

In the Name of Allāh,  
the Merciful, the Beneficent

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

## 15. The Chapters On Legal Punishments (*Al-Hudūd*) From The Messenger Of Allāh ﷺ

(المعجم ١٥) - أَبْوَابُ الْحُدُودِ  
عَنْ رَسُولِ اللَّهِ ﷺ (التحفة ١٣)

### Comments:

“*Hadd*” means to stop or prevent, and in the *Shari‘ah* it means the restrictive ordinance of Allāh ﷻ and the punishment for non-observance thereof. *Qisās* or killing in retaliation is not included in *Hudūd*, as it is the right of human-beings and can be pardoned.

### Chapter 1. What Has Been Related About Those From Whom Punishment Is Not Required

(المعجم ١) - بَابُ مَا جَاءَ فِيْمَنْ لَا  
يَحِبُّ عَلَيْهِ الْحَدُّ (التحفة ١)

1423. ‘Alī narrated that the Messenger of Allāh ﷺ said: “The pen has been lifted from three; for the sleeping person until he awakens, for the boy until he becomes a young man and for the mentally insane until he regains sanity.” (*Hasan*)

[He said:] There is something on this topic from ‘Āishah.

[Abū ‘Eisā said:] The *Hadīth* of ‘Alī is a *Hasan Gharīb Hadīth* from this route. It has been reported from more than one route from ‘Alī [from the Prophet ﷺ] and some of them mentioned: “from the boy until he has a wet dream” and we do not know that Al-Ḥasan (Al-Baṣri) heard from ‘Alī.

This *Hadīth* has similarly been reported from ‘Atā’ bin As-Sā’ib, from Abū Zibyan, from ‘Alī [bin

١٤٢٣ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى الْقَطَعِيُّ [الْبَصْرِيُّ]: حَدَّثَنَا يَشْرُ بْنُ عُمَرَ: حَدَّثَنَا هَمَامٌ عَنْ قَتَادَةَ، عَنِ الْحَسَنِ [الْبَصْرِيِّ]، عَنْ عَلِيٍّ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ، عَنِ النَّائِمِ حَتَّى يَسْتَيْقِظَ، وَعَنِ الصَّبِيِّ حَتَّى يَتَّبَّ، وَعَنِ الْمَعْتُوهِ حَتَّى يَغْفَلَ» [قَالَ]: وَفِي الْبَابِ عَنْ عَائِشَةَ.

[قَالَ أَبُو عَيْسَى]: حَدِيثٌ عَلِيُّ حَدِيثٌ حَسَنٌ غَرِيبٌ مِنْ هَذَا الْوَجْهِ. وَقَدْ رُوِيَ مِنْ غَيْرِ وَجْهِ عَنْ عَلِيٍّ [عَنِ النَّبِيِّ ﷺ] وَذَكَرَ بَعْضُهُمْ: «وَعَنِ الْغُلَامِ حَتَّى يَحْتَلِمَ». وَلَا نَعْرِفُ لِلْحَسَنِ سَمَاعًا مِنْ عَلِيٍّ بْنِ أَبِي طَالِبٍ.

وَقَدْ رُوِيَ هَذَا الْحَدِيثُ، عَنْ عَطَاءِ بْنِ

Abī Ṭālib], from the Prophet ﷺ. It has also been reported from Al-A'mash from Abū Zibyan, from Ibn 'Abbās, from 'Alī in *Mawqūf* not *Marfū'* form. And this *Hadīth* is acted upon according to the people of knowledge.

[Abū 'Eisā said: Al-Ḥasan was alive during the time of 'Alī and he saw him but we are not aware of him hearing from him.] Abū Zibyan's name is Ḥusain bin Jundab.

السَّائِبِ، عَنْ أَبِي ظِيَّانَ، عَنْ عَلِيٍّ [بْنِ أَبِي طَالِبٍ] عَنِ النَّبِيِّ ﷺ نَحْوَ هَذَا الْحَدِيثِ. وَرَوَاهُ، عَنِ الْأَعْمَشِ، عَنْ أَبِي ظِيَّانَ، عَنِ ابْنِ عَبَّاسٍ، عَنْ عَلِيٍّ مَوْفُوقًا وَلَمْ يَرْفَعَهُ. وَالْمَعْلُ عَلَى هَذَا الْحَدِيثِ عِنْدَ أَهْلِ الْعِلْمِ. [قَالَ أَبُو عَيْسَى: قَدْ كَانَ الْحَسَنُ فِي زَمَانِ عَلِيٍّ وَقَدْ أَدْرَكَهُ وَلَكِنَّا لَا نَعْرِفُ لَهُ سَمَاعًا مِنْهُ].

وَأَبُو ظِيَّانَ اسْمُهُ حُصَيْنُ بْنُ جُنْدَبٍ.

تخريج: [حسن] وأخرجه النسائي في الكبرى، ح: ٧٣٤٦ من حديث همام به وللحديث شواهد عند أبي داود، ح: ٤٣٩٨-٤٤٠٣ وابن خزيمة: ١٠٢/٢، وابن حبان، ح: ١٤٩٦ والحاكم: ٥٩/٢، ٣٨٩/٤ وغيرهم وله شاهد موقوف صحيح وله حكم الرفع \* حديث عطاء بن السائب عند أبي داود، ح: ٤٤٠٢ وحديث الأعمش عنده أيضًا، ح: ٤٣٩٩ \* وفي الباب عن عائشة [أبو داود: ٣٩٨].

### Comments:

Most of the people of knowledge and scholars have accepted and agreed with this narration, but there is a difference of opinion on its details. All the scholars and the people of knowledge agree that these three kinds of people mentioned in the narration will not be considered sinners.

## Chapter 2. What Has Been Related About Averting Legal Punishments

1424. 'Aishah narrated that the Messenger of Allāh ﷺ said: "Avert the legal penalties from the Muslims as much as possible, if he has a way out then leave him to his way, for if the *Imām* makes a mistake in forgiving it would be better than making a mistake in punishment." (*Da'if*)

(Another chain) which is similar to the narration of Muḥammad bin Rabī'ah (a narrator in no. 1424) but he did not narrate it in *Marfū'*

(المعجم ٢) - بَابُ مَا جَاءَ فِي دَرِّهِ  
الْحُدُودِ (التحفة ٢)

١٤٢٤ - حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ الْأَسْوَدِ أَبُو عَمْرٍو الْبَصْرِيُّ: حَدَّثَنَا مُحَمَّدُ بْنُ رَبِيعَةَ: حَدَّثَنَا يَزِيدُ بْنُ زِيَادٍ الدَّمَشْقِيُّ عَنِ الزُّهْرِيِّ، عَنْ عُرْوَةَ، عَنْ عَائِشَةَ قَالَتْ: قَالَ رَسُولُ اللَّهِ ﷺ: «ادْرَأُوا الْحُدُودَ عَنِ الْمُسْلِمِينَ مَا اسْتَطَعْتُمْ فَإِنْ كَانَ لَهُ مَخْرَجٌ فَخَلُّوا سَبِيلَهُ فَإِنَّ الْإِمَامَ أَنْ يُحْطِيَءَ فِي الْعَفْوِ خَيْرٌ مِنْ أَنْ يُحْطِيَءَ فِي الْعُقُوبَةِ».

form. [He said:] There are narrations on this topic from Abū Hurairah and ‘Abdullāh bin ‘Amr.

[Abū ‘Eisā said:] We do not know of the *Hadīth* of ‘Aishah to be *Marfū‘* except from the report of Muḥammad bin Rabī‘ah from Yazīd bin Ziyād Ad-Dimashqī, from Az-Zuhrī, from ‘Urwah, from ‘Aishah, from the Prophet ﷺ. Wakī‘ reported it from Yazīd bin Ziyād similarly, and he did not narrate it in *Marfū‘* form. The narration of Wakī‘ is more correct. Statements like this have been reported from more than one of the Companions of the Prophet ﷺ. Yazīd bin Ziyād Ad-Dimashqī is weak in *Hadīth* and Yazīd bin Abī Ziyād Al-Kūfī is more reliable than this one, and earlier.

حَدَّثَنَا هَذَا: حَدَّثَنَا وَكَيْعٌ عَنْ يَزِيدَ بْنِ زِيَادٍ نَحْوَ حَدِيثِ مُحَمَّدِ بْنِ رَبِيعَةَ وَلَمْ يَرْفَعَهُ [قَالَ:] وَفِي الْبَابِ عَنْ أَبِي هُرَيْرَةَ وَعَبْدِ اللَّهِ بْنِ عَمْرٍو. [قَالَ أَبُو عَمْسَى:] حَدِيثُ عَائِشَةَ لَا نَعْرِفُهُ مَرْفُوعًا إِلَّا مِنْ حَدِيثِ مُحَمَّدِ بْنِ رَبِيعَةَ عَنْ يَزِيدَ بْنِ زِيَادٍ الدَّمَشَقِيِّ، عَنِ الزُّهْرِيِّ، عَنْ عُرْوَةَ، عَنْ عَائِشَةَ عَنِ النَّبِيِّ ﷺ. وَرَوَاهُ وَكَيْعٌ عَنْ يَزِيدَ بْنِ زِيَادٍ نَحْوَهُ وَلَمْ يَرْفَعَهُ وَرِوَايَةٌ وَكَيْعٍ أَصَحَّ وَقَدْ رُوِيَ نَحْوُ هَذَا عَنْ غَيْرِ وَاحِدٍ مِنْ أَصْحَابِ النَّبِيِّ ﷺ أَنَّهُمْ قَالُوا مِثْلَ ذَلِكَ وَيَزِيدُ بْنُ زِيَادٍ الدَّمَشَقِيُّ ضَعِيفٌ فِي الْحَدِيثِ وَيَزِيدُ بْنُ أَبِي زِيَادٍ الْكُوفِيُّ أَثْبَتٌ مِنْ هَذَا وَأَقْدَمُ.

**تخریج:** [ضعيف] وأخرجه البيهقي: ۲۳۸/۸ من حديث محمد بن ربيعة بن ربيعة ومن حديث وكيع به وسنده ضعيف جداً وله شواهد كلها ضعيفة \* وفي الباب عن أبي هريرة [ابن ماجه، ح: ۲۵۴۵] وعبدالله بن عمرو [أبو داود، ح: ۴۳۷۶].

**Comments:**

Such words and expressions of the Companions are moral and rescuing suggestions to the *Imām*, judge and the the ruler. The judge or person in authority should always try to save the offender and should not apply the *Hadd* punishment if there is a chance to save the offender. Before imposing the *Hudūd* the judge is required to confirm that the offender is a sane person, and he committed the crime in that state. The judge must make sure that the offender is not under pressure, or he is not a drug addicted man. If the offence is proven and the witnesses are available, then the offender should be punished. (*Tuḥfat Al-Aḥwadhī* v. 2. p.318.)

**Chapter 3. What Has Been Related About Covering (The Faults Of) The Muslim**

(المعجم ۳) - بَابُ مَا جَاءَ فِي السُّتْرِ عَلَى الْمُسْلِمِ (التحفة ۳)

1425. Abū Hurairah narrated that the Messenger of Allāh ﷺ said: “Whoever relieves a Muslim of a

۱۴۲۵ - حَدَّثَنَا قُتَيْبَةُ: حَدَّثَنَا أَبُو عَوَانَةَ عَنِ الْأَعْمَشِ، عَنْ أَبِي صَالِحٍ، عَنْ أَبِي

burden from the burdens of the world, Allāh will relieve him of a burden from the burdens of the Hereafter. And whoever covers (the faults of) a Muslim, Allāh will cover (his faults) for him in the world and the Hereafter. And Allāh is engaged in helping the worshipper as long as the worshipper is engaged in helping his brother.” (*Sahīh*)

[He said:] There are narrations on this topic from ‘Uqbah bin ‘Āmir and Ibn ‘Umar.

[Abū ‘Eisā said:] This is how the *Hadīth* of Abū Hurairah was reported by more than one narrator; from Al-A‘mash, from Abū Ṣāliḥ, from Abū Hurairah, from the Prophet ﷺ, similar to the narration of Abū ‘Awānah.

Asbāt bin Muḥammad reported it from Al-A‘mash, who said: “It has been narrated to me from Abū Ṣāliḥ, from Abū Hurairah, from the Prophet ﷺ,” and it is similar. [It is as if this is more correct than the first narration].

(Another chain) for this *Hadīth*

تخریج: وأخرجه مسلم، الذكر والدعاء، باب فضل الاجتماع على تلاوة القرآن، وعلى الذكر، ح: ٢٦٩٩، وأبو داود، ح: ٤٩٤٦ من حديث الأعمش به وسيأتي: ١٩٣٠ \* وفي الباب عن عقبة بن عامر [أبو داود، ح: ٤٨٩٢] وابن عمر [يأتي: ١٤٢٦].

**1426.** Ibn ‘Umar narrated that the Messenger of Allāh ﷺ said: “The Muslim is the brother of the Muslim, he doesn’t oppress him and doesn’t put him into ruin, and whoever is concerned for the needs of his brother, Allāh is concerned

هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ نَفَسَ عَنْ مُسْلِمٍ كُرْبَةً مِنْ كُرْبِ الدُّنْيَا نَفَسَ اللَّهُ عَنْهُ كُرْبَةً مِنْ كُرْبِ الْآخِرَةِ، وَمَنْ سَتَرَ عَلَى مُسْلِمٍ سَتْرَهُ اللَّهُ فِي الدُّنْيَا وَالْآخِرَةِ، وَاللَّهُ فِي عَوْنِ الْعَبْدِ مَا كَانَ الْعَبْدُ فِي عَوْنِ أَخِيهِ».

[قَالَ:] وَفِي الْبَابِ عَنْ عُقْبَةَ بْنِ عَامِرٍ وَابْنِ عُمَرَ.

[قَالَ أَبُو عِيسَى:] حَدِيثُ أَبِي هُرَيْرَةَ هَكَذَا رَوَى غَيْرٌ وَاحِدٍ عَنِ الْأَعْمَشِ عَنْ أَبِي صَالِحٍ، عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ ﷺ نَحْوَ رِوَايَةِ أَبِي عَوَانَةَ وَرَوَى أَسْبَاطُ بْنُ مُحَمَّدٍ عَنِ الْأَعْمَشِ قَالَ: حَدَّثْتُ عَنْ أَبِي صَالِحٍ، عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ ﷺ نَحْوَهُ [وَكَانَ هَذَا أَصَحَّ مِنَ الْحَدِيثِ الْأَوَّلِ].

حَدَّثَنَا بِذَلِكَ عُبَيْدُ بْنُ أَسْبَاطَ بْنِ مُحَمَّدٍ قَالَ: حَدَّثَنِي أَبِي عَنِ الْأَعْمَشِ بِهَذَا الْحَدِيثِ.

١٤٢٦ - حَدَّثَنَا قُتَيْبَةُ: حَدَّثَنَا اللَّيْثُ عَنْ عَقِيلٍ، عَنِ الزُّهْرِيِّ، عَنْ سَالِمٍ، عَنْ أَبِيهِ: أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «الْمُسْلِمُ أَخُو الْمُسْلِمِ لَا يَظْلِمُهُ وَلَا يُظْلَمُهُ وَمَنْ كَانَ فِي

for his needs, and whoever relieves a Muslim of a burden, Allāh will relieve him of a burden from the burdens of the Day of Judgement and whoever covers (the faults of) a Muslim, Allāh will cover (his faults) on the Day of Judgement.” (Ṣaḥīḥ)

[Abū ‘Eisā said:] This *Ḥadīth* is *Ḥasan Ṣaḥīḥ Gharīb* as a narration of Ibn ‘Umar.

**تخریج:** وأخرجه البخاري، الإكراه، باب يمين الرجل لصاحبه أنه أخوه إذا خاف عليه القتل أو نحوه، ح: ٦٩٥١، ٢٤٤٢ من حديث الليث بن سعد به.

#### Chapter 4. What Has Been Related About Prompting In Cases Of The Legal Punishments

1427. Ibn ‘Abbās narrated that the Prophet ﷺ said to Mā’iz bin Mālik: “Is what has reached me about you true?” He said: “What has reached you about me?” He said: “It has reached me that you had relations with the slave-maid of the family of so-and-so.” He said: “Yes.” So he testified four times, and he gave the order that he be stoned. (Ṣaḥīḥ)

[He said:] There is something on this topic from As-Sā’ib bin Zaid.

[Abū ‘Eisā said:] The *Ḥadīth* of Ibn ‘Abbās is a *Ḥasan Ḥadīth*. *Shu’bah* reported this *Ḥadīth* from Simāk bin Ḥarb, from Sa’eed bin Jubair in *Mursal* form without mentioning Ibn ‘Abbās in it.

حَاجَةً أَحْيَاهُ كَانَ اللَّهُ فِي حَاجَتِهِ وَمَنْ فَرَّجَ عَنْ مُسْلِمٍ كُرْبَةً فَرَّجَ اللَّهُ عَنْهُ كُرْبَةً مِنْ كُرْبِ يَوْمِ الْقِيَامَةِ وَمَنْ سَتَرَ مُسْلِمًا سَتَرَهُ اللَّهُ يَوْمَ الْقِيَامَةِ.

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ غَرِيبٌ مِنْ حَدِيثِ ابْنِ عُمَرَ.

(المعجم ٤) - بَابُ مَا جَاءَ فِي التَّلْقِينِ فِي الْحُدِّ (التحفة ٤)

١٤٢٧ - حَدَّثَنَا قُتَيْبَةُ: حَدَّثَنَا أَبُو عَوَانَةَ عَنْ سِمَاكِ بْنِ حَرْبٍ، عَنْ سَعِيدِ بْنِ جُبَيْرٍ، عَنْ ابْنِ عَبَّاسٍ: أَنَّ النَّبِيَّ ﷺ قَالَ لِمَاعِزِ بْنِ مَالِكٍ: «أَحَقُّ مَا بَلَغَنِي عَنْكَ؟» قَالَ: مَا بَلَغَكَ عَنِّي؟ قَالَ: «بَلَغَنِي أَنَّكَ وَقَعْتَ عَلَى جَارِيَةِ آلِ فُلَانٍ». قَالَ: نَعَمْ. فَشَهِدَ أَرْبَعَ شَهَادَاتٍ فَأَمَرَ بِهِ فَرُجِمَ. [قَالَ:] وَفِي الْبَابِ عَنِ السَّائِبِ بْنِ يَزِيدَ.

[قَالَ أَبُو عِيسَى:] حَدِيثُ ابْنِ عَبَّاسٍ حَدِيثٌ حَسَنٌ. وَرَوَى شُعْبَةُ هَذَا الْحَدِيثَ عَنْ سِمَاكِ بْنِ حَرْبٍ، عَنْ سَعِيدِ بْنِ جُبَيْرٍ مُرْسَلًا وَلَمْ يَذْكُرْ فِيهِ عَنِ ابْنِ عَبَّاسٍ.

**تخریج:** وأخرجه مسلم، الحدود، باب من اعترف على نفسه بالزنى، ح: ١٩/١٦٩٣ عن قتيبة به \* وفي الباب عن السائب بن يزيد [الطبراني في الكبير: ١٥٧/٧، ح: ٦٦٨٤].

**Comments:**

The Prophet ﷺ suggested to him a way to escape by asking him in a question, as it is clear in the narration of Ibn Abbās (*Al-Bukhārī* 6824)

**Chapter 5. What Has Been Related About Averting The Legal Punishments From The One Who Confessed If He Changes His Mind**

(المعجم ٥) - بَابُ مَا جَاءَ فِي دَرِّهِ  
الْحَدِّ، عَنِ الْمُعْتَرِفِ إِذَا رَجَعَ (التحفة ٥)

1428. Abū Hurairah narrated: “Mā’iz Al-Aslamī came to the Messenger of Allāh ﷺ and said that he had committed adultery, so he ﷺ turned away from him. Then he approached from his other side and said: ‘[O Messenger of Allāh!] I have committed adultery.’ So he turned away from him. Then he came from his other side and said: ‘O Messenger of Allāh! I have committed adultery.’ So he gave the order (for stoning) upon the fourth time. He was taken to Al-Harrah and stoned with rocks. Upon being hit by the rocks, he ran swiftly until he passed a man with a camel whip who beat him with it, and the people beat him until he died. They mentioned to the Messenger of Allāh ﷺ, that he ran upon feeling the rocks at the time of death. So the Messenger of Allāh ﷺ said: ‘Why didn’t you leave him?’” (*Hasan*)

١٤٢٨ - حَدَّثَنَا أَبُو كُرَيْبٍ: حَدَّثَنَا عَبْدُهُ ابْنُ سُلَيْمَانَ عَنْ مُحَمَّدِ بْنِ عَمْرٍو: حَدَّثَنَا أَبُو سَلَمَةَ عَنْ أَبِي هُرَيْرَةَ قَالَ: جَاءَ مَا عَزُّ الْأَسْلَمِيِّ إِلَى رَسُولِ اللَّهِ ﷺ فَقَالَ: إِنَّهُ قَدْ زَنَى فَأَعْرَضَ عَنْهُ ثُمَّ جَاءَ مِنَ الشَّقِّ الْآخَرِ. فَقَالَ: [يَا رَسُولَ اللَّهِ] إِنَّهُ قَدْ زَنَى فَأَعْرَضَ عَنْهُ ثُمَّ جَاءَ مِنَ الشَّقِّ الْآخَرَ فَقَالَ: يَا رَسُولَ اللَّهِ! إِنَّهُ قَدْ زَنَى فَأَمَرَ بِهِ فِي الرَّابِعَةِ فَأُخْرِجَ إِلَى الْحَرَّةِ فُرْجِمَ بِالْحِجَارَةِ فَلَمَّا وَجَدَ مَسَّ الْحِجَارَةِ فَرَّ يَسْتَنْدُ حَتَّى مَرَّ بِرَجُلٍ مَعَهُ لُحْيٍ جَمَلٍ فَضْرَبَهُ بِهِ وَضْرَبَهُ النَّاسُ حَتَّى مَاتَ، فَذَكَرُوا ذَلِكَ لِرَسُولِ اللَّهِ ﷺ أَنَّهُ فَرَّ حِينَ وَجَدَ مَسَّ الْحِجَارَةِ وَمَسَّ الْمَوْتِ، فَقَالَ رَسُولُ اللَّهِ ﷺ: «هَلَّا تَرَكْتُمُوهُ».

