

In the Name of Allāh,
the Merciful, the Beneficent

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

13. THE BOOK OF DIVORCE

(المعجم ١٣) - أَوَّلُ كِتَابِ الطَّلَاقِ
(التحفة ٧)

تَفْرِيعُ أَبْوَابِ الطَّلَاقِ

Chapter 1. Regarding Someone Who Ruins A Wife For Her Husband^[1]

(المعجم ١) بَابُ: فِيمَنْ خَبَبَ امْرَأَةً
عَلَى زَوْجِهَا (التحفة ١)

2175. Abū Hurairah narrated that the Messenger of Allāh ﷺ said: "He who ruins a woman for her husband, or a slave for his master, is not of us." (*Hasan*)

٢١٧٥ - حَدَّثَنَا الْحَسَنُ بْنُ عَلِيٍّ: حَدَّثَنَا زَيْدُ بْنُ الْجُبَابِ: حَدَّثَنَا عَمَّارُ بْنُ رُزَيْقٍ عَنْ عَبْدِ اللَّهِ بْنِ عَيْسَى، عَنْ عِكْرِمَةَ، عَنْ يَحْيَى بْنِ يَعْمَرَ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَيْسَ مِنَّا مَنْ خَبَبَ امْرَأَةً عَلَى زَوْجِهَا أَوْ عَبْدًا عَلَى سَيِّدِهِ».

تخريج: [إسناده حسن] أخرجه أحمد: ٣٩٧/٢ والنسائي في الكبرى، ح: ٩٢١٤ من حديث عمار به وصححه ابن حبان، ح: ١٣١٩ والحاكم على شرط البخاري: ١٩٦/٢ ووافقه الذهبي.

Chapter 2. Regarding A Woman Who Asks Her Husband To Divorce Another Wife of His

2176. Abū Hurairah narrated that the Messenger of Allāh ﷺ said: "Let not any woman ask for the divorce of her sister, so that she may empty her sister's plate. And let her marry, for she will get what

(المعجم ٢) بَابُ: فِي الْمَرْأَةِ تَسْأَلُ
زَوْجَهَا طَلَّاقَ امْرَأَةٍ لَهُ (التحفة ٢)

٢١٧٦ - حَدَّثَنَا الْقَعْنَبِيُّ عَنْ مَالِكٍ، عَنْ أَبِي الزُّنَادِ، عَنْ الْأَعْرَجِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا تَسْأَلِ الْمَرْأَةُ طَلَّاقَ أُخْتِهَا لِتَسْتَفْرِغَ صَحْفَتَهَا وَلِتَنْكِحَ فَإِنَّمَا

[1] Meaning, ruins the reputation by false allegations.

is decreed for her.” (*Ṣaḥīh*)

لَهَا مَا قُدِّرَ لَهَا».

تخريج: أخرجه البخاري، القدر، باب: «وكان أمر الله قدرًا مقدرًا»، ح: ٦٦٠١ من حديث مالك به، وهو في الموطأ (يحيى): ٩٠٠/٢.

Chapter 3. Regarding The Abhorrence Of Divorce

(المعجم ٣) بَابُ: فِي كَرَاهِيَةِ الطَّلَاقِ (التحفة ٣)

2177. It was reported from Ma‘rūf, from Muḥārib, that the Messenger of Allāh ﷺ said: “Allāh has not permitted anything that is more detestable to Him than divorce.” (*Ḥasan*)

٢١٧٧ - حَدَّثَنَا أَحْمَدُ بْنُ يُونُسَ: حَدَّثَنَا مُعَرِّفٌ عَنْ مُحَارِبِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَا أَحَلَّ اللَّهُ شَيْئًا أْبْغَضَ إِلَيْهِ مِنَ الطَّلَاقِ».

تخريج: [حسن] أخرجه البيهقي ٣٢٢/٧ من حديث أبي داود به وسنده ضعيف لإرساله وانظر الحديث الآتي.

2178. It was reported from Muḥārib bin Dithār, from Ibn ‘Umar, that the Prophet ﷺ said: “The most detestable of all permitted matters to Allāh the Exalted is divorce.” (*Ḥasan*)

٢١٧٨ - حَدَّثَنَا كَثِيرُ بْنُ عُبَيْدٍ: حَدَّثَنَا مُحَمَّدُ بْنُ خَالِدٍ عَنْ مُعَرِّفِ بْنِ وَاصِلٍ، عَنْ مُحَارِبِ بْنِ دِثَارٍ، عَنْ ابْنِ عُمَرَ عَنِ النَّبِيِّ ﷺ قَالَ: «أْبْغَضُ الْحَلَالِ إِلَى اللَّهِ عَزَّوَجَلَّ الطَّلَاقُ».

تخريج: [إسناده حسن] أخرجه البيهقي ٣٢٢/٧ من حديث أبي داود وصححه الحاكم: ٢/١٩٦ ووافقه الذهبي على شرط مسلم ورواه ابن ماجه، ح: ٢٠١٨ من طريق آخر عن محارب بن دثار به.

Chapter 4. Regarding The Divorce According To The Sunnah

(المعجم ٤) بَابُ: فِي طَلَاقِ السُّنَّةِ (التحفة ٤)

2179. It was reported from Mālik, from Nāfi‘, from ‘Abdullāh bin ‘Umar that he divorced his wife while she was menstruating, during the time of the Messenger of Allāh ﷺ. ‘Umar bin Al-Khattāb asked the Messenger of Allāh ﷺ regarding this, so the Messenger of Allāh ﷺ said: “Command him to

٢١٧٩ - حَدَّثَنَا الْقَعْنَبِيُّ عَنْ مَالِكٍ، عَنْ نَافِعٍ، عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ أَنَّهُ طَلَّقَ امْرَأَتَهُ وَهِيَ حَائِضٌ عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ، فَسَأَلَ عُمَرُ بْنُ الْخَطَّابِ رَسُولَ اللَّهِ ﷺ عَنْ ذَلِكَ؟ فَقَالَ رَسُولُ اللَّهِ ﷺ: «مُرْهُ فَلْيُرَاجِعْهَا ثُمَّ لِيُمْسِكْهَا حَتَّى تَطْهَرَ ثُمَّ

take her back, then keep her until she is pure and then menstruates, and then becomes pure (again). Then, if he desires, he may keep her after that, and if he desires, he may divorce her before touching her. And that is the waiting period that Allāh has commanded to divorce women in.” (*Sahih*)

تخریج: أخرجه البخاري، الطلاق، باب: وقول الله تعالى: ﴿يَا أَيُّهَا النَّبِيُّ إِذَا طَلَقْتُمُ النِّسَاءَ...﴾ إلخ، ح: ٥٢٥١، ومسلم، الطلاق، باب تحريم طلاق الحائض بغير رضاها... إلخ، ح: ١٤٧١ من حديث مالك به وهو في الموطأ (يحيى): ٥٧٦/٢.

2180. It was reported from Al-Laith, from Nāfi' that Ibn 'Umar divorced one of his wives while she was menstruating with one divorce — narrating the same meaning as the narration of Mālik (no. 2179). (*Sahih*)

٢١٨٠ - حَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ: حَدَّثَنَا اللَّيْثُ عَنْ نَافِعٍ: أَنَّ ابْنَ عُمَرَ طَلَّقَ امْرَأَةً لَهُ وَهِيَ حَائِضٌ تَطْلِيقَةً بِمَعْنَى حَدِيثِ مَالِكٍ.

تخریج: أخرجه البخاري، الطلاق، باب: ﴿ويعولتهن أحق بردهن﴾ في العدة... إلخ، ح: ٥٣٣٢، ومسلم، انظر الحديث السابق، كلاهما عن قتيبة به.

2181. It was reported from Muḥammad bin 'Abdur-Raḥmān the freed slave of the family of Ṭalḥah, from Sāilm, from Ibn 'Umar, that he divorced his wife while she was in her menses. 'Umar mentioned this to the Prophet ﷺ, who said: “Command him to take her back, and then divorce her after she is pure or pregnant.” (*Sahih*)

٢١٨١ - حَدَّثَنَا عُثْمَانُ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا وَكَيْعٌ عَنْ سُفْيَانَ، عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ مَوْلَى آلِ طَلْحَةَ، عَنْ سَالِمٍ، عَنْ ابْنِ عُمَرَ: أَنَّهُ طَلَّقَ امْرَأَتَهُ وَهِيَ حَائِضٌ فَذَكَرَ ذَلِكَ عُمَرُ لِلنَّبِيِّ ﷺ فَقَالَ: «مُرْهُ فَلْيُرَاجِعْهَا ثُمَّ لِيُطَلِّقْهَا إِذَا طَهَّرْتَ أَوْ وَهِيَ حَائِلٌ».

تخریج: أخرجه مسلم، الطلاق، باب تحريم طلاق الحائض بغير رضاها... إلخ، ح: ٥/١٤٧١ من حديث وكيع به.

2182. It was reported from Ibn Shihāb, that Sālim bin 'Abdullāh informed him, from his father (Ibn 'Umar), that he divorced his wife

٢١٨٢ - حَدَّثَنَا أَحْمَدُ بْنُ صَالِحٍ: حَدَّثَنَا عَبْسَةُ: حَدَّثَنَا يُونُسُ عَنْ ابْنِ شِهَابٍ: أَخْبَرَنِي سَالِمُ بْنُ عَبْدِ اللَّهِ عَنْ أَبِيهِ: أَنَّهُ طَلَّقَ

while she was in her menses. ‘Umar mentioned this to the Messenger of Allāh ﷺ, and he ﷺ became very angry with that. He then said: “Command him to take her back, then, let him keep her until she becomes pure, then has her menses, then becomes pure (again). Then, if he wishes, he can divorce her while she is in her state of purity and before he touches her. And that is the divorce in the proper waiting period that Allāh the Exalted has commanded.”

(*Ṣaḥīḥ*)

تخريج: أخرجه البخاري، الأحكام، باب: هل يقضي القاضي أو يقضي وهو غضبان؟، ح: ٧١٦٠ من حديث يونس بن يزيد ومسلم، الطلاق، باب تحريم طلاق الحائض بغير رضاها، ح: ٤/١٤٧١ من حديث ابن شهاب الزهري به.

