”^[1]

They said: “O Messenger of Allāh! What if there was something about him?”^[2]

He said: “When someone whose religion and character you are pleased with comes to you then marry him.” (And he ﷺ said this) three times. (*Da'if*)

(Abū 'Eisā said:) This *Hadīth* is *Ḥasan Gharīb*. Abū Ḥātim Al-Muzanī was a Companion, and we do not know of a *Hadīth* that he narrated from the Prophet ﷺ other than this.

تخريج: [إسناده ضعيف] وأخرجه الطبراني: ٣٠٠/٢٢، ح: ٧٦٢ من حديث حاتم بن إسماعيل به * عبدالله بن مسلم: ضعيف ومحمد وسعيد: مجهولان (تقريب).

Comments:

A Muslim should prefer a religious minded lady for marriage and a Muslim lady should also prefer the same in a Muslim man.

Chapter 4. What Has Been Related About: One Who Is Married For Three Things

1086. Jābir narrated that the Prophet ﷺ said: “Indeed the woman is married for her religion, her wealth, and her beauty, so take

١٠٨٥ - حَدَّثَنَا مُحَمَّدُ بْنُ عَمْرٍو [السَّوَأُ الْبَلْخِيّ]: حَدَّثَنَا حَاتِمُ بْنُ إِسْمَاعِيلَ عَنْ عَبْدِ اللَّهِ بْنِ مُسْلِمٍ بْنِ هُرْمَزٍ، عَنْ مُحَمَّدٍ وَسَعِيدِ ابْنِي عُبَيْدٍ، عَنْ أَبِي حَاتِمٍ الْمُرَزِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِذَا جَاءَكُمْ مَنْ تَرْضَوْنَ دِينَهُ وَخُلُقَهُ فَأَنْكِحُوهُ، إِلَّا تَفْعَلُوا تَكُنْ فِتْنَةٌ فِي الْأَرْضِ وَفَسَادٌ، إِلَّا تَفْعَلُوا تَكُنْ فِتْنَةٌ فِي الْأَرْضِ وَفَسَادٌ».

قَالُوا: يَا رَسُولَ اللَّهِ وَإِنْ كَانَ فِيهِ؟ قَالَ: «إِذَا جَاءَكُمْ مَنْ تَرْضَوْنَ دِينَهُ وَخُلُقَهُ فَأَنْكِحُوهُ» ثَلَاثَ مَرَّاتٍ.

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ حَسَنٌ غَرِيبٌ. وَأَبُو حَاتِمٍ الْمُرَزِيُّ لَهُ صُحْبَةٌ، وَلَا نَعْرِفُ لَهُ عَنِ النَّبِيِّ ﷺ غَيْرَ هَذَا الْحَدِيثِ.

(المعجم ٤) - بَابُ مَا جَاءَ فِيْمَنْ يَنْكِحُ عَلَى ثَلَاثِ خِصَالٍ (التحفة ٤)

١٠٨٦ - حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدٍ بِنِ مُوسَى: حَدَّثَنَا إِسْحَاقُ بْنُ يُوْسُفَ الْأَزْرَقِيُّ: حَدَّثَنَا عَبْدُ الْمَلِكِ [بْنُ أَبِي سُلَيْمَانَ] عَنْ

[1] See previous note.

[2] “Meaning something like little wealth or inadequacy.” (*Tuhfat Al-Aḥwadhī*).

the one with religion, and may your hands be dusty.” (*Ṣaḥīḥ*)

(He said:) There are narrations on this topic from ‘Awf bin Mālik, ‘Aishah, ‘Abdullāh bin ‘Amr, and Abū Sa‘eed.

(Abū ‘Eisā said:) The *Ḥadīth* of Jābir is a *Ḥasan Ṣaḥīḥ Ḥadīth*.

عَطَاءٌ، عَنْ جَابِرٍ عَنِ النَّبِيِّ ﷺ قَالَ: «إِنَّ الْمَرْأَةَ تُنْكَحُ عَلَى دِينِهَا وَمَالِهَا وَجَمَالِهَا، فَعَلَيْكَ بِذَاتِ الدِّينِ، تَرَبَّتْ يَدَاكَ».

[قَالَ:] وفي البابِ عَنْ عَوْفِ بْنِ مَالِكٍ وَعَائِشَةَ وَعَبْدَ اللَّهِ بْنِ عَمْرٍو وَأَبِي سَعِيدٍ.

[قَالَ أَبُو عِيْسَى:] حَدِيثُ جَابِرٍ حَدِيثٌ حَسَنٌ صَحِيحٌ.

تخريج: وأخرجه مسلم، الرضاع، باب استحباب نكاح ذات الدين، ح ٧١٥ بعد، ح: ١٤٦٦ من حديث عبدالملك بن أبي سليمان به * وفي الباب عن عوف بن مالك [الجزار (كشف): ٢/ ١٥٠، ح: ١٤٠٤ وفيه يزيد بن عياض] وعائشة [أحمد: ١٥٢/٦] وعبدالله بن عمرو [ابن ماجه، ح: ١٨٥٩] وأبي سعيد [أحمد: ٨٠/٣ وابن حبان، ح: ١٢٣١ والحاكم: ١٦١/٢ وصححه ووافقه الذهبي].

Comments:

Usually people see three things in a woman for marriage. Her wealth, beauty and lineage or family but Islām recommends religiosity.

Chapter 5. What Has Been Related About Looking At The Proposed Woman

1087. Bakr bin ‘Abdullāh Al-Muzanī narrated that Al-Mughīrah bin Shu‘bah proposed to a woman, so the Prophet ﷺ said: “Look at her, for indeed that is more likely to make things better between the two of you.” (*Ṣaḥīḥ*)

There are narrations on this topic from Muḥammad bin Maslamah, Jābir, Anas, Abū Ḥumaid, and Abū Hurairah.

(Abū ‘Eisā said:) This *Ḥadīth* is *Ḥasan*. Some of the people of knowledge followed this *Ḥadīth*. They said that there is no harm in looking at her as long as he does not see anything unlawful from her.

(المعجم ٥) - بَابُ مَا جَاءَ فِي النَّظْرِ إِلَى الْمَخْطُوبَةِ (التحفة ٥)

١٠٨٧ - حَدَّثَنَا أَحْمَدُ بْنُ مَنِيعٍ: حَدَّثَنَا ابْنُ أَبِي زَائِدَةَ [قَالَ]: حَدَّثَنِي عَاصِمُ بْنُ سُلَيْمَانَ [هُوَ الْأَخْوَلُ] عَنْ بَكْرِ بْنِ عَبْدِ اللَّهِ الْمُزَنِيِّ، عَنِ الْمُغِيرَةِ بْنِ شُعْبَةَ أَنَّهُ خَطَبَ امْرَأَةً، فَقَالَ النَّبِيُّ ﷺ: «انْظُرْ إِلَيْهَا فَإِنَّهُ أَعْرَى أَنْ يُؤَدَمَ بَيْنَكُمَا».

وفي البابِ عَنْ مُحَمَّدِ بْنِ مَسْلَمَةَ وَجَابِرٍ وَأَنْسِ وَأَبِي حُمَيْدٍ وَأَبِي هُرَيْرَةَ.

[قَالَ أَبُو عِيْسَى:] هَذَا حَدِيثٌ حَسَنٌ. وَقَدْ ذَهَبَ بَعْضُ أَهْلِ الْعِلْمِ إِلَى هَذَا الْحَدِيثِ، وَقَالُوا: لَا بَأْسَ أَنْ يَنْظُرَ إِلَيْهَا

This is the saying of Aḥmad and Ishāq. And the meaning of his saying “More likely to make things better between the two of you” is; more likely to cause mutual love between the two of you.

مَا لَمْ يَرَ مِنْهَا مُحَرَّمًا، وَهُوَ قَوْلُ أَحْمَدَ وَإِسْحَاقَ. وَمَعْنَى قَوْلِهِ: «أَحْرَى أَنْ يُؤَدِمَ بَيْنَكُمَا». قَالَ: أَحْرَى أَنْ تَدُومَ الْمَوَدَّةُ بَيْنَكُمَا.

تخريج: [إسناده صحيح] وأخرجه النسائي: ٦٩/٦، ٧٠، ح: ٢٢٣٧ (النكاح، باب إباحة النظر قبل التزويج) من حديث عاصم الأحول به وصححه ابن الجارود، ح: ٦٧٥ * وفي الباب عن محمد بن مسلمة [ابن ماجه، ح: ١٨٦٤] وجابر [أبو داود، ح: ٢٠٨٢] وأنس [ابن ماجه، ح: ١٨٦٥] وأبي حميد [أحمد: ٤٢٤/٥] وأبي هريرة [مسلم، ح: ١٤٢٤].

Comments:

As marriage is a contract for the whole life, therefore it should be given due consideration before going into it. According to most of the scholars and the Four *A'immah*, it is approved and lawful to see the spouse before betrothal.

Chapter 6. What Has Been Related About Publicizing The Marriage

1088. Abū Al-Balj narrated from Muḥammad bin Ḥāṭib Al-Jumāḥī who said that the Messenger of Allāh ﷺ said: “The distinction between the lawful and the unlawful is the *Duff* and the voice.”

(*Hasan*)

(He said:) There are narrations on this topic from ‘Āishah, Jābir, Ar-Rubai‘ bint Mu‘awwidh.

(Abū ‘Eīsā said:) The *Ḥadīth* of Muḥammad bin Ḥāṭib is a *Ḥasan Ḥadīth*.

Abū Balj’s name is Yaḥya bin Abī Sulaim, and they say it is Ibn Sulaim as well.

Muḥammad bin Ḥāṭib saw the Prophet ﷺ when he was a young boy.

(المعجم ٦) - بَابُ مَا جَاءَ فِي إِعْلَانِ

النِّكَاحِ (التحفة ٦)

١٠٨٨ - حَدَّثَنَا أَحْمَدُ بْنُ مَنِيعٍ: حَدَّثَنَا هُشَيْمٌ: أَخْبَرَنَا أَبُو بَلْجٍ عَنْ مُحَمَّدِ بْنِ حَاطِبِ الْجُمَحِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «فَضْلُ مَا بَيْنَ الْحَرَامِ وَالْحَلَالِ الدُّفُّ وَالصَّوْتُ».

[قَالَ:] وَفِي الْبَابِ عَنْ عَائِشَةَ وَجَابِرٍ وَالرَّبِيعِ بِنْتِ مُعَوِذٍ.

[قَالَ أَبُو عَيْسَى:] حَدِيثُ مُحَمَّدِ بْنِ حَاطِبٍ حَدِيثٌ حَسَنٌ.

وَأَبُو بَلْجٍ اسْمُهُ يَحْيَى بْنُ أَبِي سُلَيْمٍ، وَيُقَالُ: ابْنُ سُلَيْمٍ أَيْضًا.

وَمُحَمَّدُ بْنُ حَاطِبٍ قَدْ رَأَى النَّبِيَّ ﷺ وَهُوَ غَلَامٌ صَغِيرٌ.

تخريج: [إسناده حسن] وأخرجه ابن ماجه، النكاح، باب إعلان النكاح، ح: ١٨٩٦ والنسائي: ٦/١٢٧، ح: ٣٣٧١ من حديث هشيم به وصححه الحاكم: ٢/١٨٤ والذهبي * وفي الباب عن عائشة [أبي: ١٠٨٩] وجابر [أحمد: ٣/٣٩١ والنسائي في الكبرى] والربيع بنت معوذ [أبي: ١٠٩٠].

Comments:

Marriage should be celebrated and publicized. Concealed marriages creates many problems and misunderstandings among the people and concerned families.

1089. ‘Āishah narrated that the Messenger of Allāh ﷺ said: “Publicize this marriage, and hold it in the *Masjid*, and beat the *Duff* for it.” (*Da‘if*)

(Abū ‘Eisā said:) This *Hadīth*, about this topic, is *Ḥasan Gharīb*. ‘Eisā bin Maimūn Al-Anṣārī was graded weak in *Hadīth*.

‘Eisā bin Maimūn, the one that reports *At-Tafsīr* from Ibn Abī Najīḥ is trustworthy.

١٠٨٩ - حَدَّثَنَا أَحْمَدُ بْنُ مَنِيعٍ: حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ: حَدَّثَنَا عَيْسَى بْنُ مَيْمُونٍ [الْأَنْصَارِيُّ] عَنِ الْقَاسِمِ بْنِ مُحَمَّدٍ، عَنْ عَائِشَةَ قَالَتْ: قَالَ رَسُولُ اللَّهِ ﷺ: «أَعْلِنُوا هَذَا النِّكَاحَ وَاجْعَلُوهُ فِي الْمَسَاجِدِ، وَاضْرِبُوا عَلَيْهِ بِالذُّفُوفِ».

[قَالَ أَبُو عَيْسَى:] هَذَا حَدِيثٌ حَسَنٌ غَرِيبٌ فِي هَذَا الْبَابِ. وَعَيْسَى بْنُ مَيْمُونٍ الْأَنْصَارِيُّ يُضَعَّفُ فِي الْحَدِيثِ.

وَعَيْسَى بْنُ مَيْمُونٍ الَّذِي يَرَوِي عَنِ ابْنِ أَبِي نَجِيحٍ التَّفْسِيرَ هُوَ ثِقَةٌ.

تخريج: [إسناده ضعيف] * عيسى بن ميمون ضعيف (تقريب) وللحديث طريق ضعيف جداً عند ابن ماجه، ح: ١٨٩٥ عن القاسم بن محمد به.

Comments:

Though this narration is weak, it supports the idea of publicizing the marriage when it is held in a *Masjid*.

1090. Ar-Ruba‘ bint Mu‘awwidh said: “The morning after the consummation of my marriage, the Prophet ﷺ came and sat on my bed as far from me as you are sitting now, and our little girls started beating the *Duff* and reciting verses mourning my fathers^[1] who had been killed in the battle of Badr. One of them said: ‘Among us is a Prophet who knows what will happen tomorrow.’

١٠٩٠ - حَدَّثَنَا حُمَيْدُ بْنُ مَسْعَدَةَ الْبَصْرِيُّ: حَدَّثَنَا بَشْرُ بْنُ الْمُفَضَّلِ: حَدَّثَنَا خَالِدُ بْنُ دَكْوَانَ عَنِ الرَّبِيعِ بْنِ مَعُوذٍ قَالَتْ: جَاءَ رَسُولُ اللَّهِ ﷺ فَدَخَلَ عَلَيَّ غَدَاةَ بُنَيِّ بِي، فَجَلَسَ عَلَيَّ فِرَاشِي كَمَا جَلَسَ مِنِّي، وَجَوَازِيَاتٍ لَنَا يَضْرِبْنَ بِذُفُوفِهِنَّ وَيَنْدُبْنَ مَنْ قُتِلَ مِنْ آبَائِي يَوْمَ بَدْرٍ إِلَى أَنْ قَالَتْ إِخْدَاهُنَّ: وَفِينَا نَبِيٌّ يَعْلَمُ مَا فِي غَدٍ فَقَالَ لَهَا

[1] Her father and two uncles had been killed in the battle of Badr. By saying: “My fathers” she meant that her two uncles were as dear to her as her father was.

On that the Prophet ﷺ said: ‘Stop saying this, and keep on saying what you were saying before.’”

Abū ‘Eisā said: This *Hadīth* is *Hasan Ṣaḥīh*.

[رَسُولُ اللَّهِ ﷺ]: «اسْكُتِي عَنْ هَذِهِ، وَقُولِي
الَّتِي كُنْتِ تَقُولِينَ قَبْلَهَا».
قَالَ أَبُو عِيسَى: هَذَا حَدِيثٌ حَسَنٌ
صَحِيحٌ.

تخريج: وأخرجه البخاري، النكاح، باب ضرب الدف في النكاح والوليمة، ح: ٥١٤٧ من
حديث بشر بن المفضل به.

Comments:

When the little girls uttered an improper statement in their song the Prophet ﷺ stopped them there and then. This indicates that wrong, false and unlawful things should not be permitted or appreciated at any occasion.

Chapter 7. What (Has Been Related About What) To Say To The Newlywed

(المعجم ٧) - بَابُ مَا [جَاءَ فِيهَا]

يُقَالُ لِلْمُتَزَوِّجِ (التحفة ٧)

1091. Abū Hurairah narrated that when supplicating for the newlywed, the Prophet ﷺ would say: (*Bārak Allāhu laka wa bāraka ‘alaik, wa jama‘a bainakumā fī khair.*) “May Allāh bless you and send blessings upon you, and bring goodness between you.” (*Ṣaḥīh*)

(He said:) There is something about this from ‘Aqīl bin Abī Ṭālib.

(Abū ‘Eisā said:) The *Hadīth* of Abū Hurairah is a *Hasan Ṣaḥīh Hadīth*.

١٠٩١ - حَدَّثَنَا قُتَيْبَةُ: حَدَّثَنَا عَبْدُ الْعَزِيزِ
ابْنُ مُحَمَّدٍ عَنْ سُهَيْلِ بْنِ أَبِي صَالِحٍ، عَنْ
أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ أَنَّ النَّبِيَّ ﷺ كَانَ إِذَا
رَفَّقَ الْإِنْسَانَ، إِذَا تَزَوَّجَ قَالَ: «بَارَكَ اللَّهُ لَكَ
وَبَارَكَ عَلَيْكَ، وَجَمَعَ بَيْنَكُمَا فِي خَيْرٍ»
[قَالَ:] وَفِي الْبَابِ عَنْ عَقِيلِ بْنِ أَبِي
طَالِبٍ.
[قَالَ أَبُو عِيسَى:] حَدِيثُ أَبِي هُرَيْرَةَ
حَدِيثٌ حَسَنٌ صَحِيحٌ.

تخريج: [إسناده صحيح] وأخرجه أبو داود، النكاح، باب ما يقال للمتزوج، ح: ٢١٣٠ عن
قتيبة به وصححه ابن حبان (الإحسان): ٤٠٤١ والحاكم: ١٨٣/٢ والذهبي * وفي الباب عن عقيل
ابن أبي طالب [ابن ماجه، ح: ١٩٠٦].

Comments:

In this world, in different nations, there are different ways to congratulate on marriage. The Prophet ﷺ told the Muslims to congratulate the husband and wife and ask Allāh’s blessings for them.

Chapter 8. What Has Been Related About What Is Said When One Has Intercourse With His Wife

1092. Ibn ‘Abbās narrated that the Messenger of Allāh ﷺ said: “If anyone of you, when having sexual intercourse with his wife, says: (*Bismillāh, Allāhumma jannibnash-Shaiṭāna wa jannibish-Shaiṭāna mā razaqānā*) ‘In the Name of Allāh. O Allāh! Protect me from *Shaiṭān* and protect what you bestow upon us from *Shaiṭān*’ – then if Allāh decrees that they should have a child, *Shaiṭān* will not be able to harm him.” (*Ṣaḥīḥ*)

(Abū ‘Eīsā said:) This *Ḥadīth* is *Ḥasan Ṣaḥīḥ*.

تخریج: متفق عليه، وأخرجه البخاري، النكاح، باب ما يقول إذا أتى أهله، ح: ٥١٦٥ ومسلم، ح: ١٤٣٤ من حديث منصور به.

Comments:

When a person intends to have sexual intercourse with his wife, he should pray and ask Allāh’s blessings with the mentioned supplication. If the child is born in result of this intercourse, Allāh ﷻ will save the child from the evil of Satan.

Chapter 9. What Has Been Related About The Times In Which Marriage Is Recommended

1093. ‘Āishah narrated: “The Messenger of Allāh ﷺ married me in *Shawwāl*, and he took up residence with me in *Shawwāl*.” (*Ṣaḥīḥ*)

And ‘Āishah used to recommend her women folk to take up residence (with their husbands) during *Shawwāl*.^[1]

(المعجم ٨) - بَابُ مَا جَاءَ فِيمَا يَقُولُ إِذَا دَخَلَ عَلَى أَهْلِهِ (التحفة ٨)

١٠٩٢ - حَدَّثَنَا ابْنُ أَبِي عُمَرَ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ مَنْصُورٍ، عَنْ سَالِمِ بْنِ أَبِي الْجَعْدِ، عَنْ كُرَيْبٍ، عَنِ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَوْ أَنَّ أَحَدَكُمْ، إِذَا أَتَى أَهْلَهُ، قَالَ: بِسْمِ اللَّهِ اللَّهُمَّ جَنِّبْنَا الشَّيْطَانَ وَجَنِّبِ الشَّيْطَانَ مَا رَزَقْتَنَا فَإِنِ قَضَى اللَّهُ بَيْنَهُمَا وَلَدًا لَمْ يَضُرَّهُ الشَّيْطَانُ».

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ.

(المعجم ٩) - بَابُ مَا جَاءَ فِي الْأَوْقَاتِ الَّتِي يُسْتَحَبُّ فِيهَا النِّكَاحُ (التحفة ٩)

١٠٩٣ - حَدَّثَنَا بُنْدَارٌ: حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ: حَدَّثَنَا سُفْيَانُ عَنْ إِسْمَاعِيلَ بْنِ أُمَيَّةَ، عَنْ عَبْدِ اللَّهِ بْنِ عُرْوَةَ، عَنْ عُرْوَةَ، عَنْ عَائِشَةَ قَالَتْ: تَزَوَّجَنِي رَسُولُ اللَّهِ ﷺ فِي شَوَّالٍ، وَبَتِي بِي فِي شَوَّالٍ.

[1] They say that this was to contradict the pre-Islamic belief that it should not be done during *Shawwāl*. See *Tuḥfat Al-Aḥwadhī*.

(Abū 'Eisā said:) This *Hadīth* is *Hasan Ṣaḥīḥ*, we do not know of it except from the narration of Ath-Thawrī from Ismā'il (bin Umayyah).

وَكَاثَتْ عَائِشَةُ تَسْتَحِبُّ أَنْ يُنْبَى بِنِسَائِهَا فِي شَوَّالٍ.

[قَالَ أَبُو عِيْسَى:] هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ، لَا نَعْرِفُهُ إِلَّا مِنْ حَدِيثِ الثَّوْرِيِّ عَنْ إِسْمَاعِيلَ [ابْنِ أُمِيَّةَ].

تخريج: وأخرجه مسلم، النكاح، باب استحباب التزوج والتزويج في شوال استحباب الدخول فيه، ح: ١٤٢٣ من حديث سفيان الثوري به.

Comments:

In the period of *Jahiliyyah*, people disliked to marry in the month of *Shawwāl* As for today people do not like to marry in the month of *Muḥarram*. The Prophet ﷺ did it purposely in the month of *Shawwāl* to disapprove the prevailing idea.

Chapter 10. What Has Been Related About (*Al-Walimah*) The Banquet

1094. Anas bin Mālik narrated: "The Messenger of Allāh ﷺ saw some traces of saffron on 'Abdur-Raḥmān bin 'Awf so he said: 'What is this?' He said: 'I married a woman for the amount of gold equal to a date stone.' So he said: 'May Allāh bless you. Have a banquet, even if with only one sheep.'" (*Ṣaḥīḥ*)

(He said:) There are narrations on this topic from Ibn Mas'ūd, 'Āishah, Jābir, and Zuhair bin 'Uthmān.

(Abū 'Eisā said:) The *Hadīth* of Anas is a *Hasan Ṣaḥīḥ Hadīth*.

Aḥmad bin Ḥanbal said: "The amount of gold equal to a date stone is the weight of three and one third Dirham." Ishāq said: "It is the weight of five (and one third) Dirham."

(المعجم ١٠) - بَابُ مَا جَاءَ فِي الْوَلِيمَةِ (التحفة ١٠)

١٠٩٤ - حَدَّثَنَا قُتَيْبَةُ: حَدَّثَنَا حَمَّادُ بْنُ زَيْدٍ عَنْ ثَابِتٍ، عَنْ أَنَسِ بْنِ مَالِكٍ أَنَّ رَسُولَ اللَّهِ ﷺ رَأَى عَلَى عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ أَثَرَ صُفْرَةٍ، فَقَالَ: «مَا هَذَا؟» فَقَالَ: إِنِّي تَزَوَّجْتُ امْرَأَةً عَلَى وَزْنِ نَوَاةٍ مِنْ ذَهَبٍ، فَقَالَ: «بَارَكَ اللَّهُ لَكَ، أَوْلِمَ وَلَوْ بِشَاةٍ».

[قَالَ:] وفي البابِ عَنِ ابْنِ مَسْعُودٍ وَعَائِشَةَ وَجَابِرٍ وَزُهَيْرِ بْنِ عَثْمَانَ.

[قَالَ أَبُو عِيْسَى:] حَدِيثُ أَنَسٍ حَدِيثٌ حَسَنٌ صَحِيحٌ.

وَقَالَ أَحْمَدُ بْنُ حَنْبَلٍ: وَزْنُ نَوَاةٍ مِنْ ذَهَبٍ: وَزْنُ ثَلَاثَةِ دَرَاهِمٍ وَثُلُثٍ. وَقَالَ إِسْحَاقُ: هُوَ وَزْنُ خَمْسَةِ دَرَاهِمٍ وَثُلُثٍ.

تخريج: متفق عليه، وأخرجه مسلم، النكاح، باب الصداق وجواز كونه تعليم قرآن وخاتم حديد... إلخ، ح: ١٤٢٧ عن قتبية والبخاري، ح: ٥١٥٥ من حديث حماد بن زيد به * وفي الباب عن ابن مسعود [أي: ١٠٩٧] وعائشة [البیهقي: ٢٦٠/٧] وجابر [مسلم، ح: ١٤٣٠] وزهير ابن عثمان [أبو داود، ح: ٣٧٤٥].

Comments:

‘Abdur-Rahmān bin ‘Awf is one among the Ten who were given the glad tidings of Paradise in this world, and he had very special and close relations with the Prophet ﷺ. He did not invite the Prophet ﷺ to attend his marriage and the Prophet ﷺ did not mind it. It can be inferred from this that the people in the early period of Islam did not make any special arrangements for marriage and did not consider it mandatory to invite all friends and relatives to attend it.

1095. Anas bin Mālik narrated: “The Prophet ﷺ had a banquet for Safiyyah bint Huyayy with *Sawīq*^[1] and dates.”

(Abū ‘Eisā said:) This *Hadīth* is *Hasan Gharīb*.

١٠٩٥ - حَدَّثَنَا ابْنُ أَبِي عُمَرَ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ وَائِلِ بْنِ دَاوُدَ، عَنْ أَبِيهِ، عَنِ الزُّهْرِيِّ، عَنْ أَنَسِ بْنِ مَالِكٍ: أَنَّ النَّبِيَّ ﷺ أَوْلَمَ عَلَى صَفِيَّةَ بِنْتِ حَيٍّ بِسَوِيقٍ وَتَمْرٍ. [قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ حَسَنٌ غَرِيبٌ.

تخريج: [حسن] وأخرجه ابن ماجه، ح: ١٩٠٩ عن محمد بن أبي عمر به وللحديث شواهد عند البخاري، ح: ٣٧١ ومسلم، ح: ١٣٦٥ (النكاح، باب فضيلة إعتاقه أمته ثم يتزوجها) وغيرهما.

Comments:

There is a narration in *Ṣaḥīḥ Al-Bukhārī* that the Prophet ﷺ, in the *Walīmah* banquet of Safiyyah, with the help of his friends served dates, cheese and ghee mixed together. Maybe the flour of barley was also mixed in it.

1096. (Another chain similar to the narration as no. 1095).

Others have reported this *Hadīth* from Ibn ‘Uyainah, from Az-Zuhrī, from Anas, and they did not mention “from Wā’il, from his son Nawf” in it. (*Hasan*)

(Abū ‘Eisā said:) Sufyān bin ‘Uyainah committed some *Tadlīs* in

١٠٩٦ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا الْحَمِيدِيُّ عَنْ سُفْيَانَ، نَحْوَ هَذَا. وَقَدْ رَوَى غَيْرُ وَاحِدٍ هَذَا الْحَدِيثَ عَنِ ابْنِ عُيَيْنَةَ، عَنِ الزُّهْرِيِّ عَنْ أَنَسٍ. وَلَمْ يَذْكُرُوا فِيهِ عَنْ وَائِلٍ، عَنْ ابْنِهِ نَوْفٍ.

[1] A kind of mash made of powdered roasted wheat or barley grain, or with sugar and dates.

this *Hadīth*. Sometimes he did not mention “from Wā’il, from his son Nawf” in it, and sometimes he did.