[Abū ‘Eisā said:] This *Hadīth* is *Hasan*. It has been reported through more than one route from Abū Hurairah. This *Hadīth* has been reported from Az-Zuhrī, from Abū Salamah, from Jābir bin ‘Abdullāh from the Prophet ﷺ and it is similar.

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ حَسَنٌ. قَدْ رُوِيَ مِنْ غَيْرِ وَجْهِ عَنْ أَبِي هُرَيْرَةَ. وَرُوِيَ هَذَا الْحَدِيثُ عَنِ الزُّهْرِيِّ، عَنْ أَبِي سَلَمَةَ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ عَنِ النَّبِيِّ ﷺ نَحْوُ هَذَا.

**تخریج:** [إسناده حسن] وأخرجه ابن ماجه، الحدود، باب الرجم، ح: ٢٥٥٤ من حديث محمد بن عمرو الليثي به وصححه الحاكم على شرط مسلم: ٣٦٣/٤ ووافقه الذهبي (!) ورواه البخاري، ح: ٥٢٧١ ومسلم، ح: ١٦/١٦٩١ من حديث أبي سلمة عن أبي هريرة به.

**1429.** Jābir bin ‘Abdullāh narrated: “A man from the tribe of Aslam came to the Prophet ﷺ and confessed to adultery. He turned away from him, then he confessed (again). Then he turned away from him (again) until he had testified against himself four times. So the Prophet ﷺ said: “Are you insane?” He said: “No” He said: “Are you married?” He said: “Yes.” So he gave the order and he was stoned at the *Musalla*. He ran when he was struck by the stones, and he was caught and stoned until he died. So the Messenger of Allāh ﷺ spoke well of him but he did not perform the (funeral) *Salāt* for him. (*Ṣahīh*)

[Abū ‘Eīsā said:] This *Hadīth* is *Hasan Ṣahīh*. This *Hadīth* is acted upon according to some of the people of knowledge, the punishment is carried out for one who confesses against himself regarding adultery when he does so four times. This is the view of Aḥmad and Ishāq. Some of the people of knowledge said that the punishment is carried out when he affirms it one time. This is the view of Mālik bin Anas and Ash-Shāfi‘ī. Those who hold this view use the *Hadīth* of Abū Hurairah and Zaid bin Khālid as proof, in which two men disputed with the Messenger of Allāh ﷺ. One of them said: “O

١٤٢٩ - حَدَّثَنَا بِذَلِكَ الْحَسَنُ بْنُ عَلِيٍّ الْخَلَّالُ: حَدَّثَنَا عَبْدُ الرَّزَّاقِ: حَدَّثَنَا مَعْمَرٌ عَنِ الزُّهْرِيِّ، عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ: أَنَّ رَجُلًا مِنْ أَسْلَمَ جَاءَ النَّبِيَّ ﷺ فَأَعْتَرَفَ بِالزَّانَا فَأَعْرَضَ عَنْهُ ثُمَّ اعْتَرَفَ فَأَعْرَضَ عَنْهُ حَتَّى شَهِدَ عَلَى نَفْسِهِ أَرْبَعَ شَهَادَاتٍ. فَقَالَ النَّبِيُّ ﷺ: «أَيْكَ جُنُونَ؟» قَالَ: لَا، قَالَ: «أَحْصَنْتَ؟» قَالَ: نَعَمْ. فَأَمَرَ بِهِ فَرَجِمَ فِي الْمُصَلَّى. فَلَمَّا أَدْلَقَتْهُ الْحِجَارَةُ قَرَّ فَأَدْرَكَ فَرَجِمَ حَتَّى مَاتَ. فَقَالَ لَهُ رَسُولُ اللَّهِ ﷺ: خَيْرًا، وَلَمْ يُصَلِّ عَلَيْهِ.

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ. وَالْعَمَلُ عَلَى هَذَا الْحَدِيثِ عِنْدَ بَعْضِ أَهْلِ الْعِلْمِ، أَنَّ الْمُعْتَرِفَ بِالزَّانَا إِذَا أَقَرَّ عَلَى نَفْسِهِ أَرْبَعَ مَرَّاتٍ أُقِيمَ عَلَيْهِ الْحَدُّ. وَهُوَ قَوْلُ أَحْمَدَ وَإِسْحَاقَ. وَقَالَ بَعْضُ أَهْلِ الْعِلْمِ: إِذَا أَقَرَّ عَلَى نَفْسِهِ مَرَّةً أُقِيمَ عَلَيْهِ الْحَدُّ. وَهُوَ قَوْلُ مَالِكِ بْنِ أَنَسٍ وَالشَّافِعِيِّ. وَحُجَّةٌ مَنْ قَالَ هَذَا الْقَوْلَ حَدِيثُ أَبِي هُرَيْرَةَ، وَزَيْدِ بْنِ خَالِدٍ أَنَّ رَجُلَيْنِ اخْتَصَمَا إِلَى رَسُولِ اللَّهِ ﷺ. فَقَالَ أَحَدُهُمَا: يَا رَسُولَ اللَّهِ! إِنَّ ابْنِي زَنَا بِامْرَأَةٍ هَذَا، الْوَالِدِ بَطُولِهِ. وَقَالَ النَّبِيُّ ﷺ: «اغْدُ يَا أُتَيْسُ عَلَى

Messenger of Allāh! My son had unlawful sexual relations with this man's wife." And it is a lengthy *Hadīth*. The Prophet ﷺ said: "O Unais! Go to this man's wife and if she confesses then stone her." And he did not say: "If she confesses four times."

امْرَأَةً هَذَا فَإِنْ اعْتَرَفَتْ فَارْجُمُهَا» وَلَمْ يَقُلْ:  
فَإِنْ اعْتَرَفَتْ أَرْبَعَ مَرَّاتٍ.

تخریج: متفق عليه، وأخرجه البخاري، الحدود، باب الرجم بالمصلى، ح: ٦٨٢٠ ومسلم، ح: ١٦٩١ من حديث عبدالرزاق به.

**Comments:**

An adulterer who admits his sin, but his sin is still hidden from the people, should be given a chance to refuse to admit his sin. If he refuses, he should be spared the punishment.

**Chapter 6. What Has Been Related About It Being Disliked To Intercede In Legal Punishments**

(المعجم ٦) - بَابُ مَا جَاءَ فِي كَرَاهِيَةِ أَنْ يُشْفَعَ فِي الْحُدُودِ؟ (التحفة ٦)

1430. 'Aishah narrated: "The Quraish were troubled by the affair of a woman from the tribe of Makhzūm who stole. So they said: 'Who will speak about her to the Messenger of Allāh ﷺ?' They said: 'Who can do it other than Usāmah bin Zaid, the one dear to the Messenger of Allāh?' So Usāmah spoke with him. the Messenger of Allāh ﷺ said: 'Do you intercede about a penalty from Allāh's penalties?' Then he stood up and addressed the people saying: 'Those before you were only destroyed because they used to leave a noble person if he stole. And if a weak person stole they would establish the penalty upon him. And by Allāh! If Fāṭimah bint Muḥammad stole, then I would cut off her hand.'" (*Sahīh*)

١٤٣٠ - حَدَّثَنَا قُتَيْبَةُ: حَدَّثَنَا اللَّيْثُ عَنْ ابْنِ شِهَابٍ، عَنْ عُرْوَةَ، عَنْ عَائِشَةَ أَنَّ قُرَيْشًا [أَهْمَهُمْ] شَانُ الْمَرْأَةِ الْمَخْزُومِيَّةِ الَّتِي سَرَقَتْ. فَقَالُوا: مَنْ يُكَلِّمُ فِيهَا رَسُولَ اللَّهِ ﷺ؟ فَقَالُوا: مَنْ يَجْتَرِيءُ عَلَيْهِ إِلَّا أُسَامَةُ بْنُ زَيْدٍ حِبُّ رَسُولِ اللَّهِ ﷺ فَكَلَّمَهُ أُسَامَةُ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «أَتَشْفَعُ فِي حَدٍّ مِنْ حُدُودِ اللَّهِ؟» ثُمَّ قَامَ فَاخْتَطَبَ فَقَالَ: «إِنَّمَا أَهْلَكَ الَّذِينَ مِنْ قَبْلِكُمْ أَنَّهُمْ كَانُوا إِذَا سَرَقَ فِيهِمُ الشَّرِيفُ تَرَكُوهُ. وَإِذَا سَرَقَ فِيهِمُ الضَّعِيفُ أَقَامُوا عَلَيْهِ الْحَدَّ، وَإِنَّمَا اللَّهُ لَوْ أَنَّ فَاطِمَةَ بِنْتَ مُحَمَّدٍ سَرَقَتْ لَقَطَعْتُ يَدَهَا». [قَالَ:] وَفِي الْبَابِ عَنْ مَسْعُودِ بْنِ الْعَجْمَاءِ [وَيُقَالُ:] ابْنُ الْأَعْمَجِ] وَابْنُ عُمَرَ وَجَابِرٍ.

[He said:] There are narrations on

[قَالَ أَبُو عِيْسَى:] حَدِيثُ عَائِشَةَ حَدِيثٌ



this topic from Mas'ūd bin Al-'Ajma' [and they call him Ibn Al-A'jam], Ibn 'Umar and Jābir.

[Abū 'Eisā said:] The *Hadīth* of 'Āishah is a *Hasan Ṣaḥīḥ Hadīth*. [And they call him Mas'ūd bin Al-A'jam, and he narrated this *Hadīth*.]

حَسَنٌ صَحِيحٌ [وَيُقَالُ مَسْعُودٌ بِنُ الْأَعْجَمِ وَلَهُ هَذَا الْحَدِيثُ].

تخريج: متفق عليه، وأخرجه البخاري، أحاديث الأنبياء، باب (٥٤)، ح: ٣٤٧٥ ومسلم، ح: ١٦٨٨ عن قتيبة به \* وفي الباب عن مسعود [ابن ماجه، ح: ٢٥٤٨] وابن عمر [أبو داود، ح: ٣٥٩٧] وجابر [مسلم، ح: ١٦٨٩].

**Comments:**

The name of this woman was Fāṭimah bint Aswad bin 'Abdullāh. She was the niece of Abū Salama. In the beginning, she used to borrow from people and did not return the borrowed money or other things, moreover she would deny that she had borrowed anything. She developed the habit of stealing, and her hand was cut off due to this habit. According to most of the scholars the punishment of cutting the hand cannot be imposed on refusal of return of the borrowed things, but in the view of Imām Aḥmad and the *Zāhiriyah*, this punishment can be imposed if the borrowed things are not returned. (*Minnat Al-Mun'im* v.3. p. 138.)

**Chapter 7. What Has Been Related About Confirming Stoning**

(المعجم ٧) - بَابُ مَا جَاءَ فِي تَحْقِيقِ الرَّجْمِ (التحفة ٧)

1431. 'Umar bin Al-Khaṭṭāb said: "The Messenger of Allāh ﷺ stoned, Abū Bakr stoned, and I stoned. If I didn't dislike that I add to the Book of Allāh, I would have written it in the *Muṣḥaf*, for I fear that there will come a people and they will not find it in the Book of Allāh, so they will disbelieve in it." (*Ṣaḥīḥ*)

He said: There is something about this from 'Alī.

١٤٣١ - حَدَّثَنَا أَحْمَدُ بْنُ مَنِيعٍ: حَدَّثَنَا إِسْحَاقُ بْنُ يُونُسَ الْأَزْرَقِيُّ عَنْ دَاوُدَ بْنِ أَبِي هِنْدٍ، عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، عَنْ عُمَرَ بْنِ الْخَطَّابِ. قَالَ: رَجَمَ رَسُولُ اللَّهِ ﷺ وَرَجَمَ أَبُو بَكْرٍ وَرَجِمْتُ. وَلَوْلَا أَنِّي أَكْرَهُ أَنْ أَزِيدَ فِي كِتَابِ اللَّهِ لَكَتَبْتُهُ فِي الْمُصْحَفِ فَإِنِّي قَدْ خَشِيتُ أَنْ تَجِيءَ أَقْوَامٌ فَلَا يَجِدُونَهُ فِي كِتَابِ اللَّهِ فَيَكْفُرُونَ بِهِ قَالَ: وَفِي الْبَابِ عَنْ عَلِيٍّ. [قَالَ أَبُو عِيسَى:] حَدِيثُ عُمَرَ حَدِيثٌ حَسَنٌ صَحِيحٌ. وَرُوِيَ مِنْ غَيْرِ وَجْهٍ عَنْ عُمَرَ.

تخريج: [صحيح] وأخرجه أحمد: ١/٤٣، ٣٦، ومالك في الموطأ: ٢/٨٢٤ من حديث سعيد ابن المسيب به وسعيد سمع من عمر رضي الله عنه وللحديث شواهد كثيرة عند البخاري ومسلم

وأحمد: ٥٥/١، ٥٦ وغيرهم \* وفي الباب عن علي [البخاري، ح: ٦٨١٢].

### Comments:

The fear, 'Umar had apprehended, proved true. The Khawārij, the Mu'tazilah and other modernists of today are against stoning.

**1432.** 'Umar bin Al-Khattāb said: "Verily Allāh sent Muḥammad ﷺ with the truth, and he revealed the Book to him. Among what was revealed to him was the *Āyah* of stoning. So the Messenger of Allāh ﷺ stoned, and we stoned after him. I fear that time will pass over the people such that someone will say 'We do not see stoning in the Book of Allāh.' They will be misguided by leaving an obligation which Allāh revealed. Indeed stoning is the retribution for the adulterer if he was married and the evidence has been established, or due to pregnancy, or confession." (*Ṣaḥīḥ*)

[There is something on this topic from 'Alī. Abū 'Eisā said:] This *Ḥadīth* is *Ḥasan Ṣaḥīḥ*. [It has been reported through more than one route from 'Umar bin Al-Khattāb.]

١٤٣٢ - حَدَّثَنَا سَلَمَةُ بْنُ شَيْبٍ وَإِسْحَاقُ  
ابْنُ مَنْصُورٍ وَالْحَسَنُ بْنُ عَلِيٍّ الْخَلَّالُ وَغَيْرُ  
وَاحِدٍ. قَالُوا: حَدَّثَنَا عَبْدُ الرَّزَّاقِ: حَدَّثَنَا  
مَعْمَرٌ عَنِ الزُّهْرِيِّ، عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ  
ابْنِ عُتْبَةَ، عَنِ ابْنِ عَبَّاسٍ، عَنْ عُمَرَ بْنِ  
الْخَطَّابِ قَالَ: إِنَّ اللَّهَ بَعَثَ مُحَمَّدًا ﷺ  
بِالْحَقِّ وَأَنْزَلَ عَلَيْهِ الْكِتَابَ فَكَانَ فِيمَا أَنْزَلَ  
عَلَيْهِ آيَةُ الرَّجْمِ فَرَجَمَ رَسُولُ اللَّهِ ﷺ وَرَجَمْنَا  
بَعْدَهُ وَإِنِّي خَائِفٌ أَنْ يَطُولَ بِالنَّاسِ زَمَانٌ  
فَيَقُولَ قَائِلٌ لَا نَجِدُ الرَّجْمَ فِي كِتَابِ اللَّهِ  
فَيَضِلُّوا بِتَرْكِ فَرِيضَةِ أَنْزَلَهَا اللَّهُ. أَلَا وَإِنَّ  
الرَّجْمَ حَقٌّ عَلَى مَنْ زَنَى إِذَا أَحْصَنَ وَقَامَتِ  
الْبَيِّنَةُ، أَوْ كَانَ حَمْلًا أَوْ الْاِعْتِرَافُ.

[وَفِي الْبَابِ عَنْ عَلِيٍّ. قَالَ أَبُو عَيْسَى:]  
هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ [وَرَوَى مِنْ غَيْرِ  
وَجْهِ، عَنْ عُمَرَ رَضِيَ اللَّهُ عَنْهُ].

**تخريج:** متفق عليه، وأخرجه البخاري، الاعتصام بالكتاب والسنة، باب ما ذكر النبي ﷺ وحضر على اتفاق أهل العلم... إلخ، ح: ٧٣٢٣ من حديث معمر ومسلم، ح: ١٦٩١ من حديث الزهري به.

### Comments:

Pregnancy will be deemed a proof of fornication if the woman is unmarried or her husband blames her. Though the recitation of this Verse is abrogated but its continuity is not essential for the implication. the presence of a Verse in the Qur'an is considered a proof of its validity and continuity, therefore, rejecting a *Ṣaḥīḥ* narration by declaring it information without any proof is not logical thinking.

**Chapter 8. What Has Been Related About Stoning The Married Adulterer**

1433. ‘Ubaidullāh bin ‘Abdullāh bin ‘Utbah narrated that he heard from Abū Hurairah, Zaid bin Khālīd, and Shibl, that they were with the Prophet ﷺ and two men came to him disputing. So one of them stood before him and said: “I ask you by Allāh, O Messenger of Allāh! Only that you would judge between us by the Book of Allāh.” So his disputant said – and he was more eloquent than him: “I agree O Messenger of Allāh! Judge between us by the Book of Allāh, and allow me to speak. My son was a servant for this man and he committed adultery with his wife. So they told me that my son was to be stoned. I paid him one hundred female sheep and a female slave. Then I met some people from the people of knowledge and they said that my son was to be lashed one hundred times, and to be banished for a year and that stoning is only for this man’s wife.” So the Prophet ﷺ said: “By the One in whose Hand is my soul! I will judge between you two by the Book of Allāh. The one hundred female sheep and the female slave should be returned to you. For your son is one hundred lashes and banishment for a year. O Unais! Go to this Man’s wife, and if she confesses then stone her.” He went to her and she confessed, so he stoned her. (*Sahīh*)

(المعجم ٨) - بَابُ مَا جَاءَ فِي الرَّجْمِ عَلَى النَّبِيِّ (التحفة ٨)

١٤٣٣ - حَدَّثَنَا نَصْرُ بْنُ عَلِيٍّ وَغَيْرُ وَاحِدٍ: حَدَّثَنَا [سُفْيَانُ] بْنُ عُيَيْنَةَ عَنِ الرَّهْرِيِّ، عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ [بْنِ عُبَيْتَةَ] سَمِعَهُ مِنْ أَبِي هُرَيْرَةَ وَزَيْدِ بْنِ خَالِدٍ وَشِبْلِ أَنَّهُمْ كَانُوا عِنْدَ النَّبِيِّ ﷺ فَأَتَاهُ رَجُلَانِ يَخْتَصِمَانِ فَقَامَ إِلَيْهِ أَحَدُهُمَا وَقَالَ: أَسْأَلُكَ اللَّهُ يَا رَسُولَ اللَّهِ! لَمَّا قَضَيْتَ بَيْنَنَا بَيْتَانَ بِكِتَابِ اللَّهِ. فَقَالَ خَصْمُهُ وَكَانَ أَفْقَهُ مِنْهُ: أَجَلٌ يَا رَسُولَ اللَّهِ! أَقْضِ بَيْنَنَا بِكِتَابِ اللَّهِ وَائْذَنْ لِي فَأَتَكَلِّمَ: إِنَّ ابْنِي كَانَ عَسِيفًا عَلَيَّ هَذَا فَرَزَنِي بامرأته فأخبروني أن علي ابني الرجم ففديت منه بمائة شاةٍ وخدامٍ ثم لقيت ناساً من أهل العلم فزعموا أن علي ابني جلد مائةٍ وتغريب عامٍ وإنما الرجم على امرأةٍ هذا. فقال النبي ﷺ: «والذي نفسي بيده لأقضين بينكما بكتاب الله، المائة شاةٍ والخدام رد عليك، وعلى ابنك جلد مائةٍ وتغريب عامٍ، واغد يا أنيسُ على امرأةٍ هذا فإن اعترفت فارجمها». فعدنا عليها فاعترفت فرجمها. حَدَّثَنَا إِسْحَاقُ بْنُ مُوسَى الْأَنْصَارِيُّ: حَدَّثَنَا مَعْنُ: حَدَّثَنَا مَالِكٌ عَنِ ابْنِ شِهَابٍ، عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ، عَنْ أَبِي هُرَيْرَةَ وَزَيْدِ بْنِ خَالِدِ الْجُهَنِيِّ عَنِ النَّبِيِّ ﷺ نَحْوَهُ بِمَعْنَاهُ. حَدَّثَنَا قُتَيْبَةُ: حَدَّثَنَا اللَّيْثُ عَنِ ابْنِ شِهَابٍ

(Another chain) with similar. And (Another chain) with similar.