2183. It was reported from Ayyūb, from Ibn Sīrīn that Yūnus bin Jubiar informed him that he asked Ibn ‘Umar: “How many times did you divorce your wife?” He replied: “Once.” (*Ṣaḥīḥ*)

أَمْرَاتُهُ وَهِيَ حَائِضٌ فَذَكَرَ ذَلِكَ عُمَرُ لِرَسُولِ اللَّهِ ﷺ فَتَعَزَّطَ رَسُولُ اللَّهِ ﷺ ثُمَّ قَالَ: «مَرَّةٌ فَلْيُرَاجِعْهَا ثُمَّ لِيَمْسِكْهَا حَتَّى تَطْهَرَ ثُمَّ تَحِيضَ فَتَطْهَرَ ثُمَّ إِنْ شَاءَ طَلَّقَهَا طَاهِرًا قَبْلَ أَنْ يَمَسَّ، فَلَيْكَ الطَّلَاقُ لِلْعِدَّةِ كَمَا أَمَرَ اللَّهُ تَعَالَى ذِكْرَهُ».

٢١٨٣ - حَدَّثَنَا الْحَسَنُ بْنُ عَلِيٍّ: حَدَّثَنَا عَبْدُ الرَّزَّاقِ: أَخْبَرَنَا مَعْمَرٌ عَنْ أَيُّوبَ، عَنْ ابْنِ سِيرِينَ: أَخْبَرَنِي يُونُسُ بْنُ جُبَيْرٍ: أَنَّهُ سَأَلَ ابْنَ عُمَرَ فَقَالَ: كَمْ طَلَّقْتَ أَمْرَاتِكَ؟ فَقَالَ: وَاحِدَةً.

تخريج: [إسناده صحيح] أخرجه مسلم، الطلاق، باب تحريم طلاق الحائض بغير رضاها ... إلخ، ح: ٧/١٤٧١ من حديث أيوب السخيتاني به وهو في مصنف عبدالرزاق، ح: ١٠٩٥٩ بطوله، ورواه البخاري انظر الحديث الآتي.

Comments:

1. These *Aḥādīth* are related to the meaning of the first Verse of the *Sūrat At-Ṭalāq*: Divorce them during their (legal waiting) period (65:1), that is, divorce them during the time they are in a state of purity, provided no intercourse takes place during this time.
2. Divorcing a woman during the period of her menstruation is contrary to *Sunnah*. However, if one divorces one’s wife during those days, the majority of scholars consider it a valid divorce.
3. If a woman has been divorced during her period of menses, that divorce shall be considered as one divorce, and the husband shall be told to retract. The right to retract rests with the husband, not with the legal guardian.

2184. It was reported from Yazīd bin Ibrāhīm, from Muḥammad bin Sīrīn, that Yūnus bin Jubair narrated to him: "I asked 'Abdullāh bin 'Umar regarding a man who divorces his wife while she was in her menses. He said: 'Do you know Ibn 'Umar?' I replied: 'Yes.' He said: "Abdullāh bin 'Umar divorced his wife while she was in her menses, so 'Umar went to the Prophet ﷺ and asked him about that. He replied: "Command him to take her back, then, divorce her at the beginning of her waiting period." I said: 'So should that (divorce) be counted?' He replied: 'And what else? Do you suppose he was incapable and acted like a fool?'" (*Ṣaḥīḥ*)

تخریج: أخرجه البخاري، الطلاق، باب مراجعة الحائض، ح: ٥٣٣٣ من حديث يزيد بن إبراهيم به ورواه مسلم، انظر الحديث السابق.

2185. It was reported from Abū Az-Zubair that he heard 'Abdur-Raḥmān bin Ayman, the freed slave of 'Urwah, asking Ibn 'Umar — while Abū Az-Zubair was listening: "What is your opinion regarding a man who divorced his wife while she was in her menses?" He replied: " 'Abdullāh bin 'Umar divorced his wife while she was in her menses during the life of the Messenger of Allāh ﷺ. So 'Umar asked the Messenger of Allāh ﷺ and said: ' 'Abdullāh bin 'Umar divorced his wife while she was menstruating.'" 'Abdullāh (Ibn 'Umar) said: "So he (ﷺ) returned her to me, and did not consider it to be anything. And he said: 'Once

٢١٨٤ - حَدَّثَنَا الْقَعْنَبِيُّ: حَدَّثَنَا يَزِيدُ بْنُ
إِبْرَاهِيمَ عَنْ مُحَمَّدِ بْنِ سِيرِينَ: حَدَّثَنِي يُونُسُ
ابْنُ جُبَيْرٍ قَالَ: سَأَلْتُ عَبْدَ اللَّهِ بْنَ عُمَرَ قَالَ:
قُلْتُ: رَجُلٌ طَلَّقَ امْرَأَتَهُ وَهِيَ حَائِضٌ قَالَ:
تَعْرِفُ ابْنَ عُمَرَ؟ قُلْتُ: نَعَمْ. قَالَ: فَإِنَّ
عَبْدَ اللَّهِ بْنَ عُمَرَ طَلَّقَ امْرَأَتَهُ وَهِيَ حَائِضٌ،
فَأَتَى عُمَرَ النَّبِيَّ ﷺ فَسَأَلَهُ فَقَالَ: «مَرَّةٌ
فَلْيُرَاجِعْهَا ثُمَّ يُطَلِّقْهَا فِي قُبُلِ عِدَّتِهَا». قَالَ:
قُلْتُ: فَيَعْتَدُ بِهَا؟ قَالَ: فَمَهْ أَرَأَيْتَ إِنْ عَجَزَ
وَاسْتَحَمَقَ؟!.

٢١٨٥ - حَدَّثَنَا أَحْمَدُ بْنُ صَالِحٍ: حَدَّثَنَا
عَبْدُ الرَّزَّاقِ: أَخْبَرَنَا ابْنُ جُرَيْجٍ: أَخْبَرَنِي أَبُو
الرُّبَيْرِ أَنَّهُ سَمِعَ عَبْدَ الرَّحْمَنِ بْنَ أَيْمَنَ مَوْلَى
عُرْوَةَ يَسْأَلُ ابْنَ عُمَرَ - وَأَبُو الرُّبَيْرِ يَسْمَعُ -
قَالَ: كَيْفَ تَرَى فِي رَجُلٍ طَلَّقَ امْرَأَتَهُ
حَائِضًا؟ قَالَ: طَلَّقَ عَبْدُ اللَّهِ بْنُ عُمَرَ امْرَأَتَهُ
وَهِيَ حَائِضٌ عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ فَسَأَلَ
عُمَرَ رَسُولَ اللَّهِ ﷺ فَقَالَ: إِنَّ عَبْدَ اللَّهِ بْنَ
عُمَرَ طَلَّقَ امْرَأَتَهُ وَهِيَ حَائِضٌ قَالَ عَبْدُ اللَّهِ:
فَرَدَّهَا عَلَيَّ وَلَمْ يَرَهَا شَيْئًا، وَقَالَ: إِذَا
طَهَّرْتَ فَلْيُطَلِّقْ أَوْ لِيُصَبِّحْكَ. قَالَ ابْنُ عُمَرَ:
وَقَرَأَ النَّبِيُّ ﷺ: (يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ

she is pure, let him divorce her, or let him keep her.” Ibn ‘Umar added: “And the Prophet ﷺ recited: O Prophet, if you divorce women, then divorce them at the beginning of their waiting periods.^[1]” (*Sahih*)

Abū Dāwūd said: This *Hadīth* was reported from Ibn ‘Umar by Yūnus bin Jubair, Anas bin Sirīn, Sa‘eed bin Jubair Zaid bin Aslam, Abū Az-Zubair, and Mansūr who reported it from Abū Wā’il, and with all of them is the meaning that the Prophet ﷺ commanded him to take her back until she became pure, then, if he desired, he should divorce her, or if he desired, he should keep her.

Abū Dāwūd said: And this is how Muḥammad bin ‘Abdur-Raḥmān reported it from Sālim, from Ibn ‘Umar. As for the narration of Az-Zuhri from Sālim, and that of Nāfi‘ from Ibn ‘Umar, (its meaning is) that the Prophet ﷺ commanded him to take her back until she became pure, and then menstruated, and then became pure, and then if he wished, he could divorce her or keep her.

Abū Dāwūd said: And it has been related from ‘Aṭā’ Al-Khurāsānī, from Al-Ḥasan, from Ibn ‘Umar, similar to the narration of Nāfi‘ and Az-Zuhri, and all of these narrations contradict what Abū Az-Zubair said.

تخريج: أخرجه مسلم من حديث عبدالرزاق به وانظر، ح: ٢١٨٣ وقوله: "ولم يرها شيئاً"

النِّسَاءِ فَطَلَّقُوهُنَّ فِي قُبُلِ عِدَّتِهِنَّ).

قَالَ أَبُو دَاوُدَ: رَوَى هَذَا الْحَدِيثَ عَنْ
ابن عُمَرَ يُونُسُ بْنُ جُبَيْرٍ وَأَنَسُ بْنُ سِيرِينَ
وَسَعِيدُ بْنُ جُبَيْرٍ وَرَزِيدُ بْنُ أَسْلَمَ وَأَبُو الزُّبَيْرِ
وَمَنْصُورٌ عَنْ أَبِي وَإِثْلٍ مَعْنَاهُمْ كُلُّهُمْ: أَنَّ
النَّبِيَّ ﷺ أَمَرَهُ أَنْ يُرَاجِعَهَا حَتَّى تَطْهَرَ ثُمَّ إِنْ
شَاءَ طَلَّقَ وَإِنْ شَاءَ أَمْسَكَ.

قَالَ أَبُو دَاوُدَ: وَكَذَلِكَ رَوَاهُ مُحَمَّدُ بْنُ
عَبْدِ الرَّحْمَنِ عَنْ سَالِمٍ، عَنْ ابْنِ عُمَرَ، وَأَمَّا
رِوَايَةُ الزُّهْرِيِّ عَنْ سَالِمٍ، وَنَافِعٍ عَنْ ابْنِ
عُمَرَ: أَنَّ النَّبِيَّ ﷺ أَمَرَهُ أَنْ يُرَاجِعَهَا حَتَّى
تَطْهَرَ ثُمَّ تَحِيضَ ثُمَّ تَطْهَرَ ثُمَّ إِنْ شَاءَ طَلَّقَ أَوْ
أَمْسَكَ.

قَالَ أَبُو دَاوُدَ: وَرَوَى عَنْ عَطَاءِ
الْخُرَّاسَانِيِّ، عَنِ الْحَسَنِ، عَنِ ابْنِ عُمَرَ نَحْوُ
رِوَايَةِ نَافِعٍ وَالزُّهْرِيِّ وَالْأَحَادِيثُ كُلُّهَا عَلَى
خِلَافِ مَا قَالَ أَبُو الزُّبَيْرِ.