[قَالَ أَبُو عِيسَى:] وَكَانَ سُفْيَانُ بْنُ عُيَيْنَةَ يُدَلِّسُ فِي هَذَا الْحَدِيثِ. فَرُبَّمَا لَمْ يَذْكَرْ فِيهِ عَنْ وَائِلٍ، عَنْ ابْنِهِ وَرُبَّمَا ذَكَرَهُ.

تخريج: [حسن] انظر الحديث السابق وهو في مسند الحميدي، ح: ١١٩٤ (بتحقيقي).

1097. Ibn Mas‘ūd narrated that the Messenger of Allāh ﷺ said: “Having food on the first day is what is obligatory, and having food on the second day is *Sunnah*, and having food on the third day is to be heard of, and whoever wants to be heard of, Allāh will make him heard of.” (*Da‘īf*)

Abū ‘Eisā said: We do not know of the *Hadīth* of Ibn Mas‘ūd to be *Marfū‘* except from the narration of Ziyād bin ‘Abdullāh, and Ziyād bin ‘Abdullāh narrates many strange and objectionable things.

(He said:) I heard Muḥammad bin Ismā‘īl mentioning that Muḥammad bin ‘Uqbah said: “Wakī‘ said: ‘Ziyād bin ‘Abdullāh, in spite of his nobility, lies in his narrations.’”

١٠٩٧ - حَدَّثَنَا مُحَمَّدُ بْنُ مُوسَى الْبَصْرِيُّ: حَدَّثَنَا زِيَادُ بْنُ عَبْدِ اللَّهِ: حَدَّثَنَا عَطَاءُ بْنُ السَّائِبِ عَنْ أَبِي عَبْدِ الرَّحْمَنِ، عَنِ ابْنِ مَسْعُودٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «طَعَامٌ أَوَّلَ يَوْمٍ حَقٌّ، وَطَعَامٌ يَوْمَ الثَّانِي سُنَّةٌ، وَطَعَامٌ يَوْمَ الثَّلَاثِ سُمْعَةٌ، وَمَنْ سَمِعَ سَمِعَ اللَّهُ بِهِ».

قَالَ أَبُو عِيسَى: حَدِيثُ ابْنِ مَسْعُودٍ لَا نَعْرِفُهُ مَرْفُوعًا إِلَّا مِنْ حَدِيثِ زِيَادِ بْنِ عَبْدِ اللَّهِ وَزِيَادُ بْنُ عَبْدِ اللَّهِ كَثِيرُ الْغَرَائِبِ وَالْمَنَاقِبِ.

[قَالَ:] وَاسْمِعْتُ مُحَمَّدَ بْنَ إِسْمَاعِيلَ يَذْكَرُ عَنْ مُحَمَّدِ بْنِ عُقْبَةَ قَالَ: قَالَ وَكَيْعٌ: زِيَادُ بْنُ عَبْدِ اللَّهِ، مَعَ شَرَفِهِ، يَكْذِبُ فِي الْحَدِيثِ.

تخريج: [إسناده ضعيف] وأخرجه البيهقي: ٢٦٠/٧ وابن عدي: ٣/١٥٠ من حديث محمد ابن موسى البصري الحرشي به وضعفه، وللحديث شواهد ضعيفة عند أبي داود، ح: ٣٧٤٥ وابن حبان، ح: ١٩١٥ وغيرهما * عطاء بن السائب اختلط * قول وكيع: "زياد بن عبدالله مع شرفه (لا) يكذب في الحديث" سقط "لا" من رواية الترمذي فيما أظن، وقال البخاري في التاريخ الكبير: ٣/٣٦٠: "وقال ابن عقبة السدوسي عن وكيع: هو أشرف من أن يكذب" وكذا رواه أبو أحمد الحاكم وهو الصواب كما في التهذيب وغيره.

Comments:

Having the banquet on the third day is supported by narrations recorded by *Al-Bukhārī*, *Muslim*, and others.

Chapter 11. What Has Been Related About Accepting The Invitation

1098. Ibn ‘Umar narrated that the Messenger of Allāh ﷺ said: “Accept the invitation when you are offered.” (*Ṣaḥīḥ*)

He said: There are narrations on this topic from ‘Alī, Abū Hurairah, Al-Barā’, Anas, and Abū Ayyūb.

(المعجم ١١) - بَابُ مَا جَاءَ فِي إِجَابَةِ الدَّاعِي (التحفة ١١)

١٠٩٨ - حَدَّثَنَا أَبُو سَلَمَةَ يَحْيَى بْنُ خَلْفٍ: حَدَّثَنَا بَشْرُ بْنُ الْمُفَضَّلِ عَنْ إِسْمَاعِيلِ بْنِ أُمَيَّةَ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «اتُّثُوا الدَّعْوَةَ إِذَا دُعِيتُمْ». قَالَ: وَفِي الْبَابِ عَنْ عَلِيٍّ وَأَبِي هُرَيْرَةَ وَالْبَرَاءِ وَأَنْسٍ وَأَبِي أَيُّوبَ. [قَالَ أَبُو عِيسَى:] حَدِيثُ ابْنِ عُمَرَ حَدِيثٌ حَسَنٌ صَحِيحٌ.

تخریج: متفق عليه، وأخرجه مسلم، النكاح، باب الأمر بإجابة الداعي إلى دعوة، ح: ١٠٢/١٤٢٩ من حديث بشر بن المفضل به والبخاري، ح: ٥١٧٩ من حديث نافع به * وفي الباب عن علي [يأتي: ٢٧٣٦] وأبي هريرة [البخاري، ح: ٥١٧٧ ومسلم، ح: ١٤٣٢] والبراء [البخاري، ح: ٥١٧٥ ومسلم، ح: ٢٠٦٦] وأنس [أحمد: ٣/٢١٠، ٢٧٠، ٢٣٢] وأبي أيوب [البخاري في الأدب المفرد، ح: ٩٢٢].

Comments:

In *Ṣaḥīḥ Al-Bukhārī* and *Ṣaḥīḥ Muslim*, the banquet has been explained and made clear. If someone marries a woman of his choice, it is a matter of pleasure and delight. For this reason one should be thankful to Allāh ﷻ and for the sake of expressing one’s happiness, one should invite the relatives and friends to eat food.

Chapter 12. What Has Been Related About One Who Comes To A Banquet Without An Invitation

1099. Abū Mas‘ūd narrated: “A man named Abū Shu‘aib came to a slave of his, who was a butcher, and said: ‘Prepare some food for me that will be sufficient for five, for I have seen hunger in the face of the Messenger of Allāh ﷺ.’ So he prepared some food. Then he

(المعجم ١٢) - بَابُ مَا جَاءَ فِيمَنْ يَجِيءُ إِلَى الْوَلِيْمَةِ بِغَيْرِ دَعْوَةٍ (التحفة ١٢)

١٠٩٩ - حَدَّثَنَا هَنَّاذٌ: حَدَّثَنَا أَبُو مُعَاوِيَةَ عَنِ الْأَعْمَشِيِّ، عَنْ شَقِيقٍ، عَنْ أَبِي مَسْعُودٍ قَالَ: جَاءَ رَجُلٌ يُقَالُ لَهُ أَبُو شُعَيْبٍ إِلَى غُلَامٍ لَهُ لَحَامٌ، فَقَالَ: اصْنَعْ لِي طَعَامًا يَكْفِي خَمْسَةَ. فَأَيْبَى رَأَيْتُ فِي وَجْهِ رَسُولِ اللَّهِ ﷺ الْجُوعَ قَالَ: فَصَنَعَ طَعَامًا، ثُمَّ أَرْسَلَ إِلَيَّ

sent a message to the Prophet ﷺ inviting him and those who were sitting with him. When the Prophet ﷺ stood, he was followed by a man who was not with them when they were invited. When the Messenger of Allāh ﷺ arrived at the door he said to the owner of the house: ‘A man who was not with us when you invited us followed us, if you permit him, he will enter.’” He said: We have permitted him, let him enter.” (*Ṣaḥīḥ*)

(Abū ‘Eisā said:) This *Ḥadīth* is *Ḥasan Ṣaḥīḥ*. (He said:) There are narrations on this topic from Ibn ‘Umar.

تخریج: متفق علیه، وأخرجه مسلم، الأشربة، باب ما يفعل الضيف إذا تبعه غير من دعاه صاحب الطعام... إلخ، ح: ۲۰۳۶ من حديث أبي معاوية الضرير والبخاري، ح: ۵۴۳۴ من حديث الأعمش به * وفي الباب عن ابن عمر، [أبو داود، ح: ۳۷۴۱].

Comments:

It is clear from this narration that attending banquets without being invited is not correct, and an invitee should not bring another person along to the banquet without prior permission from the host. If someone is sure that the additional guest will not be a burden on the host, then he may take him.

Chapter 13. What Has Been Related About Marrying Virgins

1100. Jābir bin ‘Abdullāh narrated: “I married a woman and went to the Prophet ﷺ, he said: ‘O Jābir! Have you married?’ I said: ‘Yes.’ He said: ‘A virgin or a matron?’ I said: ‘A matron.’ He said: ‘Why didn’t you marry a young girl, so that you may play with her and she with you?’ I said: ‘O Messenger of Allāh! ‘Abdullāh (his father) died and left behind seven – or nine – daughters, so I have brought someone who can

النَّبِيِّ ﷺ فَدَعَاهُ وَجُلَسَاءَهُ الَّذِينَ مَعَهُ، فَلَمَّا قَامَ النَّبِيُّ ﷺ اتَّبَعَهُمْ رَجُلٌ لَمْ يَكُنْ مَعَهُمْ حِينَ دُعُوا، فَلَمَّا انْتَهَى رَسُولُ اللَّهِ ﷺ إِلَى الْبَابِ، قَالَ لِصَاحِبِ الْمَنْزِلِ: «إِنَّهُ اتَّبَعَنَا رَجُلٌ لَمْ يَكُنْ مَعَنَا حِينَ دَعَوْتَنَا، فَإِنْ أَدْنَتْ لَهُ دَخَلَ». قَالَ: فَقَدْ أَدْنَا لَهُ، فَلْيَدْخُلْ.

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ. [قَالَ:] وَفِي الْبَابِ عَنِ ابْنِ عُمَرَ.

(المعجم ۱۳) - بَابُ مَا جَاءَ فِي تَزْوِيجِ

الْأَبْكَارِ (التحفة ۱۳)

۱۱۰۰ - حَدَّثَنَا قُتَيْبَةُ: حَدَّثَنَا حَمَادُ بْنُ زَيْدٍ عَنْ عَمْرِو بْنِ دِينَارٍ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: تَزَوَّجْتُ امْرَأَةً، فَأَتَيْتُ النَّبِيَّ ﷺ فَقَالَ: «أَتَزَوَّجْتِ يَا جَابِرُ؟» قُلْتُ: نَعَمْ. فَقَالَ: «بِكْرًا أَمْ نَيْبًا؟» قُلْتُ: لَا، بَلْ نَيْبًا. فَقَالَ: «هَلَّا جَارِيَةٌ تُلَاعِبُهَا وَتُلَاعِبُكَ؟» قُلْتُ: يَا رَسُولَ اللَّهِ! إِنَّ عَبْدَ اللَّهِ مَاتَ وَتَرَكَ سَبْعَ بَنَاتٍ أَوْ تِسْعًا، فَجِئْتُ بِمَنْ يَقُومُ

look after them.” (He said:) “So he supplicated for me.” (*Sahih*)

(He said:) There are narrations on this topic from Ubayy bin Ka'b and Ka'b bin 'Ujrah.

(Abū 'Eisā said:) The *Hadīth* of Jābir (bin 'Abdullāh) is a *Hasan Sahih*.

تخریج: متفق عليه، وأخرجه البخاري، النفقات، باب عون المرأة زوجها في ولده، ح: ٥٣٦٧ ومسلم، ح: ٧١٥ (الرضاع، باب استحباب نكاح البكر بعد، ح: ١٤٦٦) من حديث حماد بن زيد به * وفي الباب عن أبي بن كعب [البخاري في التاريخ الكبير: ٢٧٢/٣] وكعب بن عجرة [البخاري في التاريخ الكبير: ٢٧٢/٣ والطبراني في الكبير: ١٩/١٥٠، ح: ٣٢٨].

Comments:

It is clear from this narration that marrying a virgin is preferable as this marriage is lively and spirited. But marrying a widow or a divorced lady is also recommended if there is need of it for some higher cause.

Chapter 14. What Has Been Related About: There Is No Marriage Except With A *Walī*

1101. Abū Mūsā narrated that the Messenger of Allāh ﷺ said: “There is no marriage except with a *Walī*.” (*Sahih*)

(He said:) There are narrations on this topic from 'Āishah, Ibn 'Abbās, Abū Hurairah, 'Imrān bin Ḥuṣain, and Anas.

عَلَيْهِنَّ. [قَالَ:] فَدَعَا لِي [قَالَ:] وَفِي الْبَابِ عَنْ أَبِي بِنِ كَعْبٍ وَكَعْبِ بْنِ عُجْرَةَ.

[قَالَ أَبُو عِيسَى:] حَدِيثُ جَابِرِ بْنِ عَبْدِ اللَّهِ [حَدِيثٌ حَسَنٌ صَحِيحٌ.

(المعجم ١٤) - بَابُ مَا جَاءَ لَا نِكَاحَ إِلَّا بِوَالِيٍّ (التحفة ١٤)

١١٠١ - حَدَّثَنَا عَلِيُّ بْنُ حُجْرٍ: حَدَّثَنَا شَرِيكُ بْنُ عَبْدِ اللَّهِ عَنْ أَبِي إِسْحَاقَ؛ ح: وَحَدَّثَنَا قُتَيْبَةُ: حَدَّثَنَا أَبُو عَوَانَةَ عَنْ أَبِي إِسْحَاقَ؛ ح: وَحَدَّثَنَا بُنْدَارٌ: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ إِسْرَائِيلَ، عَنْ أَبِي إِسْحَاقَ؛ ح: وَحَدَّثَنَا عَبْدُ اللَّهِ بْنُ أَبِي زِيَادٍ: حَدَّثَنَا زَيْدُ بْنُ حُبَابٍ عَنْ يُونُسَ بْنِ أَبِي إِسْحَاقَ، عَنْ أَبِي إِسْحَاقَ، عَنْ أَبِي مُوسَى قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا نِكَاحَ إِلَّا بِوَالِيٍّ».

[قَالَ:] وَفِي الْبَابِ عَنْ عَائِشَةَ وَابْنِ عَبَّاسٍ وَأَبِي هُرَيْرَةَ وَعِمْرَانَ بْنِ حُصَيْنٍ وَأَنْسِ.

تخریج: [صحیح] وأخرجه ابن ماجه، النکاح، باب: لا نکاح إلا بولي، ح: ۱۸۸۱ من حدیث أبي عوانة به وصححه ابن حبان (الإحسان): ۴۰۶۵، ۴۰۶۶ وابن الجارود، ح: ۷۰۲، ۷۰۳ وللحدیث شواهد كثيرة جدًا * وفي الباب عن عائشة [يأتي: ۱۱۰۲] وابن عباس [ابن ماجه، ح: ۱۸۸۰] وأبي هريرة [ابن ماجه، ح: ۱۸۸۲] وعمران بن حصين [ابن عدي في الكامل: ۴/ ۱۴۵۳، ۱۵۶۹ والبيهقي: ۷/ ۱۲۵] وأنس [ابن عدي: ۳/ ۹۷۹].

1102. ‘Aishah narrated that the Messenger of Allāh ﷺ said: “Whichever woman marries without the permission of her *Walī* her marriage is invalid, her marriage is invalid. If he entered into her, then the *Mahr* is for her in lieu of what he enjoyed from her private part. If they disagree, then the *Sultān* is the *Walī* for one who has no *Walī*.” (*Hasan*)

(Abū ‘Eisā said:) This is a *Hasan Hadīth*. Yahya bin Sa‘eed Al-Anṣārī, Yahya bin Ayyūb, Sufyān Ath-Thawrī and others among the *Ḥuffāz* had reported similar from Ibn Juraij.

(Abū ‘Eisā said:) There is some disagreement with regard to the (previous) *Hadīth* of Abū Mūsā. It was reported by Isrā‘īl, Sharīk bin ‘Abdullāh, Abū ‘Awānah, Zuhair bin Mu‘āwiyah, and Qais bin Ar-Rabī‘ (all of them) from Abū Ishāq, from Abū Burdah, from Abū Mūsā, from the Prophet ﷺ.

Asbāṭ bin Muḥammad and Zaid bin Ḥubāb reported it from Yūnus bin Abī Ishāq, from Abū Ishāq, from Abū Buradah, from Abū Mūsā, from the Prophet ﷺ.

Abū ‘Ubaidah Al-Ḥaddād reported it from Yūnus bin Abī Ishāq, from Abū Burdah, from Abū

۱۱۰۲ - حَدَّثَنَا ابْنُ أَبِي عُمَرَ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنِ ابْنِ جُرَيْجٍ، عَنِ سُلَيْمَانَ ابْنِ مُوسَى، عَنِ الزُّهْرِيِّ، عَنِ عُرْوَةَ، عَنِ عَائِشَةَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «أَيُّمَا امْرَأَةٍ نَكَحَتْ بِغَيْرِ إِذْنِ وَلِيِّهَا، فَنِكَاحُهَا بَاطِلٌ، فَنِكَاحُهَا بَاطِلٌ، فَنِكَاحُهَا بَاطِلٌ، فَإِنْ دَخَلَ بِهَا فَلَهَا الْمَهْرُ بِمَا اسْتَحَلَّ مِنْ فَرْجِهَا، فَإِنْ اسْتَجْرُوا، فَالسُّلْطَانُ وَلِيُّ مَنْ لَا وَلِيَ لَهُ».

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ حَسَنٌ، وَقَدْ رَوَى يَحْيَى بْنُ سَعِيدٍ الْأَنْصَارِيُّ وَيَحْيَى ابْنُ أَثُوبٍ وَسُفْيَانُ الثَّوْرِيُّ وَعَبْدُ وَاحِدٌ مِنَ الْحَفَظَاءِ عَنِ ابْنِ جُرَيْجٍ، نَحْوَ هَذَا.

[قَالَ أَبُو عِيسَى:] وَحَدِيثُ أَبِي مُوسَى حَدِيثٌ فِيهِ اخْتِلَافٌ. رَوَاهُ إِسْرَائِيلُ وَشَرِيكُ ابْنِ عَبْدِ اللَّهِ وَأَبُو عَوَانَةَ وَزُهَيْرُ بْنُ مُعَاوِيَةَ وَقَيْسُ بْنُ الرَّبِيعِ، عَنِ أَبِي إِسْحَاقَ، عَنِ أَبِي بُرْدَةَ، عَنِ أَبِي مُوسَى عَنِ النَّبِيِّ ﷺ. وَرَوَاهُ أَسْبَاطُ بْنُ مُحَمَّدٍ وَزَيْدُ بْنُ حَبَابٍ عَنِ يُونُسَ ابْنِ أَبِي إِسْحَاقَ، عَنِ أَبِي إِسْحَاقَ، عَنِ أَبِي بُرْدَةَ، عَنِ أَبِي مُوسَى عَنِ النَّبِيِّ ﷺ. وَرَوَى أَبُو عُبَيْدَةَ الْحَدَّادُ عَنِ يُونُسَ بْنِ أَبِي إِسْحَاقَ، عَنِ أَبِي بُرْدَةَ عَنِ أَبِي مُوسَى عَنِ النَّبِيِّ ﷺ،

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Mūsā, from the Prophet ﷺ and it is similar, but he did not mention “from Abū Ishāq” in it.

It has also been reported from Yūnus bin Abī Ishāq, (from Abū Ishāq), from Abū Burdah, (from Abū Mūsā), from the Prophet ﷺ.

Shu‘bah and Ath-Thawrī reported from Abū Ishāq, (from Abū Mūsā), from the Prophet ﷺ: “There is no marriage except with a *Wali*.”

Some of the companions of Sufyān mentioned it from Sufyān, from Abū Ishāq, from Abū Burdah, from Abū Mūsā, but that is not correct.

These people who reported from Abū Ishāq, from Abū Burdah, from Abū Mūsā, from the Prophet ﷺ: “There is no marriage except with a *Wali*” – they heard from Abū Ishāq during different times, even though Shu‘bah and Ath-Thawrī have better memories and are more reliable than all of these who reported this *Hadīth* from Abū Ishāq, even still, the narrations of these people are more appropriate and correct to me. This is because Shu‘bah and Ath-Thawrī heard this *Hadīth* from Abū Ishāq in one sitting. What proves this is what has been narrated to us by Maḥmūd bin Ghailān: (He said:), “Abū Dāwūd narrated to us: (He said) ‘Shu‘bah informed us, he said: “I heard Sufyān Ath-Thawrī ask Abū Ishāq: ‘Did you hear Abū Burdah saying: “The Messenger of Allāh ﷺ said: ‘There is no marriage except with a *Wali*’? He said: “Yes.”

نَحْوَهُ. وَلَمْ يَذْكُرْ فِيهِ: عَنْ أَبِي إِسْحَاقَ.

وَقَدْ رَوَى عَنْ يُونُسَ بْنِ أَبِي إِسْحَاقَ، [عَنْ أَبِي إِسْحَاقَ] عَنْ أَبِي بُرْدَةَ، [عَنْ أَبِي مُوسَى] عَنِ النَّبِيِّ ﷺ [أَيْضًا].

وَرَوَى شُعْبَةُ وَالثَّوْرِيُّ عَنْ أَبِي إِسْحَاقَ، [عَنْ أَبِي مُوسَى] عَنِ النَّبِيِّ ﷺ: «لَا نِكَاحَ إِلَّا بِوَالِيٍّ».

وَقَدْ ذَكَرَ بَعْضُ أَصْحَابِ سُفْيَانَ عَنْ سُفْيَانَ، عَنْ أَبِي إِسْحَاقَ، عَنْ أَبِي بُرْدَةَ، عَنْ أَبِي مُوسَى، وَلَا يَصِحُّ.

وَرَوَاهُ هُوَلَاءُ الَّذِينَ رَوَوْا عَنْ أَبِي إِسْحَاقَ، عَنْ أَبِي بُرْدَةَ، عَنْ أَبِي مُوسَى عَنِ النَّبِيِّ ﷺ: «لَا نِكَاحَ إِلَّا بِوَالِيٍّ» عِنْدِي أَصَحُّ. لِأَنَّ سَمَاعَهُمْ مِنْ أَبِي إِسْحَاقَ فِي أَوْقَاتٍ مُخْتَلِفَةٍ، وَإِنْ كَانَ شُعْبَةُ وَالثَّوْرِيُّ أَحْفَظَ وَأَثْبَتَ مِنْ جَمِيعِ هُوَلَاءِ الَّذِينَ رَوَوْا عَنْ أَبِي إِسْحَاقَ هَذَا الْحَدِيثَ. فَإِنَّ رِوَايَةَ هُوَلَاءِ عِنْدِي أَشْبَهُ وَأَصَحُّ. لِأَنَّ شُعْبَةَ وَالثَّوْرِيَّ سَمِعَا هَذَا الْحَدِيثَ مِنْ أَبِي إِسْحَاقَ فِي مَجْلِسٍ وَاحِدٍ. وَمِمَّا يَدُلُّ عَلَى ذَلِكَ مَا حَدَّثَنَا مُحَمَّدُ بْنُ غَيْلَانَ: [قَالَ] حَدَّثَنَا أَبُو دَاوُدَ: [قَالَ] أَنْبَأَنَا شُعْبَةُ قَالَ: سَمِعْتُ سُفْيَانَ الثَّوْرِيَّ يَسْأَلُ أَبَا إِسْحَاقَ: أَسَمِعْتَ أَبَا بُرْدَةَ يَقُولُ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا نِكَاحَ إِلَّا بِوَالِيٍّ»؟ فَقَالَ: نَعَمْ.

فَدَلَّ هَذَا الْحَدِيثُ عَلَى أَنَّ سَمَاعَ شُعْبَةَ وَالثَّوْرِيَّ [عَنْ مَكْحُولٍ] هَذَا الْحَدِيثَ فِي

So this narration proves that Shu'bah and Ath-Thawrī heard this Hadīth (from Makhūl) at the same time, while Isrā'il is (trustworthy and) reliable in the case of Abū Ishāq.

I heard Abū Mūsā Muḥammad bin Al-Muthanna saying: "I heard 'Abdur-Rahmān bin Mahdī saying; 'I only left the (Hadīth) of Sufyān Ath-Thawrī from Abū Ishāq because I relied on Isrā'il for it, since he narrated it in a more complete fashion."

The Hadīth on this topic from 'Aishah, from the Prophet ﷺ: "There is no marriage except with a Walī" is a Hasan Hadīth to me, it was reported by Ibn Juraj from Sulaimān bin Mūsā, from Az-Zuhrī, from 'Urwah, from 'Aishah, from the Prophet ﷺ.

It was reported by Al-Hajjāj bin Artāh and Ja'far bin Rabī'ah from Az-Zuhrī, from 'Urwah, from 'Aishah, from the Prophet ﷺ. And it was reported from Hishām bin 'Urwah from his father, from 'Aishah, from the Prophet ﷺ, similarly.

Some of the people of Hadīth have criticized the narration of Az-Zuhrī from 'Urwah, from 'Aishah, from the Prophet ﷺ. Ibn Juraj said: "Then I met Az-Zuhrī and asked him about it, and he rejected it." So they considered this Hadīth weak because of this. It has been mentioned that Yahya bin Ma'in said: "This statement from Ibn

وَقَتِ وَاحِدٍ. وَإِسْرَائِيلُ هُوَ [ثِقَةٌ] ثَبَّتَ فِي أَبِي إِسْحَاقَ.

سَمِعْتُ مُحَمَّدَ بْنَ الْمُثَنَّى يَقُولُ: سَمِعْتُ عَبْدَ الرَّحْمَنِ بْنَ مَهْدِيٍّ يَقُولُ: مَا فَاتَنِي الَّذِي فَاتَنِي مِنْ حَدِيثِ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ، إِلَّا لَمَّا اتَّكَلْتُ بِهِ عَلَى إِسْرَائِيلَ، لِأَنَّهُ كَانَ يَأْتِي بِهِ أَمَّ.

وَحَدِيثُ عَائِشَةَ فِي هَذَا الْبَابِ عَنِ النَّبِيِّ ﷺ: «لَا نِكَاحَ إِلَّا بِوَالِيٍّ» حَدِيثٌ [عِنْدِي] حَسَنٌ. رَوَاهُ ابْنُ جُرَيْجٍ عَنْ سُلَيْمَانَ بْنِ مُوسَى، عَنِ الزُّهْرِيِّ، عَنْ عُرْوَةَ، عَنْ عَائِشَةَ عَنِ النَّبِيِّ ﷺ.

وَرَوَاهُ الْحَجَّاجُ بْنُ أَرْطَاةَ وَجَعْفَرُ بْنُ رَبِيعَةَ عَنِ الزُّهْرِيِّ، عَنْ عُرْوَةَ، عَنْ عَائِشَةَ عَنِ النَّبِيِّ ﷺ. وَرَوَى عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ عَنِ النَّبِيِّ ﷺ مِثْلَهُ. وَقَدْ تَكَلَّمَ بَعْضُ أَصْحَابِ الْحَدِيثِ فِي حَدِيثِ الزُّهْرِيِّ، عَنْ عُرْوَةَ، عَنْ عَائِشَةَ عَنِ النَّبِيِّ ﷺ، قَالَ ابْنُ جُرَيْجٍ: ثُمَّ لَقِيتُ الزُّهْرِيَّ فَسَأَلْتُهُ فَأَنْكَرَهُ، فَضَعَّفُوا هَذَا الْحَدِيثَ مِنْ أَجْلِ هَذَا. وَذَكَرَ عَنْ يَحْيَى بْنِ مَعِينٍ، أَنَّهُ قَالَ: لَمْ يَذْكُرْ هَذَا الْحَرْفَ عَنِ ابْنِ جُرَيْجٍ إِلَّا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ. قَالَ يَحْيَى بْنُ مَعِينٍ: وَسَمَاعُ إِسْمَاعِيلَ بْنِ إِبْرَاهِيمَ عَنِ ابْنِ جُرَيْجٍ لَيْسَ بِذَاكَ، إِنَّمَا صَحَّحَ كُتُبَهُ عَلَى كُتُبِ عَبْدِ الْمَجِيدِ بْنِ عَبْدِ الْعَزِيزِ بْنِ أَبِي رَوَادٍ مَا سَمِعَ مِنْ ابْنِ جُرَيْجٍ.