[He said:] There are narrations on this topic from Abū Bakr, ‘Ubādah bin Aṣ-Ṣāmiṭ, Abū Hurairah, Abū Sa‘eed, Ibn ‘Abbās, Jābir bin Samurah, Hazzāl, Buraidah, Salamah bin Al-Muḥabbaq, Abū Barzah, and ‘Imrān bin Ḥuṣayn.

[Abū ‘Eisā said:] The *Hadīth* of Abū Hurairah and Zaid bin Khālīd is a *Ḥasan Ṣaḥīḥ Hadīth*. This is how it was reported by Mālik bin Anas, Ma‘mar and others from Az-Zuhrī, from ‘Ubaidullāh bin ‘Abdullāh [bin ‘Utbah], from Abū Hurairah, and Zaid bin Khālīd, from the Prophet ﷺ, they also reported with this chain from the Prophet ﷺ that he said; “If a slave commits adultery lash her, if she commits adultery the fourth time sell her, even for a piece of twisted rope.” Sufyān bin ‘Uyainah reported from Az-Zuhrī, from ‘Ubaidullāh, from Abū Hurairah, Zaid bin Khālīd and Shibl, and they said: “We were with the Prophet ﷺ.” This is how Ibn ‘Uyainah reported the two *Aḥādīth*, from Abū Hurairah, Zaid bin Khālīd, and Shibl. But Ibn ‘Uyainah’s narration is mistaken; Sufyān bin ‘Uyainah made the mistake of entering one *Hadīth* in another *Hadīth*. What is correct is what was reported by [Muḥammad bin Al-Walīd] Az-Zubaidī, Yūnus bin Yazīd, and the son of Az-Zuhrī’s brother, from Az-Zuhrī, from ‘Ubaidullāh, from Abū Hurairah and Zaid bin Khālīd,

بِإِسْنَادِهِ نَحْوَ حَدِيثِ مَالِكٍ بِمَعْنَاهُ [قَالَ:]  
وَفِي الْبَابِ عَنْ أَبِي بَكْرٍ وَعُبَادَةَ بْنِ الصَّامِتِ  
وَأَبِي هُرَيْرَةَ وَأَبِي سَعِيدٍ وَابْنِ عَبَّاسٍ وَجَابِرِ  
ابْنِ سَمُرَةَ وَهَزَالٍ وَبُرَيْدَةَ وَسَلَمَةَ بْنِ الْمُحَبَّبِ  
وَأَبِي بَرَزَةَ وَعِمْرَانَ بْنِ حُصَيْنٍ.

[قَالَ أَبُو عِيسَى:] حَدِيثُ أَبِي هُرَيْرَةَ وَزَيْدِ  
ابْنِ خَالِدٍ حَدِيثٌ حَسَنٌ صَحِيحٌ. وَهَكَذَا  
رَوَى مَالِكُ بْنُ أَنَسٍ وَمَعْمَرٌ وَعَيْرٌ وَاحِدٌ عَنِ  
الرُّهْرِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ [بْنِ عْتَبَةَ]  
عَنْ أَبِي هُرَيْرَةَ وَزَيْدِ بْنِ خَالِدٍ عَنِ النَّبِيِّ ﷺ  
وَرَوَوْا بِهَذَا الْإِسْنَادِ عَنِ النَّبِيِّ ﷺ أَنَّهُ قَالَ:  
«إِذَا زَنَتِ الْأَمَةُ فَاجْلِدُوهَا فَإِنْ زَنَتْ فِي  
الرَّابِعَةِ فَبِيعُوهَا وَلَوْ بِصَفِيرٍ». وَرَوَى سُفْيَانُ  
ابْنَ عُيَيْنَةَ عَنِ الرَّهْرِيِّ، عَنْ عُبَيْدِ اللَّهِ، عَنْ  
أَبِي هُرَيْرَةَ وَزَيْدِ بْنِ خَالِدٍ وَشِبْلِ قَالُوا: كُنَّا  
عِنْدَ النَّبِيِّ ﷺ. هَكَذَا رَوَى ابْنُ عُيَيْنَةَ  
الْحَدِيثَيْنِ جَمِيعًا عَنْ أَبِي هُرَيْرَةَ وَزَيْدِ بْنِ  
خَالِدٍ وَشِبْلِ وَحَدِيثُ ابْنِ عُيَيْنَةَ وَهَمَّ وَهَمَّ  
فِيهِ سُفْيَانُ بْنُ عُيَيْنَةَ أَدْخَلَ حَدِيثًا فِي حَدِيثِ.  
وَالصَّحِيحُ مَا رَوَى [مُحَمَّدُ بْنُ الْوَلِيدِ]  
الرُّبَيْدِيُّ وَيُونُسُ بْنُ يَزِيدَ وَابْنُ أَخِي الرَّهْرِيِّ،  
عَنِ الرَّهْرِيِّ، عَنْ عُبَيْدِ اللَّهِ، عَنْ أَبِي  
هُرَيْرَةَ. وَزَيْدِ بْنِ خَالِدٍ عَنِ النَّبِيِّ ﷺ قَالَ:  
«إِذَا زَنَتِ الْأَمَةُ [فَاجْلِدُوهَا]». وَالرُّهْرِيُّ عَنْ  
عُبَيْدِ اللَّهِ، عَنْ شِبْلِ بْنِ خَالِدٍ، عَنْ عَبْدِ اللَّهِ  
ابْنِ مَالِكِ الْأَوْسِيِّ عَنِ النَّبِيِّ ﷺ قَالَ: «إِذَا  
زَنَتِ الْأَمَةُ». وَهَذَا الصَّحِيحُ عِنْدَ أَهْلِ

from the Prophet ﷺ, that he said: "When the female slave commits adultery [then lash her]." And Az-Zuhri reported from 'Ubaidullāh from Shibl bin Khālid, from 'Abdullāh bin Mālik Al-Awsī, from the Prophet ﷺ, that he said: "When the female slave commits adultery." And this is what is correct according to the people of *Hadīth*. Shibl bin Khālid did not see the Prophet ﷺ, Shibl only reported it from 'Abdullāh bin Mālik Al-Awsī, from the Prophet ﷺ. This is what is correct, and the narration of Ibn 'Uyainah is not preserved. It was related that he said: "Shibl bin Hāmid" and this is a mistake, he is only Shibl bin Khālid, and he is also called Shibl bin Khulaid. [1]

الْحَدِيثِ. وَشِبْلُ بْنُ خَالِدٍ لَمْ يُدْرِكِ النَّبِيَّ ﷺ. إِنَّمَا رَوَى شِبْلٌ، عَنْ عَبْدِ اللَّهِ بْنِ مَالِكِ الْأَوْسِيِّ عَنِ النَّبِيِّ ﷺ. وَهَذَا الصَّحِيحُ وَحَدِيثُ ابْنِ عُيَيْنَةَ غَيْرُ مَحْفُوظٍ. وَرُوي عَنْهُ أَنَّهُ قَالَ: شِبْلُ بْنُ حَامِدٍ، وَهُوَ خَطَأٌ إِنَّمَا هُوَ شِبْلُ بْنُ خَالِدٍ وَيُقَالُ أَيْضًا: شِبْلُ بْنُ خُلَيْدٍ.

**تخريج:** متفق عليه، أخرجه البخاري، الحدود، باب الاعتراف بالزنا، ح: ٦٨٢٧، ٦٨٢٨ من حديث سفيان بن عيينة ومسلم، ح: ١٦٩٧، ١٦٩٨ من حديث الزهري به \* حديث مالك في الموطأ: ٨٢٢/٢، ورواه البخاري، ح: ٦٦٣٣، ٦٦٣٤ ومسلم من حديثه \* حديث قتيبة عن الليث ابن سعد رواه مسلم، ح: ١٦٩٧، ٢٥/١٦٩٨ \* وفي الباب عن أبي بكر (أبو داود، ح: ٤٤٤٣] وعبادة بن الصامت [يأتي: ١٤٣٤] وأبي هريرة [البخاري، ح: ٥٢٧١ ومسلم، ح: ١٦٩١/١٦] وأبي سعيد [مسلم، ح: ١٦٩٤] وابن عباس [البخاري، ح: ٦٨٢٤] وجابر بن سمرة [مسلم، ح: ١٦٩٢] وهزال [أحمد: ٢١٧/٥] والنسائي في الكبرى] وبريدة [مسلم، ح: ١٦٩٥] وسلمة بن المحبق [أحمد: ٤٧٦/٣] وأبي برزة [أحمد: ٤٢٣/٤] وابن أبي شيبه: ٧٨/١٠، ح: ٨٨٣ وأبو يعلى: ٧٤٣٨] وعمران بن حصين [يأتي: ١٤٣٥] وأبي بكر [أحمد: ٨/١].

**Comments:**

The Book of Allāh (here) means the Commands of Allāh and the decisions according to it. As the orders of stoning to death are not written in the Qur'an, similarly the orders of exile for one year are also not written in the Qur'an, but it is a Command of Allāh, because obeying the Prophet ﷺ is obeying Allāh.

**1434.** 'Ubādah bin Aṣ-Ṣāmiṭ narrated: "The Messenger of Allāh ﷺ said: 'Take from me. For Allāh

١٤٣٤ - حَدَّثَنَا قُتَيْبَةُ: حَدَّثَنَا هُثَيْمٌ عَنْ مَنْصُورِ بْنِ زَادَانَ، عَنِ الْحَسَنِ، عَنْ حِطَّانَ

[1] See no. 1440 also.

has a way made for them: For the married person who commits adultery with a married person is one hundred lashes, then stoning. And for the virgin who commits adultery with a virgin is one hundred lashes and banishment for a year.” (*Ṣaḥīḥ*)

[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 were ‘Alī bin Abī Ṭālib, Ubayy bin Ka‘b, ‘Abdullāh bin Mas‘ūd, and others. They said the married is lashed and stoned. This was followed by some of the people of knowledge, and it is the view of Aḥmad and Ishāq. Some of the people of knowledge among the Companions of the Prophet ﷺ – among them were Abū Bakr and others – said that the married person is only stoned, not lashed. Similar to this has been reported from the Prophet ﷺ in a *Ḥadīth* other than this one, in the story of Mā‘iz and others, in which he ordered stoning and did not order that he be lashed before stoning. This is acted upon according to some of the people of knowledge. It is the view of Sufyān Ath-Thawrī, Ibn Al-Mubārak, Ash-Shāfi‘ī, and Aḥmad.

تخريج: وأخرجه مسلم، الحدود، باب حد الزنى، ح: ١٦٩٠ من حديث هشيم به.

### Comments:

Most of the *A‘immah*; Mālik, Ash-Shāfi‘ī, and Aḥmad, are of the opinion that a married adulterer should not be lashed before the punishment of stoning to death. An-Nakha‘ī, Al-Awza‘ī, Ath-Thawrī also have the same opinion.

ابن عبد الله، عن عبادة بن الصامت قال: قال رسول الله ﷺ: «خُدُوا عَنِّي فَقَدْ جَعَلَ اللَّهُ لَهُنَّ سَبِيلًا: الثَّبُّ بِالثَّبِّ جَلْدٌ مِائَةٌ ثُمَّ الرَّجْمُ، وَالبِكْرُ بِالبِكْرِ جَلْدٌ مِائَةٌ وَنَفْيٌ سَنَةً.» [قال أبو عيسى:] هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ، وَالْعَمَلُ عَلَى هَذَا عِنْدَ بَعْضِ أَهْلِ الْعِلْمِ مِنْ أَصْحَابِ النَّبِيِّ ﷺ مِنْهُمْ عَائِي بْنُ أَبِي طَالِبٍ وَأَبِي بَنْ كَعْبٍ وَعَبْدُ اللَّهِ بْنُ مَسْعُودٍ وَغَيْرُهُمْ. قَالُوا: الثَّبُّ تُجْلَدُ وَتُرْجَمُ وَإِلَى هَذَا ذَهَبَ بَعْضُ أَهْلِ الْعِلْمِ وَهُوَ قَوْلُ إِسْحَاقَ. وَقَالَ بَعْضُ أَهْلِ الْعِلْمِ مِنْ أَصْحَابِ النَّبِيِّ ﷺ مِنْهُمْ أَبُو بَكْرٍ وَعُمَرُ وَغَيْرُهُمَا: الثَّبُّ إِنَّمَا عَلَيْهِ الرَّجْمُ وَلَا يُجْلَدُ؟ وَقَدْ رَوَى عَنِ النَّبِيِّ ﷺ مِثْلَ هَذَا فِي غَيْرِ حَدِيثٍ فِي قِصَّةِ مَا عَزِيَ وَغَيْرِهِ أَنَّهُ أَمَرَ بِالرَّجْمِ وَلَمْ يَأْمُرْ أَنْ يُجْلَدَ قَبْلَ أَنْ يُرْجَمَ. وَالْعَمَلُ عَلَى هَذَا عِنْدَ بَعْضِ أَهْلِ الْعِلْمِ. وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ وَابْنِ الْمُبَارَكِ وَالشَّافِعِيِّ وَأَحْمَدَ.

According to Alī, Ubay bin Ka'b, Abū Dharr, Ḥasan Al-Baṣrī, Ishāq, Dāwūd and Ibn Mundhir, first he should be whipped, and then stoned.

**Chapter 9. Something Else About That (Refraining From Stoning The Pregnant Woman Until She Gives Birth)**

(المعجم ٩) - بَابُ [تَرْبِصِ الرَّجْمِ بِالْحُبْلَى حَتَّى تَضَع] (التحفة ٩)

1435. 'Imrān bin Ḥuṣain narrated: "A woman from Juhainah confessed before the Prophet ﷺ that she had committed adultery, and she said: 'I am pregnant.' So the Prophet ﷺ called for her guardian and said: 'Be good to her and if she gives birth to her child then tell me.' So he did so, and then he ﷺ gave the order that her clothes be bound tightly around her. Then he ordered her to be stoned and she was stoned. Then he performed (funeral) *Ṣalāt* for her. So 'Umar bin Al-Khaṭṭāb said to him: 'O Messenger of Allāh! You stoned her then you prayed for her?!' He said: 'She has repented a repentance that, if distributed among seventy of the people of Al-Madīnah, it would have sufficed them. Have you ever seen something more virtuous than her sacrificing herself for the sake of Allāh?'" (*Ṣaḥīḥ*)

[Abū 'Eisā said:] This *Ḥadīth* is [*Ḥasan*] *Ṣaḥīḥ*.

١٤٣٥ - حَدَّثَنَا الْحَسَنُ بْنُ عَلِيٍّ: حَدَّثَنَا عَبْدُ الرَّزَّاقِ: حَدَّثَنَا مَعْمَرٌ، عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ، عَنْ أَبِي قَلَابَةَ، عَنْ أَبِي الْمُهَلَّبِ، عَنْ عُمَرَ بْنِ حُصَيْنٍ أَنَّ أُمَّرَأَةً مِنْ جُهَيْنَةَ اعْتَرَفَتْ عِنْدَ النَّبِيِّ ﷺ بِالرَّزْنَا وَقَالَتْ أَنَا حُبْلَى. فَدَعَا النَّبِيُّ ﷺ وَلَيْهَا فَقَالَ: «أَحْسِنُ إِلَيْهَا فَإِذَا وَضَعَتْ حَمْلَهَا فَأَخْبِرْنِي» فَفَعَلَ فَأَمَرَ بِهَا فَشُدَّتْ عَلَيْهَا نِيَابُهَا ثُمَّ أَمَرَ بِرَجْمِهَا فَرُجِمَتْ ثُمَّ صَلَّى عَلَيْهَا فَقَالَ لَهُ عُمَرُ بْنُ الْخَطَّابِ: يَا رَسُولَ اللَّهِ! رَجِمْتَهَا ثُمَّ تَصَلَّى عَلَيْهَا؟! فَقَالَ: «لَقَدْ تَابَتْ تَوْبَةً لَوْ قُسِمَتْ بَيْنَ سَبْعِينَ مِنْ أَهْلِ الْمَدِينَةِ لَوَسِعَتْهُمْ، وَهَلْ وَجَدْتَ شَيْئًا أَفْضَلَ مِنْ أَنْ جَادَتْ بِنَفْسِهَا لِلَّهِ».

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ [حَسَنٌ] صَحِيحٌ.

تخریج: وأخرجه مسلم، الحدود، باب من اعترف على نفسه بالزنى، ح: ١٦٩٦ من حديث

يحيى بن أبي كثير به.

**Comments:**

The funeral prayer should be performed after stoning a fornicator. Most of the scholars support this point of view. According to Imām Mālik and Imām Aḥmad, elites of the society, the ruler, or head of the town, or city, should not perform the funeral prayer of a fornicator, but this is against a *Ṣaḥīḥ* and

clear narration. (*Ṣaḥīḥ Muslim* with *An-Nawawī*, v.2. p. 68.) It is agreed upon that a woman will not be stoned to death until the birth of the child. This is to save the child who is innocent.

### Chapter 10. What Has Been Related About Stoning The People Of The Book

(المعجم ١٠) - بَابُ مَا جَاءَ فِي رَجْمِ أَهْلِ الْكِتَابِ (التحفة ١٠)

**1436.** Ibn ‘Umar narrated that the Messenger of Allāh ﷺ stoned a Jew and a Jewess. (*Ṣaḥīḥ*)

١٤٣٦ - حَدَّثَنَا إِسْحَاقُ بْنُ مُوسَى الْأَنْصَارِيُّ: حَدَّثَنَا مَعْنٌ: حَدَّثَنَا مَالِكُ بْنُ أَنَسٍ عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ: أَنَّ رَسُولَ اللَّهِ ﷺ رَجَمَ يَهُودِيًّا وَيَهُودِيَّةً.

[Abū ‘Eisā said:] There is a long story in this *Ḥadīth*, and this *Ḥadīth* is *Ḥasan Ṣaḥīḥ*

[قَالَ أَبُو عِيَسَى:] وَفِي الْحَدِيثِ قِصَّةٌ، وَهَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ.

**تخريج:** متفق عليه، وأخرجه البخاري، الحدود، باب أحكام أهل الذمة وإحصانهم إذا زنوا، رفعوا إلى الإمام، ح: ٦٨٤١ ومسلم، ح: ١٦٩٩ من حديث مالك به وهو في الموطأ: ١٩٩/٢ بطوله.

#### Comments:

This narration is agreed upon and the events mentioned are in *Ṣaḥīḥ Al-Bukhārī* and *Ṣaḥīḥ Muslim*. A Jewish couple was brought to the presence of the Prophet ﷺ. They had committed illegal sexual intercourse. The Messenger of Allāh went to their quarter and asked them, “What do you find in the Torah as regarding the legal punishment of an adulterer?” They replied, “We blacken their face and humiliate them. We also announce their crime in public and lash them.” The Prophet said, “Bring the Torah and prove your statement if you are truthful.” They brought and opened the Torah and started reading it, when the reader reached the verse of *Rajm*’-stoning, he placed his hand over this verse, and read the verses preceding and following it. ‘Abdullāh bin Salām was beside the Prophet ﷺ, he asked the reader to lift his hand from the page, and he moved away his hand and the verse of stoning was written there. The Prophet gave the order that both of them should be stoned to death. (*Ṣaḥīḥ Muslim* v. 2. p. 69.)

**1437.** Jābir bin Samurah narrated that the Prophet ﷺ stoned a Jew and a Jewess. (*Ṣaḥīḥ*)

١٤٣٧ - حَدَّثَنَا هَنَادٌ: حَدَّثَنَا شَرِيكَ عَنْ سِمَاكِ بْنِ حَرْبٍ، عَنْ جَابِرِ بْنِ سَمْرَةَ: أَنَّ النَّبِيَّ ﷺ رَجَمَ يَهُودِيًّا وَيَهُودِيَّةً.

He said: There are narrations on this topic from Ibn ‘Umar, Al-Barā’, Jābir, Ibn Abī Awfā’, ‘Abdullāh bin Al-Ḥārith bin Jaz’, and Ibn ‘Abbās.