[1] *At-Talāq* 65:1.

يعنى لم يرها شيئاً مستقيماً لكونها لم تقع على السنة، قاله ابن عبدالبر (فتح الباري: ٣٥٤/٩).

Chapter 5. A Man Takes His Wife Back Without Any Witnesses

2186. ‘Imrān bin Ḥuṣāin was asked about a person who divorces his wife, and then engages (in intercourse) with her, without any witnesses of the divorce or of taking her back. He replied: “You have divorced contrary to the *Sunnah*, and you have taken her back contrary to the *Sunnah*. Have her divorce and your taking her back witnessed, and don’t repeat this.” (*Hasan*)

تخريج: [إسناده حسن] أخرجه ابن ماجه، الطلاق، باب الرجعة، ح: ٢٠٢٥ عن بشر بن هلال به، وقال ابن الملقن في "تحفة المحتاج"، ح: ١٤٨٨: "بإسناد جيد".

Comments:

If he decides to return to his wife, it is recommended to have two witnesses informed of that.

Chapter 6. Regarding The *Sunnah* For Divorcing Slaves

2187. Abū Hasan, a freed-slave from Banū Nawfal, informed that he asked Ibn ‘Abbās regarding a slave who was married to a slave-girl but had divorced her twice; they were then both freed, so is it allowed for him to propose to her? He replied: “Yes, this is what the Messenger of Allāh ﷺ decreed.” (*Da‘if*)

تخريج: [إسناده ضعيف] أخرجه النسائي، الطلاق، باب طلاق العبد، ح: ٣٤٥٧ من حديث يحيى بن سعيد القطان به ورواه ابن ماجه، ح: ٢٠٨٢ من حديث يحيى بن أبي كثير به * عمر بن معتب: ضعيف.

(المعجم ٥) - بَابُ الرَّجُلِ يُرَاجِعُ وَلَا يُشْهَدُ (التحفة ٥)

٢١٨٦ - حَدَّثَنَا بِشْرُ بْنُ هَلَالٍ: أَنَّ جَعْفَرَ ابْنَ سُلَيْمَانَ حَدَّثَهُمْ عَنْ يَزِيدَ الرَّشِكِ، عَنْ مُطَرِّفِ بْنِ عَبْدِ اللَّهِ: أَنَّ عِمْرَانَ بْنَ حُصَيْنٍ سَأَلَ عَنِ الرَّجُلِ يَطْلُقُ امْرَأَتَهُ ثُمَّ يَقَعُ بِهَا وَلَمْ يُشْهَدْ عَلَى طَلَاقِهَا وَلَا عَلَى رَجْعَتِهَا فَقَالَ: طَلَّقْتَ لِغَيْرِ سُنَّةٍ وَرَاجَعْتَ لِغَيْرِ سُنَّةٍ، أَشْهَدُ عَلَى طَلَاقِهَا وَعَلَى رَجْعَتِهَا وَلَا تَعُدُّ.

(المعجم ٦) - بَابُ: فِي سُنَّةِ طَلَاقِ الْعَبْدِ (التحفة ٦)

٢١٨٧ - حَدَّثَنَا زُهَيْرُ بْنُ حَرْبٍ: حَدَّثَنَا يَحْيَى بْنُ عَبْدِ اللَّهِ عَنْ عَبْدِ اللَّهِ بْنِ سَعِيدٍ: حَدَّثَنَا عَلِيُّ بْنُ الْمُبَارَكِ: حَدَّثَنِي يَحْيَى بْنُ أَبِي كَثِيرٍ أَنَّ عُمَرَ ابْنَ مُعْتَبٍ أَخْبَرَهُ أَنَّ أَبَا حَسَنِ مَوْلَى بَنِي نَوْفَلٍ أَخْبَرَهُ أَنَّهُ اسْتَفْتَى ابْنَ عَبَّاسٍ فِي مَمْلُوكٍ كَانَتْ تَحْتَهُ مَمْلُوكَةٌ فَطَلَّقَهَا تَطْلِيقَتَيْنِ ثُمَّ عَتَقَهَا بَعْدَ ذَلِكَ هَلْ يَصْلُحُ لَهُ أَنْ يَخْطُبَهَا؟ قَالَ: نَعَمْ فَضَى بِذَلِكَ رَسُولُ اللَّهِ ﷺ.

2188. (Another chain) with its meaning (similar to no. 2187), without saying: “informed.” Ibn ‘Abbās said: “One (option of divorce) remains for you. The Messenger of Allāh decreed accordingly.” (*Da‘īf*)

Abū Dāwud said: I heard Aḥmad bin Ḥanbal say: “‘Abdur-Razzāq said: ‘Ibn Al-Mubārak said to Ma‘mar: “Who is this Abū Al-Ḥasan? He has indeed taken a great responsibility!”

Abū Dāwud said: Az-Zuhrī reports from this Abū Al-Ḥasan. Az-Zuhrī said: “He was one of the *Fuqahā*’.”

Az-Zuhrī reports a number of narrations from Abū Al-Ḥasan.

Abū Dāwud said: (Though this) Abū Al-Ḥasan is well known, but this narration is not acted upon.

2189. It was reported from Muẓāhir, from Al-Qāsim bin Muḥammad, from ‘Āishah, that the Prophet ﷺ said: “The divorce of a slave-woman is two (times), and her (waiting period) is two cycles.” (*Da‘īf*)

Abū ‘Āṣim (one of the narrators) said: “Muẓāhir narrated to me: ‘Al-Qāsim narrated to me from ‘Āishah, from the Prophet ﷺ.’” similarly, except that he said: “And her waiting period is two (menstruation) cycles.”

Abū Dāwud said: It is an unknown narration. (Abū Dāwud said: Neither of these two *Hadīths* are acted upon.)

٢١٨٨ - حَدَّثَنَا مُحَمَّدُ بْنُ الْمُثَنَّى: حَدَّثَنَا عُمَانُ بْنُ عُمَرَ: أَخْبَرَنَا عَلِيُّ بْنُ إِسْحَانَ وَوَعْنَاهُ بِأَبِي إِخْبَارٍ.

قال ابن عباس: بَقِيََتْ لَكَ وَاحِدَةٌ قَضَى بِهِ رَسُولُ اللَّهِ ﷺ.

قال أبو داود: سَمِعْتُ أَحْمَدَ بْنَ حَنْبَلٍ قَالَ: قال عَبْدُ الرَّزَّاقِ: قال ابن المُبَارِكِ لِمَعْمَرٍ: مَنْ أَبُو الْحَسَنِ هَذَا؟ لَقَدْ تَحَمَّلَ صَحْرَةً عَظِيمَةً.

قال أبو داود: أبو الحسن هذا رَوَى عَنْهُ الزُّهْرِيُّ.

قال الزُّهْرِيُّ: وَكَانَ مِنَ الْفُقَهَاءِ رَوَى الزُّهْرِيُّ عَنْ أَبِي الْحَسَنِ أَحَادِيثَ.

قال أبو داود: أبو الحسن مَعْرُوفٌ وَلَيْسَ الْعَمَلُ عَلَى هَذَا الْحَدِيثِ.

تخريج: [ضعيف] انظر الحديث السابق.

٢١٨٩ - حَدَّثَنَا مُحَمَّدُ بْنُ مَسْعُودٍ: حَدَّثَنَا أَبُو عَاصِمٍ عَنْ ابْنِ جُرَيْجٍ، عَنْ مُطَاهِرٍ، عَنِ الْقَاسِمِ بْنِ مُحَمَّدٍ، عَنِ عَائِشَةَ عَنِ النَّبِيِّ ﷺ قَالَ: «طَلَّاقُ الْأَمَةِ تَطْلِيقَتَانِ [وَقُرُوءُهُمَا] حَيْضَتَانِ».

قال أبو عاصم: حَدَّثَنِي مُطَاهِرٌ: حَدَّثَنِي الْقَاسِمُ عَنْ عَائِشَةَ عَنِ النَّبِيِّ ﷺ مِثْلَهُ إِلَّا أَنَّهُ قَالَ: «وَعِدَّتُهَا حَيْضَتَانِ».

قال أبو داود: هُوَ حَدِيثٌ مَجْهُولٌ. [قال أبو داود: الْحَدِيثَانِ جَمِيعًا لَيْسَ الْعَمَلُ عَلَيْهِمَا]

قال أبو داود: مُطَاهِرٌ لَيْسَ بِمَعْرُوفٍ.

Abū Dāwud said: Muẓāhir is not well known.

تخريج: [إسناده ضعيف] أخرجه الترمذي، الطلاق، باب ما جاء أن طلاق الأمة تطليقتان، ح: ١١٨٢ وابن ماجه، ح: ٢٠٨٠ من حديث أبي عاصم به وقال الترمذي: "غريب" * مظاهر بن أسلم: ضعيف.

Chapter 7. Regarding A Divorce Before The Marriage

(المعجم ٧) بَابُ: فِي الطَّلَاقِ قَبْلَ النِّكَاحِ (التحفة ٧)

2190. It was reported from ‘Amr bin Shu’aib, from his father, from his grandfather, that the Prophet ﷺ said: “There is no divorce except with (someone) in your possession, and there is no freeing (of a slave) except someone you own, and there is no transaction except with something that you own.”

Ibn Aṣ-Ṣabbāḥ (one of the narrators) added: “And there is no fulfilling of a vow except with what you own.” (*Hasan*)

٢١٩٠ - حَدَّثَنَا مُسْلِمٌ بْنُ إِبْرَاهِيمَ: حَدَّثَنَا هِشَامٌ، ح: وَحَدَّثَنَا ابْنُ الصَّبَّاحِ: حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ عَبْدِ الصَّمَدِ قَالَ: أَخْبَرَنَا مَطَرُ الْوَرَّاقُ عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّ النَّبِيَّ ﷺ قَالَ: «لَا طَّلَاقَ إِلَّا فِيمَا تَمْلِكُ، وَلَا عِتْقَ إِلَّا فِيمَا تَمْلِكُ، وَلَا بَيْعَ إِلَّا فِيمَا تَمْلِكُ».

رَادَ ابْنُ الصَّبَّاحِ: «وَلَا وِفَاءَ نَذْرٍ إِلَّا فِيمَا تَمْلِكُ».