Jurajj has not been mentioned by anyone but Ismā'il bin Ibrāhīm.” Yahya bin Ma'in said: “The case of Ismā'il bin Ibrāhīm hearing from Ibn Jurajj is not well established; he only corrected his books according to the books of 'Abdul-Majīd bin 'Abdul-'Azīz bin Abī Rawwād, but he (Ismā'il) did not hear from Ibn Jurajj.”

So Yahya graded the narrations of Ismā'il from Ibn Jurajj weak.

On this topic, the *Hadīth* of the Prophet ﷺ: “There is no marriage except with a *Wali*” is acted upon according to the people of knowledge among the Companions of the Prophet ﷺ. Among them are 'Umar bin Al-Khaṭṭāb, 'Alī bin Abī Tālib, 'Abdullāh bin 'Abbās, Abū Hurairah, and others.

Similarly, it has been reported from some of the *Fuqahā'* among the *Tabī'in* saying: “There is no marriage except with a *Wali*.” Among them were Sa'eed bin Al-Musayyab, Al-Ḥasan Al-Baṣrī, Shuraiḥ, Ibrāhīm An-Nakha'i, 'Umar bin 'Abdul-'Azīz, and others.

This is the view of Sufyān Ath-Thawrī, Al-Awzā'i, Mālik, 'Abdullāh bin Al-Mubārak, Ash-Shāfi'i, Aḥmad, and Ishāq.

وَصَعَفَ يَحْيَى رِوَايَةَ إِسْمَاعِيلَ بْنِ إِبْرَاهِيمَ
عَنِ ابْنِ جُرَيْجٍ .

وَالْعَمَلُ فِي هَذَا الْبَابِ عَلَى حَدِيثِ النَّبِيِّ
ﷺ: «لَا نِكَاحَ إِلَّا بِوَالِيٍّ» عِنْدَ أَهْلِ الْعِلْمِ
مِنَ أَصْحَابِ النَّبِيِّ ﷺ مِنْهُمْ عُمَرُ بْنُ
الْخَطَّابِ، وَعَلِيُّ بْنُ أَبِي طَالِبٍ، وَعَبْدُ اللَّهِ
ابْنُ عَبَّاسٍ وَأَبُو هُرَيْرَةَ وَغَيْرُهُمْ .

وَهَكَذَا رُوِيَ عَنْ بَعْضِ فَهَاءِ التَّابِعِينَ
أَنَّهُمْ قَالُوا: لَا نِكَاحَ إِلَّا بِوَالِيٍّ . مِنْهُمْ سَعِيدُ
ابْنُ الْمُسَيَّبِ وَالْحَسَنُ الْبَصْرِيُّ وَشُرَيْحُ
وَإِبْرَاهِيمُ النَّخَعِيُّ وَعُمَرُ بْنُ عَبْدِ الْعَزِيزِ
وَغَيْرُهُمْ .

وَبِهَذَا يَقُولُ سُفْيَانُ الثَّوْرِيُّ وَالْأَوْزَاعِيُّ
وَمَالِكٌ وَعَبْدُ اللَّهِ بْنُ الْمُبَارَكِ وَالشَّافِعِيُّ
وَأَحْمَدُ وَإِسْحَاقُ .

تخريج: [إسناده حسن] وأخرجه أبو داود، النكاح، باب: في الولي، ح: ٢٠٨٣ من حديث
سفيان بن عيينة به وصححه ابن حبان، ح: ١٢٤٨ والحاكم: ١٦٨/٢ على شرط الشيخين وقواه ابن
عدي في الكامل: ١١١٥/٣ * ابن جريج سمعه من سليمان وسليمان من الزهري من عروة وطولت
تخريجه في تحقيق مسند الحميدي، ح: ٢٣٠ وللحديث شواهد كثيرة.

Chapter 15. What Has Been Related About: There Is No Marriage Except With Proof (Bayyinah)^[1]

1103. Ibn ‘Abbās narrated that the Prophet ﷺ said: “The adulteresses are the ones who marry themselves without *Bayyinah* (proof).” (*Da‘īf*)

Yūsuf bin Hammād (one of the narrators) said: “‘Abdul-A‘lā (one of the narrators) reported this *Hadīth* in *Marfū‘* form in *At-Tafsīr*, and in *Kitāb At-Ṭalāq* he reported it in *Mawqūf* not *Marfū‘* form.”

تخريج: [إسناده ضعيف] وأخرجه الطبراني: ١٢/١٨٢، ح: ١٢٨٢ والبيهقي: ٧/١٢٥، ١٢٦٠ من حديث يوسف بن حماد به * سعيد بن أبي عروبة وقتادة عننا وللحديث شواهد مرفوعة وموقوفة، ومنها الحديث السابق.

1104. (Another chain) from Sa‘eed bin Abī ‘Arūbah, with similar (narration), and he did not narrate it in *Marfū‘* form, and this is more correct. (*Da‘īf*)

(Abū ‘Eīsā said:) This *Hadīth* is not preserved. We do not know of anyone who narrated it in *Marfū‘* form except for what has been reported from ‘Abdul-A‘lā, from Sa‘eed, from Qatādah which is *Marfū‘*.

This *Hadīth* has also been reported from ‘Abdul-A‘lā, from Sa‘eed in *Mawqūf* form.

What is *Ṣaḥīḥ* is what is reported from Ibn ‘Abbās, as his saying: “There is no marriage except with *Bayyinah*.”

This is how it has been reported

(المعجم ١٥) - بَابُ مَا جَاءَ لَا نِكَاحَ إِلَّا بِبَيِّنَةٍ (التحفة ١٥)

١١٠٣ - حَدَّثَنَا يُوسُفُ بْنُ حَمَّادٍ الْمَعْنِيُّ الْبَصْرِيُّ: حَدَّثَنَا عَبْدُ الْأَعْلَى عَنْ سَعِيدٍ، عَنْ قَتَادَةَ، عَنْ جَابِرِ بْنِ زَيْدٍ، عَنْ ابْنِ عَبَّاسٍ أَنَّ النَّبِيَّ ﷺ قَالَ: «الْبَغَايَا اللَّاتِي يُنْكِحُنَّ أَنْفُسَهُنَّ بِغَيْرِ بَيِّنَةٍ».
قَالَ يُوسُفُ بْنُ حَمَّادٍ: رَفَعَ عَبْدُ الْأَعْلَى هَذَا الْحَدِيثَ فِي التَّفْسِيرِ. وَأَوْقَفَهُ فِي كِتَابِ الطَّلَاقِ، وَلَمْ يَرْفَعَهُ.

١١٠٤ - حَدَّثَنَا قُتَيْبَةُ: حَدَّثَنَا عُثْمَرُ [مُحَمَّدُ بْنُ جَعْفَرٍ]، عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ، نَحْوَهُ وَلَمْ يَرْفَعَهُ. وَهَذَا أَصْحَحُ.

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ غَيْرٌ مَحْفُوظٌ، لَا نَعْلَمُ أَحَدًا رَفَعَهُ إِلَّا مَا رُوِيَ عَنْ عَبْدِ الْأَعْلَى، عَنْ سَعِيدٍ، عَنْ قَتَادَةَ مَرْفُوعًا.
رَوَى عَنْ عَبْدِ الْأَعْلَى، عَنْ سَعِيدٍ هَذَا الْحَدِيثَ مَوْقُوفًا.
وَالصَّحِيحُ مَا رُوِيَ عَنْ ابْنِ عَبَّاسٍ قَوْلُهُ: لَا نِكَاحَ إِلَّا بِبَيِّنَةٍ.
وَهَكَذَا رَوَى غَيْرٌ وَاحِدٌ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ، نَحْوَ هَذَا، مَوْقُوفًا.

[1] The *Bayyinah* referred to here is witnesses as the author explains below.

by more than one (narrator) from Sa'eed bin Abī 'Arūbah, and it is similar, in *Mawqūf* form.

There are narrations on this topic from 'Imrān bin Ḥuşain, Anas, and Abū Hurairah.

This is acted upon according to the people of knowledge among the Companions of the Prophet ﷺ and those after them from the *Tābi'in* and others. They say that there is no marriage except with witnesses. There is no disagreement over that – according to what we know, from those who were among them – except for those among the latter people of knowledge. And the only disagreement among the people of knowledge on this topic is when it is witnessed by one person, and another one afterwards. So most of the people of knowledge among the people of Al-Kūfah and others said: A marriage is not acceptable until it is witnessed by two witnesses together, at the time the marriage is contracted. Some of the people of Al-Madīnah held the view that when it is witnessed by one person, and then another afterwards, then it is permissible, as long as that is publicized.

This is the view of Mālik bin Anas [and others]. This is what was said by Ishāq bin Ibrāhīm regarding what has been quoted from the people of Al-Madīnah. Some of the people of knowledge said that it is allowed for a man and two women to witness the marriage, and this is the view of Ahmad and Ishāq.

وَفِي هَذَا الْبَابِ عَنْ عِمْرَانَ بْنِ حُصَيْنٍ وَأَنْسِ وَأَبِي هُرَيْرَةَ.

وَالْعَمَلُ عَلَىٰ هَذَا عِنْدَ أَهْلِ الْعِلْمِ مِنْ أَصْحَابِ النَّبِيِّ ﷺ، وَمَنْ بَعْدَهُمْ مِنَ التَّابِعِينَ وَغَيْرِهِمْ. قَالُوا: لَا نِكَاحَ إِلَّا بِشُهُودٍ، لَمْ يَخْتَلِفُوا فِي ذَلِكَ عِنْدَنَا مِنْ مَضَىٰ مِنْهُمْ، إِلَّا قَوْمًا مِنَ الْمُتَأَخِّرِينَ مِنْ أَهْلِ الْعِلْمِ، وَإِنَّمَا اِخْتَلَفَ أَهْلُ الْعِلْمِ فِي هَذَا إِذَا أُشْهِدَ وَاحِدٌ بَعْدَ وَاحِدٍ، فَقَالَ أَكْثَرُ أَهْلِ الْعِلْمِ مِنْ أَهْلِ الْكُوفَةِ وَغَيْرِهِمْ: لَا يَجُوزُ النِّكَاحُ حَتَّىٰ يَشْهَدَ الشَّاهِدَانِ مَعًا عِنْدَ عُقْدَةِ النِّكَاحِ. وَقَدْ رَأَىٰ بَعْضُ أَهْلِ الْمَدِينَةِ إِذَا أُشْهِدَ وَاحِدٌ بَعْدَ وَاحِدٍ، فَإِنَّهُ جَائِزٌ، إِذَا أَعْلَنُوا ذَلِكَ.

وَهُوَ قَوْلُ مَالِكِ بْنِ أَنَسٍ [وغيره] هَكَذَا قَالَ إِسْحَاقُ بْنُ إِبْرَاهِيمَ فِيمَا حَكَى عَنْ أَهْلِ الْمَدِينَةِ. وَقَالَ بَعْضُ أَهْلِ الْعِلْمِ: يَجُوزُ شَهَادَةُ رَجُلٍ وَامْرَأَتَيْنِ فِي النِّكَاحِ. وَهُوَ قَوْلُ أَحْمَدَ وَإِسْحَاقَ.

تخريج: [إسناده ضعيف] وانظر الحديث السابق * وفي الباب عن عمران بن حصين [ابن عدي في الكامل: ٤/١٤٥٣ والبيهقي: ٧/١٢٥] وأنس [ابن عدي: ٧/٢٥٦٦] وأبي هريرة [البيهقي: ٧/١٤٣].

Comments:

All scholars agree that marriage without witnesses is not possible. According to Imām Mālik it is not necessary that two witnesses should be present at a time, they can witness the marriage at different times, but it is essential to publicize it. According to Imām Aḥmad one male and two females can also stand witnesses for a marriage whereas according to Imām Shāfi'is view two male witnesses are necessary.

Chapter 17. What Has Been Related About The Marriage *Khuṭbah*

(المعجم ١٧) - بَابُ مَا جَاءَ فِي حُطْبَةِ النِّكَاحِ (التحفة ١٦)

1105. ‘Abdullāh bin Mas‘ūd narrated: “The Messenger of Allāh ﷺ taught us the *Tashah-hud* for *Ṣalāt* and the *Tashah-hud* for *Al-Hājjah*.”^[1] He said: “The *Tashah-hud* for *Ṣalāt* is: (*At-Taḥiyyātulillāh, waṣ-walawātu waṭ-ṭayyibātu. As-Salāmu ‘alāika ayyuhan-Nabiyyu wa raḥmatullāhi wa barakātuhi, As-Salāmu ‘alainā wa ‘alā ‘ibādillāhiṣ-ṣāliḥīn. Ashhadu annā lā ilāha illallāh, wa ashhadu anna Muḥammadan ‘abduhu wa Rasūluh.*) ‘All greetings, prayers, and pure words are for Allāh. Peace be upon you O Prophet, and Allāh’s mercy and His blessings. Peace be upon us and all of the righteous worshippers of Allāh. I testify that none has the right to be worshipped but Allāh, and I testify that Muḥammad is His slave and His Messenger.”

And the *Tashah-hud* for *Al-Hājjah* is: ‘Indeed all praise is due to Allāh, we

١١٠٥ - حَدَّثَنَا قُتَيْبَةُ: حَدَّثَنَا عَبْنُ بْنُ الْقَاسِمِ عَنِ الْأَعْمَشِ، عَنْ أَبِي إِسْحَاقَ، عَنْ أَبِي الْأَخْوَصِ، عَنْ عَبْدِ اللَّهِ قَالَ: عَلَّمَنَا رَسُولُ اللَّهِ ﷺ التَّشَهُدَ فِي الصَّلَاةِ وَالتَّشَهُدَ فِي الْحَاجَةِ، قَالَ التَّشَهُدُ فِي الصَّلَاةِ: «التَّحِيَّاتُ لِلَّهِ وَالصَّلَوَاتُ وَالطَّيِّبَاتُ، السَّلَامُ عَلَيْكَ أَيُّهَا النَّبِيُّ وَرَحْمَةُ اللَّهِ وَبَرَكَاتُهُ، السَّلَامُ عَلَيْنَا وَعَلَى عِبَادِ اللَّهِ الصَّالِحِينَ، أَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَشْهَدُ أَنَّ مُحَمَّدًا عَبْدُهُ وَرَسُولُهُ». وَالتَّشَهُدُ فِي الْحَاجَةِ: «إِنَّ الْحَمْدَ لِلَّهِ نَسْتَعِينُهُ وَنَسْتَغْفِرُهُ وَنَعُوذُ بِاللَّهِ مِنْ شُرُورِ أَنْفُسِنَا وَسَيِّئَاتِ أَعْمَالِنَا، مَنْ يَهْدِهِ - أَيُّ اللَّهُ - فَلَا مُضِلَّ لَهُ، وَمَنْ يَضِلَّ فَلَا هَادِيَ لَهُ، وَأَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ، وَأَشْهَدُ أَنَّ مُحَمَّدًا عَبْدُهُ وَرَسُولُهُ» قَالَ: وَيَقْرَأُ ثَلَاثَ آيَاتٍ. قَالَ عَبْنُ: فَفَسَّرَهُ لَنَا سُفْيَانُ الثَّوْرِيُّ:

^[1] That is the “speech of need” or, “compliance” or the “prerequisite speech.” It is to be used for marriage or any other important matter.

seek His aid, and we seek His forgiveness, and we seek refuge with Allāh from the evils of our souls and the mischief of our deeds. (*Innal-Hamdalillāhi nasta'inuhu, wa nastaghfiruhu, wa na'ūdhu billāhi min shurūri anfusinā, wa sayy'āti a'mālinā, man yahdihi, falā muḍilla lahu, wa manyuḍlil, falā hādiya lahu, wa ashhadu an lā Ilāha illallāh wa ashhadu anna Muḥammadan 'abduhu wa Rasūluh*) 'Whomever He guides – meaning Allāh – then there is none to lead him astray, and whomever He misleads, then there is no guide for him. I testify that none has the right to be worshipped but Allāh, and I testify that Muḥammad is His worshipper and Messenger.”

He said: “And he recited three *Āyāt*.” (*Da'if*)^[1]

'Abthar (one of the narrators) said: “Sufyān Ath-Thawrī explained that to us: Have Taqwa of Allāh, with the Taqwa that He is due, and do not die except while you are Muslims.^[2] And have Taqwa of Allāh from whom you demand your mutual rights and revere the ties of kinship. Indeed Allāh is Ever Watching over you.^[3] Have Taqwa of Allāh, and speak (always) the truth.”^[4]

(He said:) There is something on this topic from 'Adī bin Ḥātim.

(Abū 'Eisā said:) The *Ḥadīth* of

﴿أَتَقُوا اللَّهَ حَقَّ تَقَاتِهِ وَلَا تَمُوتُنَّ إِلَّا وَأَنْتُمْ مُسْلِمُونَ﴾ [آل عمران: ١٠٢]. ﴿وَأَتَقُوا اللَّهَ الَّذِي تَسَاءَلُونَ بِهِ وَالْأَرْحَامَ إِنَّ اللَّهَ كَانَ عَلَيْكُمْ رَقِيبًا﴾ [النساء: ١]. ﴿أَتَقُوا اللَّهَ وَقُولُوا قَوْلًا سَدِيدًا﴾ [الأحزاب: ٧٠]. الآية [قال]: وفي الباب عن عدي بن حاتم.

[قال أبو عيسى]: حديث عبد الله حديث حسن رواه الأعمش عن أبي إسحاق، عن أبي الأحوص، عن عبد الله عن النبي ﷺ. ورواه شعبه عن أبي إسحاق، عن أبي عبيدة، عن عبد الله عن النبي ﷺ. وكلا الحديثين صحيح، لأن إسرائيل جمعتهما فقال: عن أبي إسحاق، عن أبي الأحوص وأبي عبيدة عن عبد الله بن مسعود عن النبي ﷺ. وقد قال أهل العلم: إن النكاح جائز بغير خطبة. وهو قول سفيان الثوري وغيره من أهل العلم.

[1] The *Ḥadīth* is authentic via other chains.

[2] *Āl 'Imrān* 3:102.

[3] *An-Nisā'* 4:1.

[4] *Al-Aḥzāb* 33:70.

‘Abdullāh is a *Hasan Hadīth*. It was reported by Al-A‘mash, from Abū Ishāq, from Abū Al-Aḥwas, from ‘Abdullāh, from the Prophet ﷺ.

Shu‘bah also reported it from Abū Ishāq, from Abū ‘Ubaidah, from ‘Abdullāh from the Prophet ﷺ. Both of the narrations are *Ṣaḥīḥ* because Isrā‘īl combined them both saying: “From Abū Ishāq, from Abū Al-Aḥwas, and Abū ‘Ubaidah, from ‘Abdullāh bin Mas‘ūd from the Prophet ﷺ.”

The people of knowledge have said that a marriage without a *Khuṭbah* is acceptable. This is the view of Sufyān Ath-Thawrī and others among the people of knowledge.

تخریج: [إسناده ضعيف] وأخرجه النسائي: ٨٩/٦، ح: ٣٢٧٩ عن قتيبة به * أبو إسحاق عننن ورواه شعبة عن أبي إسحاق عن أبي عبيدة عن عبدالله بن مسعود منقطعاً ورواه شعبة عن أبي إسحاق عن أبي الأحوص به، أحمد: ٣٩٣/١ ولكنه معلل لأنه لم يذكر السند والتمن كارتد * وفي الباب عن عدي بن حاتم [لعله يشير إلى حديث مسلم، ح: ٨٧٠] أبو إسحاق لم يصرح بالسماع في السند المتصل.

Comments:

In the oration of the marriage sermon all three Verses of the Qur’an carry the subject of being ‘fearful of Allāh’. And the wholesome and agreeable relationship between husband and wife depend on the fear of Allāh ﷻ. Husband and wife both are required to care for each other and each other’s rights. According to most of the scholars, the marriage sermon is not essential but according to Az-Zahriyah it is necessary and essential. (*Tuḥfat Al-Aḥwadhī*)

1106. Abū Hurairah narrated that the Messenger of Allāh ﷺ said: “Every *Khuṭbah* that does not have the *Tashah-hud* in it, then it is like a severed hand.” (*Ṣaḥīḥ*)

(Abū ‘Eisā said:) this *Hadīth* is *Hasan (Ṣaḥīḥ) Gharīb*.

١١٠٦ - حَدَّثَنَا أَبُو هِشَامِ الرَّفَاعِيُّ: حَدَّثَنَا [مُحَمَّدُ] بْنُ فَضَيْلٍ عَنْ عَاصِمِ بْنِ كُثَيْبٍ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «كُلُّ خُطْبَةٍ لَيْسَ فِيهَا تَشَهُدٌ فَهِيَ كَالْيَدِ الْجُدْمَاءِ».

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ حَسَنٌ

[صَحِيحٌ] غَرِيبٌ.

تخريج: [صحيح] وأخرجه أبو داود، الأدب، باب: في الخطبة، ح: ٤٨٤١ من حديث عاصم بن كليب به وصححه ابن حبان، ح: ١٩٩٤، ٥٧٩.

Comments:

This narration is a proof that reciting the formula of testimony is essential in every sermon.

Chapter 18. What Has Been Related About Seeking The Permission Of The Virgin And The Matron

1107. Abū Hurairah narrated that the Prophet ﷺ said: "A matron should not be given in marriage until she is consulted, and a virgin should not be given in marriage until her permission is sought, and her silence is her permission." (*Ṣaḥīh*)

(He said:) There are narrations on this topic from 'Umar, Ibn 'Abbās, 'Aīshah, and Al-'Urs bin 'Amīrah.

(Abū 'Eīsā said:) The *Ḥadīth* of Abū Hurairah is a *Ḥasan Ṣaḥīh Ḥadīth*, and this is acted upon according to the people of knowledge. The matron is not to be married until she is consulted, and if her father were to give her in marriage without having consulted her, and she dislikes it, then the marriage is annulled according to the people of knowledge in general.

The people of knowledge differ over virgins when they are given in marriage by their fathers. Most of the people of knowledge from the people of Al-Kūfah, and others, held the view that if the father gives

(المعجم ١٨) - بَابُ مَا جَاءَ فِي

اسْتِثْمَارِ الْبِكْرِ وَالْتَيْبِ (التحفة ١٧)

١١٠٧ - حَدَّثَنَا إِسْحَاقُ بْنُ مَنْصُورٍ:

حَدَّثَنَا مُحَمَّدُ بْنُ يُونُسَ: حَدَّثَنَا الْأَوْزَاعِيُّ

عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ، عَنْ أَبِي سَلَمَةَ، عَنْ

أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا

تُنْكَحُ التَّيْبُ حَتَّى تُسْتَأْمَرَ، وَلَا تُنْكَحُ الْبِكْرُ

حَتَّى تُسْتَأْذَنَ، وَإِذْنُهَا الصُّمُوتُ». [قَالَ:]

وَفِي الْبَابِ عَنْ عُمَرَ وَابْنِ عَبَّاسٍ وَعَائِشَةَ

وَالْعُرْسِ بْنِ عَمِيرَةَ.

[قَالَ أَبُو عِيسَى:] حَدِيثُ أَبِي هُرَيْرَةَ

حَدِيثٌ حَسَنٌ صَحِيحٌ، وَالْعَمَلُ عَلَى هَذَا عِنْدَ

أَهْلِ الْعِلْمِ، أَنَّ التَّيْبَ لَا تَزْوُجُ حَتَّى تُسْتَأْمَرَ،

وَإِنْ زَوَّجَهَا الْأَبُ مِنْ غَيْرِ أَنْ يَسْتَأْمَرَهَا،

فَكَرِهَتْ ذَلِكَ، فَالنِّكَاحُ مَقْسُوحٌ عِنْدَ عَامَّةِ

أَهْلِ الْعِلْمِ.

وَاخْتَلَفَ أَهْلُ الْعِلْمِ فِي تَزْوِيجِ الْأَبْكَارِ إِذَا

زَوَّجَهُنَّ الْآبَاءُ، فَرَأَى أَكْثَرُ أَهْلِ الْعِلْمِ مِنْ

أَهْلِ الْكُوفَةِ وَغَيْرِهِمْ، أَنَّ الْأَبَ إِذَا زَوَّجَ

الْبِكْرَ وَهِيَ بِالْعَتَّةِ، بِغَيْرِ أَمْرِهَا، فَلَمْ تَرْضَ

the virgin in marriage, and she has attained the age of responsibility, and he did so without consulting her, if she does not accept the marriage arranged by her father, then the marriage is annulled.

Some of the people of Al-Madīnah said: The father's giving the virgin in marriage is allowed, even if she dislikes it. This is the saying of Mālik bin Anas, Ash-Shāfi'i, Aḥmad and Ishāq.

تخريج: متفق عليه، وأخرجه مسلم، النكاح، باب استيذان الثيب في النكاح بالنطق، وبالبر بالسكوت، ح: ١٤١٩ من حديث الأوزاعي والبخاري، ح: ٥١٣٦ من حديث يحيى بن أبي كثير به * وفي الباب عن عمر [الطبراني في الكبير: ١/٧٣، ٧٤، ح: ٨٨] وابن عباس [يأتي: ١١٠٨] وعائشة [البخاري، ح: ٦٩٤٦ ومسلم، ح: ١٤٢٠] والعرس بن عميرة [البيهقي: ٧/١٢٣].

Comments:

The Prophet ﷺ has instructed that a widow or a divorced woman must extend her consent by word of mouth, and a virgin should also give her consent for her marriage. Her silence is also her permission.

1108. Ibn 'Abbās narrated that the Messenger of Allāh ﷺ said: "The matron has more right to herself than her *Walī*, and the virgin is to give permission for herself, and her silence is her permission." (*Sahīh*)

This *Hadīth* is *Hasan Sahīh*. *Shu'bah* and *Sufyān Ath-Thawrī* have reported this *Hadīth* from Mālik bin Anas.

Some people argued for the validity of marriages without the *Walī*'s permission based upon this *Hadīth*. But there is nothing in this *Hadīth* to support what they argued, because it has been reported from other routes, from Ibn 'Abbās, that the Prophet ﷺ said: "There is no marriage except

بِتَرْوِيجِ الْأَبِ، فَالنِّكَاحُ مَفْسُوحٌ، وَقَالَ بَعْضُ أَهْلِ الْمَدِينَةِ: تَرْوِيجُ الْأَبِ عَلَى الْبِكْرِ جَائِزٌ، وَإِنْ كَرِهَتْ ذَلِكَ، وَهُوَ قَوْلُ مَالِكِ بْنِ أَنَسٍ وَالشَّافِعِيِّ وَأَحْمَدَ وَإِسْحَاقَ.

١١٠٨ - حَدَّثَنَا قُتَيْبَةُ [بْنُ سَعِيدٍ]: حَدَّثَنَا مَالِكُ بْنُ أَنَسٍ عَنْ عَبْدِ اللَّهِ بْنِ الْفَضْلِ، عَنْ نَافِعِ بْنِ جُبَيْرِ بْنِ مُطْعِمٍ، عَنِ ابْنِ عَبَّاسٍ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «الْأَيْمُ أَحَقُّ بِنَفْسِهَا مِنْ وَلِيِّهَا. وَالْبِكْرُ تُسْتَأْذَنُ فِي نَفْسِهَا. وَإِذْنُهَا صُمَاتُهَا».

هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ. وَقَدْ رَوَى شُعْبَةُ وَسُفْيَانُ الثَّوْرِيُّ هَذَا الْحَدِيثَ عَنْ مَالِكِ ابْنِ أَنَسٍ.

وَقَدْ اِحْتَجَّ بَعْضُ النَّاسِ - فِي إِجَارَةِ النِّكَاحِ بِغَيْرِ وَلِيٍّ - بِهَذَا الْحَدِيثِ وَلَيْسَ فِي هَذَا الْحَدِيثِ مَا اِحْتَجُّوا بِهِ. لِأَنَّهُ قَدْ رُوِيَ -

with a *Wali*.” And Ibn ‘Abbās gave a verdict accordingly, after the Prophet ﷺ; he said: “There is no marriage except with a *Wali*.” So the saying of the Prophet ﷺ: “The matron has more right to herself than her *Wali*” only means – according to most of the people of knowledge – that her *Wali* may not give her in marriage except with her acceptance and her approval, and if he were to give her in marriage then the marriage would be annulled. This is based upon the *Hadīth* of *Khansā’ bint Khidām*, in which her father married her while she was a matron, and she did not like that, so the Prophet ﷺ rejected her marriage.