قَالَ: وَفِي الْبَابِ عَنِ ابْنِ عُمَرَ وَالْبَرَاءِ وَجَابِرِ وَابْنِ أَبِي أَوْفَى وَعَبْدِ اللَّهِ بْنِ الْحَارِثِ ابْنِ جَزْءٍ وَابْنِ عَبَّاسٍ.



[Abū 'Eisā said:] The *Hadīth* of Jābir bin Samurah is a *Ḥasan Gharīb Hadīth*. This is acted upon according to most of the people of knowledge, they said that when the people of the Book dispute and they bring their case to the Muslim judge, then he judges between them according to the Book and the *Sunnah* with the laws of (*Sharī'ah*) the Muslims. This is the view of Aḥmad and Ishāq. Some of them said that the punishment of adultery is not carried out on them. But the first view is more correct.

[قَالَ أَبُو عَيْسَى:] حَدِيثُ جَابِرِ بْنِ سَمُرَةَ حَدِيثٌ حَسَنٌ غَرِيبٌ. وَالْعَمَلُ عَلَى هَذَا عِنْدَ أَكْثَرِ أَهْلِ الْعِلْمِ قَالُوا: إِذَا اخْتَصَمَ أَهْلُ الْكِتَابِ وَتَرَافَعُوا إِلَى حُكَّامِ الْمُسْلِمِينَ حَكَمُوا بَيْنَهُمْ بِالْكِتَابِ وَالسُّنَّةِ وَبِأَحْكَامِ الْمُسْلِمِينَ. وَهُوَ قَوْلُ أَحْمَدَ وَإِسْحَاقَ وَقَالَ بَعْضُهُمْ: لَا يُقَامُ عَلَيْهِمُ الْحَدُّ فِي الزَّانَا. وَالْقَوْلُ الْأَوَّلُ أَصَحُّ.

تخریج: [صحيح] وأخرجه ابن ماجه، الحدود، باب رجم اليهودي واليهودية، ح: ٢٥٥٧ من حديث شريك به وللحديث شواهد منها الحديث السابق \* وفي الباب عن ابن عمر [تقدم: ١٤٣٦] والبراء [مسلم، ح: ١٧٠٠] وجابر [مسلم، ح: ١٧٠١] وابن أبي أوفى [البخاري، ح: ٦٨١٣] ومسلم، ح: ١٧٠٢ وأحمد: ٤/٣٥٥ وعبدالله بن الحارث بن جزء [البيهقي: ٨/٢١٦] وابن عباس [أحمد: ١/٢٦١].

**Comments:**

It is clear from this narration that if a law-suit is lodged in an Islamic Court by non-Muslims, the case will be decided according to Islamic Law. They were asked to bring the *Taurah* (Torah) just to prove to them that Islamic punishment is the same which has been prescribed in the *Taurah*. (See for details *Ṣaḥīḥ Muslim* v.2. p69. and *Tuḥfat Al-Aḥwadhī* v.2. p.325 and *Takmilah*. v.2. p.471-474.)

**Chapter 11. What Has Been Related About Banishment**

(المعجم ١١) - بَابُ مَا جَاءَ فِي النَّفْيِ  
(التحفة ١١)

**1438.** Ibn 'Umar narrated that the Prophet ﷺ lashed and banished, Abū Bakr lashed and banished, and 'Umar lashed and banished. (*Ṣaḥīḥ*)

١٤٣٨ - حَدَّثَنَا أَبُو كُرَيْبٍ وَيَحْيَى بْنُ أَكْثَمَ قَالَا: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ إِدْرِيسَ عَنْ عَبْدِ اللَّهِ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ: أَنَّ النَّبِيَّ ﷺ ضَرَبَ وَعَرَّبَ وَأَنَّ أَبَا بَكْرٍ ضَرَبَ وَعَرَّبَ وَأَنَّ عُمَرَ ضَرَبَ وَعَرَّبَ [قَالَ:] وَفِي الْبَابِ عَنْ أَبِي هُرَيْرَةَ وَرَبِيعِ بْنِ خَالِدٍ وَعُبَادَةَ بْنِ

[He said:] There are narrations on this topic from Abū Hurairah, Zaid bin Khālid, and 'Ubādah bin Aṣ-Ṣāmiṭ.

الصَّامِتِ .

[Abū 'Eisā said:] The *Hadīth* of Ibn 'Umar is a *Gharīb Hadīth*. It was reported by more than one narrator from 'Abdullāh bin Idrīs in *Marfū'* form. Some of them reported this *Hadīth* from 'Ubaidullāh, from Nāfi', from Ibn 'Umar: that Abū Bakr lashed and banished, and that 'Umar lashed and banished.

This was narrated to us by Abū Al-Ashajj (who said): " 'Abdullāh bin Idrīs narrated to us" and this is how this *Hadīth* was reported in other narrations from Ibn Idrīs, from 'Ubaidullāh bin 'Umar and it is similar to this. Similarly; Muḥammad bin Ishāq reported from Nāfi', from Ibn 'Umar, that Abū Bakr lashed and banished, and 'Umar lashed and banished. And he did not mention about the Prophet ﷺ in it. It is correct that the Prophet ﷺ banished. It was reported by Abū Hurairah, Zaid bin Khālid, 'Ubādah bin Aṣ-Ṣāmiṭ and others from the Prophet ﷺ.

This is acted upon according to the people of knowledge among the Companions of the Prophet ﷺ. Among them were Abū Bakr, 'Umar, 'Alī, Ubayy bin Ka'b, 'Abdullāh bin Mas'ūd, Abū Dharr and others. Similar has been reported from more than one of the *Fuqahā'* among the *Tābi'in*. This is the view of Sufyān Ath-Thawrī, Mālik bin Anas, 'Abdullāh bin Al-Mubāarak, Aṣh-Shāfi'i, Aḥmad, and Ishāq.

[قَالَ أَبُو عِيسَى:] حَدِيثُ ابْنِ عُمَرَ حَدِيثٌ غَرِيبٌ. رَوَاهُ غَيْرٌ وَاحِدٌ، عَنْ عَبْدِ اللَّهِ ابْنِ إِدْرِيسَ فَرَفَعُوهُ. وَرَوَى بَعْضُهُمْ عَنْ عَبْدِ اللَّهِ بْنِ إِدْرِيسَ هَذَا الْحَدِيثَ عَنْ عُبَيْدِ اللَّهِ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ أَنَّ أَبَا بَكْرٍ ضَرَبَ وَعَرَّبَ وَأَنَّ عُمَرَ ضَرَبَ وَعَرَّبَ.

حَدَّثَنَا بِذَلِكَ أَبُو سَعِيدٍ الْأَشْجِيُّ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ إِدْرِيسَ: وَهَكَذَا رَوَى هَذَا الْحَدِيثَ مِنْ غَيْرِ رِوَايَةِ ابْنِ إِدْرِيسَ، عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ نَحْوُ هَذَا. وَهَكَذَا رَوَاهُ مُحَمَّدُ ابْنُ إِسْحَاقَ عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ أَنَّ أَبَا بَكْرٍ ضَرَبَ وَعَرَّبَ وَأَنَّ عُمَرَ ضَرَبَ وَعَرَّبَ. وَلَمْ يُذَكِّرْ فِيهِ عَنِ النَّبِيِّ ﷺ. وَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ ﷺ التَّمْيِ. رَوَاهُ أَبُو هُرَيْرَةَ وَزَيْدُ ابْنِ خَالِدٍ وَعُبَادَةُ بْنُ الصَّامِتِ وَغَيْرُهُمْ عَنِ النَّبِيِّ ﷺ وَالْعَمَلُ عَلَى هَذَا عِنْدَ أَهْلِ الْعِلْمِ مِنْ أَصْحَابِ النَّبِيِّ ﷺ مِنْهُمْ أَبُو بَكْرٍ وَعُمَرُ وَعَلِيٌّ وَأَبِي بْنُ كَعْبٍ وَعَبْدُ اللَّهِ بْنُ مَسْعُودٍ وَأَبُو دَرٍّ وَغَيْرُهُمْ. وَكَذَلِكَ رَوَى عَنْ غَيْرِ وَاحِدٍ مِنْ فُقَهَاءِ التَّابِعِينَ. وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ وَمَالِكِ بْنِ أَنَسٍ وَعَبْدِ اللَّهِ بْنِ الْمُبَارَكِ وَالشَّافِعِيِّ وَأَحْمَدَ وَإِسْحَاقَ.

حديث أبي كريب به \* وفي الباب عن أبي هريرة [تقدم: ١٤٣٣] وزيد بن خالد [تقدم: ١٤٣٣] وعبادة بن الصامت [تقدم: ١٤٣٤] \* الحديث الموقوف: أخرجه البيهقي من حديث أبي سعيد الأشج به وسنده صحيح.

### Comments:

This issue has been discussed in the context of narration no. 1434. (For more details see *Tuhfat Al-Aḥwadhī* v.2. p. 326-327.)

## Chapter 12. What has Been Related About: The Legal Punishments Are Atonement For Those Who Receive Them

1439. ‘Ubādah bin Aṣ-Ṣāmiṭ narrated: “We were with the Prophet ﷺ [in a gathering] and he said: ‘Pledge to me that you will not associate [anything as] partners with Allāh, and that you will not steal nor commit adultery.’ He recited to them the *Āyah*.<sup>[1]</sup> (And he said:) ‘Whoever among you dies, then his reward is with Allāh, and whoever among you does some of this and then he is punished, it is an atonement for him. And whoever does some of this and Allāh covers it for him, then it is up to Allāh; if He wills, He will punish him, and if He wills, He will forgive him.’” (*Ṣaḥīḥ*)

[He said:] There are narrations on this topic from ‘Alī, Jarīr bin ‘Abdullāh, and *Khuzaimah bin Thābit*.

[Abū ‘Eisā said:] The *Ḥadīth* of ‘Ubādah bin Aṣ-Ṣāmiṭ is a *Ḥasan Ṣaḥīḥ Ḥadīth*. *Ash-Shāfi‘ī* said: “Regarding this topic – that the legal punishments serve as atonement for those who receive

(المعجم ١٢) - بَابُ مَا جَاءَ أَنَّ الْحُدُودَ  
كَفَّارَةً لِأَهْلِهَا (التحفة ١٢)

١٤٣٩ - حَدَّثَنَا قُتَيْبَةُ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنِ الزُّهْرِيِّ، عَنْ أَبِي إِدْرِيسَ الْخَوْلَانِيِّ، عَنْ عَبَادَةَ بْنِ الصَّامِتِ. قَالَ: كُنَّا عِنْدَ النَّبِيِّ ﷺ [فِي مَجْلِسٍ] فَقَالَ: «تُبَايِعُونِي عَلَى أَنْ لَا تُشْرِكُوا بِاللَّهِ [شَيْئًا] وَلَا تَسْرِقُوا وَلَا تَزْنُوا» قَرَأَ عَلَيْهِمُ الْآيَةَ «فَمَنْ وَفَى مِنْكُمْ فَأَجْرُهُ عَلَى اللَّهِ، وَمَنْ أَصَابَ مِنْ ذَلِكَ شَيْئًا فَعُوقِبَ عَلَيْهِ فَهُوَ كَفَّارَةٌ لَهُ، وَمَنْ أَصَابَ مِنْ ذَلِكَ شَيْئًا فَسَتَرَهُ اللَّهُ عَلَيْهِ فَهُوَ إِلَى اللَّهِ إِنْ شَاءَ عَذْبُهُ وَإِنْ شَاءَ عَفَرَ لَهُ» [قَالَ:] وَفِي الْبَابِ عَنْ عَلِيٍّ وَجَرِيرِ بْنِ عَبْدِ اللَّهِ وَخُزَيْمَةَ ابْنِ ثَابِتٍ.

[قَالَ أَبُو عَيْسَى:] حَدِيثُ عَبَادَةَ بْنِ الصَّامِتِ حَدِيثٌ حَسَنٌ صَحِيحٌ. وَقَالَ الشَّافِعِيُّ: لَمْ أَسْمَعْ - فِي هَذَا الْبَابِ أَنَّ الْحَدَّ يَكُونُ كَفَّارَةً لِأَهْلِهِ - شَيْئًا أَحْسَنَ مِنْ هَذَا الْحَدِيثِ. قَالَ الشَّافِعِيُّ: وَأُحِبُّ لِمَنْ أَصَابَ ذَنْبًا فَسَتَرَهُ اللَّهُ عَلَيْهِ أَنْ يَسْتُرَ عَلَى

<sup>[1]</sup> This refers to *Sūrat Al-Mumtahinah* (60:12). See *Tuhfat Al-Aḥwadhī*.

them – I have not heard anything more appropriate than this *Ḥadīth*.” Ash-Shāfi‘ī said: It is recommended for anyone who suffers to commit a sin which Allāh conceals for him, that he too conceal it, and repent for whatever is between him and his Lord.” Similarly it has been reported from Abū Bakr and ‘Umar, that they ordered a man to cover (the sin he committed).

نَفْسِهِ وَيَتُوبَ فِيمَا بَيْنَهُ وَبَيْنَ رَبِّهِ وَكَذَلِكَ رُوِيَ  
عَنْ أَبِي بَكْرٍ وَعُمَرَ أَنَّهُمَا أَمَرَا رَجُلًا أَنْ يَسْتُرَ  
عَلَى نَفْسِهِ.

تخريج: متفق عليه، وأخرجه البخاري، التفسير، باب: "إذا جاءك المؤمنات يباعدنك"،  
ح: ٤٨٩٤ مسلم، ح: ١٧٠٩ من حديث سفيان بن عيينة به \* وفي الباب عن علي [بأبي: ٢٦٢٦]  
وجريز بن عبدالله [لم أجده] وخزيمة بن ثابت [أحمد: ٢١٤/٥، ٢١٥].

#### Comments:

The *Ḥadd* punishment serves as an atonement, but it will not serve as an atonement of the offence if an offender continues the vice and does not give it up. Yet, Allāh is Most Gracious and Merciful, and one can count on His Mercy and Guidance to avoid the vices and sins.

### Chapter 13. What Has Been Related About Establishing Legal Punishments Upon The Slave Girl

1440. Abū Hurairah narrated that the Messenger of Allāh ﷺ said: "If one of your slave girls commits illegal sexual intercourse, then whip her three times according to the Book of Allāh, and if she does it again then sell her, even if it is for a rope made of hair." (*Ḥasan*)

[He said:] There are narrations on this topic from ‘Alī, Abū Hurairah, Zaid bin Khālid, and Shibl – from ‘Abdullāh bin Mālik Al-Awsī.

The *Ḥadīth* of Abū Hurairah is a *Ḥasan Ṣaḥīḥ Ḥadīth*. It has been reported from him through other

(المعجم ١٣) - بَابُ مَا جَاءَ فِي إِقَامَةِ  
الْحَدِّ عَلَى الْإِمَاءِ (التحفة ١٣)

١٤٤٠ - حَدَّثَنَا أَبُو سَعِيدٍ الْأَشْجِيُّ: حَدَّثَنَا  
أَبُو خَالِدٍ الْأَحْمَرُ: حَدَّثَنَا الْأَعْمَشُ عَنْ أَبِي  
صَالِحٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ  
ﷺ: «إِذَا زَنَّتْ أَمَةٌ أَحَدِكُمْ فَلْيَجْلِدْهَا ثَلَاثًا  
بِكِتَابِ اللَّهِ، فَإِنْ عَادَتْ فَلْيَبِعْهَا وَكُلَّوْ بِحَبْلٍ مِنْ  
شَعْرٍ» [قَالَ: ] وَفِي الْبَابِ عَنْ عَلِيٍّ وَأَبِي  
هُرَيْرَةَ وَزَيْدِ بْنِ خَالِدٍ وَشَيْبِلٍ، عَنْ عَبْدِ اللَّهِ بْنِ  
مَالِكِ الْأَوْسِيِّ.

[قَالَ أَبُو عِيسَى: ] حَدِيثُ أَبِي هُرَيْرَةَ  
حَدِيثٌ حَسَنٌ صَحِيحٌ.

routes, and this is acted upon according to some of the people of knowledge among the Companions of the Prophet ﷺ and others. They held the view that a man could implement the legal punishments upon his slaves without resorting to the *Sulṭān*. This is the view of Aḥmad and Ishāq. Some of them said that he has to bring them to the *Sulṭān*, and he may not implement the legal punishments himself. But the first view is more correct.

وَقَدْ رُويَ عَنْهُ مِنْ غَيْرِ وَجْهِ. وَالْعَمَلُ عَلَى هَذَا عِنْدَ بَعْضِ أَهْلِ الْعِلْمِ مِنْ أَصْحَابِ النَّبِيِّ ﷺ وَغَيْرِهِمْ رَأَوْا أَنَّ يُقِيمَ الرَّجُلُ الْحَدَّ عَلَى مَمْلُوكِهِ دُونَ السُّلْطَانِ. وَهُوَ قَوْلُ أَحْمَدَ، وَإِسْحَاقَ. وَقَالَ بَعْضُهُمْ: يُرْفَعُ إِلَى السُّلْطَانِ وَلَا يُقِيمُ الْحَدَّ هُوَ بِنَفْسِهِ وَالْقَوْلُ الْأَوَّلُ أَصَحُّ.

**تخریج:** [حسن] وأخرجه النسائي في الكبرى، ح: ٧٢٤٣ من حديث الأشج به وللحديث شواهد عند البخاري ومسلم وأبي داود، ح: ٤٤٧١ وغيرهم \* وفي الباب عن علي [يأتي: ١٤٤١] وأبي هريرة [تقدم: ١٤٣٣] وزيد بن خالد [تقدم: ١٤٣٣] وشبل [تقدم: ١٤٣٣] وعبدالله بن مالك الأوسي [أحمد: ٤/٣٤٣].

**Comments:**

According to the opinion of most of the people of knowledge, the owner of a slave is allowed to impose the *Hadd* punishment on his slave. In the view of Imām Mālik and some of the followers of Imām Shāfi‘ī the owner of the slave is not allowed to impose the *Hadd* punishment of theft. According to Imām Ath-Thawrī and Al-Awzā‘ī, only the *Hadd* punishment of fornication can be imposed on the slave by his owner. The *Ahnāf’s* point of view is that only the court has the right to impose the punishment of *Hadd*. Some others say that if the crime is clearly established and proven, and the owner himself is a man of honor and prestige, he can impose the *Hadd* punishment, otherwise, the matter must be referred to the court of justice.

**1441.** Abū ‘Abdur-Raḥmān As-Sulamī narrated: “Alī gave a *Khubbah* and said: ‘O people, establish the penalites upon your slaves, those married from them and those unmarried. A slave girl of the Prophet ﷺ comitted illegal sexual intercourse so he ordered me to whip her. I went to her and she was just experiencing her post-natal bleeding, so I feared that if I were to whip her I would kill her’ –

١٤٤١ - حَدَّثَنَا الْحَسَنُ بْنُ عَلِيٍّ الْخَلَّالُ: حَدَّثَنَا أَبُو دَاوُدَ الطَّيَالِسِيُّ: حَدَّثَنَا زَائِدَةُ [بْنُ قُدَامَةَ] عَنِ السُّدِّيِّ، عَنْ سَعْدِ بْنِ عُبَيْدَةَ، عَنْ أَبِي عَبْدِ الرَّحْمَنِ السُّلَمِيِّ قَالَ: خَطَبَ عَلِيٌّ فَقَالَ: يَا أَيُّهَا النَّاسُ، أَقِيمُوا الْحُدُودَ عَلَى أَرْقَائِكُمْ مَنْ أَحْصَنَ مِنْهُمْ وَمَنْ لَمْ يُحْصِنْ، وَإِنَّ أُمَّةَ لِرَسُولِ اللَّهِ ﷺ زَنَّتْ فَأَمْرِنِي أَنْ أُجْلِدَهَا، فَأَتَيْتُهَا فإِذَا هِيَ حَدِيثَةٌ عَهْدَ بِنَفْسٍ،

or he said: ‘she would die’ – ‘so I went to the Messenger of Allāh ﷺ and I told that to him. So he said: ‘You did well.’” (*Ṣaḥīḥ*)

[Abū ‘Eisā said:] This *Ḥadīth* is [*Ḥasan*] *Ṣaḥīḥ*. [As-Suddī’s (a narrator in this chain) name is Ismā‘īl bin ‘Abdur-Raḥmān, and he was one of the *Tābi‘īn*. He heard from Anas bin Mālik, and saw Ḥusain bin ‘Alī bin Abī Ṭālib, may Allāh be pleased with him].

تخریج: وأخرجه مسلم، الحدود، باب تأخير الحد عن النساء، ح: ١٧٠٥ من حديث الطيالسي به وهو في مسنده، ح: ١١٢.

**Comments:**

This narration indicates that a slave woman who gives birth to a child, *Hadd* punishment should not be applied on her immediately. She should be given enough time to suckle the baby. The same orders are for the punishment of a sick person. (*Ṣaḥīḥ Muslim* v. 2. P.71.)