تخريج: [إسناده حسن] أخرجه النسائي، البيهقي، باب بيع ما ليس عند البائع، ح: ٤٦١٦ من حديث مطر الوراق به، ورواه ابن ماجه، ح: ٢٠٤٧، والترمذي، ح: ١١٨١ وقال: "حسن صحيح" وصححه ابن الملقن في "تحفة المحتاج"، ح: ١١٨٤، والذهبي في تلخيص المستدرک ٢/٢٠٤، ٢٠٥.

2191. (Another chain) from ‘Amr bin Shu’aib, with his chain and its meaning (similar to no. 2190), and he added: “And whoever took an oath to do (an act of) disobedience, then there is no swearing (*Yamīn*) upon him, and whoever took an oath to sever the ties of the womb (kinship) then there is no swearing (*Yamīn*) upon him.”^[1] (*Hasan*)

٢١٩١ - حَدَّثَنَا مُحَمَّدُ بْنُ الْعَلَاءِ: أَخْبَرَنَا أَبُو أُسَامَةَ عَنْ الْوَلِيدِ بْنِ كَثِيرٍ: حَدَّثَنِي عَبْدُ الرَّحْمَنِ بْنُ الْحَارِثِ عَنْ عَمْرِو بْنِ شُعَيْبٍ بِإِسْنَادِهِ وَمَعْنَاهُ زَادَ: «وَمَنْ حَلَفَ عَلَى مَعْصِيَةٍ فَلَا يَمِينُ لَهُ، وَمَنْ حَلَفَ عَلَى قَطِيعَةٍ رَحِمَ فَلَا يَمِينُ لَهُ».

تخريج: [حسن] انظر الحديث السابق.

[1] “No swearing (*Yamīn*)” meaning either, he may not do what he swore to do, but he must atone for that, or, he is not considered one who swore, that is, the oath does not count, and he need not atone for it. See nos. 3272-3274.

2192. (Another chain) from ‘Amr bin Shu‘aib, from his father, from his grandfather that the Prophet ﷺ said — for this narration (similar to no. 2190) — he added: “And there is no vow except for what is done seeking the Face of Allāh, Most High.” (*Hasan*)

٢١٩٢ - حَدَّثَنَا ابْنُ السَّرْحِ: حَدَّثَنَا ابْنُ وَهْبٍ عَنْ يَحْيَى بْنِ عَبْدِ اللَّهِ بْنِ سَالِمٍ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ الْمَخْزُومِيِّ، عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّ النَّبِيَّ ﷺ قَالَ - فِي هَذَا الْخَبَرِ زَادَ - : «وَلَا نَذَرَ إِلَّا فِيمَا ابْتُغِيَ بِهِ وَجْهُ اللَّهِ تَعَالَى ذِكْرُهُ» .
تخريج: [حسن] انظر الحديثين السابقين .

Chapter 8. Regarding Divorcing By Mistake

2193. ‘Āishah narrated that the Messenger of Allāh ﷺ said: “There is no divorce, nor freeing (of a slave) in the state of *Ighlāq*.” (*Hasan*)

Abū Dāwud said: I think that *Ghilāq* is anger.

(المعجم ٨) بَابُ فِي الطَّلَاقِ عَلَى غَلَطٍ (التحفة ٨)

٢١٩٣ - حَدَّثَنَا عُبَيْدُ اللَّهِ بْنُ سَعْدِ الرَّهْرِيِّ أَن يَعْقُوبَ بْنَ إِبْرَاهِيمَ حَدَّثَهُمْ: حَدَّثَنَا أَبِي عَنْ ابْنِ إِسْحَاقَ، عَنْ ثَوْرِ بْنِ يَزِيدَ الْجَنْصِيِّ، عَنْ مُحَمَّدِ بْنِ عُبَيْدِ بْنِ أَبِي صَالِحٍ الَّذِي كَانَ يَسْكُنُ إِبِلِيَا قَالَ: «حَرَجْتُ مَعَ عَدِيِّ بْنِ عَدِيِّ الْكِنْدِيِّ حَتَّى قَدِمْنَا مَكَّةَ فَبَعَثَنِي إِلَى صَفِيَّةَ بِنْتِ شَيْبَةَ وَكَانَتْ قَدْ حَفِظَتْ مِنْ عَائِشَةَ قَالَتْ: سَمِعْتُ عَائِشَةَ تَقُولُ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «لَا طَّلَاقَ وَلَا عِتَاقَ فِي إِغْلَاقٍ» .
قَالَ أَبُو دَاوُدَ: الْإِغْلَاقُ أَظْنُهُ فِي الْعُضْبِ .

تخريج: [حسن] أخرجه أحمد ٢٧٦/٦ من حديث إبراهيم بن سعد به وسنده ضعيف وصححه الحاكم على شرط مسلم: ١٩٨/٢ فتعقبه الذهبي وللحديث شواهد كثيرة عند الحاكم وغيره، ورواه ابن ماجه، ح: ٢٠٤٦ من طريق آخر عن صفية به .

Comments:

Ighlāq, means; “closed”. In the matter of divorce, it means “a deranged state of mind.” It may be due to drunkenness, a fit of demonic possession, or an uncontrollable fit of rage.

Chapter 9. Regarding A Divorce That Was Said In Jest

2194. Abū Hurairah narrated that the Messenger of Allāh ﷺ said: "Three things, when done in earnest are counted as earnest, and when done in jest, are also counted as earnest: Marriage, divorce, and taking (a divorcee) back." (*Hasan*)

تخریج: [إسناده حسن] أخرجه الترمذي، الطلاق واللعان، باب ما جاء في الجد والهزل في الطلاق، ح: ١١٨٤ وابن ماجه، ح: ٢٠٣٩ من حديث عبدالرحمن بن حبيب به وصححه الحاكم: ١٩٨/٢ وقال الترمذي: "حسن غريب" وللحديث شواهد راجع التلخيص الحبير: ٢١٠/٣.

Chapter 9,10. The Abrogation Of Taking Back A Wife After The Third Divorce

2195. It was reported from 'Alī bin Ḥusain bin Wāqid, from his father, from Yazīd An-Naḥwī, from 'Ikrimah, from Ibn 'Abbās, that he recited (the Verse): "And divorced women shall wait regarding themselves for three menstrual periods. And it is not lawful for them to conceal what Allāh has created in their wombs"^[1] and said: "This was because a person who had divorced his wife was entitled to take her back, even if he had divorced her three times. But then that was abrogated, and (Allāh) said: Divorce is two times."^[2] (*Hasan*)

(المعجم ٩) بَابُ: فِي الطَّلَاقِ عَلَى الْهَزْلِ (التحفة ٩)

٢١٩٤ - حَدَّثَنَا الْقَعْنَبِيُّ: حَدَّثَنَا عَبْدُ الْعَزِيزِ يَعْنِي ابْنَ مُحَمَّدٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ حَبِيبٍ، عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ، عَنْ ابْنِ مَاهَكَ، عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «ثَلَاثٌ جِدُّهُنَّ جِدٌّ وَهَزْلُهُنَّ جِدٌّ: النِّكَاحُ وَالطَّلَاقُ وَالرَّجْعَةُ».

(المعجم ٩، ١٠) - بَابُ نَسْخِ الْمَرَاجَعَةِ بَعْدَ التَّطْلِيقَاتِ الثَّلَاثِ (التحفة ١٠)

٢١٩٥ - حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدٍ الْمَرْوَرِيُّ: حَدَّثَنِي عَلِيُّ بْنُ حُسَيْنِ بْنِ وَاقِدٍ عَنْ أَبِيهِ، عَنْ يَزِيدِ النَّحْوِيِّ، عَنْ عِكْرَمَةَ، عَنْ ابْنِ عَبَّاسٍ قَالَ: «وَالْمُطَلَّقَاتُ يَرْجِعْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ وَلَا يَحِلُّ لَهُنَّ أَنْ يَكْتُمْنَ مَا خَلَقَ اللَّهُ فِي أَرْحَامِهِنَّ» الآية. وَذَلِكَ أَنَّ الرَّجُلَ كَانَ إِذَا طَلَّقَ امْرَأَتَهُ فَهُوَ أَحَقُّ بِرَجْعَتِهَا، وَإِنْ طَلَّقَهَا ثَلَاثًا. فَتَسَخَّ ذَلِكَ فَقَالَ: «الطَّلَاقُ مَرَّتَانٍ» الآية [البقرة: ٢٢٩].

[1] Al-Baqarah 2:228.

[2] Al-Baqarah 2:229.

الطلاق، باب نسخ المراجعة بعد التطبيقات، تخريج: [إسناده حسن] أخرجه النسائي، الثلاث، ح: ٣٥٨٤ من حديث علي بن حسين به.

2196. It was reported from Ibn Juraij that one of the sons of Abū Rāfi‘, the freed slave of the Prophet ﷺ, informed him from ‘Ikrimah, the freed slave of Ibn ‘Abbās, from Ibn ‘Abbās, that he said: “Abd Yazīd, the father of Rukānah, and his brothers, divorced Umm Rukānah, and married a woman from Muzainah. She (the woman from Muzainah) came to the Prophet ﷺ and said: ‘He is as useful to me as this hair,’ and plucked a hair from her head: ‘So separate us from each other.’ The Prophet ﷺ became angry at that, so he called for Rukānah and his brothers, and asked those who were seated with him: ‘Do you see that so-and-so resembles Abd Yazīd in this way, and this one resembles him in that way?’ They said: ‘Yes.’ So the Prophet ﷺ said to Abd Yazīd: ‘Divorce her,’ and he did so. Then he said: ‘Take back your wife, the mother of Rukānah and his brothers.’ He said: ‘I divorced her three times, O Messenger of Allāh!’ He replied, ‘I know. Take her back,’ and then recited: O Prophet! If you divorce women, then divorce them at their prescribed times...”^[1] (*Da‘īf*)
Abū Dāwud said: the *Ḥadīth* of Nāfi‘ bin ‘Ujair and ‘Abdullāh bin ‘Alī bin Yazīd bin Rukānah, from