تخريج: وأخرجه مسلم، النكاح، باب استيدان الثيب في النكاح بالنطق والبر بالسكرت، ح: ١٤٢١ عن قتبية به وهو في الموطأ (يحيى): ٥٢٤/٢، ٥٢٥.

Comments:

“*Al-Ayyim*” means a woman who has no husband. Allāh’s command is to marry those women who have no husbands but this *Al-Ayyim* stands for women who are divorced or widowed. In a narration of *Ṣaḥīḥ Muslim* the word ‘*Thyib*’ has occurred which is used for the opposite of married.

Chapter 19. What Has Been Related About Coercing A Female Orphan To Marry

1109. Abū Hurairah narrated that the Messenger of Allāh ﷺ said: “An orphan is to be consulted about herself, then if she is silent that is her permission, and if she refuses, then do not authorize it (the marriage) for her” (meaning: when she attains the age of puberty and refuses it.) (*Hasan*)

(He said:) There are narrations on

مِنْ غَيْرِ وَجْهِ - عَنْ ابْنِ عَبَّاسٍ عَنِ النَّبِيِّ ﷺ، قَالَ: «لَا نِكَاحَ إِلَّا بِوَالِيٍّ». وَهَكَذَا أَقْبَى بِهِ ابْنُ عَبَّاسٍ بَعْدَ النَّبِيِّ ﷺ، فَقَالَ: لَا نِكَاحَ إِلَّا بِوَالِيٍّ. وَإِنَّمَا مَعْنَى قَوْلِ النَّبِيِّ ﷺ: «الْأَيْمُ أَحَقُّ بِنَفْسِهَا مِنْ وَلِيِّهَا» - عِنْدَ أَكْثَرِ أَهْلِ الْعِلْمِ - : أَنَّ الْوَالِيَّ لَا يُزَوِّجُهَا إِلَّا بِرِضَاهَا وَأَمْرِهَا: فَإِنْ زَوَّجَهَا فَالْنِكَاحُ مَفْسُوحٌ: عَلَى حَدِيثِ خَنْسَاءِ بِنْتِ خِدَامٍ، حَيْثُ زَوَّجَهَا أَبُوهَا وَهِيَ ثَيْبٌ، فَكَرِهَتْ ذَلِكَ، فَرَدَّ النَّبِيُّ ﷺ نِكَاحَهُ.

(المعجم ١٩) - بَابُ مَا جَاءَ فِي إِكْرَاهِ الْيَتِيمَةِ عَلَى التَّزْوِيجِ (التحفة ١٨)

١١٠٩ - حَدَّثَنَا قُتَيْبَةُ: حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ عَنْ مُحَمَّدِ بْنِ عَمْرٍو، عَنْ أَبِي سَلَمَةَ، عَنْ أَبِي هُرَيْرَةَ، قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «الْيَتِيمَةُ تُسْتَأْمَرُ فِي نَفْسِهَا، فَإِنْ صَمَتَتْ فَهِيَ إِذْنُهَا، وَإِنْ أَبَتْ فَلَا جَوَازَ عَلَيْهَا». [بَعْنِي إِذَا أَدْرَكْتَ فَرَدَّتْ]. [قَالَ:] وَفِي الْبَابِ عَنْ أَبِي مُوسَى، وَابْنِ عَمْرٍو [وَعَائِشَةَ].

this topic from Abū Mūsā, Ibn ‘Umar (and ‘Āishah).

Abū ‘Eisā said: The *Ḥadīth* of Abū Hurairah is a *Ḥasan Ḥadīth*.

The people of knowledge differ over (the rules governing about) giving the orphan girl in marriage. Some of the people of knowledge held the view that when the orphan girl is given in marriage, the consummation is postponed until she attains the age of responsibility. Then, when she attains the age of responsibility, it is up to her to permit the wedding or annul it. This is the saying of some of the *Tābi‘īn* and others.

Some of them said: It is not allowed to give the orphan girl in marriage until she attains the age of responsibility, and she is not allowed a choice about the wedding. This is the view of Sufyān Ath-Thawrī Ash-Shāfi‘ī, and others among the people of knowledge.

Aḥmad and Ishāq said that when the orphan girl reaches nine years of age, and she is given in marriage and she approves, then the marriage is allowed, and she does not have a choice to permit or to annul it when she reaches puberty. They argued using the *Ḥadīth* of ‘Āishah that the Prophet ﷺ consummated his marriage with her when she was nine years of age,^[1] and ‘Āishah has said: “When a girl reaches nine years of age then she is a woman.”^[2]

قَالَ أَبُو عِيْسَى: حَدِيثُ أَبِي هُرَيْرَةَ حَدِيثٌ حَسَنٌ.

وَاحْتَلَفَ أَهْلُ الْعِلْمِ فِي تَرْوِيحِ الْيَتِيمَةِ فَرَأَى بَعْضُ أَهْلِ الْعِلْمِ: أَنَّ الْيَتِيمَةَ إِذَا رُؤِجَتْ، فَالنِّكَاحُ مَوْقُوفٌ حَتَّى تَبْلُغَ، فَإِذَا بَلَغَتْ فَلَهَا الْخِيَارُ فِي إِجَارَةِ النِّكَاحِ أَوْ فَمَنْعِهِ. وَهُوَ قَوْلُ بَعْضِ التَّابِعِينَ وَغَيْرِهِمْ. وَقَالَ بَعْضُهُمْ: لَا يَجُوزُ نِكَاحُ الْيَتِيمَةِ حَتَّى تَبْلُغَ، وَلَا يَجُوزُ الْخِيَارُ فِي النِّكَاحِ. وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ وَالشَّافِعِيِّ وَغَيْرِهِمَا مِنْ أَهْلِ الْعِلْمِ. وَقَالَ أَحْمَدُ وَإِسْحَاقُ: إِذَا بَلَغَتِ الْيَتِيمَةُ تِسْعَ سِنِينَ فَرُؤِجَتْ فَرَضِيَّتْ، فَالنِّكَاحُ جَائِزٌ، وَلَا خِيَارَ لَهَا إِذَا أُدْرِكَتْ. وَاحْتَجَّ بِحَدِيثِ عَائِشَةَ: أَنَّ النَّبِيَّ ﷺ بَنَى بِهَا وَهِيَ بِنْتُ تِسْعِ سِنِينَ وَقَدْ قَالَتْ عَائِشَةُ إِذَا بَلَغَتِ الْجَارِيَةَ تِسْعَ سِنِينَ فَهِيَ امْرَأَةٌ.

[1] “Āishah had reached puberty at nine years of age.” (*Tuḥfat Al-Aḥwadhī*).

[2] “She is judged as having reached womanhood because at that time she has attained the perceptions and discernment to know what is beneficial or harmful for herself, and Allāh Most High knows best.” (*Tuḥfat Al-Aḥwadhī*).

تخريج: [إسناده حسن] وأخرجه أبو داود، النكاح، باب: في الاستيمار، ح: ٢٠٩٣ والنسائي: ٨٧/٦، ح: ٣٢٧٢ من حديث محمد بن عمرو به وصححه ابن حبان، ح: ١٢٣٩، ١٢٤٠ * وفي الباب عن أبي موسى [أحمد: ٤/٣٩٤، ٤١١] وابن عمر [ابن ماجه، ح: ١٨٧٨ وأحمد: ٢/١٣٠] وعائشة [البخاري، ح: ٦٩٧١ ومسلم، ح: ١٤٢٠].

Comments:

When a girl who attains the age that she is wise enough to understand the matters of matrimony, taking her consent is necessary. If she gives her consent and the marriage takes place, later on she has no choice of revoking her marriage. If the marriage takes place at the age when she is a minor or before the age of understanding the matters of matrimony, if her consent is taken, it carries no weight. In this situation the girl has the right of keeping or revoking her agreement to the marriage.

Chapter 20. What Has Been Related About Two *Walī* Giving The Same Woman In Marriage

(المعجم ٢٠) - بَابُ مَا جَاءَ فِي
الْوَالِيَيْنِ يُزَوِّجَانِ (التحفة ١٩)

1110. Samurah bin Jundab narrated that the Messenger of Allāh ﷺ said: “Whichever woman is given in marriage by two *Walī*, then her case is in accordance with the first of them, and whoever sells something to two men, then it is for the first of them.” (*Hasan*)

١١١٠ - حَدَّثَنَا قُتَيْبَةُ: حَدَّثَنَا عُذْرٌ: حَدَّثَنَا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ، عَنِ الْحَسَنِ، عَنْ سَمُرَةَ بْنِ جُنْدَبٍ، أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «أَيُّمَا امْرَأَةً زَوَّجَهَا وَلِيَانِ فَهِيَ لِلأَوَّلِ مِنْهُمَا، وَمَنْ بَاعَ بَيْعًا مِنْ رَجُلَيْنِ فَهُوَ لِلأَوَّلِ مِنْهُمَا».

(Abū ‘Eisā said:) This *Hadīth* is *Hasan*, and this is acted upon according to the people of knowledge. We do not know of any disagreement among them regarding that. When one of two *Walī* gives her in marriage before the other, then the marriage of the first is accepted, and the marriage of the other is annulled, and if they both gave her in marriage together (meaning; at the same time) then both of them are annulled. This is the view of *Ath-Thawrī*, *Ahmad*, and *Ishāq*.

[قَالَ أَبُو عِيْسَى:] هَذَا حَدِيثٌ حَسَنٌ، وَالْعَمَلُ عَلَى هَذَا عِنْدَ أَهْلِ الْعِلْمِ، لَا نَعْلَمُ بَيْنَهُمْ فِي ذَلِكَ اخْتِلَافًا: إِذَا زَوَّجَ أَحَدُ الْوَالِيَيْنِ قَبْلَ الْآخَرِ، فَيُنكَحُ الأَوَّلُ جَائِزًا، وَيُنكَحُ الْآخِرُ مَفْسُوحًا. وَإِذَا زَوَّجَا جَمِيعًا فَيُنكَحُهُمَا جَمِيعًا مَفْسُوحًا. وَهُوَ قَوْلُ الثَّوْرِيِّ وَأَحْمَدَ وَإِسْحَاقَ.

تخريج: [حسن] وأخرجه ابن ماجه، التجارات، باب: إذا باع المجيزان فهو للأول، ح: ٢١٩٠ من حديث سعيد بن أبي عروبة به وصححه الحاكم على شرط البخاري: ٣٥/٢ ووافقه الذهبي وللحديث شواهد، انظر نيل المقيود، ح: ٢٠٨٨.

Comments:

If two guardians (*Walī*), equally responsible in status of guardianship, give a girl in marriage, the first marriage will be accepted as the valid marriage and the second marriage conducted by the second guardian will have no value, and will be invalid. If two guardians are not equal in status of guardianship, the marriage conducted by the nearer guardian will be accepted as the valid marriage. The nearest guardian is father then grandfather then real brother. (For detail see *Al-Mughnī* v. 9. p. 355-561. For the detail of two guardians see *Al-Mughnī* v. 16. p.190)

Chapter 21. What Has Been Related About A Slave Marrying Without The Permission Of His Owner

(المعجم ٢١) - بَابُ مَا جَاءَ فِي نِكَاحِ الْعَبْدِ بِغَيْرِ إِذْنِ سَيِّدِهِ (التحفة ٢٠)

1111. Jābir bin ‘Abdullāh narrated that the Prophet ﷺ said: “Whichever slave gets married without the permission of his owner, then he is a fornicator.” (*Da‘īf*)

١١١١ - حَدَّثَنَا عَلِيُّ بْنُ حُجْرٍ: حَدَّثَنَا الْوَلِيدُ بْنُ مُسْلِمٍ عَنْ زُهَيْرِ بْنِ مُحَمَّدٍ، عَنْ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ عَقِيلٍ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ عَنِ النَّبِيِّ ﷺ قَالَ: «أَيُّمَا عَبْدٍ تَزَوَّجَ بِغَيْرِ إِذْنِ سَيِّدِهِ فَهُوَ غَايِرٌ».

(He said:) There is something on this topic from Ibn ‘Umar.

[قَالَ:] وفي الباب عن ابن عمر.

(Abū ‘Eisā said:) The *Hadīth* of Jābir is a *Hasan Hadīth*. Some of them reported this *Hadīth* from ‘Abdullāh bin Muḥammad bin ‘Aqīl, from Ibn ‘Umar, from the Prophet ﷺ but it is not correct. What is *Ṣaḥīḥ* is from ‘Abdullāh bin Muḥammad bin ‘Aqīl, from Jābir bin ‘Abdullāh.

[قَالَ أَبُو عِيسَى:] حَدِيثُ جَابِرٍ حَدِيثٌ حَسَنٌ. وَرَوَى بَعْضُهُمْ هَذَا الْحَدِيثَ عَنْ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ عَقِيلٍ، عَنِ ابْنِ عُمَرَ عَنِ النَّبِيِّ ﷺ وَلَا يَصِحُّ. وَالصَّحِيحُ عَنْ عَبْدِ اللَّهِ ابْنِ مُحَمَّدِ بْنِ عَقِيلٍ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ.

This is acted upon according to the people of knowledge among the Companions of the Prophet ﷺ and others. The marriage of a slave without the permission of his owner is not allowed. This is the view of Aḥmad, Ishāq and others (without any disagreement).

وَالْعَمَلُ عَلَى هَذَا عِنْدَ أَهْلِ الْعِلْمِ مِنْ أَصْحَابِ النَّبِيِّ ﷺ وَغَيْرِهِمْ: أَنَّ نِكَاحَ الْعَبْدِ بِغَيْرِ إِذْنِ سَيِّدِهِ لَا يَجُوزُ وَهُوَ قَوْلُ أَحْمَدَ وَإِسْحَاقَ وَغَيْرِهِمَا [بِلَا اخْتِلَافٍ].

تخریج: [إسناده ضعيف] وأخرجه أبو داود، النكاح، باب: في نكاح العبد بغير إذن مواليه، ح: ٢٠٧٨ من حديث ابن عقيل به وصححه الحاكم: ١٩٤/٢ ووافقه الذهبي * وفي الباب عن ابن عمر [أبو داود، ح: ٢٠٧٩] ابن عقيل، تقدم: ١٢٨.

1112. (Another chain) Jābir bin ‘Abdullāh narrated that the Prophet ﷺ said: “Whichever slave gets married without the permission of his owner, then he is a fornicator.” (Da‘if)

This *Hadīth* is *Hasan Ṣaḥīh*.

١١١٢ - حَدَّثَنَا سَعِيدُ بْنُ يَحْيَى بْنِ سَعِيدٍ الْأُمَوِيُّ: حَدَّثَنَا أَبِي: حَدَّثَنَا ابْنُ جُرَيْجٍ عَنْ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ عَقِيلٍ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ عَنِ النَّبِيِّ ﷺ قَالَ: «أَيُّمَا عَبْدٍ تَزَوَّجَ بَعَيْرِ إِذْنِ سَيِّدِهِ فَهُوَ عَاهِرٌ». هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ.

تخریج: [إسناده ضعيف] وأخرجه أحمد: ٣٧٧/٣ عن يحيى بن سعيد القطان به وانظر

Comments:

It is agreed upon that a slave cannot marry without the permission of his master. If he marries without permission it will not be valid.

Chapter 22. What Has Been Related About Women’s Dowries

1113. ‘Abdullāh bin ‘Āmr bin Rabī‘ah narrated from his father: “A woman from Banū Fazārah was married for (the dowry of) two sandals. So the Messenger of Allāh ﷺ said to her: ‘Do you approve of (exchanging) yourself and your wealth for two sandals?’ She said: ‘Yes.’” He said: “So he permitted it.” (Da‘if)

(He said:) There are narrations on this topic from ‘Umar, Abū Hurairah, Suhail bin Sa‘d, Abū Sa‘eed, Anas, ‘Āishah, Jābir, and Abū Ḥadrad Al-Aslamī.

(Abū ‘Eisā said:) The *Hadīth* of ‘Āmir bin Rabī‘ah is a *Hasan Ṣaḥīh Hadīth*.

(المعجم ٢٢) - بَابُ مَا جَاءَ فِي مَهْجُورِ النِّسَاءِ (التحفة ٢١)

١١١٣ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ: وَحَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ وَمُحَمَّدُ بْنُ جَعْفَرٍ، قَالُوا: حَدَّثَنَا شُعْبَةُ عَنْ عَاصِمِ بْنِ عُبَيْدِ اللَّهِ، قَالَ: سَمِعْتُ عَبْدَ اللَّهِ بْنَ عَامِرِ بْنِ رَبِيعَةَ عَنْ أَبِيهِ: أَنَّ امْرَأَةً مِنْ بَنِي فِزَارَةَ تَزَوَّجَتْ عَلَى تَعْلَيْنِ، فَقَالَ رَسُولُ اللَّهِ ﷺ: «أَرْضَيْتِ مِنْ نَفْسِكَ وَمَالِكَ بِنَعْلَيْنِ؟» قَالَتْ: نَعَمْ، قَالَ: فَأَجَازَهُ. [قَالَ:] وَفِي الْبَابِ عَنْ عَمْرِو أَبِي هُرَيْرَةَ وَسَهْلِ بْنِ سَعْدٍ وَأَبِي سَعِيدٍ وَأَنْسِ وَعَائِشَةَ وَجَابِرِ وَأَبِي حَدْرَدِ الْأَسْلَمِيِّ. [قَالَ أَبُو عِيسَى:] حَدِيثُ عَامِرِ بْنِ رَبِيعَةَ حَدِيثٌ حَسَنٌ صَحِيحٌ.

The people of knowledge disagreed over the dowry. Some of them said that the dowry is whatever (meaning the two parties in the marriage contract) agreed to. This is the saying of Sufyān Ath-Thawrī, Ash-Shāfi'ī, Aḥmad, and Ishāq.

Mālik bin Anas said: "The dowry is not to be less than four Dīnār." Some of the people of Al-Kūfah said that the dowry is not to be less than ten Dirham.

وَإِخْتَلَفَ أَهْلُ الْعِلْمِ فِي الْمَهْرِ، فَقَالَ بَعْضُهُمْ: الْمَهْرُ عَلَى مَا تَرَاضُوا عَلَيْهِ، وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ وَالشَّافِعِيِّ وَأَحْمَدَ وَإِسْحَاقَ. وَقَالَ مَالِكُ بْنُ أَنَسٍ: لَا يَكُونُ الْمَهْرُ أَقَلَّ مِنْ رُبْعِ دِينَارٍ. وَقَالَ بَعْضُ أَهْلِ الْكُوفَةِ: لَا يَكُونُ الْمَهْرُ أَقَلَّ مِنْ عَشْرَةِ دَرَاهِمٍ.

تخریج: [إسناده ضعيف] وأخرجه ابن ماجه، النكاح، باب صداق النساء، ح: ١٨٨٨ من حديث عاصم بن عبيدالله به وهو ضعيف * وفي الباب عن عمر [يأتي: ١١١٤م] وأبي هريرة [مسلم، ح: ١٤٢٤] وسهيل بن سعد [يأتي: ١١١٤] وأبي سعيد [الدارقطني: ٣/٢٤٤] والبيهقي [أنس [يأتي: ١٩٣٣] وعائشة [أحمد: ٨٢/٦] وجابر [أبو داود، ح: ٢١١٠] وأبي حردر الأسلمي [أحمد: ٣/٤٤٨].

Comments:

The Prophet ﷺ has not prescribed the amount of dowry, but for most of his wives the amount of dowry was five hundred Dirham. People fixed varied amounts as a dowry and the Prophet ﷺ did not stop them by fixing less or higher amounts. An-Najāshī paid four thousand Dīnār on behalf of the Prophet ﷺ as the dowry of Umm Ḥabībah. The dowry is not only an amount that is to be fixed, but it is to be paid to the wife and its payment is an obligation.

Chapter 23. Something Else

(المعجم ٢٣) - [باب منه] (التحفة ٢٢)

1114. Sahl bin Sa'd As-Sā'idi narrated that a woman came to the Messenger of Allāh ﷺ and said: "I present myself to you (for marriage)." So she stood for a long time. Then a man said: "O Messenger of Allāh! Marry her to me if you have no need of her." So he said: "Do you have anything to give her as a dowry?" He said: "I have nothing except this *Izār*." So the Messenger of Allāh ﷺ said: "If you give her your *Izār* then you will have no *Izār*, so search for something." He said: "I did not find anything." He said: "Search for

١١١٤ - حَدَّثَنَا الْحَسَنُ بْنُ عَلِيٍّ الْخَلَّالُ: حَدَّثَنَا إِسْحَاقُ بْنُ عَيْسَى وَعَبْدُ اللَّهِ بْنُ نَافِعٍ [الصَّائِعِ]، قَالَ: حَدَّثَنَا مَالِكُ بْنُ أَنَسٍ عَنْ أَبِي حَازِمِ بْنِ دِينَارٍ، عَنْ سَهْلِ بْنِ سَعْدِ السَّاعِدِيِّ: أَنَّ رَسُولَ اللَّهِ ﷺ جَاءَهُ امْرَأَةٌ فَقَالَتْ: إِنِّي وَهَبْتُ نَفْسِي لَكَ، فَقَامَتْ طَوِيلًا، فَقَالَ رَجُلٌ: يَا رَسُولَ اللَّهِ! زَوَّجْنِيهَا إِنْ لَمْ يَكُنْ لَكَ بِهَا حَاجَةٌ. فَقَالَ: «هَلْ عِنْدَكَ مِنْ شَيْءٍ تُصَدِّقُهَا؟» فَقَالَ: مَا عِنْدِي إِلَّا إِزَارِي هَذَا. فَقَالَ رَسُولُ اللَّهِ ﷺ:

something, even if it is just an iron ring.” He said: So he searched but he did not find anything. The Messenger of Allāh ﷺ said: “Do you have any Qur’ān (memorized)?” He said: “Yes. This *Sūrat* and that *Sūrat*” and he named the *Sūrat*. So the Messenger of Allāh ﷺ said: “I marry her to you for what you have (memorized) of the Qur’ān.” (*Ṣaḥīḥ*)

(Abū ‘Eīsā said:) This *Hadīth* is *Ḥasan Ṣaḥīḥ*. Ash-Shāfi‘ī followed this *Hadīth*, he said: “If he does not have anything to give to her, and he marries her for a *Sūrat* of the Qur’ān, then the marriage is acceptable and he is to teach her the *Sūrat* of the Qur’ān.”

Some of the people of knowledge said that the marriage is allowed if he gives her a dowry of its like.

This is the saying of the people of Al-Kūfah, Aḥmad, and Ishāq.

تخریج: متفق علیه، وأخرجه البخاري، النكاح، باب: السلطان ولي لقول النبي ﷺ: زوجناكها بما معك من القرآن، ح: ٥١٣٥ من حديث مالك ومسلم، ح: ١٤٢٥ من حديث أبي حازم به وهو في الموطأ (بحی): ٥٢٦/٢.

1114. B. Abū Al-‘Ajfā’ (As-Sulamī) said: “Umar bin Al-Khaṭṭāb said: ‘Do not exaggerate in the dowries of women. If doing so was honorable in the world or *Taqwā* before Allāh then Allāh’s Prophet ﷺ would have been the first of you to do it. I do not know of the Messenger of Allāh ﷺ marrying any of his women, nor giving any of his daughters in marriage, for more than twelve *Uqiyah*.’” (*Ḥasan*)

«إِزَارَكَ إِنْ أُعْطِيَتْهَا جَلَسَتْ وَلَا إِزَارَ لَكَ فَالْتَمِسْ شَيْئًا». قَالَ: مَا أَجِدُ. قَالَ «الْتَمِسْ وَلَوْ خَاتَمًا مِنْ حَدِيدٍ». قَالَ: فَالْتَمِسْ فَلَمْ يَجِدْ شَيْئًا، فَقَالَ رَسُولُ اللَّهِ ﷺ: «هَلْ مَعَكَ مِنَ الْقُرْآنِ شَيْءٌ؟» قَالَ: نَعَمْ، سُورَةٌ كَذَا، وَسُورَةٌ كَذَا لِسُورٍ سَمَّاهَا فَقَالَ رَسُولُ اللَّهِ ﷺ: «رَوِّجْتُكَهَا بِمَا مَعَكَ مِنَ الْقُرْآنِ».

[قَالَ أَبُو عِيْسَى:] هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ. وَقَدْ ذَهَبَ الشَّافِعِيُّ إِلَى هَذَا الْحَدِيثِ، فَقَالَ إِنْ لَمْ يَكُنْ لَهُ شَيْءٌ يُضَدِّقُهَا، فَتَزَوَّجَهَا عَلَى سُورَةٍ مِنَ الْقُرْآنِ، فَالنِّكَاحُ جَائِزٌ، وَيُعَلِّمُهَا سُورَةَ مِنَ الْقُرْآنِ. وَقَالَ بَعْضُ أَهْلِ الْعِلْمِ: النِّكَاحُ جَائِزٌ، وَيَجْعَلُ لَهَا صَدَاقٌ مِثْلَهَا. وَهُوَ قَوْلُ أَهْلِ الْكُوفَةِ وَأَحْمَدَ وَإِسْحَاقَ.

١١١٤ م - حَدَّثَنَا ابْنُ أَبِي عُمَرَ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ أَيُّوبَ، عَنِ ابْنِ سِيرِينَ، عَنْ أَبِي الْعَجْفَاءِ [السُّلَمِيِّ] قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: «أَلَا لَا تُعَالُوا صَدَقَةَ النِّسَاءِ، فَإِنَّهَا لَوْ كَانَتْ مَكْرَمَةً فِي الدُّنْيَا أَوْ تَقْوَى عِنْدَ اللَّهِ، لَكَانَ أَوْلَاكُمْ بِهَا نَبِيُّ اللَّهِ ﷺ. مَا عَلِمْتُ رَسُولَ اللَّهِ ﷺ نَكَحَ شَيْئًا مِنْ نِسَائِهِ، وَلَا أَنْكَحَ شَيْئًا مِنْ بَنَاتِهِ عَلَى أَكْثَرِ مِنْ ثِنْتِي عَشْرَةَ أُوقِيَةً».

(Abū 'Eisā said:) This *Ḥadīth* is *Ḥasan Ṣaḥīḥ*. Abū Al-'Ajfā' As-Sulamī's name is Haram, and a *Uqīyah* – according to the people of knowledge – is forty Dirham, so twelve *Uqīyah* is four hundred and eighty Dirham.

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ. وَأَبُو الْعَجْفَاءِ السُّلَمِيُّ، اسْمُهُ: هَرَمٌ. وَالْوَقِيَّةُ – عِنْدَ أَهْلِ الْعِلْمِ –: أَرْبَعُونَ دِرْهَمًا، وَثِنْتَا عَشْرَةَ وَقِيَّةً: أَرْبَعُمِائَةٌ وَثَمَانُونَ دِرْهَمًا.

تخریج: [إسناده حسن] وأخرجه أبو داود، النكاح، باب الصداق، ح: ٢١٠٦ من حديث أبوب السخيتاني به * محمد بن سيرين سمعه من أبي العجفاء [أحمد: ٤٠٧/١ وغيره] ومن ابن أبي العجفاء فالطريقان محفوظان كما حققته في تخریج مسند الحميدي، ح: ٢٣ والحديث صححه ابن حبان (الإحسان): ٤٦٠١ والحاكم: ١٧٥/٢، ١٧٦.

Comments:

According to a *Ṣaḥīḥ*, narration the point of view of Imām *Shafi'i* is correct. If a person has nothing to pay as dowry he can pay in the form of teaching Qur'an. (*Faṭh Al-Bārī* v.9. p.267) In the narration of 'Aīshah the amount of dowry is five hundred Dirham. 'Umar has disregarded 20 Dirham. (1/2 *Uqīyah*) Some say the dowry of Umm Ḥabībah paid by Najāshī was four hundred Dirham and some say four hundred Dinār. (*Ma'ārif Al-Ḥadīth* v.7. p 26.)

Chapter 24. What Has Been Related About A Man Who Emancipates A Slave Woman, Then Marries Her

1115. Anas bin Mālik narrated: "The Messenger of Allāh ﷺ emancipated Ṣafīyah and he made her emancipation her dowry." (*Ṣaḥīḥ*)

(He said:) There is something on this topic from Ṣafīyah.