**Chapter 14. What Has Been Related About Legal Punishment For The Drunkard**

1442. Abū Sa‘eed Al-Khudrī narrated that the Messenger of Allāh ﷺ implemented the penalty by beating forty times, with two shoes – Mis‘ar (one of the narrators) said: “I think it was for wine.” (*Da‘īf*)

[He said:] There are narrations on this topic from ‘Alī, ‘Abdur-Raḥmān bin Azhar, Abū Hurairah, As-Sā‘ib, Ibn ‘Abbās, and ‘Uqbah bin Al-Ḥārith.

[Abū ‘Eisā said:] The *Ḥadīth* of Abū Sa‘eed is a *Ḥasan Ḥadīth*. Abū Aṣ-Ṣiddiq An-Nājī’s name is Bakr bin ‘Amr [and they also call him Bakr bin Qais].

تخریج: [إسناده ضعيف] وأخرجه النسائي في الكبرى، ح: ٥٢٩٣ من حديث مسعر به \*

فَحَشِيْتُ إِنَّ أَنَا جَلَدْتُهَا أَنْ أَقْتَلَهَا - أَوْ قَالَ: تَمُوتُ - فَأَتَيْتُ رَسُولَ اللَّهِ ﷺ فَذَكَرْتُ ذَلِكَ لَهُ. فَقَالَ: «أَحْسَنْتَ».

[قَالَ أَبُو عِيْسَى:] هَذَا حَدِيثٌ [حَسَنٌ] صَحِيحٌ. [وَالسُّدِّيُّ اسْمُهُ إِسْمَاعِيلُ بْنُ عَبْدِ الرَّحْمَنِ وَهُوَ مِنَ التَّابِعِينَ، قَدْ سَمِعَ مِنْ أَنَسِ بْنِ مَالِكٍ وَرَأَى حُسَيْنَ بْنَ عَلِيٍّ بْنِ أَبِي طَالِبٍ رَضِيَ اللَّهُ عَنْهُ].

(المعجم ١٤) - بَابُ مَا جَاءَ فِي حَدِّ السُّكَرَانَ (التحفة ١٤)

١٤٤٢ - حَدَّثَنَا سُفْيَانُ بْنُ وَكِيعٍ: حَدَّثَنَا أَبِي عَنْ مِسْعَرٍ، عَنْ زَيْدِ الْعَمِيِّ، عَنْ أَبِي الصَّدِّيقِ، عَنْ أَبِي سَعِيدِ الْخُدْرِيِّ: أَنَّ رَسُولَ اللَّهِ ﷺ ضَرَبَ الْحَدَّ بِتَعْلَيْنِ أَرْبَعِينَ - قَالَ مِسْعَرٌ: أَظُنُّهُ فِي الْخَمْرِ - . [قَالَ:] وَفِي الْأَبِ عَنْ عَلِيٍّ، وَعَبْدِ الرَّحْمَنِ بْنِ أَزْهَرَ، وَأَبِي هُرَيْرَةَ، وَالسَّائِبِ، [وَأَبِي عَبَّاسٍ، وَوَعْقَبَةَ] بْنِ الْحَارِثِ.

[قَالَ أَبُو عِيْسَى:] حَدِيثُ أَبِي سَعِيدٍ حَدِيثٌ حَسَنٌ، وَأَبُو الصَّدِّيقِ النَّاجِي اسْمُهُ بَكْرُ بْنُ عَمْرٍو [وَيُقَالُ: بَكْرُ بْنُ قَيْسٍ].

تخریج: [إسناده ضعيف] وأخرجه النسائي في الكبرى، ح: ٥٢٩٣ من حديث مسعر به \*

زيد العمي ضعيف (تقريب) \* وفي الباب عن علي [البخاري، ح: ٦٧٧٨ ومسلم، ح: ١٧٠٧] وعبدالرحمن بن أزهر [أبو داود، ح: ٤٤٨٨] وأبي هريرة [البخاري، ح: ٦٧٧٧، ٦٧٨١] والسائب [البخاري، ح: ٦٧٧٩] وابن عباس [أبو داود، ح: ٤٤٧٦] وعقبة بن الحارث [البخاري، ح: ٦٧٧٥، ٢٣١٦].

**1443.** Anas narrated that a man who had drunk wine was brought to the Prophet ﷺ, so he beat him about forty times with two stalks of a palm tree. So Abū Bakr did similarly, and by the time ‘Umar became *Khalifah* he sought council from the people. And ‘Abdur-Rahmān bin ‘Awf said: ‘I see that the lightest penalty is eighty lashes,’ so ‘Umar ordered that. (*Ṣaḥīḥ*)

[Abū ‘Eisā said:] The *Ḥadīth* of Anas is a *Ḥasan Ṣaḥīḥ Ḥadīth*. This is acted upon according to the people of knowledge among the Companions of the Prophet ﷺ and others. The punishment for intoxication is eighty (lashes).

١٤٤٣ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ . حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ : حَدَّثَنَا شُعْبَةُ قَالَ : سَمِعْتُ قَتَادَةَ يُحَدِّثُ عَنْ أَنَسٍ عَنِ النَّبِيِّ ﷺ أَنَّهُ أُتِيَ بِرَجُلٍ قَدْ شَرِبَ الْخَمْرَ ، فَضْرَبَهُ بِجَرِيدَتَيْنِ نَحْوَ الْأَرْبَعِينَ . وَفَعَلَهُ أَبُو بَكْرٍ ، فَلَمَّا كَانَ عُمَرُ اسْتَشَارَ النَّاسَ فَقَالَ عَبْدُ الرَّحْمَنِ بْنُ عَوْفٍ : كَأَخْفِ الْحُدُودِ : ثَمَانِينَ ، فَأَمَرَ بِهِ عُمَرُ .

[قَالَ أَبُو عِيسَى:] حَدِيثُ أَنَسٍ حَدِيثٌ حَسَنٌ صَحِيحٌ ، وَالْعَمَلُ عَلَى هَذَا عِنْدَ أَهْلِ الْعِلْمِ مِنْ أَصْحَابِ النَّبِيِّ ﷺ وَغَيْرِهِمْ أَنَّ حَدَّ السُّكْرَانِ ثَمَانُونَ .

تخریج: متفق عليه، وأخرجه مسلم، الحدود، باب حد الخمر، ح: ١٧٠٦ عن محمد بن بشار والبخاري، ح: ٦٧٧٣ من حديث شعبة به مختصراً ومطولاً.

### Comments:

A date palm stick without leaves is called ‘*Jaridah*’. Hitting by two sticks may mean hitting with by each stick for forty times, making a total eighty strikes, and it may also mean hitting with two sticks together forty times, that is eighty strikes with two sticks together. (*Takmilah* v. 2. p. 488 and *Al-Mughnī* v. 3. p. 150.)

### Chapter 15. What Has Been Related About: Whoever Drinks Wine Then Lash Him, And Whoever Does It A Fourth Time, Then Kill Him

**1444.** Mu‘āwiyah narrated that the Messenger of Allāh ﷺ said: “Whoever drinks wine, then lash him. If he returns to it, then on the fourth time kill him.” (*Ḥasan*)

(المعجم ١٥) - بَابُ مَا جَاءَ مَنْ شَرِبَ الْخَمْرَ فَاجْلِدُوهُ وَمَنْ عَادَ فِي الرَّابِعَةِ فَاقْتُلُوهُ (التحفة ١٥)

١٤٤٤ - حَدَّثَنَا أَبُو كُرَيْبٍ : حَدَّثَنَا أَبُو بَكْرِ بْنُ عَيَّاشٍ عَنْ عَاصِمِ بْنِ بَهْدَلَةَ ، عَنْ أَبِي صَالِحٍ ، عَنْ مُعَاوِيَةَ قَالَ : قَالَ رَسُولُ اللَّهِ

[He said:] There are narrations on this topic from Abū Hurairah, Ash-Sharīd, Shurahbīl bin Aws, Jarīr, Abū Ar-Ramad Al-Balawī, and ‘Abdullāh bin ‘Amr.

[Abū ‘Eīsā said:] The *Hadīth* of Mu‘āwiyah was also reported like this by Ath-Thawrī; from ‘Āshim, from Abū Šāliḥ, from Mu‘āwiyah, from the Prophet ﷺ. Ibn [Juraij] and Ma‘mar reported it from Suhail bin Abī Šāliḥ, from his father, from Abū Hurairah, from the Prophet ﷺ. [He said:] I heard Muḥammad saying: “The *Hadīth* of Abū Šāliḥ from Mu‘āwiyah from the Prophet ﷺ about this topic is more correct than the *Hadīth* of Abū Šāliḥ from Abū Hurairah from the Prophet ﷺ. This was only the earlier order, then it was abrogated later.” This is what was reported from Muḥammad bin Ishāq, from Muḥammad bin Al-Munkadir, from Jābir bin ‘Abdullāh, from the Prophet ﷺ who said: “Whoever drinks wine, then lash him, if he returns to it, then on the fourth time kill him.” He said: “Then a man who had been drinking was brought to the Prophet ﷺ a fourth time, so he beat him, he did not kill him.” Similar was reported by Az-Zuhri from Qabiṣah bin Dhu‘aib from the Prophet ﷺ, he (Qabiṣah) said: “so the order to kill was lifted, and that was a granted favor (from the Law-Giver).”

This [*Hadīth*] is acted upon according to the people of knowledge in general, we do not know of any disagreement between

ﷺ: «مَنْ شَرِبَ الْخَمْرَ فَاجْلِدُوهُ فَإِنْ عَادَ فِي الرَّابِعَةِ فَاقْتُلُوهُ» [قَالَ:] وفي الباب عن أبي هريرة، والشريد، وشرحبيل بن أوس، وجريز، وأبي الرميد البلوي، وعبد الله بن عمرو.

[قَالَ أَبُو عِيسَى:] حَدِيثُ مُعَاوِيَةَ، هَكَذَا رَوَى الثَّوْرِيُّ أَيْضًا عَنْ عَاصِمٍ، عَنْ أَبِي صَالِحٍ، عَنْ مُعَاوِيَةَ عَنِ النَّبِيِّ ﷺ. وَرَوَى ابْنُ [جُرَيْجٍ] وَمَعْمَرٌ عَنْ سُهَيْلِ بْنِ أَبِي صَالِحٍ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ ﷺ. [قَالَ:] سَمِعْتُ مُحَمَّدًا يَقُولُ: حَدِيثُ أَبِي صَالِحٍ عَنْ مُعَاوِيَةَ عَنِ النَّبِيِّ ﷺ فِي هَذَا أَصَحُّ مِنْ حَدِيثِ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ ﷺ. وَإِنَّمَا كَانَ هَذَا فِي أَوَّلِ الْأَمْرِ ثُمَّ نُسِخَ بَعْدُ. هَكَذَا رَوَى مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ مُحَمَّدِ بْنِ الْمُكَدِّرِ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ عَنِ النَّبِيِّ ﷺ قَالَ: «إِنَّ مَنْ شَرِبَ الْخَمْرَ فَاجْلِدُوهُ، فَإِنْ عَادَ فِي الرَّابِعَةِ فَاقْتُلُوهُ». قَالَ: ثُمَّ أَتَى النَّبِيُّ ﷺ بَعْدَ ذَلِكَ بِرَجُلٍ قَدْ شَرِبَ فِي الرَّابِعَةِ فَضْرَبَهُ وَلَمْ يَقْتُلْهُ. وَكَذَلِكَ رَوَى الزُّهْرِيُّ عَنْ قَبِيصَةَ بْنِ دُوَيْبٍ عَنِ النَّبِيِّ ﷺ نَحْوَ هَذَا قَالَ: فَرُفِعَ الْقَتْلُ وَكَانَتْ رُحْصَةً.

وَالْعَمَلُ عَلَى هَذَا [الْحَدِيثِ] عِنْدَ عَامَّةِ أَهْلِ الْعِلْمِ، لَا نَعْلَمُ بَيْنَهُمْ اخْتِلَافًا فِي ذَلِكَ فِي الْقَدِيمِ وَالْحَدِيثِ. وَمِمَّا يُقْوَى هَذَا مَا رَوَى عَنِ النَّبِيِّ ﷺ مِنْ أَوْجِهِ كَثِيرَةً، أَنَّهُ



them about this, neither the earlier or the latter among them. What strengthens this, is what is reported from the Prophet ﷺ through many routes, that he said: "The blood of a Muslim man who testifies to *Lā ilāha illallāh* and, that I am the Messenger of Allāh, is not lawful except for one of three: A life for a life, the (married) adulterer, and leaving his religion."

قَالَ: «لَا يَحِلُّ دَمُ امْرِئٍ مُسْلِمٍ يَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَنَّي رَسُولُ اللَّهِ إِلَّا بِأَحَدِي ثَلَاثٍ: النَّفْسُ بِالنَّفْسِ، وَالنِّيبُ الزَّانِي، وَالنَّارُكُ لِذِيهِ».

**تخریج:** [حسن] وأخرجه أبو داود، الحدود، باب: إذا تابع في شرب الخمر، ح: ٤٤٨٢ وابن ماجه، ح: ٢٥٧٣ من حديث عاصم به وصححه ابن حبان، ح: ١٥١٩، والذهبي في تلخيص المستدرک: ٣٧٢/٤ وللحديث طرق أخرى \* وفي الباب عن أبي هريرة [أبو داود، ح: ٤٤٨٤] والشريد [أحمد: ٣٨٨/٤] والدارمي: [٢٣١٨] وشرحيل بن أوس [أحمد: ٢٣٤/٤] وعبد بن حميد، ح: ٤٠٨] وجريز [البخاري في التاريخ الكبير: ١٤٢/٣] والحاكم: ٣٧١/٤ والطبراني في الكبير: ٢/٣٣٥، ح: ٢٣٩٧، ٢٣٩٨] وأبي الرمد البلوي [الطبراني في الكبير: ٣٥٦/٢٢، ح: ٨٩٣] وعبدالله ابن عمرو [أحمد: ١٦٦/٢، ١٩١] وعبدالله بن عمر [أبو داود، ح: ٤٤٨٣] \* حديث معمر: أحمد: ٨٠/٢ والنسائي في الكبرى، ح: ٥٢٩٦ وسنده صحيح \* حديث محمد بن إسحاق: النسائي في الكبرى، ح: ٥٣٠٢، ٥٣٠٣ والبيهقي: ٣١٤/٨ وهو حديث صحيح \* وحديث الزهري: أبو داود، ح: ٤٤٨٥، قبضة سمعه من صحابي لا نعرفه، انظر المحلى: ٣٦٨/١١.

**Comments:**

The majority of the scholars hold the view that if a person who had been punished for drinking alcohol is found guilty of committing the same offence for the four time, he should not be given capital punishment, as opposed to Ibn Ḥazm who believed otherwise.

**Chapter 16. What Has Been Related About: For How Much (Wealth) Is The Thief's Hand Cut Off?**

(المعجم ١٦) - **بَابُ مَا جَاءَ فِي كَمِّ يَقْطَعُ السَّارِقُ** (التحفة ١٦)

1445. 'Āishah narrated that the Prophet ﷺ used to cut the hand for a fourth of a Dinār and beyond that. (*Ṣaḥīh*)

١٤٤٥ - حَدَّثَنَا عَلِيُّ بْنُ حُجْرٍ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنِ الزُّهْرِيِّ، أَخْبَرْتُهُ عَمْرَةَ عَنْ عَائِشَةَ: أَنَّ النَّبِيَّ ﷺ كَانَ يَقْطَعُ فِي رُبْعٍ دِينَارًا فَصَاعِدًا.

[Abū 'Eisā said:] The *Ḥadīth* of 'Āishah is a *Ḥasan Ṣaḥīh Ḥadīth*. This *Ḥadīth* has been reported through other routes from 'Amrah, from 'Āishah in *Marfū'* form. Some

[قَالَ أَبُو عِيسَى:] حَدِيثُ عَائِشَةَ حَدِيثٌ حَسَنٌ صَحِيحٌ. وَقَدْ رَوَى هَذَا الْحَدِيثُ مِنْ غَيْرِ

of them reported it from ‘Amrah, from ‘Aishah in *Mawqūf* form.

وَجُوْهُ عَنْ عَمْرَةَ، عَنْ عَائِشَةَ مَرْفُوعًا، وَرَوَاهُ بَعْضُهُمْ عَنْ عَمْرَةَ، عَنْ عَائِشَةَ مَوْقُوفًا.

تخريج: متفق عليه، وأخرجه مسلم، الحدود، باب حد السرقة ونصابها، ح: ١٦٨٤ من حديث سفيان بن عيينة والبخاري، ح: ٦٧٨٩ من حديث الزهري به.

1446. Ibn ‘Umar narrated: “The Messenger of Allāh ﷺ cut the hand for a shield worth three Dirham.” (*Ṣaḥīḥ*)

[He said:] There are narrations on this topic from Sa‘d, ‘Abdullāh bin ‘Amr, Ibn ‘Abbās, Abū Hurairah, and Ayman.

[Abū ‘Eisā said:] The *Ḥadīth* of Ibn ‘Umar 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. Among them were Abū Bakr Aṣ-Ṣiddīq who cut for five Dirham. It has been reported that ‘Uthmān and ‘Alī cut for a fourth of a Dīnār. It has been reported that Abū Hurairah and Abū Sa‘eed said that the hand is cut off for five Dirham. This is acted upon according to some of the *Fuqahā’* among the *Ṭābi‘īn*, it is the view of Mālik bin Anas, Ash-Shāfi‘ī, Aḥmad, and Ishāq. They held the view that the hand was cut off for a fourth of a Dīnār and whatever was beyond that.

It has been reported that Ibn Mas‘ūd said that it is not cut for less than a Dīnār or ten Dirham. And this is a *Mursal Ḥadīth* which was reported by Al-Qāsim bin ‘Abdur-Raḥmān from Ibn Mas‘ūd, and Al-

١٤٤٦ - حَدَّثَنَا قُتَيْبَةُ: حَدَّثَنَا اللَّيْثُ عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ قَالَ: قَطَعَ رَسُولُ اللَّهِ ﷺ فِي مِجَنٍّ قِيَمَتُهُ ثَلَاثَةُ دَرَاهِمٍ.

[قَالَ:] وَفِي الْبَابِ عَنْ سَعْدٍ، وَعَبْدِ اللَّهِ ابْنِ عَمْرٍو، وَابْنِ عَبَّاسٍ، وَأَبِي هُرَيْرَةَ، وَأَيْمَانَ.

[قَالَ أَبُو عِيْسَى:] حَدِيثُ ابْنِ عُمَرَ حَدِيثٌ حَسَنٌ صَحِيحٌ، وَالْعَمَلُ عَلَى هَذَا عِنْدَ بَعْضِ أَهْلِ الْعِلْمِ مِنْ أَصْحَابِ النَّبِيِّ ﷺ، مِنْهُمْ: أَبُو بَكْرٍ الصِّدِّيقُ قَطَعَ فِي خَمْسَةِ دَرَاهِمٍ. وَرُوِيَ عَنْ عُثْمَانَ وَعَلِيٍّ: أَنَّهُمَا قَطَعَا فِي رُبْعِ دِينَارٍ. وَرُوِيَ عَنْ أَبِي هُرَيْرَةَ وَأَبِي سَعِيدٍ أَنَّهُمَا قَالَا: تُقَطَعُ الْيَدُ فِي خَمْسَةِ دَرَاهِمٍ. وَالْعَمَلُ عَلَى هَذَا عِنْدَ بَعْضِ فُقَهَاءِ التَّابِعِينَ. وَهُوَ قَوْلُ مَالِكِ بْنِ أَنَسٍ، وَالشَّافِعِيِّ، وَأَحْمَدَ، وَإِسْحَاقَ: رَأَوْا الْقَطْعَ فِي رُبْعِ دِينَارٍ فَصَاعِدًا.

وَقَدْ رُوِيَ عَنِ ابْنِ مَسْعُودٍ أَنَّهُ قَالَ: لَا قَطْعَ إِلَّا فِي دِينَارٍ أَوْ عَشْرَةِ دَرَاهِمٍ. وَهُوَ حَدِيثٌ مُرْسَلٌ رَوَاهُ الْقَاسِمُ بْنُ عَبْدِ الرَّحْمَنِ عَنِ ابْنِ مَسْعُودٍ. وَالْقَاسِمُ لَمْ يَسْمَعْ مِنْ ابْنِ مَسْعُودٍ. وَالْعَمَلُ عَلَى هَذَا عِنْدَ بَعْضِ أَهْلِ الْعِلْمِ. وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ وَأَهْلِ

Qāsim did not hear from Ibn Mas'ūd. This is acted upon according to some of the people of knowledge, it is the view of Sufyān Ath-Thawrī and the people of Al-Kūfah. They said that the hand is not cut off for less than ten Dirham.

[It has been reported that 'Alī said that there is no cutting of hand for less than ten Dirham. But its chain of narration is not connected.]