٢١٩٦ - حَدَّثَنَا أَحْمَدُ بْنُ صَالِحٍ: حَدَّثَنَا عَبْدُ الرَّزَّاقِ: حَدَّثَنَا ابْنُ جُرَيْجٍ: أَخْبَرَنِي بَعْضُ بَنِي أَبِي رَافِعٍ مَوْلَى النَّبِيِّ ﷺ عَنْ عِكْرِمَةَ مَوْلَى ابْنِ عَبَّاسٍ، عَنْ ابْنِ عَبَّاسٍ - قَالَ: طَلَّقَ عَبْدُ يَزِيدَ - أَبُو رُكَّانَةَ وَإِخْوَتَهُ - أُمَّ رُكَّانَةَ وَنَكَحَ امْرَأَةً مِنْ مَرْيَتِهِ، فَجَاءَتِ النَّبِيَّ ﷺ فَقَالَتْ: مَا يُعْنِي عَنِّي إِلَّا كَمَا تُعْنِي هَذِهِ الشَّعْرَةَ لِشَعْرَةٍ أَخَذْتَهَا مِنْ رَأْسِهَا فَفَرَّقَ بَيْنِي وَبَيْنَهُ، فَأَخَذَتِ النَّبِيَّ ﷺ حَمِيمَةً فَدَعَا بِرُكَّانَةَ وَإِخْوَتِهِ ثُمَّ قَالَ لِيَجْلِسَايَ: «أَتُرَوْنَ فُلَانًا يُشْبِهُ مِنْهُ كَذَا وَكَذَا» مِنْ عَبْدِ يَزِيدَ، «وَفُلَانًا يُشْبِهُ مِنْهُ كَذَا وَكَذَا؟» قَالُوا: نَعَمْ، قَالَ النَّبِيُّ ﷺ لِعَبْدِ يَزِيدَ: «طَلَّقْهَا»، فَفَعَلَ، قَالَ: «رَاجِعِ امْرَأَتَكَ أُمَّ رُكَّانَةَ وَإِخْوَتَهُ» فَقَالَ: إِنِّي طَلَّقْتُهَا ثَلَاثًا يَا رَسُولَ اللَّهِ! قَالَ: «قَدْ عَلِمْتُ رَاجِعُهَا» وَتَلَا ﴿يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعَدَّتِهِنَّ﴾ [الطلاق: ١].

قَالَ أَبُو دَاوُدَ: وَحَدِيثُ نَافِعِ بْنِ عَجْبَرٍ وَعَبْدِ اللَّهِ بْنِ عَلِيٍّ بْنِ يَزِيدَ بْنِ رُكَّانَةَ عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّ رُكَّانَةَ طَلَّقَ امْرَأَتَهُ الْبَيْتَةَ فَوَدَّهَا إِلَيْهِ النَّبِيُّ ﷺ: أَصَحُّ، لِأَنَّهُمْ وَلَدَ الرَّجُلِ وَأَهْلُهُ أَعْلَمُ بِهِ إِنَّ رُكَّانَةَ إِنَّمَا طَلَّقَ امْرَأَتَهُ الْبَيْتَةَ فَجَعَلَهَا النَّبِيُّ ﷺ وَاحِدَةً.

[1] *At-Talāq* 65:1.

his father, from his grand father — that Rukānah divorced his wife irrevocably (*Al-Battah*), and the Prophet ﷺ returned her to him^[1] — it is more correct, because the son and family of a man are more knowledgeable of him. So Rukānah only divorced his wife with an irrevocable divorce and the Prophet ﷺ counted it as one.

تخریج: [إسناده ضعيف] أخرجه البيهقي: ۳۳۹/۷ من حديث أبي داود به وهو في مصنف عبدالرزاق، ح: ۳۳۴ * بعض بني رافع: مجهول.

2197. It was reported from ‘Abdullāh bin Kathīr, from Mujāhid who said: “I was with Ibn ‘Abbās, when a man came to him and said that he had divorced his wife three times. Ibn ‘Abbās remained quiet, until I thought that he would return her to him. Then he said: ‘One of you goes and commits a foolish act, and then cries out, “O Ibn ‘Abbās! O Ibn ‘Abbās!” even though Allāh says: And whoever has *Taqwā* of Allāh, Allāh will make a way out for him.^[2] So you did not have *Taqwā* of Allāh, and I do not find any way out for you. You have disobeyed your Lord, and your wife has become completely separated from you. And Allāh has said: O Prophet! If you divorce your wives, then divorce them^[3] — at the beginning of their prescribed times” (*Sahīh*)

۲۱۹۷ - حَدَّثَنَا حُمَيْدُ بْنُ مَسْعَدَةَ: حَدَّثَنَا إِسْمَاعِيلُ: أَخْبَرَنَا أَبُو بَرٍّ عَنْ عَبْدِ اللَّهِ بْنِ كَثِيرٍ، عَنْ مُجَاهِدٍ قَالَ: كُنْتُ عِنْدَ ابْنِ عَبَّاسٍ فَجَاءَهُ رَجُلٌ فَقَالَ: إِنَّهُ طَلَّقَ امْرَأَتَهُ ثَلَاثًا، قَالَ: فَسَكَتَ حَتَّى ظَنَنْتُ أَنَّهُ رَادُّهَا إِلَيْهِ، ثُمَّ قَالَ: يَنْطَلِقُ أَحَدُكُمْ فَيَرْكَبُ الْحُمُوقَةَ ثُمَّ يَقُولُ: يَا ابْنَ عَبَّاسٍ! يَا ابْنَ عَبَّاسٍ! وَإِنَّ اللَّهَ قَالَ: ﴿وَمَنْ يَتَّقِ اللَّهَ يَجْعَلْ لَهُ مَخْرَجًا﴾ [الطلاق: ۲] وَإِنَّكَ لَمْ تَتَّقِ اللَّهَ فَلَا أَجِدُ لَكَ مَخْرَجًا، عَصَيْتَ رَبَّكَ وَبَانَتْ مِنْكَ امْرَأَتُكَ، وَإِنَّ اللَّهَ قَالَ: (يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ فِي قُبُلِ عِدَّتِهِنَّ).

قَالَ أَبُو دَاوُدَ: رَوَى هَذَا الْحَدِيثَ حُمَيْدُ الْأَعْرَجُ وَعَظِيمَةُ عَنْ مُجَاهِدٍ، عَنْ ابْنِ عَبَّاسٍ. وَرَوَاهُ شُعْبَةُ عَنْ عَمْرٍو بْنِ مَرَّةٍ، عَنْ سَعِيدِ بْنِ

[1] He is referring to no. 2206.

[2] *At-Talāq* 65:2.

[3] *At-Talāq* 65:1.

Abū Dāwud said: This *Hadīth* was reported by Ḥumaid Al-A'raj and others, from Mujāhid, from Ibn 'Abbās. And *Shu'bah* reported it from 'Amr bin Murrah, from Sa'eed bin Jubair, from Ibn 'Abbās. Ayyūb and Ibn Juraij both reported it from 'Ikrimah bin Khālid, from Sa'eed bin Jubair, from Ibn 'Abbās. And Ibn Juraij reported it from 'Abdul-Ḥamīd bin Rāfi', from 'Atā', from Ibn 'Abbās. And Al-A'mash reported it from Mālik bin Al-Hārith, from Ibn 'Abbās. And Ibn Juraij reported it from 'Amr bin Dīnār, from Ibn 'Abbās. All of these said, regarding the three divorces, that they are valid. And he said: "And she is completely separated from you." Similar to the narration of Ismā'il from Ayyūb, from 'Abdullāh bin Kathīr.^[1]

Abū Dāwud said: Ḥammād bin Zaid reported from Ayyūb, from 'Ikrimah, from Ibn 'Abbās: "If he said: 'You are divorced three times' — at once — then it is counted as one."

And Ismā'il bin Ibrāhīm reported it from Ayyūb, from 'Ikrimah, as his own saying, not mentioning Ibn 'Abbās.

جُبَيْرٌ، عن ابن عَبَّاسٍ. وَأَيُّوبُ وَابْنُ جُرَيْجٍ جَمِيعًا عن عِكْرَمَةَ بْنِ خَالِدٍ، عن سَعِيدِ بْنِ جُبَيْرٍ، عن ابنِ عَبَّاسٍ، وَابْنُ جُرَيْجٍ عن عَبْدِ الْحَمِيدِ بْنِ رَافِعٍ، عن عَطَاءٍ، عن ابنِ عَبَّاسٍ. وَرَوَاهُ الْأَعْمَشُ عن مَالِكِ بْنِ الْحَارِثِ، عن ابنِ عَبَّاسٍ. وَابْنُ جُرَيْجٍ عن عَمْرٍو بْنِ دِينَارٍ، عن ابنِ عَبَّاسٍ؛ كُلُّهُمْ قَالُوا فِي الطَّلَاقِ الثَّلَاثِ أَنَّهُ أَجَازَهَا، قال: وَبَأْتَتْ مِنْكَ نَحْوَ حَدِيثِ إِسْمَاعِيلَ عن أَيُّوبَ، عن عَبْدِ اللَّهِ بْنِ كَثِيرٍ.

قال أَبُو دَاوُدَ: وَرَوَى حَمَادُ بْنُ زَيْدٍ عن أَيُّوبَ، عن عِكْرَمَةَ، عن ابنِ عَبَّاسٍ: إِذَا قال: أَنْتِ طَالِقٌ ثَلَاثًا - بِقَمٍ وَاحِدٍ: فَهِيَ وَاحِدَةٌ - وَرَوَاهُ إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ عن أَيُّوبَ، عن عِكْرَمَةَ هَذَا قَوْلَهُ وَلَمْ يَذْكُرِ ابْنَ عَبَّاسٍ وَجَعَلَهُ قَوْلَ عِكْرَمَةَ.

تخريج: [إسناده صحيح] أخرجه النسائي في الكبرى، ح: ١١٦٠٢ والطبري في تفسيره: ٢٨/ ٨٤ والطبراني في الكبير: ١١/ ٨٨، ٨٩، ح: ١١٣٩ من حديث إسماعيل به وصححه ابن حجر في الفتح: ٩/ ٣٦٢، وتواتر عن ابن عباس أنه أفتى بوقوع الثلاث في المدخولة وأما غير المدخولة فكان يراها واحدة * وقوله: في قبل عدتهن، تفسير من ابن عباس وكان يقرأ "لعدتهن" كما في المعجم الكبير للطبراني: ١١/ ٩٥، ح: ١١١٥٧ وحديث أبي داود عن حماد بن زيد لم أجد موصولاً وهذا لغیر المدخولة إن صح.

[1] Meaning, no. 2197.

2198. It was reported from Muḥammad bin Iyās that Ibn ‘Abbās, Abū Hurairah, and ‘Abdullāh bin ‘Amr bin Al-‘Āṣ were all asked regarding a virgin whose husband divorced her three times. They all replied: “She is not permitted for him until after she has married another husband (and that husband divorces her).”