(Abū 'Eisā said:) The *Ḥadīth* of Anas is a *Ḥasan Ṣaḥīḥ Ḥadīth*. This is acted upon according to some of the people of knowledge among the Companions of the Prophet ﷺ and others. It is the view of *Ash-Shāfi'i*, *Aḥmad*, and *Ishāq*.

Some of the people of knowledge disliked considering her emancipation to be her dowry, to the extent that he should give her a dowry besides freeing her. The first view is more correct.

(المعجم ٢٤) - بَابُ مَا جَاءَ فِي الرَّجُلِ يُعْتَقُ الْأَمَةَ ثُمَّ يَتَزَوَّجُهَا (التحفة ٢٣)

١١١٥ - حَدَّثَنَا قُتَيْبَةُ: حَدَّثَنَا أَبُو عَوَانَةَ عَنْ قَتَادَةَ وَعَبْدِ الْعَزِيزِ بْنِ صُهَيْبٍ، عَنْ أَنَسِ بْنِ مَالِكٍ: أَنَّ رَسُولَ اللَّهِ ﷺ أَعْتَقَ صَفِيَّةَ، وَجَعَلَ عِتْقَهَا صَدَاقًا.

[قَالَ:] وفي الباب عن صَفِيَّةَ. قَالَ أَبُو عِيسَى: حَدِيثُ أَنَسٍ حَدِيثٌ حَسَنٌ صَحِيحٌ. وَالْعَمَلُ عَلَى هَذَا عِنْدَ بَعْضِ أَهْلِ الْعِلْمِ مِنْ أَصْحَابِ النَّبِيِّ ﷺ وَغَيْرِهِمْ وَهُوَ قَوْلُ الشَّافِعِيِّ وَأَحْمَدَ وَإِسْحَاقَ. وَكَرِهَ بَعْضُ أَهْلِ الْعِلْمِ أَنْ يُجْعَلَ عِتْقُهَا صَدَاقًا، حَتَّى يُجْعَلَ لَهَا مَهْرًا سِوَى الْعِتْقِ. وَالْقَوْلُ الْأَوَّلُ أَصَحُّ.

تخريج: متفق عليه، وأخرجه مسلم، النكاح، باب فضيلة إعتاقه أمته ثم يتزوجها، ح: ١٣٦٥ - ٨٥ بعد ح: ١٤٢٧ عن قتيبة والبخاري، ح: ٥٠٨٦ من طريق آخر من حديث أنس به * وفي الباب عن صفية [الطبراني في الكبير: ٧٣/٢٤، ٧٤، ح: ١٩٤].

Comments:

Manumission of a slave is an act of great reward and honor. Freedom also brings monetary benefits to a slave or slave woman. So freedom being a monetary benefit can serve as a dowry, and this is the sense of the narration.

Chapter 25. What Has Been Related About The Virtue Of That

1116. Abū Burdah bin Abī Mūsā narrated from his father that the Messenger of Allāh ﷺ said: "Three will receive their reward twice: A slave who fulfills the rights of Allāh and the rights of his owners, then he will be given his reward twice. And a man who has a beautiful slave girl, so he teaches her good manners, then he frees her, then he marries her seeking the Face of Allāh by that; then he will be given his reward twice. And a man who believed in an earlier Book, then another Book came to him and he believed in it; then he will be given his reward twice." (*Ṣaḥīḥ*)

(Another chain) from Abū Mūsā, from the Prophet ﷺ and it is similar in meaning.

(Abū 'Eīsā said:) The *Ḥadīth* of Abū Mūsā is a *Ḥasan Ṣaḥīḥ Ḥadīth*. Abū Burdah bin Abī Mūsā's name is 'Amir bin 'Abdullāh bin Qais. Shu'bah and Sufyān Ath-Thawrī reported this *Ḥadīth* from Ṣāliḥ bin Ṣāliḥ bin Ḥayy. (And Ṣāliḥ bin Ṣāliḥ bin Ḥayy is the father of Al-Ḥasan bin Ṣāliḥ bin Ḥayy).

(المعجم ٢٥) - بَابُ مَا جَاءَ فِي الْفَضْلِ فِي ذَلِكَ (التحفة ٢٤)

١١١٦ - حَدَّثَنَا هَنَادٌ: حَدَّثَنَا عَلِيُّ بْنُ مُسْهِرٍ عَنِ الْفَضْلِ بْنِ يَزِيدَ، عَنِ الشَّعْبِيِّ، عَنْ أَبِي بُرْدَةَ بْنِ أَبِي مُوسَى، عَنْ أَبِيهِ، قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «ثَلَاثَةٌ يُؤْتَوْنَ أَجْرَهُمْ مَرَّتَيْنِ: عَبْدٌ آدَى حَقَّ اللَّهِ وَحَقَّ مَوْلَاهُ، فَذَلِكَ يُؤْتَى أَجْرُهُ مَرَّتَيْنِ: وَرَجُلٌ كَانَتْ عِنْدَهُ جَارِيَةٌ وَضِيئَةٌ فَأَدَّبَهَا فَأَحْسَنَ أَدَبَهَا، ثُمَّ أَعْتَقَهَا، ثُمَّ تَزَوَّجَهَا: يَبْتَغِي بِذَلِكَ وَجْهَ اللَّهِ فَذَلِكَ يُؤْتَى أَجْرُهُ مَرَّتَيْنِ، وَرَجُلٌ آمَنَ بِالْكِتَابِ الْأَوَّلِ ثُمَّ جَاءَهُ الْكِتَابُ الْآخِرُ: فَأَمَّنَ بِهِ فَذَلِكَ يُؤْتَى أَجْرُهُ مَرَّتَيْنِ».

حَدَّثَنَا ابْنُ أَبِي عُمَرَ: حَدَّثَنَا سُفْيَانٌ عَنْ صَالِحِ بْنِ صَالِحٍ - وَهُوَ ابْنُ حَيٍّ - عَنِ الشَّعْبِيِّ، عَنْ أَبِي بُرْدَةَ، عَنْ أَبِي مُوسَى عَنِ النَّبِيِّ ﷺ، نَحْوَهُ بِمَعْنَاهُ.

[قَالَ أَبُو عِيسَى:] حَدِيثُ أَبِي مُوسَى حَدِيثٌ حَسَنٌ صَحِيحٌ. وَأَبُو بُرْدَةَ بْنُ أَبِي مُوسَى، اسْمُهُ: عَامِرُ بْنُ عَبْدِ اللَّهِ بْنِ قَيْسٍ.

وَقَدْ رَوَى شُعْبَةُ وَسُفْيَانُ الثَّوْرِيُّ عَنْ صَالِحِ
ابْنِ صَالِحِ بْنِ حَيٍّ هَذَا الْحَدِيثَ، [وَصَالِحُ
ابْنُ صَالِحِ بْنِ حَيٍّ هُوَ وَالِدُ الْحَسَنِ بْنِ
صَالِحِ بْنِ حَيٍّ].

تخریج: متفق عليه، وأخرجه البخاري، النكاح، باب اتخاذ السراري، ومن أعتق جارية ثم تزوجها، ح: ٥٠٨٣ ومسلم، ح: ١٥٤ من حديث الشعبي به.

Comments:

For a slave to fulfill the rights of the master and rights of Allāh is a very difficult task. Similarly freeing a slave girl and bringing her to the status of a free woman, and marrying her is an uphill task, likewise believing in an earlier the Messenger of Allāh and the Book given to him, and then to believe in another Messenger and the Book that came to him is also very difficult. All these tasks are quite difficult, perplexing and against the ego of a human being. On the same analogy, the Christians and Jews refused to believe in the Prophet ﷺ and accept the faith. These three tasks are rewarded twice as, it requires one to cross the barrier of ego, pride and prejudice.

Chapter 26. What Has Been Related About A Person Who Marries A Woman, Then Divorces Her Before Having Intercourse With Her: Can He Marry Her Daughter Or Not?

(المعجم ٢٦) - بَابُ مَا جَاءَ فِيمَنْ يَتَزَوَّجُ
الْمَرْأَةَ ثُمَّ يَطْلُقُهَا قَبْلَ أَنْ يَدْخُلَ بِهَا هَلْ
يَتَزَوَّجُ ابْنَتَهَا، أَمْ لَا؟ (التحفة ٢٥)

1117. ‘Amr bin Shu‘aib narrated from his father, from his grandfather that the Prophet ﷺ said: “Whichever man married a woman and entered into her, then it is not lawful for him to marry her daughter. If he did not enter into her then he may marry her daughter. And whichever man married a woman and he entered into her, or he did not enter into her, then it is not lawful for him to marry her mother.” (*Da‘īf*)

Abū ‘Eīsā said: This *Hadīth* is not correct considering of its chain. It has only been reported by Ibn

١١١٧ - حَدَّثَنَا قُتَيْبَةُ: حَدَّثَنَا ابْنُ لَهَيْعَةَ
عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ،
أَنَّ النَّبِيَّ ﷺ قَالَ: «أَيُّمَا رَجُلٍ نَكَحَ امْرَأَةً
فَدَخَلَ بِهَا، فَلَا يَحِلُّ لَهُ نِكَاحُ ابْنَتِهَا، وَإِنْ لَمْ
يَكُنْ دَخَلَ بِهَا فَلْيُنِكَحْ ابْنَتَهَا، وَأَيُّمَا رَجُلٍ
نَكَحَ امْرَأَةً فَدَخَلَ بِهَا أَوْ لَمْ يَدْخُلْ بِهَا فَلَا
يَحِلُّ لَهُ نِكَاحُ أُمِّهَا».

قَالَ أَبُو عِيسَى: هَذَا حَدِيثٌ لَا يَصِحُّ مِنْ
قَبْلِ إِسْنَادِهِ وَإِنَّمَا رَوَاهُ ابْنُ لَهَيْعَةَ وَالْمُثَنَّى بْنُ
الصَّبَّاحِ عَنْ عَمْرِو بْنِ شُعَيْبٍ وَالْمُثَنَّى بْنُ

Lahī'ah and Al-Muthannā bin Aṣ-Ṣabbāh from 'Amr bin Shu'aib, and Al-Muthannā bin Aṣ-Ṣabbāh and Ibn Lahī'ah are both weak in *Hadīth*.

This is acted upon according to most of the people of knowledge, they said that when a man marries a woman and then he divorces her before having entered into her, then marrying her daughter is lawful for him. And when a man marries a daughter and he divorces her before having entered into her, then it is not lawful for him to marry her mother due to Allāh, Most High's Saying: Your wives' mothers.^[1] And this is the view of Ash-Shāfi'ī, Aḥmad and Ishāq.

الصَّبَاحِ وَإِنْ لَهَيْعَةً يُضَعَّفَانِ فِي الْحَدِيثِ، وَالْعَمَلُ عَلَى هَذَا عِنْدَ أَكْثَرِ أَهْلِ الْعِلْمِ قَالُوا: إِذَا تَزَوَّجَ الرَّجُلُ امْرَأَةً ثُمَّ طَلَّقَهَا قَبْلَ أَنْ يَدْخُلَ بِهَا حَلَّ لَهُ أَنْ يَنْكِحَ ابْنَتَهَا، وَإِذَا تَزَوَّجَ الرَّجُلُ ابْنَتَهُ فَطَلَّقَهَا قَبْلَ أَنْ يَدْخُلَ بِهَا لَمْ يَحِلَّ لَهُ نِكَاحُ أُمِّهَا لِقَوْلِ اللَّهِ تَعَالَى: ﴿وَأُمَّهَاتُ نِسَائِكُمْ﴾ [النساء: ٢٣] وَهُوَ قَوْلُ الشَّافِعِيِّ وَأَحْمَدَ وَإِسْحَاقَ.

تخریج: [إسناده ضعيف] وأخرجه البيهقي: ١٦٠/٧ من حديث ابن لهيعة به وعن * حديث المشي، أخرجه البيهقي.

Comments:

Allāh has set up a condition of relationship on the daughter of the wife and said; “No prohibition if you have not gone in.” There is no harm in marrying their daughters after divorcing them. But the mothers of the wives are forbidden without any condition of going in or not going in with them. It is not allowed to marry the mother of the wife in any condition.

Chapter 27. What Has Been Related About One Who Divorced His Wife Three Times, Then She Married Someone Else, And He Divorced Her Before Having Intercourse With Her

1118. 'Aīshah narrated: “The wife of Rifā'ah Al-Qurzī came to the Messenger of Allāh ﷺ and said: ‘I was with Rifā'ah and he divorced

(المعجم ٢٧) - بَابُ مَا جَاءَ فِيمَنْ يُطَلِّقُ امْرَأَتَهُ ثَلَاثًا فَيَتَزَوَّجُهَا آخَرَ فَيُطَلِّقُهَا قَبْلَ أَنْ يَدْخُلَ بِهَا (التحفة ٢٦)

١١١٨ - حَدَّثَنَا ابْنُ أَبِي عُمَرَ وَإِسْحَاقُ ابْنُ مَنْصُورٍ قَالَا: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنِ الزُّهْرِيِّ، عَنْ عُرْوَةَ، عَنْ عَائِشَةَ قَالَتْ:

[1] *An-Nisā'* 4:23.

me irrevocably. Then I married ‘Abdur-Rahmān bin Az-Zubair, but he only has the likes of the fringe of a garment.’^[1] So he said: ‘Perhaps you want to return to Rifā‘ah? No, not until you taste his sweetness and he tastes your sweetness.’^[2] (*Ṣaḥīh*)

(He said:) There are narrations on this topic from Ibn ‘Umar, Anas, Ar-Rumaiṣā’ or Al-Ghumaiṣā’, and Abū Hurairah.

(Abū ‘Eisā said:) The *Ḥadīth* of ‘Āishah is a *Ḥasan Ṣaḥīḥ Ḥadīth*. This is acted upon according to the people of knowledge in general among the Companions of the Prophet ﷺ and others. When a man divorces his wife three times then she marries a different husband and he divorces her before having entered into her, then she is not lawful to the first husband to marry while she has not had intercourse with the second one.

تخریج: متفق علیه، وأخرجه البخاري، الشهادات، باب شهادة المختبئ، ح: ٢٦٣٩، ومسلم، ح: ١٤٣٣، من حديث سفيان بن عيينة به * وفي الباب عن ابن عمر [النسائي، ح: ٣٤٤٣، ٣٤٤٤] وأنس [البيهقي: ٣٧٥/٧] والرميصاء أو الغميصاء [النسائي، ح: ٣٤٤٢] والطبراني في الكبير: ٣٥١/٢٤، ح: ٨٦٩] وأبي هريرة [عزاه المباركفوري إلى الطبراني وابن أبي شيبة، تحفة الأحوذى: ١٨٥/٢].

Comments:

According to the Four *A’immah* and religious scholars, if the second husband without having sexual intercourse, divorces her, it is not lawful to marry the first husband. According to Sa‘eed bin Musayyab, if a woman had married in a legal way, to live with the second husband, and not just to fulfill the condition of the second husband to marry the first husband again, and the second husband divorced her without having sexual intercourse, she can marry the first husband, but this point of view is against the *Ḥadīth*. He might not have heard this narration.

جَاءَتْ امْرَأَهُ رِفَاعَةَ الْقُرْظِيَّ إِلَى رَسُولِ اللَّهِ ﷺ فَقَالَتْ: إِنِّي كُنْتُ عِنْدَ رِفَاعَةَ فَطَلَّقَنِي فَبَتَّ طَلَاقِي، فَتَزَوَّجْتُ عَبْدَ الرَّحْمَنِ بْنِ الزَّبِيرِ وَمَا مَعَهُ إِلَّا مِثْلَ هُدْبَةِ الثَّوْبِ فَقَالَ: «أَتُرِيدِينَ أَنْ تَرَجِعِي إِلَيَّ رِفَاعَةَ؟ لَا، حَتَّى تَذُوقِي عُسَيْلَتَهُ وَيَذُوقَ عُسَيْلَتِكَ».

[قَالَ:] وَفِي الْبَابِ عَنِ ابْنِ عُمَرَ وَأَنْسِ وَالرَّمِيصَاءِ أَوْ الْغَمِيصَاءِ وَأَبِي هُرَيْرَةَ.

[قَالَ أَبُو عِيْسَى:] حَدِيثُ عَائِشَةَ حَدِيثٌ حَسَنٌ صَحِيحٌ. وَالْعَمَلُ عَلَى هَذَا عِنْدَ عَامَّةِ أَهْلِ الْعِلْمِ مِنْ أَصْحَابِ النَّبِيِّ ﷺ وَغَيْرِهِمْ، أَنَّ الرَّجُلَ إِذَا طَلَّقَ امْرَأَتَهُ ثَلَاثًا فَتَزَوَّجَتْ زَوْجًا غَيْرَهُ، فَطَلَّقَهَا قَبْلَ أَنْ يَدْخُلَ بِهَا، أَنَّهَا لَا تَحِلُّ لِلزَّوْجِ الْأَوَّلِ إِذَا لَمْ يَكُنْ جَامِعَهَا الزَّوْجِ الْآخَرَ.

[1] Meaning that he was impotent. See *Tuhfat Al-Aḥwadhī* and *Fath Al-Bārī* no. 5317.

[2] Meaning intercourse.

Chapter 28. What Has Been Related About The *Muḥill* And The One Who The *Muḥallal* Was Done For^[1]

1119. Jābir bin ‘Abdullāh and ‘Alī narrated: “The Messenger of Allāh ﷺ cursed the *Muḥill* and the one the *Muḥallal* was done for.” (*Da‘if*)^[2]

(He said:) There are narrations on this topic from Ibn Mas‘ūd, Abū Hurairah, ‘Uqbah bin ‘Āmir, and Ibn ‘Abbās.

Abū ‘Eisā said: The *Hadīth* of ‘Alī and Jābir is defective. This is how Ash‘ath bin ‘Abdur-Raḥmān reported it from Mujālid from ‘Āmir (Ash-Sha‘bī), from Al-Hārith, from ‘Alī. And, from ‘Āmir, from Jābir bin ‘Abdullāh, from the Prophet ﷺ. The chain for this *Hadīth* is not supported because Mujālid bin Sa‘eed was graded weak by some of the people of knowledge, among them Aḥmad bin Ḥanbal. And ‘Abdullāh bin Numair reported this *Hadīth* from Mujālid, from ‘Āmir, from Jābir bin ‘Abdullāh, from ‘Alī. In this Ibn Numair was confused, the first narration is more correct. Mughīrah and Ibn Abī Khālid and others, reported it from Ash-Sha‘bi, from Al-Hārith, from ‘Alī.

(المعجم ٢٨) - بَابُ مَا جَاءَ فِي الْمُحِلِّ وَالْمُحَلَّلِ لَهُ (التحفة ٢٧)

١١١٩ - حَدَّثَنَا أَبُو سَعِيدٍ الْأَشْجَعِيُّ: حَدَّثَنَا أَشْعَثُ بْنُ عَبْدِ الرَّحْمَنِ بْنِ زُبَيْدِ الْأَيْمِيِّ: حَدَّثَنَا مُجَالِدٌ عَنِ الشَّعْبِيِّ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ وَعَنِ الْحَارِثِ، عَنْ عَلِيٍّ قَالَا: إِنَّ رَسُولَ اللَّهِ ﷺ لَعَنَ الْمُحِلَّ وَالْمُحَلَّلَ لَهُ.

[قَالَ:] وَفِي الْبَابِ عَنِ ابْنِ مَسْعُودٍ وَأَبِي هُرَيْرَةَ وَعُقْبَةَ بْنِ عَامِرٍ وَابْنَ عَبَّاسٍ.

قَالَ أَبُو عِيْسَى: حَدِيثُ عَلِيٍّ وَجَابِرِ حَدِيثٌ مَعْلُومٌ، وَهَكَذَا رَوَى أَشْعَثُ بْنُ عَبْدِ الرَّحْمَنِ عَنْ مُجَالِدٍ، عَنْ عَامِرٍ [الشَّعْبِيِّ]، عَنْ الْحَارِثِ، عَنْ عَلِيٍّ وَعَامِرٍ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ عَنِ النَّبِيِّ ﷺ، وَهَذَا حَدِيثٌ لَيْسَ إِسْنَادُهُ بِالْقَائِمِ لِأَنَّ مُجَالِدَ بْنَ سَعِيدٍ قَدْ ضَعَفَهُ بَعْضُ أَهْلِ الْعِلْمِ مِنْهُمْ أَحْمَدُ بْنُ حَنْبَلٍ وَرَوَى عَبْدُ اللَّهِ ابْنُ نُمَيْرٍ هَذَا الْحَدِيثَ عَنْ مُجَالِدٍ، عَنْ عَامِرٍ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ، عَنْ عَلِيٍّ. وَهَذَا قَدْ وَهَمَ فِيهِ ابْنُ نُمَيْرٍ. وَالْحَدِيثُ الْأَوَّلُ أَصَحُّ. وَقَدْ رَوَاهُ مُغْبِرَةُ وَابْنُ أَبِي خَالِدٍ وَغَيْرُ وَاحِدٍ عَنِ الشَّعْبِيِّ، عَنِ الْحَارِثِ، عَنْ عَلِيٍّ.

تخریج: [إسناده ضعيف] وأخرجه ابن ماجه، النكاح، باب المحلل والمحلل له، ح: ١٩٣٥، من حديث مجالد به وهو ضعيف ولأصل الحديث شواهد كثيرة عند ابن ماجه وأبي داود،

[1] “The meaning of the *Muḥill* is the one who marries a woman, who was divorced three times, with the intent of divorcing her, or with the condition of making her lawful for her previous husband. And the one the *Muḥallal* was done for is the first husband.” (*Tuhfat Al-Aḥwadhī*).

[2] There are authentic versions which support this and the following narration.

ح: ٢٠٧٦ وغيرهما وانظر الحديث الآتي * وفي الباب عن ابن مسعود [يأتي: ١١٢٠] وأبي هريرة [أحمد: ٣٢٣/٢] وعقبة بن عامر [ابن ماجه، ح: ١٩٣٦] وابن عباس [ابن ماجه، ح: ١٩٣٤].

1120. ‘Abdullāh bin Mas‘ūd narrated: “The Messenger of Allāh ﷺ cursed the *Muḥill* and the one the *Muḥallal* was done for.” (*Da‘if*) (Abū ‘Eisā said:) This *Ḥadīth* is *Ḥasan Ṣaḥīḥ*. Abū Qais Al-Awdī’s name is ‘Abdur-Raḥmān bin Tharwān, and this *Ḥadīth* has been reported from the Prophet ﷺ through other routes.

This (*Ḥadīth*) is acted upon according to the scholars among the Companions of the Prophet ﷺ, among them are ‘Umar bin Al-Khaṭṭāb, ‘Uthmān bin ‘Affān, ‘Abdullāh bin ‘Amr, and others. This is the view of the *Fuqahā* among the *Tābi‘īn* and it is the view of Sufyān Ath-Thawrī, Ibn Al-Mubārak, Ash-Shāfi‘ī, Aḥmad, and Ishāq.

(He said:) I heard Al-Jārūd (bin Mu‘ādh) mentioning that Wakī‘ held this view, and he said: “The view of the people of opinion on this topic must be cast aside.”^[1] (Al-Jārūd said:) “Wakī‘ said: ‘Sufyān said: “When (a man) marries a woman to make her lawful (for the previous husband) then it occurs to him to keep her, then it is not lawful for him to keep her until he has a new marriage with her.”

١١٢٠ - حَدَّثَنَا مُحَمَّدُ بْنُ غَيْلَانَ:

حَدَّثَنَا أَبُو أَحْمَدَ الزُّبَيْدِيُّ: حَدَّثَنَا سُفْيَانُ عَنْ أَبِي قَيْسٍ، عَنْ هُرَيْلِ بْنِ شُرْحَيْلٍ، عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: لَعَنَ رَسُولُ اللَّهِ ﷺ الْمُحِلَّ وَالْمُحَلَّلَ لَهُ.

[قَالَ أَبُو عَيْسَى:] هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ. وَأَبُو قَيْسٍ الْأَوْدِيُّ اسْمُهُ عَبْدُ الرَّحْمَنِ بْنُ تَرْوَانَ، وَقَدْ رَوَى هَذَا الْحَدِيثَ عَنِ النَّبِيِّ ﷺ مِنْ غَيْرِ وَجْهِ. وَالْعَمَلُ عَلَى هَذَا [الْحَدِيثِ] عِنْدَ أَهْلِ الْعِلْمِ مِنْ أَصْحَابِ النَّبِيِّ ﷺ مِنْهُمْ عَمْرُ بْنُ الْخَطَّابِ وَعُثْمَانُ بْنُ عَفَّانَ وَعَبْدُ اللَّهِ بْنُ عَمْرٍو وَغَيْرُهُمْ. وَهُوَ قَوْلُ الْفُقَهَاءِ مِنَ التَّابِعِينَ وَبِهِ يَقُولُ سُفْيَانُ الثَّوْرِيُّ وَابْنُ الْمُبَارَكِ وَالشَّافِعِيُّ وَأَحْمَدُ وَإِسْحَاقُ [قَالَ]: وَسَمِعْتُ الْجَارُودَ [بْنَ مُعَاذٍ] يَذْكُرُ عَنْ وَكَيْعٍ أَنَّهُ قَالَ بِهَذَا وَقَالَ: يَنْبَغِي أَنْ يُرْمَى بِهَذَا الْبَابِ مِنْ قَوْلِ أَصْحَابِ الرَّأْيِ. [قَالَ جَارُودٌ]: قَالَ وَكَيْعٌ: وَقَالَ سُفْيَانُ إِذَا تَزَوَّجَ [الرَّجُلُ] الْمَرْأَةَ لِيُحَلِّلَهَا ثُمَّ بَدَأَ لَهُ أَنْ يُمَسِّكَهَا فَلَا يَحِلُّ لَهُ أَنْ يُمَسِّكَهَا، حَتَّى يَتَزَوَّجَهَا بِنِكَاحٍ جَدِيدٍ.

تخريج: [إسناده ضعيف] وأخرجه النسائي: ١٤٩/٦، ح: ٣٤٤٥ (الطلاق، باب إحلال المطلقة ثلاثاً وما فيه من التغليظ) من حديث سفيان الثوري به وعنن، وانظر الحديث السابق.

[1] That is, the view that the marriage is valid even if the man intended to divorce the woman to make her lawful to the previous husband.

Comments:

Marrying a second husband for the sake of getting married again to the first husband, is not lawful according to this narration. No Muslim is allowed to go against the divine law. The Prophet ﷺ said he who acts against the law, then he is reprobated.

Chapter 29. What Has Been Related About (The Prohibition of) *Mut'ah*

1121. 'Alī bin Abī Ṭālib narrated: "The Prophet ﷺ prohibited *Mut'ah* with women, and the meat of domestic donkeys during (the campaign of) *Khaibar*." (*Ṣaḥīḥ*)

(He said:) There are narrations on this topic from Sabrah Al-Juhni and Abū Hurairah.

(Abū 'Eīsā said:) The *Ḥadīth* of 'Alī is a *Ḥasan Ṣaḥīḥ Ḥadīth*. This is acted upon according to the people of knowledge among the Companions of the Prophet ﷺ and others. It is only from Ibn 'Abbās that something about permitting *Mut'ah* has been narrated, then he reverted from his opinion when he was informed of this from the Prophet ﷺ. Most of the people of knowledge ordered the prohibition of *Mut'ah*, and it is the view of Ath-Thawrī, Ibn Al-Mubāarak, Ash-Shāfi'ī, Aḥmad, and Ishāq.

(المعجم ٢٩) - بَابُ مَا جَاءَ فِي
[تَحْرِيمِ] نِكَاحِ الْمُتْعَةِ (التحفة ٢٨)

١١٢١ - حَدَّثَنَا ابْنُ أَبِي عُمَرَ: حَدَّثَنَا
سُفْيَانُ عَنِ الزُّهْرِيِّ، عَنْ عَبْدِ اللَّهِ وَالْحَسَنِ
ابْنِ مُحَمَّدِ بْنِ عَلِيٍّ، عَنْ أَبِيهِمَا، عَنْ عَلِيٍّ
ابْنِ أَبِي طَالِبٍ أَنَّ النَّبِيَّ ﷺ نَهَى عَنْ مُتْعَةِ
النِّسَاءِ وَعَنْ لُحُومِ الْحُمُرِ الْأَهْلِيَّةِ زَمَنَ خَيْبَرَ.
[قَالَ:] وَفِي الْبَابِ عَنْ سَبْرَةَ الْجُهَنِيِّ
وَأَبِي هُرَيْرَةَ.