**تخریج:** متفق عليه، وأخرجه مسلم، الحدود، أيضًا، ح: ١٦٨٦ عن قتيبة والخاري، ح: ٦٧٩٥ من حديث الليث بن سعد به \* وفي الباب عن سعد [ابن ماجه، ح: ٢٥٨٦] وعبدالله بن عمرو [أبو داود، ح: ٤٣٩٠] وأصله عند الترمذي، ح: ١٢٨٩ [وابن عباس [أبو داود، ح: ٤٣٨٧] وأبي هريرة [مسلم، ح: ١٦٨٧] وأيمن [النسائي، ح: ٤٩٤٦-٤٩٥٢].

### Chapter 17. What Has Been Related About Hanging The Hand Of The Thief (Around His Neck)

1447. 'Abdur-Raḥmān bin Muḥairiz said: "I asked Faḍālah bin 'Ubaid about hanging the hand around the neck of the thief: 'Is this from the *Sunnah*?' He said: 'A man came to the Messenger of Allāh ﷺ with a thief so his hand was cut off, and then he ordered that it be hung around his neck.'" (Da'if)

[Abū 'Eisā said:] This *Hadīth* is *Ḥasan Gharīb*, we do not know of it except as a narration of 'Umar bin 'Alī Al-Muqaddamī from Al-Ḥajjāj bin Arṭāh. 'Abdur-Raḥmān bin Muḥairiz is the brother of 'Abdullāh bin Muḥairiz and he is from Ash-Shām.

**تخریج:** [إسناده ضعيف] وأخرجه أبو داود، الحدود، باب: في السارق تعلق يده في عنقه، ح: ٤٤١١ عن قتيبة به وقال النسائي: ٩٢/٨، ح: ٤٩٨٦ "الحجاج بن أرطاة ضعيف ولا يحتج

الْكُوفَةِ، قَالُوا: لَا قَطَعَ فِي أَقَلِّ مِنْ عَشْرَةِ دَرَاهِمَ [وَرُوِيَ عَنْ عَلِيٍّ أَنَّهُ قَالَ: لَا قَطَعَ فِي أَقَلِّ مِنْ عَشْرَةِ دَرَاهِمَ وَلَيْسَ إِسْنَادُهُ بِمُتَّصِلٍ].

### (المعجم ١٧) - بَابُ مَا جَاءَ فِي تَعْلِيْقِ يَدِ السَّارِقِ (التحفة ١٧)

١٤٤٧ - حَدَّثَنَا قُتَيْبَةُ: حَدَّثَنَا عُمَرُ بْنُ عَلِيٍّ الْمَقْدَمِيُّ: حَدَّثَنَا الْحَجَّاجُ عَنْ مَكْحُولٍ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ مُحَيْرِيزٍ قَالَ: سَأَلْتُ فَضَالَهَ بْنَ عُبَيْدٍ عَنْ تَعْلِيْقِ الْيَدِ فِي عُنُقِ السَّارِقِ، أَمِنَ السُّنَّةَ هُوَ؟ قَالَ: أَتَيْتُ رَسُولَ اللَّهِ ﷺ بِسَارِقٍ فَقُطِعَتْ يَدُهُ ثُمَّ أَمَرَ بِهَا فَعُلِّقَتْ فِي عُنُقِهِ.

[قَالَ أَبُو عِيْسَى:] هَذَا حَدِيثٌ حَسَنٌ غَرِيبٌ لَا نَعْرِفُهُ إِلَّا مِنْ حَدِيثِ عُمَرَ بْنِ عَلِيٍّ الْمَقْدَمِيِّ عَنِ الْحَجَّاجِ بْنِ أَرْطَاةَ، وَعَبْدُ الرَّحْمَنِ بْنُ مُحَيْرِيزٍ هُوَ أَخُو عَبْدِ اللَّهِ بْنِ مُحَيْرِيزٍ شَامِيٍّ.

بحدِيثه " ومدلس وعنعن .

### Comments:

This punishment is awarded to make a sign of warning for others. Imām Shāfi'ī and Aḥmad support this view, and the *Aḥnāf* say that the court has the right and choice of carrying it out. (*Tuḥfat Al-Aḥwadhī* v. 2. p. 332.)

### Chapter 18. What Has Been Related About The Traitor, The Embezzler And The Plunderer

(المعجم ١٨) - بَابُ مَا جَاءَ فِي الْخَائِنِ وَالْمُخْتَلِسِ وَالْمُتَّهَبِ (التحفة ١٨)

**1448.** Jābir narrated that the Prophet ﷺ said: "There is no cutting of the hand for the traitor or the embezzler, nor the plunderer." (*Ṣaḥīḥ*)

[Abū 'Eisā said:] This *Ḥadīth* is *Ḥasan Ṣaḥīḥ*. This is acted upon according to the people of knowledge. Mughīrah bin Muslim narrated it – just as Ibn Juraj did – from Abū Az-Zubair, from Jābir, from the Prophet ﷺ, and it is similar. Mughīrah bin Muslim is from Al-Baṣrah, and he is the brother of 'Abdul-'Azīz Al-Qasmālī. This is what 'Alī bin Al-Madīnī said.

١٤٤٨ - حَدَّثَنَا عَلِيُّ بْنُ حَشْرَمٍ: حَدَّثَنَا عَيْسَى بْنُ يُونُسَ عَنِ ابْنِ جُرَيْجٍ، عَنْ أَبِي الزُّبَيْرِ، عَنْ جَابِرِ عَنِ النَّبِيِّ ﷺ قَالَ: «لَيْسَ عَلَى خَائِنٍ وَلَا مُتَّهَبٍ وَلَا مُخْتَلِسٍ قَطْعٌ.» [قَالَ أَبُو عَيْسَى:] هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ، وَالْعَمَلُ عَلَى هَذَا عِنْدَ أَهْلِ الْعِلْمِ. وَقَدْ رَوَى مُغِيرَةُ بْنُ مُسْلِمٍ عَنْ أَبِي الزُّبَيْرِ، عَنْ جَابِرٍ عَنِ النَّبِيِّ ﷺ نَحْوَ حَدِيثِ ابْنِ جُرَيْجٍ وَمُغِيرَةَ بْنُ مُسْلِمٍ هُوَ بَصْرِيٌّ أَخُو عَبْدِ الْعَزِيزِ الْقَسْمَلِيِّ كَذَا قَالَ عَلِيُّ بْنُ الْمَدِينِيِّ.

تخریج: [صحیح] وأخرجه أبو داود، الحدود، باب القطع، في الخلسة والخيانة، ح: ٤٣٩١ والنسائي، ح: ٤٩٧٥، ٤٩٧٦ وابن ماجه، ح: ٢٥٩١ من حديث ابن جريج به وصرح بالسماع عند الدارمي: ١٧٥/٢ وغيره وصرحه ابن حبان، ح: ١٥٠٢-١٥٠٤ وتقدم طرفه في تخریج حديث: ١١٢٣.

### Comments:

According to Qāḍī 'Iyād, cutting of hand is only the punishment for stealing; robbery, plunder or embezzlement is more than stealing. These offences are terrorist activities and cause of creating violence and disturbances in the society, so the state, on such actions, can award severe punishment in the light of Verse 34 of *Sūrat Al-Mā'idah*. The punishment may be execution or crucifixion.

### Chapter 19. What Has Been Related About Not Cutting The Hand For (Date) Fruits Or Palm Marrow

1449. Rāfi‘ bin Khadīj narrated that he heard the Messenger of Allāh ﷺ say: “There is no cutting of the hand for fruits or palm marrow.” (*Sahih*)

[Abū ‘Eisā said:] This is what some of them reported from Yaḥyā bin Sa‘eed, from Muḥammad bin Yaḥyā bin Ḥabbān, from his paternal uncle Wāsi‘ bin Ḥabbān, from Rāfi‘ [bin Khadīj], from the Prophet ﷺ, and it is similar to the narration of Al-Laith bin Sa‘d.

Mālik bin Anas and others reported this *Hadīth* from Yaḥyā bin Sa‘eed, from Muḥammad bin Yaḥyā bin Ḥabbān, from Rāfi‘ bin Khadīj, from the Prophet ﷺ, and they did not mention: “from Wāsi‘ bin Ḥabbān” in it.

(المعجم ١٩) - بَابُ مَا جَاءَ: لَا قَطْعَ فِي ثَمَرٍ وَلَا كَثْرٍ (التحفة ١٩)

١٤٤٩ - حَدَّثَنَا قُتَيْبَةُ: حَدَّثَنَا اللَّيْثُ عَنْ يَحْيَى بْنِ سَعِيدٍ، عَنْ مُحَمَّدِ بْنِ يَحْيَى بْنِ حَبَّانَ، عَنْ عَمِّهِ وَاسِعِ بْنِ حَبَّانَ، أَنَّ رَافِعَ ابْنَ خَدِيجٍ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «لَا قَطْعَ فِي ثَمَرٍ وَلَا كَثْرٍ».

[قَالَ أَبُو عِيسَى:] هَكَذَا رَوَى بَعْضُهُمْ عَنْ يَحْيَى بْنِ سَعِيدٍ، عَنْ مُحَمَّدِ بْنِ يَحْيَى بْنِ حَبَّانَ، عَنْ عَمِّهِ وَاسِعِ بْنِ حَبَّانَ، عَنْ رَافِعِ [ابْنِ خَدِيجٍ] عَنِ النَّبِيِّ ﷺ نَحْوَ رِوَايَةِ اللَّيْثِ ابْنِ سَعْدٍ.

وَرَوَى مَالِكُ بْنُ أَنَسٍ وَغَيْرُهُ وَاجِدٌ هَذَا الْحَدِيثَ عَنْ يَحْيَى بْنِ سَعِيدٍ، عَنْ مُحَمَّدِ بْنِ يَحْيَى بْنِ حَبَّانَ، عَنْ رَافِعِ بْنِ خَدِيجٍ عَنِ النَّبِيِّ ﷺ وَلَمْ يَذْكُرُوا فِيهِ: عَنْ وَاسِعِ بْنِ حَبَّانَ.

تخريج: [إسناده صحيح] وأخرجه النسائي: ٨٧/٨، ٨٨، ح: ٤٩٧٠ (قطع السارق، باب ما لا قطع فيه) عن قتيبة به وصححه ابن الجارود، ح: ٨٢٦ وابن حبان، ح: ١٥٠٥ وحديث مالك في الموطأ: ٨٣٩/٢ (يحيى).

#### Comments:

Here the fruit means those fruits which are still on trees. According to Imām Abū Ḥanīfah’s view, cutting the hand is not applicable for stealing edibles, but in the view of other *A’immah* if these edibles are not secured and saved in a house, or by an enclosure, then there is no punishment of cutting the hand. This punishment is applicable for stealing a thing from a protected place. (*Al-Mughni* v. 12. p. 424. and *Aridhatul Ahwadhī* v. 6. p. 229 & 437.)

## Chapter 20. What Has Been Related About The Hands Not Being Cut In Battles

**1450.** Busr bin Arṭāh narrated that the Prophet ﷺ said: “The hands are not cut in battles.” (*Ṣaḥīḥ*)

[Abū ‘Eisā said:] This *Ḥadīth* is *Gharīb*. Others besides Ibn Lahī‘ah reported similar to this with this chain, and he also said: “Busr bin Abī Arṭāt.”

This is acted upon according to some of the people of knowledge, among them Al-Awzā‘ī. They did not see that the legal punishments should be carried out in battles in the presence of the enemy, fearing that the one the punishment was implemented upon may join the enemy. So when the *Imām* has left the land of war, and returned to the land of Islam, he applies the punishment on those deserving. This was said by Al-Awzā‘ī.

(المعجم ٢٠) - بَابُ مَا جَاءَ أَنْ لَا يُقَطَّعَ الْأَيْدِي فِي الْعَزْوِ (التحفة ٢٠)

١٤٥٠ - حَدَّثَنَا قُتَيْبَةُ: حَدَّثَنَا ابْنُ لَهَيْعَةَ عَنْ عِيَّاشِ بْنِ عَبَّاسِ الْبَصْرِيِّ، عَنْ شَيْبَةَ بْنِ يَثْبَانَ، عَنْ جُنَادَةَ بْنِ أَبِي أُمَيَّةَ، عَنْ بُسْرِ بْنِ أَرْطَاءَةَ قَالَ: سَمِعْتُ النَّبِيَّ ﷺ يَقُولُ: «لَا يُقَطَّعُ الْأَيْدِي فِي الْعَزْوِ».

[قَالَ أَبُو عِيْسَى:] هَذَا حَدِيثٌ غَرِيبٌ، وَقَدْ رَوَاهُ غَيْرُ ابْنِ لَهَيْعَةَ بِهَذَا الْإِسْنَادِ نَحْوَ هَذَا، وَقَالَ بُسْرُ بْنُ أَبِي أَرْطَاءَةَ أَيْضًا. وَالْعَمَلُ عَلَى هَذَا عِنْدَ بَعْضِ أَهْلِ الْعِلْمِ مِنْهُمْ الْأَوْزَاعِيِّ لَا يَرَوْنَ أَنْ يَقَامَ الْحَدُّ فِي الْعَزْوِ بِحَضْرَةِ الْعَدُوِّ مَخَافَةَ أَنْ يَلْحَقَ، مَنْ يَقَامُ عَلَيْهِ الْحَدُّ، بِالْعَدُوِّ، فَإِذَا خَرَجَ الْإِمَامُ مِنْ أَرْضِ الْحَرْبِ وَرَجَعَ إِلَى دَارِ الْإِسْلَامِ أَقَامَ الْحَدُّ عَلَى مَنْ أَصَابَهُ. كَذَلِكَ قَالَ الْأَوْزَاعِيُّ.

تخریج: [صحيح] وأخرجه أبو داود، الحدود، باب السارق يسرق في الغزو أيقطع؟، ح: ٤٤٠٨ والنسائي، ح: ٤٩٨٢ من حديث عباس بن عياش به وقال ابن معين: "هذا إسناد شامي".

### Comments:

This narration ‘Ubādah bin Aṣ-Ṣāmit describes that *Hudūd* punishments are to be carried out and implemented at all places, in travel and in dwellings. This narration reports that the *Hadd* punishment of cutting the hand is not implemented for stealing spoils because a pilferer thinks himself a shareholder of the spoils. In the case of cutting off his hand, there is the possibility that he may join the enemy’s lines and commit the crime of apostasy.

**Chapter 21. What Has Been Related About A Man Having Relations With The Slave Girl Of His Wife**

**1451.** Ḥabīb bin Sālīm said: “A man was brought to An-Nu‘mān bin Bashīr who had relations with the slave girl of his wife. He said: ‘I give you a judgement about her case according to the judgement of the Messenger of Allāh ﷺ: If she made her lawful for him, then I will lash him one hundred times, and if she did not make her lawful, then I will stone him.’” (*Hasan*)

**تخریج:** [حسن] وأخرجه ابن ماجه، الحدود، باب من وقع على جارية امرأته، ح: ٢٥٥١ والنسائي، ح: ٣٣٦٤ من حديث قتادة به والسند معلول وله شاهد عند ابن ماجه، ح: ٢٥٥٢ وغيره وسنده حسن.

**1452.** (Another chain) from An-Nu‘mān bin Bashīr with similar. [And it has been reported that Qatādah said: “Ḥabīb bin Sālīm wrote to me about him.” And, Abū Bash-shār (one of the narrators) did not hear this from Ḥabīb bin Sālīm as well, he only reported it from Khālīd bin ‘Urfuṭah.] (*Hasan*)

[He said:] There is something similar on this topic from Salamah bin Al-Muḥabbqa.

[Abū ‘Eīsā said:] The chain for the *Hadīth* of An-Nu‘mān contains some confusion (*Idṭirāb*). He said: I heard Muḥammad bin Ismā‘īl saying: “Qatādah also did not hear this *Hadīth* from Ḥabīb bin Sālīm, he only reported it from Khālīd bin ‘Urfuṭah.”

[Abū ‘Eīsā said:] The people of

(المعجم ٢١) - بَابُ مَا جَاءَ فِي الرَّجُلِ يَفْعُ عَلَى جَارِيَةِ امْرَأَتِهِ (التحفة ٢١)

١٤٥١ - حَدَّثَنَا عَلِيُّ بْنُ حُجْرٍ: حَدَّثَنَا هُشَيْمٌ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ وَأَيُّوبَ بْنِ مَسْكِينٍ، عَنْ قَتَادَةَ، عَنْ حَبِيبِ بْنِ سَالِمٍ قَالَ: رُفِعَ إِلَى التُّعْمَانِ بْنِ بَشِيرٍ رَجُلٌ وَقَعَ عَلَى جَارِيَةِ امْرَأَتِهِ فَقَالَ: لِأَفْضِيئَ فِيهَا بِقِضَاءِ رَسُولِ اللَّهِ ﷺ، لَئِنْ كَانَتْ أَحَلَّتْهَا لَهُ لِأَجْلَدَنَّهُ مِائَةً، وَإِنْ لَمْ تَكُنْ أَحَلَّتْهَا لَهُ رَجَمْتُهُ.

١٤٥٢ - حَدَّثَنَا عَلِيُّ بْنُ حُجْرٍ: حَدَّثَنَا هُشَيْمٌ عَنْ أَبِي بَشِيرٍ، عَنْ حَبِيبِ بْنِ سَالِمٍ، عَنِ التُّعْمَانِ بْنِ بَشِيرٍ نَحْوَهُ [وَيُرْوَى عَنْ قَتَادَةَ أَنَّهُ قَالَ: كَتَبَ بِهِ إِلَيَّ حَبِيبُ بْنُ سَالِمٍ. وَأَبُو بَشَارٍ لَمْ يَسْمَعْ مِنْ حَبِيبِ بْنِ سَالِمٍ هَذَا أَيْضًا، إِنَّمَا رَوَاهُ عَنْ خَالِدِ بْنِ عُرْفُطَةَ. قَالَ:] وَفِي الْبَابِ عَنْ سَلَمَةَ بْنِ الْمُحَبِّقِ نَحْوَهُ.

[قَالَ أَبُو عِيْسَى:] حَدِيثُ التُّعْمَانِ فِي إِسْنَادِهِ اضْطِرَابٌ، قَالَ: سَمِعْتُ مُحَمَّدًا يَقُولُ: لَمْ يَسْمَعْ قَتَادَةُ مِنْ حَبِيبِ بْنِ سَالِمٍ هَذَا الْحَدِيثَ أَيْضًا، إِنَّمَا رَوَاهُ عَنْ خَالِدِ بْنِ عُرْفُطَةَ.

[قَالَ أَبُو عِيْسَى:] وَقَدْ اِخْتَلَفَ أَهْلُ الْعِلْمِ

knowledge differ over the case of a man who has relations with his wife's slave girl. It has been reported from more than one of the Companions of the Prophet ﷺ – among them 'Alī and Ibn 'Umar – that he is to be stoned. Ibn Mas'ūd said: "The legal punishment is not required for him, but he may be punished." Ahmad and Ishāq followed what was reported from An-Nu'mān bin Bashīr from the Prophet ﷺ.

فِي الرَّجُلِ يَقَعُ عَلَى جَارِيَةِ امْرَأَتِهِ، فَرُوي عَنْ غَيْرِ وَاحِدٍ مِنْ أَصْحَابِ النَّبِيِّ ﷺ مِنْهُمْ: عَلِيٌّ، وَابْنُ عُمَرَ: أَنَّ عَلَيْهِ الرَّجْمَ. وَقَالَ ابْنُ مَسْعُودٍ: لَيْسَ عَلَيْهِ حَدٌّ وَلَكِنْ يُعَزَّرُ. وَذَهَبَ أَحْمَدُ وَإِسْحَاقُ إِلَى مَا رَوَى الثُّعْمَانُ بْنُ بُشَيْرٍ عَنِ النَّبِيِّ ﷺ.

تخريج: [حسن] انظر الحديث السابق \* وفي الباب عن سلمة بن المحيق [أبو داود، ح: ٤٤٦٠، ٤٤٦١ وأحمد: ٤٧٦/٣].

### Comments:

When a woman gave her slave woman to her husband, and he, due to his ignorance, thought her lawful for himself, while according to the *Shari'ah* she is not lawful for him, the *Hadd* punishment will not be implemented on him, but as a warning and teaching lesson to others he will be whipped.

## Chapter 22. What Has Been Related About A Woman Who Is Forced To Commit Adultery

(المعجم ٢٢) - بَابُ مَا جَاءَ فِي الْمَرْأَةِ إِذَا اسْتَكْرَهَتْ عَلَى الزَّانَا (التحفة ٢٢)

1453. 'Abdul-Jabbār bin Wā'il bin Ḥujr narrated that his father said: "A woman was forced to commit illegal sexual relations during the time of the Messenger of Allāh ﷺ. The Messenger of Allāh ﷺ did not enforce the legal punishment upon her, but he enforced it upon the one who had done it to her." And the narrator did not mention him assigning a dowry for her. (*Da'if*)

[Abū 'Eīsā said:] This *Hadīth* is *Gharīb*, and its chain is not connected. This *Hadīth* has been reported through more than one route. [He said:] I heard

١٤٥٣ - حَدَّثَنَا عَلِيُّ بْنُ حُجْرٍ: حَدَّثَنَا مُعَمَّرُ بْنُ سُلَيْمَانَ الرَّقْفِيُّ عَنِ الْحَجَّاجِ بْنِ أَرْطَاةَ، عَنْ عَبْدِ الْجَبَّارِ بْنِ وَائِلِ بْنِ حُجْرٍ، عَنْ أَبِيهِ قَالَ: اسْتَكْرَهَتْ امْرَأَةٌ عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ، فَذَرَأَ عَنْهَا رَسُولُ اللَّهِ ﷺ الْحَدَّ، وَأَقَامَهُ عَلَى الَّذِي أَصَابَهَا، وَلَمْ يَذْكُرْ أَنَّهُ جَعَلَ لَهَا مَهْرًا.