(*Ṣaḥīḥ*)

Abū Dāwud said: Mālik reported from Yaḥayā bin Sa‘eed, from Bukair bin Al-Ashajj, from Mu‘āwiyah bin Abi ‘Ayyāsh, that he bore witness to this story when Muḥammad bin Iyās bin Al-Bukair came to Ibn Az-Zubair and ‘Āṣim bin ‘Umar and asked them regarding this issue. They both said: “Go to Ibn ‘Abbās and Abū Hurairah, for we left them while they were at ‘Āishah’s house, may Allāh be pleased with her.” Then he cited this narration.

Abū Dāwud said: And the saying of Ibn ‘Abbās that a triple divorce is irrevocable, regardless of whether the marriage has been consummated or not, and that she is not permitted for her husband until she marries another person, is similar to another narration from him, regarding *Ṣarf*, then Ibn ‘Abbās retracted from that.^[1]

٢١٩٨ - قَالَ أَبُو دَاوُدَ: وَصَارَ قَوْلُ ابْنِ عَبَّاسٍ فِيمَا حَدَّثَنَا أَحْمَدُ بْنُ صَالِحٍ وَمُحَمَّدُ ابْنُ يَحْيَى - وَهَذَا حَدِيثُ أَحْمَدَ - قَالَ: حَدَّثَنَا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ، عَنِ الرَّهْرِيِّ، عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، وَمُحَمَّدُ بْنُ عَبْدِ الرَّحْمَنِ بْنِ ثَوْبَانَ عَنْ مُحَمَّدِ ابْنِ إِيَّاسٍ أَنَّ ابْنَ عَبَّاسٍ وَأَبَا هُرَيْرَةَ وَعَبْدَ اللَّهِ ابْنَ عَمْرٍو بَنِي الْعَاصِ سَأَلُوا عَنِ الْبِكْرِ يُطَلَّقُهَا زَوْجَهَا ثَلَاثًا؟ فَكَلَّمَهُمْ قَالَ: لَا تَحِلُّ لَهُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ.

قَالَ أَبُو دَاوُدَ: وَرَوَى مَالِكٌ عَنْ يَحْيَى بْنِ سَعِيدٍ، عَنِ بُكَيْرِ بْنِ الْأَشَجِّ، عَنِ مُعَاوِيَةَ بْنِ أَبِي عَيَّاشٍ أَنَّهُ شَهِدَ هَذِهِ الْقِصَّةَ حِينَ جَاءَ مُحَمَّدُ بْنُ إِيَّاسٍ بِنَ الْبُكَيْرِ إِلَى ابْنِ الزُّبَيْرِ وَعَاصِمِ بْنِ عُمَرَ فَسَأَلَهُمَا عَنِ ذَلِكَ فَقَالَ: أَذْهَبَ إِلَى ابْنِ عَبَّاسٍ وَأَبِي هُرَيْرَةَ فَإِنِّي تَرَكْتُهُمَا عِنْدَ عَائِشَةَ رَضِيَ اللَّهُ عَنْهَا، ثُمَّ سَأَقَ هَذَا الْخَبَرَ.

قَالَ أَبُو دَاوُدَ: وَقَوْلُ ابْنِ عَبَّاسٍ - هُوَ أَنَّ الطَّلَاقَ الثَّلَاثَ تَبَيَّنَ مِنْ زَوْجِهَا مَدْخُولًا بِهَا أَوْ غَيْرَ مَدْخُولٍ بِهَا - : لَا تَحِلُّ لَهُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ، هَذَا مِثْلَ خَبْرِهِ الْآخَرَ، فِي الصَّرْفِ قَالَ فِيهِ، ثُمَّ إِنَّهُ رَجَعَ عَنْهُ. يَعْنِي ابْنَ عَبَّاسٍ.

تخريج: [صحيح] أخرجه البيهقي: ٣٥٤/٧ من حديث أبي داود به وحديث مالك في الموطأ (يحيى): ٥٧٠/٢.

[1] See no. 3348.

2199. It was reported from Ayyūb and others, from Ṭāwūs, that a man by the name of Abū Aṣ-Ṣahbā' would frequently ask Ibn 'Abbās questions. Once, he said: "Are you not aware of the fact that if a man divorced his wife thrice, before he consummated the marriage with her, they would consider it as one during the time of the Messenger of Allāh ﷺ, and Abū Bakr, and the early period of 'Umar?" Ibn 'Abbās replied: "Yes, they would consider that if a man divorced his wife thrice before he consummated the marriage with her, it would be counted as one during the time of the Messenger of Allāh ﷺ, and Abū Bakr, and the early period of 'Umar. But when they saw people doing this (frequently), he said: 'Consider it all upon them.'" (*Da'if*)

٢١٩٩ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ مَرْوَانَ: حَدَّثَنَا أَبُو التُّعْمَانِ: حَدَّثَنَا حَمَادُ بْنُ زَيْدٍ عَنْ أَبِي بَرْزَةَ، عَنْ عَائِشَةَ وَوَالِدِهَا، عَنْ طَاوُسٍ: أَنَّ رَجُلًا يُقَالُ لَهُ أَبُو الصَّهْبَاءِ كَانَ كَثِيرَ السُّؤَالِ لَابْنِ عَبَّاسٍ قَالَ: أَمَا عَلِمْتَ أَنَّ الرَّجُلَ كَانَ إِذَا طَلَّقَ امْرَأَتَهُ ثَلَاثًا قَبْلَ أَنْ يَدْخُلَ بِهَا جَعَلُوهَا وَاحِدَةً عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ وَأَبِي بَكْرٍ وَصَدْرًا مِنْ إِمَارَةِ عُمَرَ؟ قَالَ ابْنُ عَبَّاسٍ: بَلَى كَانَ الرَّجُلُ إِذَا طَلَّقَ امْرَأَتَهُ ثَلَاثًا قَبْلَ أَنْ يَدْخُلَ بِهَا جَعَلُوهَا وَاحِدَةً عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ وَأَبِي بَكْرٍ وَصَدْرًا مِنْ إِمَارَةِ عُمَرَ، فَلَمَّا [أَنَّ] رَأَى النَّاسَ قَدْ تَتَابَعُوا فِيهَا قَالَ: أَجِيزُوهُمْ عَلَيْهِمْ.

تخريج: [إسناده ضعيف] أخرجه البيهقي في دلائل النبوة: ٣٣٨/٧ من حديث أبي داود به ووقع في المطبوع تصحيف * غير واحد: لم أعرفهم وقول ابن عباس يؤيد هذا الحديث.

2200. It was reported from Ibn Juraij, that Ibn Ṭāwūs informed him from his father, that Abū Aṣ-Ṣahbā' said to Ibn 'Abbās: "Do you not know that three (divorces) were considered as one during the time of the Prophet ﷺ, and Abū Bakr, and three (years) from the rule of 'Umar?" Ibn 'Abbās replied: "Yes." (*Sahih*)

٢٢٠٠ - حَدَّثَنَا أَحْمَدُ بْنُ صَالِحٍ: أَخْبَرَنَا عَبْدُ الرَّزَّاقِ: أَخْبَرَنَا ابْنُ جُرَيْجٍ: أَخْبَرَنِي ابْنُ طَاوُسٍ عَنْ أَبِيهِ أَنَّ أَبَا الصَّهْبَاءِ قَالَ لَابْنِ عَبَّاسٍ: أَتَعْلَمُ أَنَّمَا كَانَتْ الثَّلَاثُ تُجْعَلُ وَاحِدَةً عَلَى عَهْدِ النَّبِيِّ ﷺ وَأَبِي بَكْرٍ وَثَلَاثًا مِنْ إِمَارَةِ عُمَرَ؟ قَالَ ابْنُ عَبَّاسٍ: نَعَمْ.

تخريج: أخرجه مسلم، الطلاق، باب طلاق الثلاث، ح: ١٤٧٢ من حديث عبدالرزاق به وهو في مصنفه، ح: ١١٣٣٧.

Chapter 10/11. Regarding Statements That Equate To Divorce, And Intentions

(المعجم ١٠، ١١) بَابُ: فِي مَا عَنِيَ بِهِ الطَّلَاقُ وَالنِّيَّاتُ (التحفة ١١)

2201. ‘Umar bin Al-Khattāb narrated that the Messenger of Allāh ﷺ said: “Actions are only done with intentions, and every person will only obtain what he intended. So whoever intended to emigrate for the sake of Allāh and His Messenger, then his emigration is for Allāh and His Messenger. And whoever emigrated due to a worldly benefit that would come to him, or because he wished to marry a woman, then his emigration will be for that which he emigrated.” (Ṣaḥīh)

٢٢٠١ - حَدَّثَنَا مُحَمَّدُ بْنُ كَثِيرٍ: أَخْبَرَنَا سُفْيَانُ: حَدَّثَنِي يَحْيَى بْنُ سَعِيدٍ عَنْ مُحَمَّدِ بْنِ إِبْرَاهِيمَ التَّمِيمِيِّ، عَنْ عَلْقَمَةَ بْنِ وَقَّاصٍ اللَّيْثِيِّ قَالَ: سَمِعْتُ عُمَرَ بْنَ الْخَطَّابِ يَقُولُ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّمَا الْأَعْمَالُ بِالنِّيَّةِ وَإِنَّمَا لِامْرِئٍ مَا نَوَى، فَمَنْ كَانَتْ هِجْرَتُهُ إِلَى اللَّهِ وَرَسُولِهِ فَهَجْرَتُهُ إِلَى اللَّهِ وَرَسُولِهِ، وَمَنْ كَانَتْ هِجْرَتُهُ لِدُنْيَا يُصِيبُهَا أَوْ امْرَأَةٍ يَتَرَوَّجُهَا فَهَجْرَتُهُ إِلَى مَا هَاجَرَ إِلَيْهَا».

تخریج: أخرجه البخاري، بدء الوحي، باب: كيف كان بدء الوحي إلى رسول الله ﷺ... إلخ، ح: ١ ومسلم، الإمارة، باب قوله ﷺ: «إِنَّمَا الْأَعْمَالُ بِالنِّيَّةِ... إلخ»، ح: ١٩٠٧ من حديث سفیان بن عیینة به.