[قَالَ أَبُو عِيْسَى:] حَدِيثٌ عَلِيٍّ حَدِيثٌ
حَسَنٌ صَحِيحٌ، وَالْعَمَلُ عَلَى هَذَا عِنْدَ أَهْلِ
الْعِلْمِ مِنْ أَصْحَابِ النَّبِيِّ ﷺ وَغَيْرِهِمْ، وَإِنَّمَا
رُوِيَ عَنِ ابْنِ عَبَّاسٍ شَيْءٌ مِنَ الرُّخْصَةِ فِي
الْمُتْعَةِ، ثُمَّ رَجَعَ عَنْ قَوْلِهِ حَيْثُ أُخْبِرَ عَنِ
النَّبِيِّ ﷺ، وَأَمْرٌ أَكْثَرَ أَهْلَ الْعِلْمِ عَلَى تَحْرِيمِ
الْمُتْعَةِ وَهُوَ قَوْلُ الثَّوْرِيِّ وَابْنِ الْمُبَارَكِ
وَالشَّافِعِيِّ وَأَحْمَدَ وَإِسْحَاقَ.

تفريغ: متفق عليه، وأخرجه البخاري، النكاح، باب نهي النبي ﷺ عن نكاح المتعة أخيراً،
ح: ٥١١٥ ومسلم، ح: ١٤٠٧ من حديث سفيان بن عيينة به * وفي الباب عن سيرة الجهنبي
(مسلم، ح: ١٤٠٦) وأبي هريرة [الدارقطني: ٢٥٩/٤ وابن حبان، ح: ١٢٦٧].

Comments:

Mut'ah is unlawful in every condition or situation. In the beginning of Islam during war, being away from home and in unavoidable conditions it was permitted, but at the time of the Farewell *Hajj* (*Hajjatul-Wada'*) it was declared unlawful, and the temporary permission was abrogated.

1122. Muḥammad bin Ka'ab narrated that Ibn 'Abbās said: "Mut'ah was only during the beginning of Islām. A man would arrive in a land that he was not familiar with so he would marry a woman for the extent of time that he thought he would remain there. So his Mut'ah was upheld and his case was fine until the (following) Āyah was revealed: Except their wives or what their right hands possess.^[1] Then every private part other than those became unlawful." (Da'īf)

١١٢٢ - حَدَّثَنَا مُحَمَّدُ بْنُ غَيْلَانَ: حَدَّثَنَا سُفْيَانُ بْنُ عُقْبَةَ أَخُو قَبِيصَةَ بْنِ عُقْبَةَ: حَدَّثَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ مُوسَى بْنِ عُبَيْدَةَ، عَنْ مُحَمَّدِ بْنِ كَعْبٍ، عَنِ ابْنِ عَبَّاسٍ قَالَ: إِنَّمَا كَانَتْ الْمُتْعَةُ فِي أَوَّلِ الْإِسْلَامِ، كَانَ الرَّجُلُ يَقْدُمُ الْبَلَدَةَ لَيْسَ لَهُ بِهَا مَعْرِفَةٌ، فَيَتَزَوَّجُ الْمَرْأَةَ بِقَدْرِ مَا يَرَى أَنَّهُ يُقِيمُ فَتَحْفَظُ لَهُ مَتَاعَهُ وَتُضْلِحُ لَهُ شَيْئَهُ حَتَّى إِذَا نَزَلَتْ الْآيَةُ ﴿إِلَّا عَلَىٰ أَرْوَاحِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ﴾ [المؤمنون: ٦] قَالَ ابْنُ عَبَّاسٍ: فَكُلُّ فَرْجٍ سِوَاهُمَا فَهُوَ حَرَامٌ.

تخريج: [إسناده ضعيف] وأخرجه البيهقي: ٢٠٥/٧، ٢٠٦ من حديث سفیان بن عقیبة به *

موسى بن عبدة: ضعيف.

Comments:

The issue and its subject matter which Ibn Abbās has described, belongs to the pre-Islamic era, and after the advent of Islam, when the Islamic Divine Law was still being revealed to the Prophet ﷺ, this custom of the pre-Islamic era was still in existence in beginning of Islam. This issue of Mut'ah was totally terminated with the Verse of the Qur'an revealed in Makkah that only the wife and the slave girl are lawful for sexual intercourse. A woman under Mut'ah is neither a wife nor a slave girl, and it is agreed upon that she cannot be an heir.

Chapter 30. What Has Been Related About The Prohibition Of The *Shigār* Marriage

1123. 'Imrān bin Ḥusain narrated that the Prophet ﷺ said: "There is no *Jalab*, no *Janab*,^[2] and no

(المعجم ٣٠) - بَابُ مَا جَاءَ فِي النَّهْيِ

عَنْ نِكَاحِ الشُّغَارِ (التحفة ٢٩)

١١٢٣ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ

ابْنِ أَبِي الشَّوَارِبِ: حَدَّثَنَا بِشْرُ بْنُ

[1] Al-Mu'minūn 23:6.

[2] "Jalab and Janab can occur in racing and in Zakāt. As for the Jalab in racing, it is when a man follows his horse shouting and screaming at it in order to drive and encourage it on. Janab is when he has a horse next to his horse, so that when the one he is riding tires he can change to (the other one). Jalab in Zakāt is when the Zakāt collector does not come close to the people, but he halts somewhere and sends someone who will fetch the wealth for him from its different locations so that he can take the charities from them, and Janab is when the owner of the wealth keeps it at such a distance from where he is, that the collector has to go far away to get it." (Tuhfat Al-Ahwadhī).

Shighār in Islām. And whoever takes some property by force, then he is not from us.” (*Ṣaḥīḥ*)

(Abū ‘Eīsā said:) This *Ḥadīth* is *Ḥasan Ṣaḥīḥ*. (He said:) There are narrations on this topic from Anas, Abū Raiḥānah, Ibn ‘Umar, Jābir, Mu‘āwiyah, Abū Hurairah, and Wā’il bin Ḥujr.

المُضْطَلِّ: حَدَّثَنَا حُمَيْدٌ - وَهُوَ الطَّوِيلُ - قَالَ: حَدَّثَ الْحَسَنُ عَنْ عِمْرَانَ بْنِ حُصَيْنٍ عَنِ النَّبِيِّ ﷺ قَالَ: «لَا جَلْبَ وَلَا جَنْبَ وَلَا شَعَارَ فِي الْإِسْلَامِ، وَمَنْ انْتَهَبَ نُهْبَةً فَلَيْسَ مِنَّا».

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ. [قَالَ:] وَفِي الْبَابِ عَنْ أَنَسٍ وَأَبِي رَيْحَانَةَ وَابْنِ عُمَرَ وَجَابِرٍ وَمُعَاوِيَةَ وَأَبِي هُرَيْرَةَ وَوَائِلِ بْنِ حُجْرٍ.

تخریج: [صحیح] وأخرجه أبو داود، الجهاد، باب: في الجلب على الخيل في السباق، ح: ٢٥٨١ (وابن ماجه، ح: ٣٩٣٧ وغيره) من حديث بشر بن المفضل به واصله ابن حبان، ح: ١٥٠٢ - ١٥٠٤ والمؤلف، ح: ١٤٤٨ وغيرهما وله شواهد عند أبي داود، ح: ٤٣٩١، ٤٣٩٢ وغيره * وفي الباب عن أنس [ابن ماجه، ح: ١٨٨٥ وابن حبان، ح: ١٢٦٩] وأبي ريحانة [ابن عدي في الكامل: ٧٩٩/٢] وابن عمر [يأتي: ١١٢٤] وجابر [مسلم، ح: ١٤١٧] ومعاوية [أبو داود، ح: ٢٠٧٥] وأبي هريرة [مسلم، ح: ١٤١٦] ووائل بن حجر [البيزار (كشف): ١٦٦/٢، ح: ١٤٤٠].

Comments:

Shighār means marriage of reciprocity. It is not allowed that the guardian of a woman or girl marry her in exchange of another woman to marry him. Islamic law does not allow such type of marriages.

1124. Ibn ‘Umar narrated: “The Prophet ﷺ prohibited *Shighār*.” (*Ṣaḥīḥ*)

(Abū ‘Eīsā said:) This *Ḥadīth* is *Ḥasan Ṣaḥīḥ*. This is acted upon according to this people of knowledge in general. They do not allow the *Shighār* marriage. *Shighār* is when a man gives his daughter in marriage in exchange for marrying the other man’s daughter or sister and no dowry is exchanged

١١٢٤ - حَدَّثَنَا إِسْحَاقُ بْنُ مُوسَى الْأَنْصَارِيُّ: حَدَّثَنَا مَعْنٌ: حَدَّثَنَا مَالِكٌ عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ: أَنَّ النَّبِيَّ ﷺ نَهَى عَنِ الشُّعَارِ.

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ. وَالْعَمَلُ عَلَى هَذَا عِنْدَ عَامَّةِ أَهْلِ الْعِلْمِ لَا يَزُونَ نِكَاحَ الشُّعَارِ. وَالشُّعَارُ أَنْ يَزُوجَ الرَّجُلُ ابْنَتَهُ عَلَى أَنْ يَزُوجَهُ الْآخَرُ ابْنَتَهُ

between them. Some of the people of knowledge said that the *Shighār* marriage is annulled and it is not lawful even if they gave them a dowry. This is the view of Ash-Shāfi'i, Aḥmad and Ishāq. It has been reported that 'Aṭā' bin Abī Rabāḥ said: "They marry them simultaneously, and they set the same dowry." This is the view of the people of Al-Kūfah.

أَوْ أُخْتَهُ وَلَا صَدَاقَ بَيْنَهُمَا. وَقَالَ بَعْضُ أَهْلِ الْعِلْمِ: نِكَاحُ الشُّغَارِ مَفْسُوحٌ وَلَا يَحِلُّ وَإِنْ جَعَلَ لَهُمَا صَدَاقًا، وَهُوَ قَوْلُ الشَّافِعِيِّ وَأَحْمَدَ وَإِسْحَاقَ. وَرُوِيَ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ [أَنَّهُ] قَالَ: يُقْرَانِ عَلَى نِكَاحِهِمَا، وَيُجْعَلُ لَهُمَا صَدَاقُ الْمِثْلِ، وَهُوَ قَوْلُ أَهْلِ الْكُوفَةِ.

تخريج: متفق عليه، وأخرجه البخاري، النكاح، باب الشغار، ح: ٥١١٢، ومسلم، ح: ١٤١٥، من حديث مالك به وهو في الموطأ (يحيى): ٥٣٥/٢.

Chapter 31. What Has Been Related About: A Woman Should Not Be Married Along With Her Paternal Aunt Nor Her Maternal Aunt

(المعجم ٣١) - بَابُ مَا جَاءَ لَا تُنْكَحُ الْمَرْأَةُ عَلَى عَمَّتِهَا وَلَا عَلَى خَالَتِهَا (التحفة ٣٠)

1125. Ibn 'Abbās narrated: "The Prophet ﷺ prohibited marrying a woman along with her paternal aunt or along with her maternal aunt." (*Ṣaḥīḥ*)

Abū Ḥarīz's (a narrator in the chain of this *Ḥadīth*) name is 'Abdullāh bin Ḥusain.

(Another chain) from Abū Hurairah, and it is similar.

(He said:) There are narrations on this topic from 'Alī, Ibn 'Umar, 'Abdullāh bin 'Amr, Abū Sa'eed, Abū Umāmah, Jābir, 'Āishah, Abū Mūsā, and Samurah bin Jundab.

١١٢٥ - حَدَّثَنَا نَضْرُ بْنُ عَلِيٍّ الْجَهْضَمِيُّ: حَدَّثَنَا عَبْدُ الْأَعْلَى [بْنُ عَبْدِ الْأَعْلَى]: حَدَّثَنَا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ أَبِي حَرِيْزٍ، عَنْ عِكْرِمَةَ، عَنِ ابْنِ عَبَّاسٍ: أَنَّ النَّبِيَّ ﷺ نَهَى عَنْ تَزْوِجِ الْمَرْأَةِ عَلَى عَمَّتِهَا أَوْ عَلَى خَالَتِهَا.

وَأَبُو حَرِيْزٍ اسْمُهُ عَبْدُ اللَّهِ بْنُ حُسَيْنٍ.

حَدَّثَنَا نَضْرُ بْنُ عَلِيٍّ: حَدَّثَنَا عَبْدُ الْأَعْلَى عَنْ هِشَامِ بْنِ حَسَّانَ، عَنِ ابْنِ سِيرِينَ، عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ ﷺ بِمِثْلِهِ. [قَالَ:] وَفِي الْبَابِ عَنْ عَلِيٍّ وَابْنِ عُمَرَ وَعَبْدِ اللَّهِ بْنِ عَمْرٍو وَأَبِي سَعِيدٍ وَأَبِي أُمَامَةَ وَجَابِرٍ وَعَائِشَةَ وَأَبِي مُوسَى وَسَمُرَةَ بْنِ جُنْدَبٍ.

تخريج: [صحيح] وأخرجه أحمد: ٣٧٢/١ من حديث سعيد به وله طريق آخر عند أبي داود، ح: ٢٠٦٧ وللحديث شواهد عند البخاري، ح: ٥١٠٩ ومسلم، ح: ١٤٠٨ وغيرهما * حديث هشام، أخرجه مسلم، ح: ٣٨/١٤٠٨ * وفي الباب عن علي [أحمد: ١/٧٨] وابن عمر [العقيلي في الضعفاء: ١/١٨٥] وعبد الله بن عمرو [أحمد: ٢/١٨٩] وأبي سعيد [أحمد: ٣/٦٧] وأبي أمامة [الخطيب في الموضح: ٣/٣١٥] وأبو يعلى، ح: ٤٧٥٧ وأصله عند الحاكم: ٤/٣٤٩] وجابر [البخاري، ح: ٥١٠٨] وعائشة [الخطيب في الموضح: ٣/٣٨٥] وأبي موسى [ابن ماجه، ح: ١٩٣١] وسمرة بن جندب [البخاري في التاريخ الكبير: ١/٤٣].

1126. Abū Hurairah narrated: “The Messenger of Allāh ﷺ prohibited that a woman be married along with her paternal aunt, or the paternal aunt along with her brother’s daughter, or a woman with her maternal aunt, or the maternal aunt along with her sister’s daughter, and the younger^[1] is not to be married with the older,^[2] nor the older with the younger.” (*Ṣaḥīḥ*)

(Abū ‘Eīsā said:) The *Ḥadīth* of Ibn ‘Abbās and Abū Hurairah is a *Ḥasan Ṣaḥīḥ Ḥadīth*. This is acted upon according to the people of knowledge in general. We do not know of any disagreement among them. It is not lawful for a man to be married to a woman and her paternal or maternal aunt at the same time. If he marries a woman along with her paternal or maternal aunt, or, a paternal aunt along with her brother’s daughter, then the second of the two marriage is annulled. This is the view of the people of knowledge in general.

١١٢٦ - حَدَّثَنَا الْحَسَنُ بْنُ عَلِيٍّ [الْخَلَّالُ]: حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ: حَدَّثَنَا دَاوُدُ بْنُ أَبِي هِنْدٍ: حَدَّثَنَا عَامِرٌ عَنْ أَبِي هُرَيْرَةَ، أَنَّ رَسُولَ اللَّهِ ﷺ نَهَى أَنْ تُنكَحَ الْمَرْأَةُ عَلَى عَمَّتِهَا أَوْ أَلْعَمَّةِ عَلَى بِنْتِ أُخِيهَا أَوْ الْمَرْأَةَ عَلَى خَالَتِهَا، أَوْ الْخَالََّةُ عَلَى بِنْتِ أُخْتِهَا، وَلَا تُنكَحُ الصَّغْرَى عَلَى الْكُبْرَى، وَلَا الْكُبْرَى عَلَى الصَّغْرَى.

[قَالَ أَبُو عِيْسَى: حَدِيثُ ابْنِ عَبَّاسٍ وَأَبِي هُرَيْرَةَ حَدِيثٌ حَسَنٌ صَحِيحٌ. وَالْعَمَلُ عَلَى هَذَا عِنْدَ عَامَّةِ أَهْلِ الْعِلْمِ، لَا نَعْلَمُ بَيْنَهُمْ اخْتِلَافًا، أَنَّهُ لَا يَجُزُّ لِلرَّجُلِ أَنْ يَجْمَعَ بَيْنَ الْمَرْأَةِ وَعَمَّتِهَا أَوْ خَالَتِهَا، فَإِنْ نَكَحَ امْرَأَةً عَلَى عَمَّتِهَا أَوْ خَالَتِهَا أَوْ أَلْعَمَّةِ عَلَى بِنْتِ أُخِيهَا، فَنِكَاحُ الْأُخْرَى مِنْهُمَا مَفْسُوحٌ، وَبِهِ يَقُولُ عَامَّةُ أَهْلِ الْعِلْمِ.]

[1] “That is the sister’s daughter or the brother’s daughter (i.e., the niece), and she is called ‘the younger’ because she holds the status like that of the daughter.” (*Tuhfat Al-Aḥwadhī*).

[2] “Meaning the paternal or maternal aunt.” (*Tuhfat Al-Aḥwadhī*).

Abū 'Eīsā said: Ash-Sha'bī saw Abū Hurairah and he reported from him. I asked Muḥammad about this and he said: "Correct."

Abū 'Eīsā said: Ash-Sha'bī (also) reported from a man, from Abū Hurairah.

قَالَ أَبُو عِيسَى: أَدْرَكَ الشَّعْبِيُّ أَبَا هُرَيْرَةَ وَرَوَى عَنْهُ، وَسَأَلْتُ مُحَمَّدًا عَنْ هَذَا، فَقَالَ: صَحِيحٌ.
قَالَ أَبُو عِيسَى: وَرَوَى الشَّعْبِيُّ عَنْ رَجُلٍ، عَنْ أَبِي هُرَيْرَةَ.

تخريج: [إسناده صحيح] وأخرجه أبو داود، النكاح، باب ما يكره أن يجمع بينهما من النساء، ح: ٢٠٦٥ من حديث داود به وعلقه البخاري، ح: ٥١٠٨ وصححه ابن حبان (الإحسان): ٤١٠٦ وابن الجارود، ح: ٦٨٥.

Comments:

All Sunnies agree on this point that it is not allowed for a man to marry parental aunt and her niece both and similarly the maternal aunt and her niece cannot be married to a man. But amongst the Shi'ites such marriages are allowed!!.

Chapter 32. What Has Been Related About Conditions When Contracting A Marriage

(المعجم ٣٢) - بَابُ مَا جَاءَ فِي الشَّرْطِ عِنْدَ عَقْدَةِ النِّكَاحِ (التحفة ٣١)

1127. 'Uqbah bin 'Āmir Al-Juhānī narrated that the Messenger of Allāh ﷺ said: "Indeed the conditions most deserving to be fulfilled are those that make the private parts lawful among you." (*Ṣaḥīḥ*)

(Another chain with similar narration) (Abū 'Eīsā said:) This *Ḥadīth* is *Ḥasan Ṣaḥīḥ*. This is acted upon according to some of the people of knowledge among the Companions of the Prophet ﷺ. Among them is 'Umar bin Al-Khaṭṭāb: When a man marries a woman, and he makes the condition for her that he will not take her out of her land, then he is not to take her out. This is the saying of some of the people of knowledge. It is the view of Ash-Shāfi'i, Aḥmad, and Ishāq.

١١٢٧ - حَدَّثَنَا يُوسُفُ بْنُ عِيسَى: حَدَّثَنَا وَكَيْعٌ: حَدَّثَنَا عَبْدُ الْحَمِيدُ بْنُ جَعْفَرٍ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ، عَنْ مَرْثَدِ بْنِ عَبْدِ اللَّهِ الْبَزْزِيِّ أَبِي الْحَيْرِ، عَنْ عُقْبَةَ بْنِ عَامِرِ الْجُهَنِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّ أَحَقَّ الشُّرُوطِ أَنْ يُوفَى بِهَا، مَا اسْتَحَلَلْتُمْ بِهِ الْفُرُوجَ.»
حَدَّثَنَا أَبُو مُوسَى مُحَمَّدُ بْنُ الْمُثَنَّى: حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ عَنْ عَبْدِ الْحَمِيدِ بْنِ جَعْفَرٍ، نَحْوَهُ.

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ، وَالْعَمَلُ عَلَى هَذَا عِنْدَ بَعْضِ أَهْلِ الْعِلْمِ مِنْ أَصْحَابِ النَّبِيِّ ﷺ. مِنْهُمْ عُمَرُ

It has been related that ‘Alī bin Abī Tālib said: “Allāh’s conditions take precedence over her conditions.” It is as if he held the view that the husband could take the woman even if she had made the condition on her husband that he could not take her out (of her land). And some of the people of knowledge followed this. This is the view of Sufyān Ath-Thawrī and some of the people of Al-Kūfah.

ابْنُ الْخَطَّابِ قَالَ: إِذَا تَزَوَّجَ الرَّجُلُ امْرَأَةً، وَشَرَطَ لَهَا أَنْ لَا يُخْرِجَهَا مِنْ مِصْرَهَا، فَلَيْسَ لَهُ أَنْ يُخْرِجَهَا، وَهُوَ قَوْلُ بَعْضِ أَهْلِ الْعِلْمِ. وَبِهِ يَقُولُ الشَّافِعِيُّ وَأَحْمَدُ وَإِسْحَاقُ. وَرُوِيَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ قَالَ: شَرَطُ اللَّهِ قَبْلَ شَرْطِهَا، كَأَنَّهُ رَأَى لِلزَّوْجِ أَنْ يُخْرِجَهَا وَإِنْ كَانَتْ اشْتَرَطَتْ عَلَى زَوْجِهَا أَنْ لَا يُخْرِجَهَا، وَذَهَبَ بَعْضُ أَهْلِ الْعِلْمِ إِلَى هَذَا. وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ وَبَعْضِ أَهْلِ الْكُوفَةِ.

تخریج: متفق عليه، وأخرجه مسلم، النكاح، باب الوفاء بالشروط في النكاح، ح: ١٤١٨ من حديث وكيع والبخاري، ح: ٥١٥١ من حديث يزيد به.

Chapter 33. What Has Been Related About A Man Who Accepted Islām While Having Ten Wives

(المعجم ٣٣) - بَابُ مَا جَاءَ فِي الرَّجُلِ يُسَلِّمُ وَعِنْدَهُ عَشْرُ نِسْوَةٍ (التحفة ٣٢)

1128. Ibn ‘Umar narrated: “Ghīlān bin Salamah Ath-Thaqafī accepted Islām and he had ten wives in *Jahiliyyah* who accepted Islām along with him. So the Prophet ﷺ ordered (him) to chose four (of them).” (*Da‘īf*)

(Abū ‘Eisā said:) This is how Ma‘mar reported this *Hadīth* from Az-Zuhrī: “From Sālim, from his father.” (He said:) I heard Muḥammad bin Ismā‘īl saying: “This *Hadīth* is not preserved. What is correct is what Shu‘aib bin Abī Ḥamzah and others reported from Az-Zuhrī (and Ḥamzah), he said: “He narrated to me from Muḥammad bin Suwaid Ath-

١١٢٨ - حَدَّثَنَا هَذَا: حَدَّثَنَا عَبْدُهُ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ، عَنْ مَعْمَرٍ، عَنِ الزُّهْرِيِّ، عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ، عَنِ ابْنِ عُمَرَ: أَنَّ غَيْلَانَ بْنَ سَلَمَةَ التَّقْفِيَّيَّ اسْلَمَ وَلَهُ عَشْرُ نِسْوَةٍ فِي الْجَاهِلِيَّةِ، فَأَسْلَمْنَ مَعَهُ، فَأَمَرَ [هُ] النَّبِيُّ ﷺ أَنْ يَتَخَيَّرَ أَرْبَعًا [مِنْهُنَّ].

[قَالَ أَبُو عِيسَى:] هَكَذَا رَوَاهُ مَعْمَرٌ عَنِ الزُّهْرِيِّ، عَنْ سَالِمٍ، عَنْ أَبِيهِ. [قَالَ:] وَسَمِعْتُ مُحَمَّدَ بْنَ إِسْمَاعِيلَ يَقُولُ: هَذَا حَدِيثٌ غَيْرٌ مَحْفُوظٌ، وَالصَّحِيحُ مَا رَوَى شُعَيْبُ بْنُ أَبِي حَمْزَةَ وَعَيْرُهُ عَنِ الزُّهْرِيِّ [وَحَمْزَةَ]، قَالَ:

Thaqafi that Ghilān bin Salamah accepted Islām and he had ten wives.” Muḥammad said: “The Hadīth of Az-Zuhri from Sālim, from his father, was only: “A man from Thaqif divorced his wives. So ‘Umar said to him: ‘Return to your wives or they will stone your grave just as the grave of Abū Righāl is stoned.”

(Abū ‘Eisā said:) The Hadīth of Ghilān bin Salamah is acted upon according to our companions, among them Ash-Shāfi‘ī, Aḥmad, and Ishāq.

حَدَّثْتُ عَنْ مُحَمَّدِ بْنِ سُؤَيْدِ التَّمِيفِيِّ، أَنَّ غَيْلَانَ ابْنَ سَلَمَةَ أَسْلَمَ وَعِنْدَهُ عَشْرُ نِسْوَةٍ، قَالَ مُحَمَّدٌ: وَإِنَّمَا حَدِيثُ الزُّهْرِيِّ عَنْ سَالِمٍ، عَنْ أَبِيهِ أَنَّ رَجُلًا مِنْ تَمِيفٍ طَلَّقَ نِسَاءَهُ. فَقَالَ لَهُ عُمَرُ: لَتَرَاجِعَنَّ نِسَاءَكَ، أَوْ لَأَرْجُمَنَّ قَبْرَكَ، كَمَا رُجِمَ قَبْرُ أَبِي رِغَالٍ.

[قَالَ أَبُو عِيْسَى]: وَالْعَمَلُ عَلَى حَدِيثِ غَيْلَانَ بْنِ سَلَمَةَ عِنْدَ أَصْحَابِنَا، مِنْهُمْ الشَّافِعِيُّ وَأَحْمَدُ وَإِسْحَاقُ.

تخریج: [إسناده ضعيف] وأخرجه ابن ماجه، النكاح، باب الرجل يسلم وعنده أكثر من أربع نساء، ح: ١٩٥٣ من حديث معمر به، الزهري عنن وصححه ابن حبان (الإحسان): ٤١٤٦ وللحديث شواهد ضعيفة عند ابن ماجه، ح: ١٩٥٢ وغيره.

Comments:

In the reign of ‘Umar, Ghilan Ath-Thaqafi divorced his wife with the intention to deprive her from inheritance, and distribute it among his sons. ‘Umar asked him to return to his wife and remarry her otherwise he will face severe consequences. It means divorcing with such bad intentions is not lawful.

Chapter 34. What Has Been Related About A Man Who Accepts Islām While He Is Married To Two Sisters

1129. Abū Wahb Al-Jaishāni narrated that he heard Ibn Fairūz Ad-Dailamī narrating from his father: “I went to the Prophet ﷺ and said: ‘O Messenger of Allāh! I accepted Islām and I had two sisters (as wives).’ So the Messenger of Allāh ﷺ said: ‘Chose whichever of them you will.’” (*Hasan*)

(المعجم ٣٤) - بَابُ مَا جَاءَ فِي الرَّجُلِ يُسَلِّمُ وَعِنْدَهُ أُخْتَانِ (التحفة ٣٣)

١١٢٩ - حَدَّثَنَا قُتَيْبَةُ: حَدَّثَنَا ابْنُ لَهَيْعَةَ عَنْ أَبِي وَهَبِ الْجَيْشَانِيِّ أَنَّهُ سَمِعَ ابْنَ فَيْرُوزَ الدَّيْلَمِيَّ يُحَدِّثُ عَنْ أَبِيهِ قَالَ: أَتَيْتُ النَّبِيَّ ﷺ فَقُلْتُ: يَا رَسُولَ اللَّهِ! إِنِّي أَسَلَمْتُ وَتَحْتِي أُخْتَانِ، فَقَالَ رَسُولُ اللَّهِ ﷺ: «اخْتَرِي أَيَّتَهُمَا شِئْتَ».