[قَالَ أَبُو عِيْسَى:] هَذَا حَدِيثٌ غَرِيبٌ، وَلَيْسَ إِسْنَادُهُ بِمُتَّصِلٍ، وَقَدْ رُوِيَ هَذَا الْحَدِيثُ مِنْ غَيْرِ هَذَا الْوَجْهِ [قَالَ:] سَمِعْتُ مُحَمَّدًا يَقُولُ: عَبْدُ الْجَبَّارِ بْنُ وَائِلِ بْنِ حُجْرٍ



Muḥammad saying: “Abdul-Jabbār bin Wā’il bin Ḥujr did not hear from his father, nor did he see him.” They say that he was born a month after his father died.

This *Ḥadīth* is acted upon according to the people of knowledge among the Companions of the Prophet ﷺ and others, in that the legal punishment is not implemented upon the woman who is coerced into committing adultery.

لَمْ يَسْمَعْ مِنْ أَبِيهِ وَلَا أَدْرَكَهُ، يُقَالُ: إِنَّهُ وُلِدَ بَعْدَ مَوْتِ أَبِيهِ بِأَشْهُرٍ. وَالْعَمَلُ عَلَى هَذَا الْحَدِيثِ عِنْدَ أَهْلِ الْعِلْمِ مِنْ أَصْحَابِ النَّبِيِّ ﷺ وَغَيْرِهِمْ: أَنْ لَيْسَ عَلَى الْمُسْتَكْرَهِ حَدٌّ.

تخریج: [إسناده ضعيف] وأخرجه ابن ماجه، الحدود، باب المستكره، ح: ٢٥٩٨ من حديث الرقي به \* حجاج بن أرطاة ضعيف مدلس وعبدالجبار بن وائل عن أبيه منقطع.

1454. ‘Alqamah bin Wā’il Al-Kindī narrated from his father: “A woman went out during the time of the Prophet ﷺ to go to *Ṣalāt*, but she was caught by a man and he had relations with her, so she screamed and he left. Then a man came across her and she said: ‘That man has done this and that to me,’ then she came across a group of the Emigrants (*Muhājirīn*) and she said: ‘That man did this and that to me.’ They went to get the man she thought had relations with her, and they brought him to her. She said: ‘Yes that’s him.’ So they brought him to the Messenger of Allāh ﷺ, and when he ordered that he be stoned, the man who had relations with her, said: ‘O Messenger of Allāh, I am the one who had relations with her.’ So he said to her: ‘Go, for Allāh has forgiven you.’ Then he said some nice words to the man (who was first brought). And he said to the man who had

١٤٥٤ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى [النَّيْسَابُورِيُّ]: حَدَّثَنَا مُحَمَّدُ بْنُ يُونُسَ عَنْ إِسْرَائِيلَ: حَدَّثَنَا سِمَاكُ بْنُ حَرْبٍ عَنْ عُلْقَمَةَ ابْنِ وَايِلِ الْكِنْدِيِّ، عَنْ أَبِيهِ: أَنَّ امْرَأَةً خَرَجَتْ عَلَى عَهْدِ النَّبِيِّ ﷺ تُرِيدُ الصَّلَاةَ، فَتَلَقَّاهَا رَجُلٌ فَتَجَلَّلَهَا فَقَضَى حَاجَتَهُ مِنْهَا، فَصَاحَتْ، فَانْطَلَقَ، وَمَرَّ عَلَيْهَا رَجُلٌ فَقَالَتْ: إِنَّ ذَاكَ الرَّجُلَ فَعَلَ بِي كَذَا وَكَذَا، وَمَرَّتْ بِعِصَابِيَةِ مِنَ الْمُهَاجِرِينَ فَقَالَتْ: إِنَّ ذَاكَ الرَّجُلَ فَعَلَ بِي كَذَا وَكَذَا، فَانْطَلَقُوا فَأَخَذُوا الرَّجُلَ الَّذِي ظَنَنْتُ أَنَّهُ وَقَعَ عَلَيْهَا، وَأَتَوْهَا، فَقَالَتْ: نَعَمْ هُوَ هَذَا. فَأَتَوْا بِهِ رَسُولَ اللَّهِ ﷺ، فَلَمَّا أَمَرَ بِهِ لِيُرْجَمَ قَامَ صَاحِبُهَا الَّذِي وَقَعَ عَلَيْهَا فَقَالَ: يَا رَسُولَ اللَّهِ، أَنَا صَاحِبُهَا، فَقَالَ لَهَا: «ادْهَبِي فَمَنْدَعَفَرَ اللَّهُ لَكَ»، وَقَالَ لِلرَّجُلِ قَوْلًا حَسَنًا، وَقَالَ لِلرَّجُلِ الَّذِي وَقَعَ عَلَيْهَا: «ارْجُمُوهُ»، وَقَالَ: «لَقَدْ

relations with her: 'Stone him.' Then he said: 'He has repented a repentance that, if the inhabitants of Al-Madīnah had repented with, it would have been accepted from them.'" (*Hasan*)

[Abū 'Eisā said:] This *Hadīth* is *Hasan Gharīb Ṣaḥīḥ*. 'Alqamah bin Wā'il bin Ḥujr heard from his father; he was older than 'Abdul-Jabbār, and 'Abdul-Jabbār did not hear from his father.

تخریج: [إسناده حسن] وأخرجه أبو داود، الحدود، باب: في صاحب الحد يجيء في فقر، ح: ٤٣٧٩ عن محمد بن يحيى الذهلي به وصححه ابن الجارود، ح: ٨٢٣ (والرجل لم يرجع بعد).

#### Comments:

If a rape is proven against the will of a woman, according to Imām Mālik and Shāfi'ī she deserves the dowry and the court has to help her in getting her right. In the view of Imām Abū Ḥanīfah and Sufyān she does not deserve the dowry.

### Chapter 23. What Has Been Related About One Who Commits Bestiality

1455. Ibn 'Abbās narrated that the Messenger of Allāh ﷺ said: "Whomever you see having relations with an animal then kill him and kill the animal." So it was said to Ibn 'Abbās: "What is the case of the animal?" He said: "I did not hear anything from the Messenger of Allāh ﷺ about this, but I see that the Messenger of Allāh ﷺ disliked eating its meat or using it, due to the fact that such a (heinous) thing had been done with that animal." (*Hasan*)

[Abū 'Eisā said:] We do not know of this *Hadīth* except from the narration of 'Amr bin Abī 'Amr

تَاب تَوْبَةً لَوْ تَابَهَا أَهْلُ الْمَدِينَةِ لَقِيلَ مِنْهُمْ». [قَالَ أَبُو عِيْسَى:] هَذَا حَدِيثٌ حَسَنٌ غَرِيبٌ صَحِيحٌ، وَعَلَقَمَةُ بْنُ وائِلِ بْنِ حُجْرٍ سَمِعَ مِنْ أَبِيهِ، وَهُوَ أَكْبَرُ مِنْ عَبْدِ الْجَبَّارِ، وَعَبْدُ الْجَبَّارِ لَمْ يَسْمَعْ مِنْ أَبِيهِ.

(المعجم ٢٣) - بَابُ مَا جَاءَ فِيْمَنْ يَقْعُ عَلَى الْبَهِيمَةِ (التحفة ٢٣)

١٤٥٥ - حَدَّثَنَا مُحَمَّدُ بْنُ عَمْرٍو السَّوَأِيُّ: حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ عَنْ عَمْرٍو بْنِ أَبِي عَمْرٍو، عَنْ عِكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ وَجَدْتُمُوهُ وَقَعَ عَلَى بَهِيمَةٍ فَاقْتُلُوهُ وَاقْتُلُوا الْبَهِيمَةَ». فَقِيلَ لِابْنِ عَبَّاسٍ: مَا شَأْنُ الْبَهِيمَةِ؟ قَالَ: مَا سَمِعْتُ مِنْ رَسُولِ اللَّهِ ﷺ فِي ذَلِكَ شَيْئًا، وَلَكِنْ أَرَى رَسُولَ اللَّهِ ﷺ كَرِهَ أَنْ يُؤْكَلَ مِنْ لَحْمِهَا أَوْ يُتَمَعَّ بِهَا، وَقَدْ عَمِلَ بِهَا ذَلِكَ الْعَمَلُ.

[قَالَ أَبُو عِيْسَى:] هَذَا حَدِيثٌ لَا نَعْرِفُهُ

from 'Ikrimah, from Ibn 'Abbās, from the Prophet ﷺ. Sufyān Ath-Thawrī reported from 'Āsim, from Abū Razīn, from Ibn 'Abbās who said: "Whoever has relations with a beast, then there is no legal punishment for him." That was narrated to us by Muḥammad bin Bash-shār (who said): "Abdur-Raḥmān bin Mahdī narrated to us, Sufyān Ath-Thawrī narrated to us." This is more correct than the first *Hadīth*. This is acted upon according to the people of knowledge, it is the view of Aḥmad and Ishāq.

إِلَّا مِنْ حَدِيثِ عَمْرٍو بْنِ أَبِي عَمْرٍو عَنْ عِكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ عَنِ النَّبِيِّ ﷺ. وَقَدْ رَوَى سُفْيَانُ الثَّوْرِيُّ عَنْ عَاصِمٍ، عَنْ أَبِي رَزِينٍ، عَنِ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ: مَنْ أَتَى بِهِيْمَةً فَلَا حَدَّ عَلَيْهِ.

حَدَّثَنَا بِذَلِكَ مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ: حَدَّثَنَا سُفْيَانُ الثَّوْرِيُّ، وَهَذَا أَصَحُّ مِنَ الْحَدِيثِ الْأَوَّلِ. وَالْعَمَلُ عَلَى هَذَا عِنْدَ أَهْلِ الْعِلْمِ، وَهُوَ قَوْلُ أَحْمَدَ، وَإِسْحَاقَ.

تخريج: [إسناده حسن] وأخرجه أبو داود، الحدود، باب: فيمن أتى بهيمة، ح: ٤٤٦٤ من حديث عبدالعزيز بن محمد به وانظر نيل المقصود، ق ص: ٩٦٣ \* أثر ابن عباس: أبو داود، ح: ٤٤٦٥ والنسائي في الكبرى، ح: ٧٣٤١ عن عاصم به، وقال النسائي: "هذا غير صحيح" وهذا الأثر في حق من لم يحصن، وأما من أحصن فحده القتل كما في الحديث المرفوع.

**Comments:**

Sexual intercourse with animals is one of the most disgusting acts. Though this is not considered fornication, yet the performer deserves a severe punishment. This punishment should be exemplary and a clear warning to others.

**Chapter 24. What Has Been Related About The Punishment Of The Sodomite**

(المعجم ٢٤) - بَابُ مَا جَاءَ فِي حَدِّ اللُّوطِيِّ (التحفة ٢٤)

1456. Ibn 'Abbās narrated that the Messenger of Allāh ﷺ said: "Whomever you find doing the actions of the people of Lūṭ then kill the one doing it, and the one it is done to." (*Hasan*)

١٤٥٦ - حَدَّثَنَا مُحَمَّدُ بْنُ عَمْرٍو السَّوَأِيُّ: حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ عَنْ عَمْرٍو بْنِ أَبِي عَمْرٍو، عَنْ عِكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ وَجَدْتُمُوهُ يَعْمَلُ عَمَلُ قَوْمِ لُوطٍ فَاقْتُلُوا الْفَاعِلَ وَالْمَفْعُولَ بِهِ» [قَالَ]: «وَفِي الْبَابِ عَنْ جَابِرٍ وَأَبِي هُرَيْرَةَ». [قَالَ أَبُو عِيسَى]: «وَأِنَّمَا نَعْرِفُ

[He said:] There are narrations on this topic from Jābir and Abū Hurairah.

[Abū 'Eisā said:] It is only through

this route that we know of this to be a *Ḥadīth* of Ibn ‘Abbās from the Prophet ﷺ. Muḥammad bin Ishāq reported this *Ḥadīth* from ‘Amr bin Abī ‘Amr, so he said: “Those who do the act of the people of Lūt are cursed.” And he did not mention killing in it. He did mention: “Those who have relations with a beast are cursed.” This *Ḥadīth* has been reported from ‘Āṣim bin ‘Umar, from Suhail bin Abī Ṣāliḥ, from his father, from Abū Hurairah, from the Prophet ﷺ saying: “Kill the doer and the one it is done to.”

[Abū ‘Eisā said:] There is some disparagement in its chain of narration, we do not know of anyone who reported it from Suhail bin Abī Ṣāliḥ besides ‘Āṣim bin ‘Umar Al-‘Umarī, and ‘Āṣim bin ‘Umar was graded weak in *Ḥadīth* due to his memory.

The people of knowledge differ over the legal punishment for the sodomite. Some of them held the view that he has to be stoned, whether married or not married. This is the view of Mālik, Aṣh-Shāfi‘ī, Aḥmad and Ishāq.

Some of the people of knowledge among the *Fuqahā’* from the *Tābi‘īn* – among them Al-Ḥasan Al-Baṣrī, Ibrāhīm An-Nakha‘ī, ‘Aṭā’ bin Abī Rabāḥ, and others – said that the legal punishment for the sodomite is the legal punishment for illegal sexual relations. This is the view of Ath-Thawrī and the people of Al-Kūfah.

هَذَا الْحَدِيثَ عَنِ ابْنِ عَبَّاسٍ عَنِ النَّبِيِّ ﷺ مِنْ هَذَا الْوَجْهِ. وَرَوَى مُحَمَّدُ بْنُ إِسْحَاقَ هَذَا الْحَدِيثَ عَنْ عَمْرِو بْنِ أَبِي عَمْرٍو فَقَالَ: «مَلْعُونٌ مَنْ عَمِلَ عَمَلِ قَوْمِ لُوطٍ» وَلَمْ يَذْكُرْ فِيهِ الْقَتْلَ، وَذَكَرَ فِيهِ: «مَلْعُونٌ مَنْ أَتَى بَهِيمَةً». وَقَدْ رُوِيَ هَذَا الْحَدِيثُ عَنْ عَاصِمِ ابْنِ عَمَرَ، عَنْ سُهَيْلِ بْنِ أَبِي صَالِحٍ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ ﷺ قَالَ: «اقْتُلُوا الْفَاعِلَ وَالْمَفْعُولَ بِهِ».

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ فِي إِسْنَادِهِ مَقَالٌ، وَلَا نَعْلَمُ أَحَدًا رَوَاهُ عَنْ سُهَيْلِ بْنِ أَبِي صَالِحٍ غَيْرَ عَاصِمِ بْنِ عَمَرَ الْعُمَرِيُّ، وَعَاصِمُ بْنُ عَمَرَ يُضَعَّفُ فِي الْحَدِيثِ مِنْ قِبَلِ حِفْظِهِ. وَاخْتَلَفَ أَهْلُ الْعِلْمِ فِي حَدِّ اللَّوْطِيِّ، فَرَأَى بَعْضُهُمْ أَنَّ عَلَيْهِ الرَّجْمَ أَحْصَنَ أَوْ لَمْ يُحْصِنَ. وَهَذَا قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ، وَأَحْمَدَ، وَإِسْحَاقَ.

وَقَالَ بَعْضُ أَهْلِ الْعِلْمِ مِنْ فُقَهَاءِ التَّائِبِينَ، مِنْهُمْ: الْحَسَنُ الْبَصْرِيُّ، وَإِبْرَاهِيمُ التَّحِييُّ، وَعَطَاءُ بْنُ أَبِي رَبَاحٍ وَغَيْرُهُمْ، قَالُوا: حَدِّ اللَّوْطِيِّ حَدِّ الزَّانِي، وَهُوَ قَوْلُ الثَّوْرِيِّ وَأَهْلِ الْكُوفَةِ.

**تخریج:** [إسناده حسن] وأخرجه أبو داود، الحدود، باب: فيمن عمل عمل قوم لوط، ح: ٤٤٦٢ وابن ماجه، ح: ٢٥٦١ من حديث عبدالعزیز الدرأوردی به، وضححه ابن الجارود، ح: ٨٢٠ والحاکم: ٣٥٥/٤ والذهبي وغيرهم \* وفي الباب عن جابر [يأتي: ١٤٥٧] وأبي هريرة [ابن ماجه، ح: ٢٥٦٢].

**Comments:**

It is agreed upon that sodomy is unlawful, but there is difference of opinion among the scholars. The punishment of a sodomite, married or unmarried is stoning. ‘Alī, Ibn ‘Abbās, Jābir bin Zaid, Zuhri, Rabī‘ah, Mālik, and Ishāq all support this view. One point of view of Imām Aḥmad and Ash-Shāfi‘ī is also the same. This is the correct point of view.

**1457.** Jābir narrated that the Messenger of Allāh ﷺ said: “What I fear most from my *Ummah* is the behavior of the people of Lūt.” (Da‘īf)

[Abū ‘Eīsā said:] This *Hadīth* is *Hasan Gharīb*, we only know of it from this route, from ‘Abdullāh bin Muḥammad bin ‘Aqīl bin Abī Ṭālib, from Jābir.

١٤٥٧ - حَدَّثَنَا أَحْمَدُ بْنُ مَنِيعٍ: حَدَّثَنَا بَنُ هَارُونَ: حَدَّثَنَا هَمَّامٌ عَنِ الْقَاسِمِ ابْنِ عَبْدِ الْوَّاحِدِ الْمَكِّيِّ، عَنْ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ عَقِيلٍ أَنَّهُ سَمِعَ جَابِرًا يَقُولُ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّ أَخْوَفَ مَا أَخَافُ عَلَى أُمَّتِي عَمَلُ قَوْمِ لُوطٍ».

[قال أبو عيسى:] هذا حديث حسن غريب إنما نعرفه من هذا الوجه عن عبد الله بن محمد بن عقيل بن أبي طالب، عن جابر.

**تخریج:** [إسناده ضعيف] وأخرجه ابن ماجه، الحدود، باب من عمل عمل قوم لوط، ح: ٢٥٦٣ من حديث القاسم بن عبدالواحد به وضححه الحاکم: ٣٥٧/٤ والذهبي.

**Comments:**

Sodomy and lesbianism are among the most disgusting forms of sexual satisfaction. Old civilizations were destroyed and stones were rained upon such people, as stated in *Sūrat Hūd* Verse 82. “We turned (the cities) upside down and rained down, on them stones of baked clay, spread layer on layer.”

**Chapter 25. What Has Been Related About The Apostate**

(المعجم ٢٥) - بَابُ مَا جَاءَ فِي الْمُرْتَدِّ (التحفة ٢٥)

**1458.** ‘Ikrimah narrated that ‘Alī burnt some people who apostasized from Islām. This news reached Ibn ‘Abbās, so he said: “If it were me I would have killed them according to the statement of the Messenger

١٤٥٨ - حَدَّثَنَا أَحْمَدُ بْنُ عَبْدِ الصَّبِيِّ الْبَصْرِيُّ: حَدَّثَنَا عَبْدُ الْوَهَّابِ الثَّقَفِيُّ: حَدَّثَنَا أَيُّوبُ عَنْ عِكْرِمَةَ: أَنَّ عَلِيًّا حَرَّقَ قَوْمًا ارْتَدُّوا عَنِ الْإِسْلَامِ، فَبَلَغَ ذَلِكَ ابْنَ عَبَّاسٍ فَقَالَ: لَوْ

of Allāh ﷺ. The Messenger of Allāh ﷺ said: ‘Whoever changes his religion then kill him.’ And I would not have burned them because the Messenger of Allāh ﷺ said: ‘Do not punish with the punishment of Allāh.’ So this reached ‘Alī, and he said: “Ibn ‘Abbās has told the truth.” (*Ṣaḥīḥ*) [Abū ‘Eisā said:] This *Ḥadīth* is *Ḥasan Ṣaḥīḥ*. This is acted upon according to the people of knowledge in cases of apostasy.

They disagree in the case of a woman who apostasizes from Islām. A group of the people of knowledge said she is to be killed. This is the view of Al-Awzā‘ī, Aḥmad, and Ishāq. Another group said that she is imprisoned not killed. This is the view of Sufyān Ath-Thawrī and others from the people of Al-Kūfah.

تخریج: وأخرجه البخاري، استتابة المرتدين، باب حكم المرتد والمردة واستتابتهم، ح: ٦٩٢٢ من حديث أيوب السخيتاني به.