2202. It was reported from Ibn Shihāb who said: ‘Abdur-Raḥmān bin ‘Abdullāh bin Ka‘b bin Mālik informed me that ‘Abdullāh bin Ka‘b — who was the guide for Ka‘b bin Mālik when he became blind — said: “I heard Ka‘b bin Mālik” and he narrated his story regarding the incident of Tabūk. He said: “So when forty of those fifty (days) had passed, a messenger came from the Messenger of Allāh ﷺ and said: ‘The Messenger of Allāh ﷺ has commanded you to leave your wife.’ I said: ‘Should I divorce her, or what?’ He said: ‘No, just leave her, and do not approach her.’ So I

٢٢٠٢ - حَدَّثَنَا أَحْمَدُ بْنُ عَمْرٍو بْنِ السَّرْحِ وَسَلِيمَانُ بْنُ دَاوُدَ قَالَا: أَخْبَرَنَا ابْنُ وَهَبٍ: أَخْبَرَنِي يُونُسُ عَنْ ابْنِ شِهَابٍ قَالَ: أَخْبَرَنِي عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ كَعْبِ بْنِ مَالِكٍ أَنَّ عَبْدَ اللَّهِ بْنَ كَعْبٍ - وَكَانَ قَائِدَ كَعْبٍ مِنْ بَنِيهِ جِئِنَ عَمِي - قَالَ: سَمِعْتُ كَعْبَ بْنَ مَالِكٍ، فَسَاقَ قِصَّتَهُ فِي تَبُوكَ قَالَ: حَتَّى إِذَا مَضَتْ أَرْبَعُونَ مِنَ الْخَمْسِينَ إِذَا رَسُولُ رَسُولِ اللَّهِ ﷺ يَأْتِي فَقَالَ: إِنَّ رَسُولَ اللَّهِ ﷺ يَأْمُرُكَ أَنْ تَعْتَزَلَ امْرَأَتَكَ، قَالَ: فَقُلْتُ: أَطْلَقَهَا أَمْ مَاذَا أَفْعَلُ؟ قَالَ: لَا، بَلِ اعْتَزَلْهَا، فَلَا تَقْرَبْتَهَا. فَقُلْتُ لِامْرَأَتِي:

said to my wife: ‘Go to you family, and stay with them until Allāh, Most High, decides in this matter.’”^[1] (*Ṣaḥīḥ*)

الْحَقِي بِأَهْلِكَ فَكُونِي عِنْدَهُمْ حَتَّى يَقْضِيَ اللَّهُ تَعَالَى فِي هَذَا الْأَمْرِ.

تخریج: أخرجه مسلم، التوبة، باب حديث توبة كعب بن مالك وصاحبيه، ح: ٢٧٦٩ عن أحمد بن عمرو بن السرح، والبخاري، الوصايا، باب: إذا تصدق أو وقف بعض ماله أو بعض رقيقه أو دوابه فهو جائز، ح: ٢٧٥٧ من حديث ابن شهاب الزهري به.

Comments:

If a husband tells his wife to go to her family with the intent of divorcing her, she will be divorced.

Chapter 11/12. Regarding Allowing The Wife To Choose

(المعجم ١١، ١٢) بَابُ: فِي الْخِيَارِ
(التحفة ١٢)

2203. ‘Āishah narrated: “The Messenger of Allāh ﷺ gave us the right to choose, so we all chose him, and that was not counted as anything.” (*Ṣaḥīḥ*)

٢٢٠٣ - حَدَّثَنَا مُسَدَّدٌ: حَدَّثَنَا أَبُو عَوَانَةَ
عَنِ الْأَعْمَشِ، عَنْ أَبِي الضُّحَى، عَنْ
مَسْرُوقٍ، عَنْ عَائِشَةَ قَالَتْ: خَيْرَنَا رَسُولُ اللَّهِ
ﷺ فَاخْتَرْنَاهُ، فَلَمْ يُعَدَّ ذَلِكَ شَيْئًا.

تخریج: أخرجه البخاري، الطلاق، باب من خير أزواجه ... إلخ، ح: ٥٢٦٢ ومسلم، الطلاق، باب بيان أن تخييره امرأته لا يكون طلاقاً إلا بالنية، ح: ٢٨/١٤٧٧ من حديث الأعمش به.

Comments:

If a husband says to his wife: “Either choose me or yourself” and by that he means divorce, then she will be divorced if she chooses herself.

Chapter 12/13. Regarding The Phrase: ‘Your Matter Is In Your Hands’

(المعجم ١٢، ١٣) بَابُ: فِي أَمْرِكِ بِيَدِكَ
(التحفة ١٣)

2204. Hammad bin Zaid said that he asked Ayyūb: “Do you know anyone who agreed with Al-Hasan regarding his opinion on the phrase: ‘Your matter is in your hands?’” He said: ‘No, except for something narrated to us by Qatādah, from Kathīr, the freed

٢٢٠٤ - حَدَّثَنَا الْحَسَنُ بْنُ عَلِيٍّ: حَدَّثَنَا
سُلَيْمَانُ بْنُ حَرْبٍ عَنْ حَمَادِ بْنِ زَيْدٍ قَالَ:
قُلْتُ لِأَيُّوبَ: هَلْ تَعْلَمُ أَحَدًا، قَالَ [بِقَوْلِ]
الْحَسَنِ فِي: أَمْرِكِ بِيَدِكَ؟ قَالَ: لَا إِلَّا شَيْءٌ
حَدَّثَنَا قَتَادَةُ عَنْ كَثِيرِ مَوْلَى ابْنِ سَمْرَةَ، عَنْ

[1] See nos. 4600, 4915 and 4916. See a long version in Al-Bukhārī (4418) and Muslim (7016).

slave of Ibn Samurah, from Abū Salamah, from Abū Hurairah, from the Prophet ﷺ, with its like.' Ayyūb said: 'But then, when Kathīr came to us and we asked him about it, he said that he had never narrated any such thing. And when we mentioned this to Qatādah, he said: Yes, he had, but he forgot.'

(Da'if)

تخریج: [إسناده ضعيف] أخرجه الترمذي، الطلاق، باب ما جاء في: أمرك بيدك، ح: ۱۱۷۸ والنسائي، ح: ۳۴۴۹ من حديث سليمان بن حرب به وقال الترمذي: "غريب" وقال النسائي: "منكر" * قتادة مدلس وعنن وكثير أنكر المروي المنسوب إليه.

2205. It was reported from Hishām, from Qatādah, from Al-Hasan, regarding the phrase: "Your matter is in your hands," — he said: "(It counts as) three."

(Da'if)

۲۲۰۵ - حَدَّثَنَا مُسْلِمُ بْنُ أَبِرَاهِيمَ: حَدَّثَنَا هِشَامٌ عَنْ قَتَادَةَ، عَنِ الْحَسَنِ فِي: أَمْرِكَ بِيَدِكَ قَالَ: ثَلَاثٌ.

تخریج: [إسناده ضعيف] * قتادة عنن.

Chapter 13/14. Regarding An Irrevocable (*Al-Battah*) Divorce

2206. It was reported from Nāfi' bin 'Ujair bin 'Abd Yazīd bin Rukānah, that Rukānah bin Abd Yazīd divorced his wife Suhaimah irrevocably (*Al-Battah*), and he then informed the Prophet ﷺ about that, and said: "By Allāh, I only intended one!" The Messenger of Allāh ﷺ said: "You swear by Allāh that you only intended one?" He replied: "I swear by Allāh that I only intended one." So the Messenger of Allāh ﷺ returned her to him. He then divorced her the second time during the era of 'Umar, and then the third time during the era of

(المعجم ۱۳، ۱۴) بَابُ فِي الْبَتَّةِ

(النفحة ۱۴)

۲۲۰۶ - حَدَّثَنَا ابْنُ السَّرْحِ وَإِبْرَاهِيمُ بْنُ خَالِدِ الْكَلْبِيِّ أَبُو ثَوْرٍ فِي آخِرِينَ قَالُوا: حَدَّثَنَا مُحَمَّدُ بْنُ إِدْرِيسَ الشَّافِعِيُّ: حَدَّثَنِي عَمِّي مُحَمَّدُ بْنُ عَلِيِّ بْنِ شَافِعٍ عَنِ [عَبْدِ اللَّهِ] بْنِ عَلِيِّ بْنِ السَّائِبِ، عَنِ نَافِعِ بْنِ عُجَيْرِ بْنِ عَبْدِ يَزِيدِ بْنِ رُكَانَةَ: أَنَّ رُكَانَةَ بْنَ عَبْدِ يَزِيدٍ طَلَّقَ امْرَأَتَهُ سُهِيمَةَ الْبَتَّةَ فَأَخْبَرَ النَّبِيَّ ﷺ بِذَلِكَ وَقَالَ: وَاللَّهِ! مَا أَرَدْتُ [بِهَا] إِلَّا وَاحِدَةً. فَقَالَ رَسُولُ اللَّهِ ﷺ: «وَاللَّهِ! مَا أَرَدْتُ إِلَّا وَاحِدَةً؟» فَقَالَ رُكَانَةُ: وَاللَّهِ! مَا أَرَدْتُ إِلَّا وَاحِدَةً، فَرَدَّهَا إِلَيْهِ رَسُولُ اللَّهِ ﷺ، فَطَلَّقَهَا

‘Uthmān. (*Hasan*)

Abū Dāwud said: The beginning of it is the wording of Ibrāhīm (one of the narrators) while the end of it is the wording of Ibn As-Sarḥ (one of the narrators).

الثَّانِيَّةُ فِي زَمَانِ عُمَرَ وَالثَّلَاثَةَ فِي زَمَانِ عُثْمَانَ .

قَالَ أَبُو دَاوُدَ: أَوَّلُهُ لَفْظُ إِبْرَاهِيمَ وَآخِرُهُ لَفْظُ ابْنِ السَّرْحِ .

تخريج: [إسناده حسن] أخرجه الدارقطني: ٣٣/٤، ح: ٣٩٣٣ من حديث الشافعي به وهو في الأم: ١١٨/٥، ١٣٧، ٢٦٠، و ٣٥/٧ ومسند الشافعي، ص: ٢٦٨ ونقل الدارقطني بسند صحيح عن أبي داود قال: "وهذا حديث صحيح" وأعل بما لا يقدر.

2207. (Another chain) from Nafi' bin 'Ujairah, from Rukānah bin 'Abd Yazīd, from the Prophet ﷺ for this *Hadīth*. (*Hasan*)

٢٢٠٧ - حَدَّثَنَا مُحَمَّدُ بْنُ يُوسُفَ النَّسَائِيُّ أَنَّ عَبْدَ اللَّهِ بْنَ الزُّبَيْرِ حَدَّثَهُمْ عَنْ مُحَمَّدِ بْنِ إِدْرِيسَ: حَدَّثَنِي عَمِّي مُحَمَّدُ بْنُ عَلِيٍّ عَنْ ابْنِ السَّائِبِ، عَنْ نَافِعِ بْنِ عُجَيْرٍ، عَنْ رُكَانَةَ بْنِ عَبْدِ يَزِيدَ عَنِ النَّبِيِّ ﷺ بِهَذَا الْحَدِيثِ .