تخریج: [حسن] وأخرجه أبو داود، الطلاق، باب: في من أسلم وعنده نساء أكثر من أربع أو أختان، ح: ٢٢٤٣ وابن ماجه، ح: ١٩٥٠ من حديث أبي وهب به وصححه ابن حبان، ح: ١٢٧٦ وانظر الحديث الآتي.

1130. [Abū Wahb Al-Jaishānī narrated from Aḍ-Ḍaḥḥāk bin Fairūz Ad-Dailamī from his father: "I said: 'O Messenger of Allāh! I accepted Islām and I had two sisters (as wives).' So Messenger of Allāh ﷺ said: 'Chose whichever of them you will.'"] (*Hasan*)

This *Hadīth* is *Hasan Gharīb*. Abū Wahb Al-Jaishānī's name is Ad-Dailam bin Hawsha'.

١١٣٠ - [حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا وَهْبُ بْنُ جَرِيرٍ: حَدَّثَنَا أَبِي قَالَ: سَمِعْتُ يَحْيَى بْنَ أَيُّوبَ يُحَدِّثُ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ، عَنْ أَبِي وَهْبِ الْجَيْشَانِيِّ، عَنِ الضَّحَّاكِ بْنِ فَيْرُوزَ الدَّيْلَمِيِّ، عَنْ أَبِيهِ قَالَ: قُلْتُ: يَا رَسُولَ اللَّهِ! أَسَلَّمْتُ وَتَحْتِي أُخْتَانِ قَالَ: «اخْتَرِي أَيْتَهُمَا شِئْتَ».] هَذَا حَدِيثٌ حَسَنٌ غَرِيبٌ، وَأَبُو وَهْبٍ الْجَيْشَانِيُّ اسْمُهُ الدَّيْلَمِيُّ بْنُ هَوْشَعٍ.

تخریج: [إسناده حسن] وأخرجه أبو داود، ح: ٢٢٤٣ من حديث وهب بن جرير به (انظر الحديث السابق).

Comments:

According to three *A'immah*, — Mālik, Shāfi'ī, and Aḥmad, if someone embraces Islam and two sisters are married to him, he can keep one and separate from the other.

Chapter 35. (What Has Been Related About) A Man Who Buys A Slave Girl Who Is Pregnant

1131. Ruwaifi' bin Thābit narrated that the Prophet ﷺ said: "Whoever believes in Allāh and the Last Day, then he does not levy his water on someone else's child."^[1] (*Hasan*)

(Abū 'Eisā said:) This *Hadīth* is *Hasan*. It has been reported through more than one route from Ruwaifi' bin Thābit. This is acted upon according to the people of knowledge. They do not think that if a man buys a slave girl and she is pregnant, that he can have sexual

(المعجم ٣٥) - بَابُ [مَا جَاءَ فِي] الرَّجُلِ يَشْتَرِي الْجَارِيَةَ وَهِيَ حَامِلٌ (التحفة ٣٤)

١١٣١ - حَدَّثَنَا عُمَرُ بْنُ حَفْصِ السَّيِّبَانِيِّ الْبُصْرِيُّ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ وَهْبٍ: حَدَّثَنَا يَحْيَى بْنُ أَيُّوبَ عَنْ رَبِيعَةَ ابْنِ سُلَيْمٍ، عَنْ بُشَيْرِ بْنِ عُبَيْدِ اللَّهِ، عَنْ رُوَيْفِعِ بْنِ ثَابِتٍ عَنِ النَّبِيِّ ﷺ قَالَ: «مَنْ كَانَ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ فَلَا يَسْقِ مَاءَهُ وَلَدَ غَيْرِهِ».

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ حَسَنٌ، وَقَدْ رُوِيَ مِنْ غَيْرِ وَجْهِ عَنِ رُوَيْفِعِ بْنِ

[1] It is explained by the author below.

relations with her until she delivers. There are narrations on this topic from Ibn ‘Abbās, Abū Ad-Dardā’, Al-‘Irbāḍ bin Sāriyah, and Abū Sa‘eed.

ثَابِتٌ . وَالْعَمَلُ عَلَى هَذَا عِنْدَ أَهْلِ الْعِلْمِ ، لَا يَرَوْنَ لِلرَّجُلِ ، إِذَا اشْتَرَى جَارِيَةً وَهِيَ حَامِلٌ ، أَنْ يَطَّأَهَا حَتَّى تَضَعَ ، وَفِي الْبَابِ عَنْ ابْنِ عَبَّاسٍ وَأَبِي الدَّرْدَاءِ وَالْعُرْبَاضِ بْنِ سَارِيَةَ ، وَأَبِي سَعِيدٍ .

تخريج: [إسناده حسن] وللحديث طريق آخر عند أبي داود، ح: ٢١٥٨ عن رويغ وشاهد عند الترمذي، يأتي: ١٥٦٤ * وفي الباب عن ابن عباس [أحمد: ٢٥٦/١ والحاكم: ١٣٧/٢] وأبي الدرداء [أبو داود، ح: ٢١٥٦] والعرباض بن سارية [يأتي: ١٤٧٤] وأبي سعيد [مسلم، ح: ١٤٥٦] وأبو داود، ح: ٢١٥٧.

Comments:

The child in the womb of the mother belongs to the father, so it is not lawful to have sexual relations with a woman who is pregnant from someone else. All *A‘immah* agree on this point. This narration is with reference to slave girls.

Chapter 36. What Has Been Related (About A Man) Who Captures A Slave Woman That Has A Husband, Is It Lawful For Him To Have Relations With Her?

(المعجم ٣٦- بَابُ مَا جَاءَ فِيهِ الرَّجُلُ بِسَبِيِ الْأَمَةِ وَلَهَا زَوْجٌ ، هَلْ يَحِلُّ لَهُ وَطْؤُهَا (التحفة ٣٥)

1132. Abū Sa‘eed Al-Khudrī narrated: “We got some captives on the day of Awṭās, and they had husbands among their people. They mentioned that to the Messenger of Allāh ﷺ, so the following was revealed: And women who are already married, except those whom your right hands posses.^[1] (*Hasan*)

١١٣٢ - حَدَّثَنَا أَحْمَدُ بْنُ مَنِيعٍ : حَدَّثَنَا هُشَيْمٌ : حَدَّثَنَا عُثْمَانُ النَّبِيُّ عَنْ أَبِي الْخَلِيلِ ، عَنْ أَبِي سَعِيدِ الْخُدْرِيِّ قَالَ : أَصَبْنَا سَبَايَا يَوْمَ أَوْطَاسٍ ، وَلَهُنَّ أَزْوَاجٌ فِي قَوْمِهِنَّ ، فَذَكَرُوا ذَلِكَ لِرَسُولِ اللَّهِ ﷺ ، فَتَرَلَتْ : ﴿ وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ إِلَّا مَا مَلَكَتْ أَيْمَانُكُمْ ﴾ [النساء: ٢٤].

(Abū ‘Eisā said:) This *Hadīth* is *Hasan*.

This is how Ath-Thawrī reported it: “From ‘Uthmān Al-Battī, from Abū Al-Khalīl, from Abū Sa‘eed.” Abū Al-Khalīl’s name is Ṣāliḥ bin

[قَالَ أَبُو عِيسَى :] هَذَا حَدِيثٌ حَسَنٌ ، وَهَكَذَا رَوَاهُ الثَّوْرِيُّ عَنْ عُثْمَانَ النَّبِيِّ ، عَنْ أَبِي الْخَلِيلِ ، عَنْ أَبِي سَعِيدٍ ، وَأَبُو الْخَلِيلِ

[1] *An-Nisā’* 4:24.

Abī Maryam. And Hammām reported this *Hadūh* from Qatādah, from Šālīh Abū Al-Khalīl, from Abū ‘Alqamah Al-Hāshimī, from Abū Sa‘eed, from the Prophet ﷺ. That was narrated to us by ‘Abd bin Ḥumaid (he said): “Ḥabbān bin Hilāl narrated to us (he said): Hammām narrated to us.”

اسْمُهُ صَالِحُ بْنُ أَبِي مَرْيَمَ، وَرَوَى هَمَّامٌ هَذَا الْحَدِيثَ عَنْ قَتَادَةَ، عَنْ صَالِحِ أَبِي الْخَلِيلِ، عَنْ أَبِي عَلْقَمَةَ الْهَاشِمِيِّ، عَنْ أَبِي سَعِيدٍ عَنِ النَّبِيِّ ﷺ. حَدَّثَنَا بِذَلِكَ عَبْدُ بْنُ حُمَيْدٍ: حَدَّثَنَا حَبَّانُ بْنُ هِلَالٍ: حَدَّثَنَا هَمَّامٌ.

تخريج: [إسناده حسن] وأخرجه أحمد: ٧٢/٣ من حديث عثمان به وهو في صحيح مسلم، ح: ٣٥/١٤٥٦ من حديث أبي الخليل به.

Comments:

This issue is agreed upon by all Four *A‘immaḥ*; when a married woman becomes a prisoner of war without her husband, her contract of marriage with her husband ends, and her new master has the right to have sexual relations with her after the birth of a child if she is pregnant, or after waiting a while to confirm the status of her womb if she is not apparently pregnant.

Chapter 37. What Has Been Related About The Dowry Of The *Baghī*^[1]

1133. Abū Mas‘ūd Al-Anṣārī narrated: “The Messenger of Allāh ﷺ prohibited the price of a dog, the dowry of a fornicator, and the payment made to the fortune-teller.” (*Ṣaḥīḥ*)

He said: There are narrations on this topic from Rāfi‘ bin Khadīj, Abū Juḥaifah, Abū Hurairah, and Ibn ‘Abbās.

(Abū ‘Eīsā said:) The *Hadūth* of Abū Mas‘ūd is a *Ḥasan Ṣaḥīḥ Hadūth*.

(المعجم ٣٧) - بَابُ مَا جَاءَ فِي كَرَاهِيَةِ مَهْرِ الْبَغِيِّ (التحفة ٣٦)

١١٣٣ - حَدَّثَنَا قُتَيْبَةُ: حَدَّثَنَا اللَّيْثُ عَنْ ابْنِ شِهَابٍ، عَنْ أَبِي بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ أَبِي مَسْعُودٍ الْأَنْصَارِيِّ قَالَ: نَهَى رَسُولُ اللَّهِ ﷺ عَنْ ثَمَنِ الْكَلْبِ وَمَهْرِ الْبَغِيِّ وَحُلْوَانِ الْكَاهِنِ، قَالَ: وَفِي الْبَابِ عَنْ رَافِعِ بْنِ خَدِيجٍ وَأَبِي جُحَيْفَةَ وَأَبِي هُرَيْرَةَ وَابْنِ عَبَّاسٍ. [قَالَ أَبُو عِيْسَى:] وَحَدِيثُ أَبِي مَسْعُودٍ حَدِيثٌ حَسَنٌ صَحِيحٌ.

تخريج: متفق عليه، وأخرجه مسلم، المساقاة، باب تحريم ثمن الكلب، وحلوان الكاهن ... إلخ، ح: ١٥٦٧ عن قتيبة والبخاري، ح: ٢٢٣٧ من حديث ابن شهاب الزهري * وفي الباب عن رافع بن خديج [يأتي: ١٢٧٥] وأبي جحيفة [البخاري، ح: ٢٢٣٨] وأبي هريرة [البخاري، ح: ٢٢٨٣] وابن عباس [أبو داود، ح: ٣٤٨٢ وأحمد: ٢٧٨/١، ٢٣٥].

[1] Here it means the fornicator. See *Tuḥfat Al-Aḥwadhī*.

Comments:

In the view of most of the scholars, buying and selling of dog is unlawful, but in the view of Imām Abū Ḥanīfah it is allowed. Imām ‘Aṭā and Nakha’ī allow the buying and selling of a hunting dog. It is agreed upon by all, that money paid for illegal sexual intercourse (*Zinā*) is unlawful.

Chapter 38. What Has Been Related About A Man Is Not To Propose To A Woman Who Has Been Proposed To By His Brother

1134. Abū Hurairah narrated that the Messenger of Allāh ﷺ said: “A man is not to sell over his brother’s sale, nor is he to propose to whom his brother has proposed.” (*Ṣaḥīḥ*)

(He said:) There are narrations on this topic from Samurah and Ibn ‘Umar.

Abū ‘Eīsā said: The *Ḥadīth* of Abū Hurairah is a *Ḥasan Ṣaḥīḥ Ḥadīth*.

Mālik bin Anas said: “The meaning of it being disliked to propose to a woman that his brother has proposed to, is when the man proposed to the woman and she accepted it, then no one is to make a proposal over his proposal.”

Ash-Shāfi‘ī said: “This *Ḥadīth*: ‘A man is not to propose to whom his brother has proposed’ – means, according to us, when a man proposes to a woman and she accepts and agrees to it. Then no one is to make a proposal over his proposal. If it is before he knows that she accepted or agreed with him, then there is no harm in him proposing to her. The proof for that is the *Ḥadīth* of Fāṭimah bint Qais,

(المعجم ٣٨) - بَابُ مَا جَاءَ أَنْ لَا
يَخْطُبُ الرَّجُلُ عَلَى خِطْبَةِ أَخِيهِ
(التحفة ٣٧)

١١٣٤ - حَدَّثَنَا أَحْمَدُ بْنُ مَنِيعٍ وَوُثَيْبَةُ
قَالَ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنِ الزُّهْرِيِّ،
عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، عَنْ أَبِي هُرَيْرَةَ قَالَ
قُتَيْبَةُ: يَبْلُغُ بِهِ [النَّبِيُّ ﷺ]. وَقَالَ أَحْمَدُ: قَالَ
رَسُولُ اللَّهِ ﷺ: «لَا يَبِيعُ الرَّجُلُ عَلَى بَيْعِ
أَخِيهِ، وَلَا يَخْطُبُ عَلَى خِطْبَةِ أَخِيهِ»،
[قَالَ]: وَفِي الْبَابِ عَنْ سَمْرَةَ وَابْنِ عُمَرَ.

قَالَ أَبُو عِيسَى: حَدِيثُ أَبِي هُرَيْرَةَ حَدِيثٌ
حَسَنٌ صَحِيحٌ. قَالَ مَالِكُ بْنُ أَنَسٍ: إِنَّمَا
مَعْنَى كَرَاهِيَةِ أَنْ يَخْطُبَ الرَّجُلُ عَلَى خِطْبَةِ
أَخِيهِ، إِذَا خَطَبَ الرَّجُلُ الْمَرْأَةَ فَرَضِيَتْ بِهِ،
فَلَيْسَ لِأَحَدٍ أَنْ يَخْطُبَ عَلَى خِطْبَتِهِ. وَقَالَ
الشَّافِعِيُّ: مَعْنَى هَذَا الْحَدِيثِ «لَا يَخْطُبُ
الرَّجُلُ عَلَى خِطْبَةِ أَخِيهِ»، هَذَا عِنْدَنَا إِذَا
خَطَبَ الرَّجُلُ الْمَرْأَةَ فَرَضِيَتْ بِهِ وَرَكَتْ إِلَيْهِ،
فَلَيْسَ لِأَحَدٍ أَنْ يَخْطُبَ عَلَى خِطْبَتِهِ. فَأَمَّا
قَبْلَ أَنْ يَعْلَمَ رِضَاهَا أَوْ رُكُوتَهَا إِلَيْهِ، فَلَا
بَأْسَ أَنْ يَخْطُبَهَا. وَالْحُجَّةُ فِي ذَلِكَ حَدِيثُ
فَاطِمَةَ بِنْتِ قَيْسٍ، حَيْثُ جَاءَتْ النَّبِيَّ ﷺ
فَذَكَرَتْ لَهُ أَنَّ أَبَا جَهْمٍ بْنُ حُدَيْفَةَ وَمُعَاوِيَةَ

in which she came to the Prophet ﷺ and she mentioned to him that Abū Jahm bin Ḥudhaifah and Mu'āwiyah bin Abī Sufyān had both proposed to her. So he said: 'As for Abū Jahm, he is a man who does not give women a rest from his stick. As for Mu'āwiyah he is a destitute person with no wealth. But marry Usāmah.' So the meaning of this *Hadīth*, to us, and Allāh knows best, is that Fāṭimah had not informed him of her acceptance of either one of them. If she had told him that, then he would not have directed her to someone other than whom she had mentioned."

ابْنُ أَبِي سُفْيَانَ حَطَبَاهَا، فَقَالَ: «أَمَّا أَبُو جَهْمٍ، فَرَجُلٌ لَا يَرْفَعُ عَصَاهُ عَنِ النِّسَاءِ. وَأَمَّا مُعَاوِيَةُ فَصُعْلُوكٌ لَا مَالَ لَهُ، وَلَكِنْ أَنْكِحِي أُسَامَةَ»، فَمَعْنَى هَذَا الْحَدِيثِ عِنْدَنَا، وَاللَّهِ أَعْلَمُ، أَنَّ فَاطِمَةَ لَمْ تُخْبِرْهُ بِرِضَاهَا بِوَاحِدٍ مِنْهُمَا، وَلَوْ أُخْبِرْتُهُ، لَمْ يُشِيرْ عَلَيْهَا بِغَيْرِ الَّذِي ذَكَرْتُهُ.

تخريج: متفق عليه، وأخرجه البخاري، البيهقي، باب: لا يبيع على بيع أخيه... إلخ، ح: ٢١٤٠ ومسلم، ح: ١٤١٣ من حديث سفیان بن عيينة به * وفي الباب عن ابن عمر [البخاري، ح: ٥١٤٢ ومسلم، ح: ١٤١٢] وسمرة [أحمد: ٢/٢٤٢] * حديث: "أما أبو جهم فرجل لا يرفع عصاه عن النساء" انظر الحديث الآتي.

Comments:

'Selling over his brother's sale' means that a person who has completed a transaction and the matters are over, the third person should not poke in for less or more money. According to the situation a third person as a buyer or as a seller should not try to undo the deal by paying more or accepting less.

1135. Abū Bakr bin Al-Jahm narrated: "Abū Salamah bin 'Abdur-Raḥmān and I visited Fāṭimah bint Qais. She narrated to us that her husband had divorced her three times, and he did not leave her with anywhere to live nor any wealth. She said: 'He left ten *Afīzah*^[1] for me with the son of his uncle: five were of barely, and five of wheat.' She said: 'I went to the Messenger of Allāh ﷺ and

١١٣٥ - حَدَّثَنَا مُحَمَّدُ بْنُ عَدْلَانَ: حَدَّثَنَا أَبُو دَاوُدَ [قَالَ]: أَنْبَأَنَا شُعْبَةُ قَالَ: أَخْبَرَنِي أَبُو بَكْرِ بْنُ الْجَهْمِ قَالَ: دَخَلْتُ أَنَا وَأَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ عَلَى فَاطِمَةَ بِنْتِ قَيْسٍ، فَحَدَّثْتَنَا أَنَّ زَوْجَهَا طَلَّقَهَا ثَلَاثًا، وَلَمْ يَجْعَلْ لَهَا سُكْنَى وَلَا نَفَقَةً، قَالَتْ: وَوَضَعَ لِي عَشْرَةَ أَفْزَرَةَ عِنْدَ ابْنِ عَمِّ لَه: خَمْسَةَ شَعِيرٍ

[1] *Afīzah* is plural of *Qafīz* and it is a type of container.

mentioned that to him.’ She said: ‘He said: “He is correct.”’^[1] (She said:) ‘So he ordered me to complete my *Iddah* in the home of Umm *Sharik*. But then the Messenger of Allāh ﷺ said to me: “Umm *Sharik*’s home is visited by the *Muhājirūn*, so spend your *Iddah* in the home of Ibn Umm Maktūm, for there you can remove your garments and he will not see you. Then when your *Iddah* is completed and someone proposes to you come to me.”

‘So when my *Iddah* completed Abū Jahm and Mu‘āwiyah proposed to me.’ She said: ‘I went to the Messenger of Allāh ﷺ and mentioned that to him, and he said: “As for Mu‘āwiyah, he is a man with no wealth, and as for Abū Jahm he is a man who is harsh with women.” She said: ‘Then Uṣamah bin Zaid proposed to me, and he married me. So Allāh blessed me with Uṣamah.’” (*Ṣaḥīḥ*)

This *Ḥadīth* is *Ṣaḥīḥ*, Sufyān *Ath-Thawrī* reported a *Ḥadīth* similar to this from Abū Bakr bin Al-Jahm, but he added in it: “So the Messenger of Allāh ﷺ said to me: ‘Marry Uṣamah.’” (And he mentioned the chain of narration for that.)

تخریج: وأخرجه مسلم، الطلاق، باب المطلقة البائن لا نفقة لها، ح: ٥٠/١٤٨٠ من حديث شعبة (٤٧/١٤٨٠) ومن حديث وكيع عن سفیان الثوري به وهو في مسند أبي داود الطيالسي، ح: ١٦٤٥.

وَحَمْسَةَ بُرٍّ، قَالَتْ: فَأَتَيْتُ رَسُولَ اللَّهِ ﷺ فَذَكَرْتُ ذَلِكَ لَهُ، قَالَتْ: فَقَالَ «صَدَقَ» [قَالَتْ] فَأَمَرَنِي أَنْ أَعْتَدَ فِي بَيْتِ أُمِّ شَرِيكِ، ثُمَّ قَالَ لِي رَسُولُ اللَّهِ ﷺ: «إِنَّ بَيْتَ أُمِّ شَرِيكِ بَيْتٌ يَعْشَاهُ الْمُهَاجِرُونَ، وَلَكِنْ أَعْتَدِي فِي بَيْتِ ابْنِ أُمِّ مَكْتُومٍ، فَعَسَى أَنْ تُلْقِي نِيَابِكَ فَلَا يَرَاكَ، فَإِذَا انْقَضَتْ عِدَّتُكَ فَجَاءَ أَحَدٌ يَخْطُبُكَ فَأَيِّنِي».

فَلَمَّا انْقَضَتْ عِدَّتِي، خَطَبَنِي أَبُو جَهْمٍ وَمُعَاوِيَةُ. قَالَتْ: فَأَتَيْتُ رَسُولَ اللَّهِ ﷺ، فَذَكَرْتُ ذَلِكَ لَهُ، فَقَالَ: «أَمَّا مُعَاوِيَةُ فَرَجُلٌ لَا مَالَ لَهُ، وَأَمَّا أَبُو جَهْمٍ فَرَجُلٌ شَدِيدٌ عَلَى النِّسَاءِ»، قَالَتْ: فَخَطَبَنِي أُسَامَةُ بْنُ زَيْدٍ، فَتَزَوَّجَنِي، فَبَارَكَ اللَّهُ لِي فِي أُسَامَةَ.

هَذَا حَدِيثٌ صَحِيحٌ، وَقَدْ رَوَاهُ سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي بَكْرٍ بْنِ أَبِي جَهْمٍ نَحْوَ هَذَا الْحَدِيثِ. وَزَادَ فِيهِ: فَقَالَ لِي النَّبِيُّ ﷺ: «انْكحِي أُسَامَةَ». حَدَّثَنَا بِذَلِكَ مَحْمُودُ بْنُ غِبْلَانَ: حَدَّثَنَا وَكَيْعٌ عَنْ سُفْيَانَ، عَنْ أَبِي بَكْرٍ بْنِ أَبِي الْجَهْمِ بِهَذَا.

[1] Meaning it was correct of him to not give her any wealth or a place to live. See *Tuhfat Al-Aḥwadhī*.

Chapter 39. What Has Been Related About 'Azl^[1]

1136. Jābir narrated: “We said: ‘O Messenger of Allāh! We practice ‘Azl, but the Jews claim that it is minor infanticide.’ So he said: ‘The Jews lie: When Allāh wants to create it, nothing can prevent Him.’” (*Da'īf*)^[2]

He said: There are narrations on this topic from 'Umar, Al-Barā', Abū Hurairah, and Abū Sa'eed.

تخريج: [إسناده ضعيف] وأخرجه النسائي في الكبرى، ح: ٩٠٧٨ من حديث معمر به، يحيى بن أبي كثير مدلس وعنن * وفي الباب عن عمر [ابن ماجه، ح: ١٩٢٨] والبراء [لم أجده] وأبي هريرة [النسائي في الكبرى، ح: ٩٠٩٠] وأبي سعيد [البخاري، ح: ٥٢١٠] ومسلم، ح: ٤٣٨].

1137. Jābir bin 'Abdullāh narrated: “We practiced 'Azl while the Qur'ān was being revealed.” (*Ṣaḥīḥ*)

(Abū 'Eīsā said:) The *Ḥadīth* of Jābir is a *Ḥasan Ṣaḥīḥ Ḥadīth*. It has been reported from him through other routes.

There are those among the people of knowledge, among the Companions of the Prophet ﷺ and others, who permitted 'Azl. Mālik bin Anas said: “The permission of the free woman is to be requested for 'Azl, while the slave woman's permission need not be requested.”

(المعجم ٣٩) - بَابُ مَا جَاءَ فِي الْعَزْلِ
(التحفة ٣٨)

١١٣٦ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَبِي الشَّوَارِبِ: حَدَّثَنَا يَزِيدُ بْنُ زُرَيْعٍ: حَدَّثَنَا مَعْمَرٌ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ، عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ ثَوْبَانَ، عَنْ جَابِرٍ قَالَ: قُلْنَا: يَا رَسُولَ اللَّهِ! إِنَّا كُنَّا نَعَزِلُ، فَزَعَمَتِ الْيَهُودُ أَنَّهُ الْمَوُوءِدَةُ الصُّعْرَى، فَقَالَ: «كَذَبَتِ الْيَهُودُ، إِنَّ اللَّهَ إِذَا أَرَادَ أَنْ يَخْلُقَهُ لَمْ يَمْنَعَهُ». قَالَ: وَفِي الْبَابِ عَنْ عُمَرَ وَالْبَرَاءِ وَأَبِي هُرَيْرَةَ وَأَبِي سَعِيدٍ.

١١٣٧ - حَدَّثَنَا قُتَيْبَةُ أَبِي وَابْنُ عُمَرَ قَالَا: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ، عَنْ عَطَاءٍ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: كُنَّا نَعَزِلُ، وَالْقُرْآنُ يَنْزِلُ. [قَالَ أَبُو عِيسَى:] حَدِيثُ جَابِرٍ حَدِيثٌ حَسَنٌ صَحِيحٌ. وَقَدْ رُوِيَ عَنْهُ مِنْ غَيْرِ وَجْهٍ، وَقَدْ رَحَّصَ قَوْمٌ مِنْ أَهْلِ الْعِلْمِ مِنْ أَصْحَابِ النَّبِيِّ ﷺ وَغَيْرِهِمْ، فِي الْعَزْلِ، وَقَالَ مَالِكُ ابْنُ أَنَسٍ: تُسْتَأْمَرُ الْحُرَّةُ فِي الْعَزْلِ، وَلَا تُسْتَأْمَرُ الْأَمَةُ.

[1] When the man pulls out prior to ejaculation during intercourse.

[2] There are other chains which support it.

تخریج: متفق عليه، وأخرجه البخاري، النكاح، باب العزل، ح: ٥٢٠٨ ومسلم، ح: ١٤٤٠ من حديث سفيان بن عيينة به.

Comments:

Some people want a reasonable gap between their two children. For this purpose the husband during the performance just at the time of seminal discharge takes out the organ from her's to prevent pregnancy. But it is not sure that by doing that the pregnancy will not take place. If a child has to come into this world, a drop of sperm may enter the womb in spite of such action. That is why it has been said that if Allāh wants some human being to come into this world nothing will prevent it.

Chapter 40. What Has Been Related About 'Azl Being Disliked

1138. Abū Sa'eed narrated: “‘Azl was mentioned before the Messenger of Allāh ﷺ and he said: ‘Why would one of you do that?’” (*Ṣaḥīḥ*)

(Abū 'Eisā said:) In his narration, Ibn Abī 'Umar added: “And he did not say: ‘None of you should do that.’”

In both narrations they said: “For there is no soul to be created except that Allāh will create it.”^[1]

(He said:) There is something on this from Jābir.

(Abū 'Eisā said:) The *Ḥadīth* of Abū Sa'eed is a *Ḥasan Ṣaḥīḥ Ḥadīth*. It has been reported through other routes from Abū Sa'eed. There are those among the people of knowledge, from the Companions of the Prophet ﷺ and others, who disliked 'Azl.