**Comments:**

The people, who were burnt alive, were the followers of a Jew named ‘Abdullāh bin Sabah. They were hypocrites and they were involved in a heinous crime of preaching ‘Alī’s divinity, so ‘Alī giving a lesson for others, gave them such a severe punishment.

**Chapter 26. What Has Been Related About One Who Brandishes A Weapon**

1459. Abū Mūsā narrated that the Prophet ﷺ said: “Whoever carries weapons against us, he is not from us.” (*Ṣaḥīḥ*)

He said: There are narrations on this topic from Ibn ‘Umar, Ibn Az-Zubair, Abū Hurairah, and

كُنْتُ أَنَا لَقَتْنُهُمْ يَقُولِ رَسُولِ اللَّهِ ﷺ، قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ بَدَّلَ دِينَهُ فَأَقْتُلُوهُ»، وَلَمْ أَكُنْ لِأُحَرِّقُهُمْ لِأَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «لَا تُعَذِّبُوا بِعَذَابِ اللَّهِ» فَبَلَغَ ذَلِكَ عَلِيًّا فَقَالَ: صَدَقَ ابْنُ عَبَّاسٍ.

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ، وَالْعَمَلُ عَلَى هَذَا عِنْدَ أَهْلِ الْعِلْمِ فِي الْمُرْتَدِّ.

وَاخْتَلَفُوا فِي الْمَرْأَةِ إِذَا ارْتَدَّتْ عَنِ الْإِسْلَامِ، فَقَالَتْ طَائِفَةٌ مِنْ أَهْلِ الْعِلْمِ: تُقْتَلُ، وَهُوَ قَوْلُ الْأَوْزَاعِيِّ، وَأَحْمَدَ، وَإِسْحَاقَ. وَقَالَتْ طَائِفَةٌ مِنْهُمْ: تُجَبَسُ وَلَا تُقْتَلُ، وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ وَغَيْرِهِ مِنْ أَهْلِ الْكُوفَةِ.

(المعجم ٢٦) - بَابُ مَا جَاءَ فِيْمَنْ شَهَرَ السَّلَاحَ (التحفة ٢٦)

١٤٥٩ - حَدَّثَنَا أَبُو كُرَيْبٍ وَأَبُو السَّائِبِ [سَالِمُ بْنُ جُنَادَةَ]: حَدَّثَنَا أَبُو أُسَامَةَ عَنْ بُرَيْدِ ابْنِ عَبْدِ اللَّهِ بْنِ أَبِي بُرْدَةَ، عَنْ جَدِّهِ أَبِي بُرْدَةَ، عَنْ أَبِي مُوسَى عَنِ النَّبِيِّ ﷺ قَالَ: «مَنْ حَمَلَ عَلَيْنَا السَّلَاحَ فَلَيْسَ مِنَّا».

Salamah bin Al-Akwa‘.

[Abū ‘Eisā said:] The *Hadīth* of Abū Mūsā is a *Ḥasan Ṣaḥīḥ Hadīth*.

قَالَ: وَفِي الْبَابِ عَنِ ابْنِ عُمَرَ، وَابْنِ الزُّبَيْرِ، وَأَبِي هُرَيْرَةَ، وَسَلَمَةَ بْنِ الْأَكْوَعِ. [قَالَ أَبُو عِيسَى:] حَدِيثُ أَبِي مُوسَى حَدِيثٌ حَسَنٌ صَحِيحٌ.

**تخریج:** متفق عليه، أخرجه البخاري، الفتن، باب قول النبي ﷺ: "من حمل علينا السلاح فليس منا" ح: ٧٠٧١ عن أبي كريب ومسلم، ح: ١٠٠ من حديث أبي أسامة به \* وفي الباب عن ابن عمر [مسلم، ح: ٩٨] وابن الزبير [النسائي: ١١٧/٧، ح: ٤١٠٢ والطحاوي في مشكل الآثار: ١١٧/٢] وأبي هريرة [مسلم، ح: ١٠١] وسلمة بن الأكوع [مسلم، ح: ٩٩].

### Comments:

Picking up weapons of Muslims against Muslim brothers and trying to frighten each other, or putting pressure, or fighting against each other, is against the dignity and honor of Muslims. Such behaviour is not expected from Muslims.

### Chapter 27. What Has Been Related About The Legal Punishment For The *Sāḥir*<sup>[1]</sup>

(المعجم ٢٧) - بَابُ مَا جَاءَ فِي حَدِّ السَّاحِرِ (التحفة ٢٧)

**1460.** Jundab narrated that he heard the Messenger of Allāh ﷺ saying: "The punishment of the *Sāḥir* is a strike of the sword." (*Da‘īf*)

[Abū ‘Eisā said:] We do not know of this *Hadīth* to be *Marfū‘* except from this route. Ismā‘īl bin Muslim Al-Makkī was graded weak in *Hadīth* due to his memory. As for Ismā‘īl bin Muslim Al-‘Abdī Al-Baṣrī, Waki‘ said: "He is trustworthy." It has been reported from Al-Ḥasan as well. What is correct is from Jundab in *Mawqūf* form.

This *Hadīth* is acted upon according to some of the people of knowledge among the Companions of the Prophet ﷺ and others, and

١٤٦٠ - حَدَّثَنَا أَحْمَدُ بْنُ مَنِيعٍ: حَدَّثَنَا أَبُو مُعَاوِيَةَ عَنْ إِسْمَاعِيلَ بْنِ مُسْلِمٍ، عَنِ الْحَسَنِ، عَنْ جُنْدَبٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «حَدُّ السَّاحِرِ ضَرْبَةٌ بِالسَّيْفِ».

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ لَا نَعْرِفُهُ مَرْفُوعًا إِلَّا مِنْ هَذَا الْوَجْهِ، وَإِسْمَاعِيلُ بْنُ مُسْلِمٍ الْمَكِّيُّ يُضَعَّفُ فِي الْحَدِيثِ مِنْ قِبَلِ حِفْظِهِ، وَإِسْمَاعِيلُ بْنُ مُسْلِمٍ الْبَصْرِيُّ، قَالَ وَكَيْعٌ: هُوَ ثِقَّةٌ، وَيُرَوَّى عَنِ الْحَسَنِ أَيْضًا، وَالصَّحِيحُ عَنْ جُنْدَبٍ مَوْقُوفٌ وَالْعَمَلُ عَلَى هَذَا الْحَدِيثِ عِنْدَ بَعْضِ أَهْلِ الْعِلْمِ مِنْ أَصْحَابِ النَّبِيِّ ﷺ وَغَيْرِهِمْ، وَهُوَ قَوْلُ مَالِكِ بْنِ أَنَسٍ، وَقَالَ الشَّافِعِيُّ: إِنَّمَا

[1] It is a sorcerer, a witch, or a magician.

it is the view of Mālik bin Anas. Ash-Shāfi'ī said that the *Sāhir* is only killed when the magic he practises reaches the level of disbelief, when his behavior is less than disbelief, then he did not see that he should be killed.

يُقْتَلُ السَّاحِرُ إِذَا كَانَ يَعْمَلُ مِنْ سِحْرِهِ مَا يَبْلُغُ الْكُفْرَ، فَإِذَا عَمِلَ عَمَلًا دُونَ الْكُفْرِ فَلَمْ يَرِ عَلَيْهِ قَتْلًا.

تخريج: [إسناده ضعيف] وأخرجه البيهقي: ١٣٦/٨ من حديث أبي معاوية الضرير به وقال: "إسماعيل بن مسلم ضعيف" \* موقف جندب رضي الله عنه، أخرجه الدارقطني: ١١٤/٣، ح: ٣١٨٠ وسنده صحيح وكذا ثبت عن عمر رضي الله عنه عند أبي داود، ح: ٣٠٤٣.

**Comments:**

No doubt magic and sorcery is one of the grievous sins and its practise is strictly prohibited and unlawful. Sometimes the practices of sorcery reach the boundary of infidelity and disbelief, and sometimes it remains within the limits of grievous sin, therefore, it's teaching and learning are also unlawful. According to Ash-Shāfi'ī a magician should not be killed until he enters the boundaries of disbelief, but Imām Abū Ḥanīfah, Imām Aḥmad and many Companions of the Prophet ﷺ and the followers of the Companions, think that the sorcerer is a disbeliever and that he does not deserve to be asked to repent. He should rather be killed. (See for details *Al-Mughni* v.12. P. 302-303.)

**Chapter 28. What Has Been Related About The One Who Steals From The Spoils Of War, And What Is To Be Done To Him**

(المعجم ٢٨) - بَابُ مَا جَاءَ فِي الْعَالِ مَا يُضْنَعُ بِهِ (التحفة ٢٨)

1461. 'Umar narrated that the Messenger of Allāh ﷺ said: "Whomever you find stealing from the spoils of war while in the path of Allāh, then burn his belongings." Ṣāliḥ (one of the narrators) said: "I entered upon Maslamah and with him was Sālim bin 'Abdullāh. There was a man there who had stolen from the spoils of war, so Sālim narrated this *Ḥadīth*. So he ordered accordingly, and his belongings were burnt. There was a *Muṣḥaf* in his belongings, so Sālim said: 'Sell this and give its proceeds

١٤٦١ - حَدَّثَنَا مُحَمَّدُ بْنُ عَمْرٍو السَّوَأِيُّ: حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ عَنْ صَالِحِ بْنِ مُحَمَّدِ بْنِ زَائِدَةَ، عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ، عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ، عَنْ عُمَرَ: أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «مَنْ وَجَدْتُمُوهُ غَلًّا فِي سَبِيلِ اللَّهِ فَأَحْرِقُوا مَتَاعَهُ». قَالَ صَالِحٌ: فَدَخَلْتُ عَلَى مَسْلَمَةَ وَمَعَهُ سَالِمُ بْنُ عَبْدِ اللَّهِ فَوَجَدَ رَجُلًا قَدْ غَلَّ، فَحَدَّثَ سَالِمٌ بِهَذَا الْحَدِيثِ، فَأَمَرَ بِهِ فَأَحْرَقَ مَتَاعَهُ، فَوَجِدَ فِي مَتَاعِهِ مُصْحَفًا، فَقَالَ سَالِمٌ: بَعِ هَذَا



as charity.” (*Da‘if*)

[Abū ‘Eisā said:] This *Ḥadīth* is *Gharīb*, we do not know of it except from this route. This is acted upon according to some of the people of knowledge. It is the view of Al-Awzā‘ī, Aḥmad and Ishāq.

He said: I asked Muḥammad about this *Ḥadīth* and he said: “This was only reported by Ṣāliḥ bin Muḥammad bin Zā‘idah, and he is Abū Wāqid Al-Laithī, and he is *Munkar* in *Ḥadīth*.”<sup>[1]</sup> Muḥammad said: “There is another *Ḥadīth* from the Prophet ﷺ about stealing from the spoils of war and he did not order burning one’s goods in it.”

[Abū ‘Eisā said:] This *Ḥadīth* is *Gharīb*.

**تخریج:** [إسناده ضعيف] وأخرجه أبو داود، الجهاد، باب: في عقوبة الغال، ح: ٢٧١٣ من حديث عبدالعزيز الدراوردي به والحديث ضعفه البيهقي: ١٠٣/٩ وغيره \* صالح هذا منكر الحديث كما قال البخاري وغيره.

**Comments:**

Stealing from the spoils and embezzlement in it is a severe offence. The spoils of war are collective property of the Muslims, therefore, every one should be very careful about it, and no one is allowed to take anything from it until it is distributed. If someone takes anything from it before its distribution, he commits the crime of embezzlement.

**Chapter 29. What Has Been Related About One Who Says To Another: “O You Effeminate!”**

**1462.** Ibn ‘Abbās narrated that the Prophet ﷺ said: “If a man says to another man: ‘O you Jew’ then beat him twenty times. If he says: ‘O you effeminate’ then beat him twenty times. And whoever has

وَتَصَدَّقَ بِتَمَنِيهِ.

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ غَرِيبٌ لَا نَعْرِفُهُ إِلَّا مِنْ هَذَا الْوَجْهِ. وَالْعَمَلُ عَلَى هَذَا عِنْدَ بَعْضِ أَهْلِ الْعِلْمِ، وَهُوَ قَوْلُ الْأَوْزَاعِيِّ، وَأَحْمَدَ وَإِسْحَاقَ.

قَالَ: وَسَأَلْتُ مُحَمَّدًا عَنْ هَذَا الْحَدِيثِ فَقَالَ: إِنَّمَا رَوَى هَذَا صَالِحُ بْنُ مُحَمَّدِ بْنِ زَائِدَةَ، وَهُوَ أَبُو وَاقِدِ اللَّيْثِيِّ، وَهُوَ مُنْكَرُ الْحَدِيثِ. قَالَ مُحَمَّدٌ: وَقَدْ رَوِيَ فِي غَيْرِ حَدِيثٍ عَنِ النَّبِيِّ ﷺ فِي الْغَالِ فَلَمْ يَأْمُرْ فِيهِ بِحَرْقِ مَتَاعِهِ. وَقَالَ [أَبُو عِيسَى]: هَذَا حَدِيثٌ غَرِيبٌ.

(المعجم ٢٩) - بَابُ مَا جَاءَ فِيْمَنْ يَقُولُ لِلْآخَرِ يَا مُخَنَّثُ (التحفة ٢٩)

١٤٦٢ - حَدَّثَنَا مُحَمَّدُ بْنُ رَافِعٍ: حَدَّثَنَا ابْنُ أَبِي فُدَيْكٍ عَنْ إِبْرَاهِيمَ بْنِ إِسْمَاعِيلَ بْنِ أَبِي حَبِيبَةَ، عَنْ دَاوُدَ بْنِ الْحُصَيْنِ، عَنْ عِكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ عَنِ النَّبِيِّ ﷺ قَالَ:

<sup>[1]</sup> Meaning, they abandoned narrating from him.

relations with someone that is a *Maḥram* then kill him.” (*Da‘īf*)

[Abū ‘Eīsā said:] We do not know of this *Hadīth* except from this route. Ibrāhīm bin Ismā‘īl was graded weak in *Hadīth*.

It has been reported from the Prophet ﷺ through other routes; it has been reported from Al-Barā’ bin ‘Azib and Qurrah bin Iyās Al-Muzanī, that a man married a previous wife of his father, so the Prophet ﷺ ordered that he be killed. This is acted upon according to our companions. They say that whoever has relations with someone that is a *Maḥram* and he knows, then he is to be killed.

Aḥmad said whoever has relations with his mother then he is to be killed. Ishāq said that whoever has relations with someone who is a *Maḥram* then he is to be killed.

تخريج: [إسناده ضعيف جداً] وأخرجه ابن ماجه، الحدود، باب حد القذف، ح: ٢٥٦٨ من حديث ابن أبي فديك به \* إبراهيم بن إسماعيل ضعيف جداً وفيه علة أخرى \* حديث البراء ابن عازب [تقدم: ١٣٦٢] قره بن أياس [ابن ماجه، ح: ٢٦٠٨].

### Comments:

In the light of this narration, if someone gives an offensive and objectionable nickname to a Muslim brother he can be punished under Islamic Law. Marrying a step mother or other close relatives (*Mahārim*) is prohibited. Adultery is an extremely disgusting act and a capital offence. He who marries his step mother or fornicates with other close relatives, the punishment of *Hadd* is not applied on him, he is killed. In awarding this punishment there is no difference between married or unmarried person, punishment is the same and instant. (*Tuhfat Al-Aḥwadhī* v. 2. p. 339.)

### Chapter 30. What Has Been Related About *At-Ta‘zīr* (Unregulated Punishments)

1463. Abū Burdah bin Niyār

«إِذَا قَالَ الرَّجُلُ لِلرَّجُلِ: يَا يَهُودِيَّ، فَأَضْرِبُوهُ عِشْرِينَ، وَإِذَا قَالَ: يَا مُخَنَّثٌ. فَأَضْرِبُوهُ عِشْرِينَ، وَمَنْ وَقَعَ عَلَى ذَاتِ مَحْرَمٍ فَأَقْتُلُوهُ».

[قَالَ أَبُو عِيسَى: ] هَذَا حَدِيثٌ لَا نَعْرِفُهُ إِلَّا مِنْ هَذَا الْوَجْهِ، وَإِبْرَاهِيمُ بْنُ إِسْمَاعِيلَ يُضَعَّفُ فِي الْحَدِيثِ.

وَقَدْ رُوِيَ عَنِ النَّبِيِّ ﷺ مِنْ غَيْرِ وَجْهِ، رَوَاهُ الْبَرَاءُ بْنُ عَازِبٍ وَقُرَّةُ بْنُ أَيَّاسِ الْمُرَزِيِّ: أَنَّ رَجُلًا تَزَوَّجَ امْرَأَةً أَبِيهِ فَأَمَرَ النَّبِيُّ ﷺ بِقَتْلِهِ. وَالْعَمَلُ عَلَى هَذَا عِنْدَ أَصْحَابِنَا، قَالُوا: مَنْ أَتَى ذَاتَ مَحْرَمٍ وَهُوَ يَعْلَمُ، فَعَلَيْهِ الْقَتْلُ.

وَقَالَ أَحْمَدُ: مَنْ تَزَوَّجَ أُمَّهُ قُتِلَ. وَقَالَ إِسْحَاقُ: مَنْ وَقَعَ عَلَى ذَاتِ مَحْرَمٍ قُتِلَ.

(المعجم ٣٠) - بَابُ مَا جَاءَ فِي التَّعْزِيرِ (التحفة ٣٠)

١٤٦٣ - حَدَّثَنَا قُتَيْبَةُ: حَدَّثَنَا اللَّيْثُ بْنُ

narrated that the Messenger of Allāh ﷺ said: “No one is to be lashed more than ten lashes except for a legal punishment among Allāh’s punishments.” (*Sahīh*)

[He said:] Ibn Lahī‘ah reported this *Hadīth* from Bukair and he was mistaken in it. He said: “From ‘Abdur-Raḥmān bin Jābir bin ‘Abdullāh, from his father, from the Prophet ﷺ.” This is a mistake. What is correct is the narration of Al-Laith bin Sa‘d. It should be: “Abdur-Raḥman bin Jābir bin ‘Abdullāh from Abū Burdah bin Niyār, from the Prophet ﷺ.”

[Abū ‘Eisā said:] This *Hadīth* is [*Hasan*] *Gharīb*, we do not know of it except as a narration of Bukair bin Al-Ashajj. The people of knowledge differ over *At-Ta‘zīr*, and the best thing reported about *At-Ta‘zīr* is this *Hadīth*.

سَعْدٌ عَنْ زَيْدِ بْنِ أَبِي حَبِيبٍ، عَنْ بُكَيْرِ بْنِ عَبْدِ اللَّهِ بْنِ الْأَشْجِ، عَنْ سُلَيْمَانَ بْنِ يَسَارٍ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ جَابِرِ بْنِ عَبْدِ اللَّهِ، عَنْ أَبِي بُرْدَةَ بْنِ نِيَّارٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا يُجْلَدُ فَوْقَ عَشْرِ جَلْدَاتٍ إِلَّا فِي حَدٍّ مِنْ حُدُودِ اللَّهِ». [قَالَ:] وَقَدْ رَوَى هَذَا الْحَدِيثَ ابْنُ لَهَيْعَةَ عَنْ بُكَيْرٍ فَأَخْطَأَ فِيهِ وَقَالَ: عَنْ عَبْدِ الرَّحْمَنِ بْنِ جَابِرِ بْنِ عَبْدِ اللَّهِ، عَنْ أَبِيهِ عَنِ النَّبِيِّ ﷺ، وَهُوَ خَطَأٌ. وَالصَّحِيحُ حَدِيثُ اللَّيْثِ بْنِ سَعْدٍ إِنَّمَا هُوَ: عَبْدُ الرَّحْمَنِ بْنُ جَابِرِ بْنِ عَبْدِ اللَّهِ عَنْ أَبِي بُرْدَةَ بْنِ نِيَّارٍ عَنِ النَّبِيِّ ﷺ.

[قَالَ أَبُو عِيْسَى:] هَذَا حَدِيثٌ [حَسَنٌ] غَرِيبٌ لَا نَعْرِفُهُ إِلَّا مِنْ حَدِيثِ بُكَيْرِ بْنِ الْأَشْجِ، وَقَدْ اِخْتَلَفَ أَهْلُ الْعِلْمِ فِي التَّعْزِيرِ وَأَحْسَنُ شَيْءٍ رُوِيَ فِي التَّعْزِيرِ هَذَا الْحَدِيثُ.

تخريج: متفق عليه، وأخرجه البخاري، الحدود، باب: كم التعزير والأدب؟، ح: ٦٨٤٨ من حديث الليث بن سعد ومسلم، ح: ١٧٠٨ من حديث بكير بن عبدالله بن الأشج به.

### Comments:

This narration indicates that no offender should be given a physical punishment of more than ten lashes except if the offense he has committed is one for which a “*Hadd*” has been prescribed.