تخریج: وأخرجه مسلم، النكاح، باب حكم العزل، ح: ١٤٣٨/١٣٢ من حديث سفيان بن عيينة به ورواه البخاري، ح: ٥٢١٠ من حديث أبي سعيد الخدري به * وفي الباب عن جابر [مسلم، ح: ١٤٣٩].

(المعجم ٤٠) - بَابُ مَا جَاءَ فِي كَرَاهِيَةِ الْعَزْلِ (التحفة ٣٩)

١١٣٨ - حَدَّثَنَا ابْنُ أَبِي عُمَرَ وَفُتَيْبَةُ قَالَا: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنِ ابْنِ أَبِي نَجِيحٍ، عَنْ مُجَاهِدٍ، عَنْ قَزَعَةَ، عَنْ أَبِي سَعِيدٍ قَالَ: ذَكَرَ الْعَزْلُ عِنْدَ رَسُولِ اللَّهِ ﷺ فَقَالَ: «لِمَ يَفْعَلُ ذَلِكَ أَحَدُكُمْ؟».

[قَالَ أَبُو عِيْسَى:] زَادَ ابْنُ أَبِي عُمَرَ فِي حَدِيثِهِ: وَلَمْ يَقُلْ لَا يَفْعَلُ ذَلِكَ أَحَدُكُمْ، قَالَا فِي حَدِيثِهِمَا: فَإِنَّهَا لَيْسَتْ نَفْسٌ مَخْلُوقَةٌ إِلَّا اللَّهُ خَالِقُهَا، [قَالَ:] وَفِي الْبَابِ عَنْ جَابِرٍ.

[قَالَ أَبُو عِيْسَى:] حَدِيثُ أَبِي سَعِيدٍ حَدِيثٌ حَسَنٌ صَحِيحٌ، وَقَدْ رُوِيَ مِنْ غَيْرِ وَجْهِ عَنْ أَبِي سَعِيدٍ. وَقَدْ كَرِهَ الْعَزْلَ قَوْمٌ مِنْ أَهْلِ الْعِلْمِ مِنْ أَصْحَابِ النَّبِيِّ ﷺ وَغَيْرِهِمْ.

[1] That is, At-Tirmidhī heard the same chain for this *Ḥadīth*, but with alternative wording, from Qutaibah, and Ibn Abī 'Umar.

Chapter 41. What Has Been Related About Dividing Time For The Virgin And The Matron

1139. Abū Qilābah narrated from Anas bin Mālik, he (Abū Qilābah) said: “If I wish, I could say: ‘The Messenger of Allāh ﷺ said’” but he said: “The *Sunnah* when a man marries a virgin after he already has a wife, is that he stays with her seven (nights). And when he marries a matron when he already has a wife, he stays with her three (nights).” (*Ṣaḥīḥ*)

(He said:) There is a narration on this topic from Umm Salamah.

(Abū ‘Eisā said:) The *Hadīth* of Anas is a *Ḥasan Ṣaḥīḥ Hadīth*. Muḥammad bin Ishāq reported it in *Marfū’* form from Ayyūb, from Abū Qilābah, from Anas. While some of them did not narrate it in *Marfū’* form.

(He said:) This is acted upon according to some of the people of knowledge, they said that when a man marries a virgin woman along with his (current) wife, then he stays with her for seven (nights). Then he divides equally between them afterwards. When he marries a matron along with his wife, he stays with her for three (nights). (This is the view of Mālik, Ash-Shāfi‘i, Aḥmad, and Ishāq.)

[Some of the people of knowledge among the *Tābi‘īn* said: “When he marries a virgin along with his wife, then he stays with her for three (nights). And when he marries a

(المعجم ٤١) - بَابُ مَا جَاءَ فِي الْقِسْمَةِ لِلْبِكْرِ وَالْتَيْبِ (التحفة ٤٠)

١١٣٩ - حَدَّثَنَا أَبُو سَلَمَةَ يَحْيَى بْنُ خَلْفٍ: حَدَّثَنَا بَشْرُ بْنُ الْمُفَضَّلِ عَنْ خَالِدِ الْحَدَّاءِ، عَنْ أَبِي قِلَابَةَ، عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: لَوْ شِئْتُ أَنْ أَقُولَ: قَالَ رَسُولُ اللَّهِ ﷺ، وَلِكَيْتَهُ قَالَ: السُّنَّةُ، إِذَا تَزَوَّجَ الرَّجُلُ الْبِكْرَ عَلَى امْرَأَتِهِ، أَقَامَ عِنْدَهَا سَبْعًا، وَإِذَا تَزَوَّجَ التَّيْبَ عَلَى امْرَأَتِهِ، أَقَامَ عِنْدَهَا ثَلَاثًا. [قَالَ:] وَفِي الْبَابِ عَنْ أُمِّ سَلَمَةَ.

[قَالَ أَبُو عِيسَى:] حَدِيثُ أَنَسٍ حَدِيثٌ حَسَنٌ صَحِيحٌ. وَقَدْ رَفَعَهُ مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ أَيُّوبَ، عَنْ أَبِي قِلَابَةَ، عَنْ أَنَسِ، وَلَمْ يَرْفَعَهُ بَعْضُهُمْ. [قَالَ:] وَالْعَمَلُ عَلَى هَذَا عِنْدَ بَعْضِ أَهْلِ الْعِلْمِ، قَالُوا: إِذَا تَزَوَّجَ الرَّجُلُ امْرَأَةً بَكْرًا عَلَى امْرَأَتِهِ، أَقَامَ عِنْدَهَا سَبْعًا، ثُمَّ قَسَمَ بَيْنَهُمَا بَعْدَ، بِالْعَدْلِ، وَإِذَا تَزَوَّجَ التَّيْبَ عَلَى امْرَأَتِهِ أَقَامَ عِنْدَهَا ثَلَاثًا. [وَهُوَ قَوْلُ مَالِكٍ وَالشَّافِعِيِّ وَأَحْمَدَ وَإِسْحَاقَ].

[وَقَالَ بَعْضُ أَهْلِ الْعِلْمِ مِنَ التَّابِعِينَ: إِذَا تَزَوَّجَ الْبِكْرَ عَلَى امْرَأَتِهِ أَقَامَ عِنْدَهَا ثَلَاثًا، وَإِذَا تَزَوَّجَ التَّيْبَ أَقَامَ عِنْدَهَا لَيْلَتَيْنِ وَالْقَوْلُ الْأَوَّلُ أَصْح.]

matron he stays with her for two nights.” But the first view is more correct].

تخریج: متفق عليه، وأخرجه البخاري، النكاح، باب العدل بين النساء "ولن تستطيعوا أن تعدلوا بين النساء... إلخ"، ح: ٥٢١٣ من حديث بشر ومسلم، ح: ١٤٦١ من حديث خالد الحذاء به * وفي الباب عن أم سلمة [مسلم، ح: ١٤٦٠].

Comments:

The view point of the three *A'immah* and Ishāq and Abū Thawr is that if a married person marries another woman, he will stay with her for seven days if she is a virgin, and if she is a widow or divorced, he will stay with her for three days, and after this period he will have to fix the turns among his wives.

Chapter 42. What Has Been Related About Equality Between Co-Wives

1140. ‘Aishah narrated that the Prophet ﷺ would divide (his time) equally between his wives and say: “O Allāh! This is my division in what I have control over, so do not punish me for what You have control over which I do not have control over.” (*Ṣaḥīḥ*)

(Abū ‘Eisā said:) This *Hadīth* of ‘Aishah has been reported by more than one, from Ḥammād bin Salamah, from Ayyūb, from Abū Qilābah, from ‘Abdullāh bin Yazīd, from ‘Aishah: “The Prophet ﷺ would divide” while Ḥammād bin Zaid and others reported it from Ayyūb, from Abū Qilābah in *Mursal* form: “The Prophet ﷺ would divide” and this is more correct than the narration of Ḥammād bin Salamah. (a narrator in the chain of *Hadīth* no. 1140)

As for his saying: “Do not punish me for what you have control over which I do not have control over” –

(المعجم ٤٢) - بَابُ مَا جَاءَ فِي التَّسْوِيَةِ
بَيْنَ الضَّرَائِرِ (التحفة ٤١)

١١٤٠ - حَدَّثَنَا ابْنُ أَبِي عُمَرَ: حَدَّثَنَا بِشْرُ بْنُ السَّرِيِّ: حَدَّثَنَا حَمَادُ بْنُ سَلَمَةَ عَنْ أَيُّوبَ، عَنْ أَبِي قِلَابَةَ، عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ، عَنْ عَائِشَةَ أَنَّ النَّبِيَّ ﷺ كَانَ يَقْسِمُ بَيْنَ نِسَائِهِ فَيَعْدِلُ وَيَقُولُ: «اللَّهُمَّ هَذِهِ قِسْمَتِي فِيمَا أَمْلِكُ، فَلَا تَلْمَنِي فِيمَا تَمْلِكُ وَلَا أَمْلِكُ».

[قَالَ أَبُو عِيسَى: حَدِيثُ عَائِشَةَ هَكَذَا، رَوَاهُ غَيْرُ وَاحِدٍ عَنْ حَمَادِ بْنِ سَلَمَةَ، عَنْ أَيُّوبَ، عَنْ أَبِي قِلَابَةَ، عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ، عَنْ عَائِشَةَ أَنَّ النَّبِيَّ ﷺ كَانَ يَقْسِمُ، وَرَوَاهُ حَمَادُ بْنُ زَيْدٍ وَغَيْرُ وَاحِدٍ عَنْ أَيُّوبَ، عَنْ أَبِي قِلَابَةَ، مُرْسَلًا أَنَّ النَّبِيَّ ﷺ كَانَ يَقْسِمُ، وَهَذَا أَصْحَحُ مِنْ حَدِيثِ حَمَادِ بْنِ سَلَمَةَ.]

he meant love and affection, this is how it was explained by some of the people of knowledge.

وَمَعْنَى قَوْلِهِ: «لَا تَلْمُنِي فِيمَا تَمْلِكُ وَلَا أَمْلِكُ»، إِنَّمَا يَعْنِي بِهِ الْحُبَّ وَالْمَوَدَّةَ، كَذَا فَسَّرَهُ بَعْضُ أَهْلِ الْعِلْمِ.

تخریج: [إسناده صحيح] وأخرجه أبو داود، النكاح، باب: في القسم بين النساء، ح: ٢١٣٤ وابن ماجه، ح: ١٩٧١ وغيرهما من حديث حماد بن سلمة به وصححه ابن حبان (الإحسان): ٤١٩٢ والحاكم: ١٨٧/٢ والذهبي وأرسله حماد بن زيد وابن علي عن أيوب عن أبي قلابة به وهذا لا يضر، إن شاء الله تعالى.

Comments:

This narration makes it clear that the Prophet ﷺ, in his practical life, did justice with his honorable wives. He used to treat all of them alike. Sentiments of love towards one is a natural phenomenon, and it is not easy to control, but the Prophet ﷺ did justice at all times with his wives.

1141. Abū Hurairah narrated that the Messenger of Allāh ﷺ said: “When a man has two wives and he is not just between them, he will come on the Day of Judgement with one side drooping.” (*Da‘if*)

(Abū ‘Eisā said:) This *Hadīth* was only narrated (like this) by Hammām bin Yahya from Qatādah. Hishām Ad-Dastawā‘ī narrated it from Qatādah who said: “It was said.” And we do not know of this *Hadīth* to be *Marfū‘* except from the narration of Hammām, and Hammām is a trustworthy *Hāfiẓ*.

١١٤١ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ: حَدَّثَنَا هَمَّامٌ عَنْ قَتَادَةَ، عَنِ النَّضْرِ بْنِ أَنَسٍ، عَنْ بَشِيرِ بْنِ نَهْيِكٍ، عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ ﷺ قَالَ: «إِذَا كَانَ عِنْدَ الرَّجُلِ امْرَأَتَانِ، فَلَمْ يَعْدِلْ بَيْنَهُمَا، جَاءَ يَوْمَ الْقِيَامَةِ وَشِقُّهُ سَاقِطٌ».

[قَالَ أَبُو عِيسَى:] وَإِنَّمَا أُسْنَدَ هَذَا الْحَدِيثِ هَمَّامٌ بْنُ يَحْيَى عَنْ قَتَادَةَ، وَرَوَاهُ هِشَامُ الدَّسْتَوَائِيُّ عَنْ قَتَادَةَ قَالَ: كَانَ يُقَالُ، وَلَا نَعْرِفُ هَذَا الْحَدِيثَ مَرْفُوعًا إِلَّا مِنْ حَدِيثِ هَمَّامٍ، وَهَمَّامٌ ثِقَّةٌ حَافِظٌ.

تخریج: [إسناده ضعيف] وأخرجه النسائي: ٦٣/٧، ح: ٣٣٩٤ (عشرة النساء، باب ميل الرجل إلى بعض نسائه دون بعض) من حديث ابن مهدي، وأبو داود، ح: ٢١٣٣ وابن ماجه، ح: ١٩٦٩ من حديث همام به وصححه ابن حبان، ح: ١٣٠٧ وابن الجارود، ح: ٧٢٢ والحاكم: ١٨٦/٢ والذهبي وغيرهم * قتادة مدلس وعنن وللحديث شاهد ضعيف.

Comments:

This is an example of a punishment for wrongdoing in this world. A person who does not treat his wives with justice on the Day of Judgement will come with one side drooping, as described in the narration, moreover he will be disgraced before the people on that day.

Chapter 43. What Has Been Related About A Married Couple Who Are Idolaters, Then One Of Them Accepted Islām

1142. ‘Amr bin Shu‘aib narrated from his father, from his grandfather: “The Messenger of Allāh ﷺ returned his daughter Zainab to Abul-‘Āsh bin Ar-Rabi‘ with a new dowry and a new wedding.” (*Da‘īf*)

(Abū ‘Eisā said:) There is some criticism regarding the chain of this *Hadīth* (and there is some criticism regarding the other *Hadīth* as well). And this is acted upon according to the people of knowledge; when the woman accepts Islām before her husband, then if her husband accepts Islām while she is in her *Iddah*, then her husband has more right to her while she is in her *Iddah*. This is the view of Mālik bin Anas, Al-Awzā‘ī, Ash-Shāfi‘ī, Ahmad, and Ishāq.

(المعجم ٤٣) - بَابُ مَا جَاءَ فِي الزَّوْجَيْنِ الْمُشْرِكَيْنِ يُسْلِمُ أَحَدُهُمَا (التحفة ٤٢)

١١٤٢ - حَدَّثَنَا أَحْمَدُ بْنُ مَنِيعٍ وَهَنَادٌ قَالَا: حَدَّثَنَا أَبُو معاويةَ عَنِ الْحَجَّاجِ، عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّ رَسُولَ اللَّهِ ﷺ رَدَّ ابْنَتَهُ زَيْنَبَ عَلَى أَبِي الْعَاصِ بْنِ الرَّبِيعِ، بِمَهْرٍ جَدِيدٍ وَنِكَاحٍ جَدِيدٍ.

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ فِي إِسْنَادِهِ مَقَالٌ [وَفِي الْحَدِيثِ الْآخِرِ أَيْضًا مَقَالٌ] وَالْعَمَلُ عَلَى هَذَا الْحَدِيثِ عِنْدَ أَهْلِ الْعِلْمِ أَنَّ الْمَرْأَةَ إِذَا أَسْلَمَتْ قَبْلَ زَوْجِهَا ثُمَّ أَسْلَمَ زَوْجُهَا وَهِيَ فِي الْعِدَّةِ أَنَّ زَوْجَهَا أَحَقُّ بِهَا مَا كَانَتْ فِي الْعِدَّةِ، وَهُوَ قَوْلُ مَالِكِ بْنِ أَنَسٍ وَالْأَوْزَاعِيِّ وَالشَّافِعِيِّ وَأَحْمَدَ وَإِسْحَاقَ.

تحريج: [إسناده ضعيف] وأخرجه ابن ماجه، النكاح، باب الزوجين يسلم أحدهما قبل الآخر، ح: ٢٠١٠ من حديث أبي معاوية الضرير عن الحجاج بن أرطاة به والحجاج ضعيف مدلس.

Comments:

Maulāna Saffur-Rahman, in his book *Tajalliyāt-i-Nubbuwat*, on page 177 writes that the Prophet ﷺ returned his daughter Zainab to her husband. This return took place after the separation of three years. The reason is that the Qur’ānic Verse regarding the revocation of marriage of unbelievers with Muslim women was not revealed yet, so the marriage was intact. Abul-‘Āsh was captured as a prisoner in the year 6 A.H on 6th of Jumada Al-Awwal on his return from Shām. He was released on the intercession of Zainab. After his release he went to Makkah and returned all the entrusted things to their owners and migrated to Al-Madīnah, there he accepted Islam.

1143. Ibn ‘Abbās narrated: “The Prophet ﷺ returned his daughter Zainab to Abul-‘Āsh bin Ar-Rabi‘

١١٤٣ - حَدَّثَنَا هَنَادٌ: حَدَّثَنَا يُونُسُ بْنُ بُكَيْرٍ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ قَالَ: حَدَّثَنِي

after six years in the first marriage without renewing the marriage.”

(*Da'if*)

(Abū 'Eisā said:) There is no harm in the chain of this *Hadīth*, but we are not aware of the point in this *Hadīth*. Perhaps this *Hadīth* ensues from Dāwūd bin Ḥuṣayn (one of the narrators); due to his (bad) memory.

دَاوُدُ بْنُ الْحُصَيْنِ عَنْ عِكْرِمَةَ، عَنِ ابْنِ عَبَّاسٍ قَالَ: رَدَّ النَّبِيُّ ﷺ ابْنَتَهُ زَيْنَبَ عَلَى أَبِي الْعَاصِ بْنِ الرَّبِيعِ، بَعْدَ سِتِّ سِنِينَ، بِالنِّكَاحِ الْأَوَّلِ، وَلَمْ يُحَدِّثْ نِكَاحًا.

[قَالَ أَبُو عِيْسَى:] هَذَا حَدِيثٌ لَيْسَ بِإِسْنَادِهِ بَأْسٌ، وَلَكِنْ لَا نَعْرِفُ وَجْهَ هَذَا الْحَدِيثِ، وَلَعَلَّهُ قَدْ جَاءَ هَذَا مِنْ قِبَلِ دَاوُدَ ابْنِ حُصَيْنٍ، مِنْ قِبَلِ حِفْظِهِ.

تخريج: [إسناده ضعيف] وأخرجه أبو داود، الطلاق، باب إلى متى ترد عليه امرأته إذا أسلم بعدها، ح: ٢٢٤٠ وابن ماجه، ح: ٢٠٠٩ من حديث محمد بن إسحاق بن يسار به وصححه الحاكم: ٦٣٨/٣، ٦٣٩ على شرط مسلم فقال الذهبي: "لا" * داود عن عكرمة، منكر كما قال ابن المديني وغيره وقال في التقریب: "ثقة إلا في عكرمة ورُمي برأي الخوارج".

1144. Ibn 'Abbās narrated: "A man became a Muslim during the time of the Prophet ﷺ, then his wife became a Muslim, so he said: 'O Messenger of Allāh! She accepted Islām along with me, so return her to me.' So he returned her to him." (*Da'if*)

This *Hadīth* is *Ṣaḥīḥ*. I heard 'Abd bin Ḥumaid saying: "I heard Yazīd bin Hārūn mentioning this *Hadīth* from Muḥammad bin Ishāq."

As for the narration of Al-Ḥajjāj, from 'Amr bin Shu'aib, from his father, from his grandfather: "The Prophet ﷺ returned his daughter Zainab to Abul-'Āṣ with a new dowry and a new wedding"— Yazīd bin Hārūn said: "The *Hadīth* of Ibn 'Abbās has a better chain." While the *Hadīth* of 'Amr bin Shu'aib is acted upon.

١١٤٤ - حَدَّثَنَا يُونُسُ بْنُ عِيْسَى: حَدَّثَنَا وَكَيْعٌ [قَالَ]: حَدَّثَنَا إِسْرَائِيلُ عَنْ سِمَاكِ بْنِ حَرْبٍ، عَنْ عِكْرِمَةَ، عَنِ ابْنِ عَبَّاسٍ: أَنَّ رَجُلًا جَاءَ مُسْلِمًا عَلَى عَهْدِ النَّبِيِّ ﷺ، ثُمَّ جَاءَتْ امْرَأَتُهُ مُسْلِمَةً، فَقَالَ: يَا رَسُولَ اللَّهِ! إِنَّهَا كَانَتْ أَسْلَمَتْ مَعِي، فَرَدَّهَا عَلَيَّ، فَرَدَّهَا عَلَيَّ. هَذَا حَدِيثٌ صَحِيحٌ. سَمِعْتُ عَبْدَ بْنَ حُمَيْدٍ يَقُولُ: سَمِعْتُ يَزِيدَ بْنَ هَارُونَ يَذْكُرُ، عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ، هَذَا الْحَدِيثِ.

وَحَدِيثُ الْحَجَّاجِ، عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّ النَّبِيَّ ﷺ رَدَّ ابْنَتَهُ زَيْنَبَ عَلَى أَبِي الْعَاصِ بِمَهْرٍ جَدِيدٍ وَنِكَاحٍ جَدِيدٍ. فَقَالَ يَزِيدُ بْنُ هَارُونَ: حَدِيثُ ابْنِ عَبَّاسٍ أَجْوَدُ إِسْنَادًا. وَالْعَمَلُ عَلَى حَدِيثِ عَمْرِو بْنِ شُعَيْبٍ.

تخریج: [إسناده ضعيف] وأخرجه أبو داود، الطلاق، باب إذا أسلم أحد الزوجين، ح: ٢٢٣٨ من حديث وكيع به * سماك عن عكرمة، سلسلة ضعيفة.

Comments:

Most of the scholars say that if a husband accepts Islam after the prescribed waiting period of three months for a separated woman has passed, she does not remain his wife, and there is a need for new dowry and marriage.

Chapter 44. What Has Been Related About A Man Who Married A Woman Then He Died Before Stipulating The Dowry For Her

(المعجم ٤٤) - بَابُ مَا جَاءَ فِي الرَّجُلِ يَتَزَوَّجُ الْمَرْأَةَ فَيَمُوتُ عَنْهَا قَبْلَ أَنْ يَفْرِضَ لَهَا (التحفة ٤٣)

1145. ‘Alqamah narrated that Ibn Mas‘ūd was asked about a man who married a woman and he did not stipulate the dowry for her, and he did not enter into her until he died. So Ibn Mas‘ūd said: “She gets the same dowry as other women, no less and no more, she has to observe the *Iddah*, and she gets inheritance.” So Ma‘qil bin Sinān Al-Ashja‘ī stood and said: “The Messenger of Allāh ﷺ judged the same as you have judged regarding Birwa‘ bint Wāshiq, a woman of ours.” So Ibn Mas‘ūd was happy about that. (*Ṣaḥīḥ*)

١١٤٥ - حَدَّثَنَا مُحَمَّدُ بْنُ عِيْلَانَ: حَدَّثَنَا يَزِيدُ بْنُ الْحُبَابِ: حَدَّثَنَا سُفْيَانُ عَنْ مَنصُورٍ، عَنْ إِبْرَاهِيمَ، عَنْ عَلْقَمَةَ، عَنِ ابْنِ مَسْعُودٍ، أَنَّهُ سُئِلَ عَنْ رَجُلٍ تَزَوَّجَ امْرَأَةً وَلَمْ يَفْرِضْ لَهَا صَدَاقًا، وَلَمْ يَدْخُلْ بِهَا حَتَّى مَاتَ، فَقَالَ ابْنُ مَسْعُودٍ: لَهَا مِثْلُ صَدَاقِ نِسَائِهَا، لَا وَكَسَ وَلَا شَطَطَ، وَعَلَيْهَا الْعِدَّةُ وَلَهَا الْمِيرَاثُ، فَقَامَ مَعْقِلُ بْنُ سِنَانَ الْأَشْجَعِيُّ فَقَالَ: فَضَى رَسُولُ اللَّهِ ﷺ فِي بَرُوعَ بِنْتِ وَاشِقِ، امْرَأَةً مِنَّا، مِثْلُ مَا فَضَيْتَ، فَفَرَحَ بِهَا ابْنُ مَسْعُودٍ، [قَالَ:] وَفِي الْبَابِ عَنِ الْجَرَّاحِ.

(He said:) There is something on this topic from Al-Jarrāḥ.

(Another chain for the same)

(Abū ‘Eisā said:) The *Ḥadīth* of Ibn Mas‘ūd is a *Ḥasan Ṣaḥīḥ Ḥadīth*, and it has been reported from him through other routes.

حَدَّثَنَا الْحَسَنُ بْنُ عَلِيٍّ الْخَلَّالُ: حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ وَعَبْدُ الرَّزَّاقِ، كِلَاهُمَا عَنْ سُفْيَانَ، عَنْ مَنصُورٍ نَحْوَهُ.

This is acted upon according to some of the people of knowledge among the Companions of the Prophet ﷺ and others, it is the view of Ath-Thawrī, Aḥmad, and Ishāq.

[قَالَ أَبُو عِيْسَى:] حَدِيثُ ابْنِ مَسْعُودٍ حَدِيثٌ حَسَنٌ صَحِيحٌ. وَقَدْ رُوِيَ عَنْهُ مِنْ غَيْرِ وَجْهِ. وَالْعَمَلُ عَلَى هَذَا عِنْدَ بَعْضِ أَهْلِ الْعِلْمِ مِنْ أَصْحَابِ النَّبِيِّ ﷺ وَغَيْرِهِمْ، وَبِهِ يَقُولُ الثَّوْرِيُّ وَأَحْمَدُ وَإِسْحَاقُ.

Some of the people of knowledge among the Companions of the Prophet ﷺ, among them 'Alī bin Abī Ṭālib, Zaid bin Thābit, Ibn 'Abbās, and Ibn 'Umar said that when a man marries a woman and he does not enter into her, and he does not stipulate a dowry for her until he dies, then she inherits but there is no dowry for her, and she observes the *Iddah*. This is the view of Ash-Shāfi'ī. He said: "If the narration about Birwa' bint Wāshiq is reliable then it is a proof reported from the Prophet ﷺ." It has been related that in Egypt, Ash-Shāfi'ī changed this view and his new rulings were in accord with the *Hadīth* about Birwa' bint Wāshiq.

وَقَالَ بَعْضُ أَهْلِ الْعِلْمِ مِنْ أَصْحَابِ النَّبِيِّ ﷺ: مِنْهُمْ عَلِيُّ بْنُ أَبِي طَالِبٍ وَزَيْدُ بْنُ ثَابِتٍ وَابْنُ عَبَّاسٍ وَابْنُ عُمَرَ: إِذَا تَزَوَّجَ الرَّجُلُ الْمَرْأَةَ وَلَمْ يَدْخُلْ بِهَا وَلَمْ يَفْرِضْ لَهَا صَدَاقًا حَتَّى مَاتَ، قَالُوا: لَهَا الْمِيرَاثُ، وَلَا صَدَاقَ لَهَا، وَعَلَيْهَا الْعِدَّةُ، وَهَذَا قَوْلُ الشَّافِعِيِّ، وَقَالَ: لَوْ تَبَتَّ حَدِيثُ بَرُوعِ بِنْتِ وَاشِقٍ لَكَانَتْ الْحُجَّةُ فِيمَا رُوِيَ عَنِ النَّبِيِّ ﷺ، وَرُوِيَ عَنِ الشَّافِعِيِّ أَنَّهُ رَجَعَ بِمِصْرَ بَعْدَ عَن هَذَا الْقَوْلِ، وَقَالَ بِحَدِيثِ بَرُوعِ بِنْتِ وَاشِقٍ.

تخريج: [صحيح] وأخرجه أبو داود، النكاح، باب: فيمن تزوج ولم يسم لها صداقًا حتى مات، ح: ٢١١٥ وابن ماجه، ح: ١٨٩١ (تعليقًا) من حديث سفيان الثوري به وصححه البيهقي: ٧/ ٢٤٥ وللحديث شواهد منها عند النسائي، ح: ٣٣٦٠ وصححه ابن حبان، ح: ١٢٦٣ والحاكم على شرط مسلم: ١٨٠/٢ ووافقه الذهبي، وإسناده صحيح.

Comments:

This narration of Birwa' bint Wāshiq is a *Ṣaḥīh* narration and it proves that if the husband dies without fixing dowry, and without having sexual intercourse, she will get the dowry. She will become an heir and will pass the waiting period prescribed for a widow.