تخريج: [حسن] انظر الحديث السابق وأخرجه الدارقطني: ٣٣/٤ والبيهقي: ٣٤٢/٧ من حديث أبي داود به.

2208. (Another chain) from 'Abdullāh bin 'Alī bin Yazīd bin Rukānah, from his father, from his grandfather, that he irrevocably divorced his wife. He then came to the Messenger of Allāh ﷺ, who asked him: "What did you intend?" He replied, "One." He said: "By Allāh?" He replied, "By Allāh." So the Prophet ﷺ said: "It is as you intended." (*Da'if*)

٢٢٠٨ - حَدَّثَنَا سُلَيْمَانُ بْنُ دَاوُدَ الْعَتَكِيُّ: حَدَّثَنَا جَرِيرُ بْنُ حَارِثٍ عَنِ الزُّبَيْرِ بْنِ سَعِيدٍ، عَنْ عَبْدِ اللَّهِ بْنِ عَلِيٍّ بْنِ يَزِيدَ بْنِ رُكَانَةَ، عَنْ أَبِيهِ، عَنْ جَدِّهِ: أَنَّهُ طَلَّقَ امْرَأَتَهُ الْبَتَّةَ، فَأَتَى رَسُولَ اللَّهِ ﷺ فَقَالَ: «مَا أَرَدْتُ؟» قَالَ: وَاحِدَةً، قَالَ: «اللَّهُ؟» قَالَ اللَّهُ! قَالَ: «هُوَ عَلَيَّ مَا أَرَدْتُ» .

Abū Dāwud said: This is more correct than the narration of Ibn Jurajj,^[1] which says that Rukānah divorced his wife three times. Because these are people (the narrators) from his family and they are more knowledgeable about his

قَالَ أَبُو دَاوُدَ: وَهَذَا أَصَحُّ مِنْ حَدِيثِ ابْنِ جُرَيْجٍ: أَنَّ رُكَانَةَ طَلَّقَ امْرَأَتَهُ ثَلَاثًا لِأَنَّهُمْ أَهْلُ بَيْتِهِ وَهُمْ أَعْلَمُ بِهِ . وَحَدِيثُ ابْنِ جُرَيْجٍ رَوَاهُ عَنْ بَعْضِ بَنِي أَبِي رَافِعٍ عَنْ عِكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ .

[1] That is, no. 2196.

affairs. And the narration of Ibn Juraij was reported from someone from the sons of Abū Rāfi', from 'Ikrimah, from Ibn 'Abbās.

تخريج: [إسناده ضعيف] أخرجه الترمذي، الطلاق واللعان، باب ما جاء في الرجل يطلق امرأته البتة، ح: ١١٧٧ وابن ماجه، ح: ٢٠٥١ من حديث جرير بن حازم به * الزبير بن سعيد: لين الحديث، والحديث السابق يعني عنه.

Comments:

The *Battah* divorce means the irrevocable divorce, wherein there remains no right of return.

Chapter 14/15. Regarding Whisperings Of Divorce^[1]

(المعجم ١٤، ١٥) بَابُ: فِي الْوَسْوَسَةِ
بِالطَّلَاقِ (التحفة ١٥)

2209. Abū Hurairah narrated that the Prophet ﷺ said: "Allāh has overlooked for my nation what it does not say or act upon, and what it (only) thinks about." (*Ṣaḥīḥ*)

٢٢٠٩ - حَدَّثَنَا مُسْلِمٌ بْنُ إِبرَاهِيمَ: حَدَّثَنَا هِشَامٌ عَنْ قَتَادَةَ، عَنْ زُرَّارَةَ بْنِ أَوْفَى، عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ ﷺ قَالَ: «إِنَّ اللَّهَ تَجَاوَزَ لِأُمَّتِي عَمَّا لَمْ يَتَكَلَّمْ بِهِ أَوْ تَعَمَّلْ بِهِ وَبِمَا حَدَّثَتْ بِهِ أَنْفُسَهَا».

تخريج: أخرجه البخاري، العتق، باب الخطأ والنسيان في العتاقة والطلاق ونحوه... إلخ، ح: ٢٥٢٨ ومسلم، الإيمان، باب تجاوز الله عن حديث النفس والخواطر بالقلب إذا لم تستقر، ح: ١٢٧ من حديث قتادة به.

Comments:

Divorce does not become valid until a person articulates the meaning of divorce, verbally or in writing. Just thinking of divorce does not make it valid.

Chapter 15/16. Regarding A Man Calling His Wife: "My Sister"

(المعجم ١٥، ١٦) بَابُ: فِي الرَّجُلِ يَقُولُ لِامْرَأَتِهِ: يَا أُخْتِي (التحفة ١٦)

2210. It was reported from Khālid Aṭ-Ṭaḥān, from Abū Tamimah Al-Hujaimī, that a man said to his wife: "O little sister of mine!" at which the Messenger of Allāh ﷺ said: "Is she your sister?" So he

٢٢١٠ - حَدَّثَنَا مُوسَى بْنُ إِسْمَاعِيلَ: حَدَّثَنَا حَمَّادٌ؛ ح: وَحَدَّثَنَا أَبُو كَامِلٍ: حَدَّثَنَا عَبْدُ الْوَاحِدِ وَخَالِدُ الطَّحَّانُ الْمَعْنَى كُلُّهُمُ عَنْ خَالِدٍ، عَنْ أَبِي تَمِيمَةَ الْهُجَيْمِيِّ: أَنَّ رَجُلًا

[1] Meaning thinking about these matters in one's mind, or the whisperings of *Shaitan* that occur in one's heart.

disliked that and forbade it. (*Da'if*)

قَالَ لَامْرَأَتِهِ يَا أُخِيَّةُ! فَقَالَ رَسُولُ اللَّهِ ﷺ: «أُخْتُكَ هِيَ!؟» ففكرة ذلك ونهى عنه.

تخريج: [إسناده ضعيف] أخرجه البيهقي: ٣٦٦/٧ من حديث أبي داود به * السند مرسل.

2211. It was reported from Khālid Al-Hadh-dhā, from Abū Tamīmah, from a man among his people, that he heard the Prophet ﷺ, who heard a man saying to his wife: “O little sister of mine!” So he forbade him from doing so. (*Da'if*)

Abū Dāwud said: ‘Abdul-‘Azīz bin Al-Mukhtār reported it from Khālid, and Shu'bah reported it from Khālid, from a man, from Abū Tamīmah, from the Prophet ﷺ.

٢٢١١ - حَدَّثَنَا مُحَمَّدُ بْنُ إِبْرَاهِيمَ الْبَرَزِيُّ: حَدَّثَنَا أَبُو نُعَيْمٍ: حَدَّثَنَا عَبْدُ السَّلَامِ يَعْنِي ابْنَ حَرْبٍ عَنْ خَالِدِ الْحَدَّاءِ، عَنْ أَبِي تَمِيمَةَ، عَنْ رَجُلٍ مِنْ قَوْمِهِ: أَنَّهُ سَمِعَ النَّبِيَّ ﷺ، سَمِعَ رَجُلًا يَقُولُ لَامْرَأَتِهِ: يَا أُخِيَّةُ! فَفَنَهَا.

قَالَ أَبُو دَاوُدَ: وَرَوَاهُ عَبْدُ الْعَزِيزِ بْنُ الْمُخْتَارِ عَنْ خَالِدِ، عَنْ أَبِي عَثْمَانَ، عَنْ أَبِي تَمِيمَةَ عَنِ النَّبِيِّ ﷺ. وَرَوَاهُ شُعْبَةُ عَنْ خَالِدِ، عَنْ رَجُلٍ، عَنْ أَبِي تَمِيمَةَ عَنِ النَّبِيِّ ﷺ.

تخريج: [إسناده ضعيف] خالد الحذاء: لم يسمعه من أبي تيممة، بينهما رجل وهو مجهول.

2212. It was reported from Hishām, from Muḥammad, from Abū Hurairah, from the Prophet ﷺ, that (Prophet) Ibrāhīm never lied except thrice: Twice for the sake of Allāh, when he said: I am feeling sick^[1] and when he said, ‘Rather, the largest of them did it.’^[2] And (the third) was when he was travelling through a land that was ruled by a tyrant. When he camped, the tyrant was approached and told: “A man has camped here with a woman who is of the most beautiful of mankind.” So the

٢٢١٢ - حَدَّثَنَا مُحَمَّدُ بْنُ الْمُثَنَّى: حَدَّثَنَا عَبْدُ الْوَهَّابِ: حَدَّثَنَا هِشَامٌ عَنْ مُحَمَّدٍ، عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ ﷺ: «أَنَّ إِبْرَاهِيمَ عَلَيْهِ السَّلَامُ لَمْ يَكْذِبْ قَطُّ إِلَّا ثَلَاثًا: ثِنْتَانِ فِي ذَاتِ اللَّهِ قَوْلُهُ: ﴿إِنِّي سَقِيمٌ﴾ [الصافات: ٨٩] وَقَوْلُهُ: ﴿بَلْ فَعَلَكُمْ كَيْدَهُمْ هَذَا﴾ [الأنبياء: ٦٣] وَبَيْنَمَا هُوَ يَسِيرُ فِي أَرْضِ جَبَّارٍ مِنَ الْجَبَّارَةِ إِذْ نَزَلَ مِنْزِلًا، فَأَتَى الْجَبَّارُ قَبِيلَ لَهْ: إِنَّهُ نَزَلَ هَهُنَا رَجُلٌ مَعَهُ امْرَأَةٌ هِيَ أَحْسَنُ النَّاسِ، قَالَ:

[1] *As-Saffāt* 37:89.

[2] *Al-Anbiyā* 21:63.

tyrant called for him and asked him about her, to which he replied, "She is my sister." When he returned, he said: "He asked me about you, and I told him that you are my sister, and there is no Muslim today besides you and me, and you are my sister according to the Book of Allāh, so do not make (him think) that I was lying." And he quoted the remainder of the narration. (*Ṣaḥīḥ*)

Abū Dāwud said: *Shu'aib bin Abī Ḥamzah* reported this narration from Abū Az-Zinād, from Al-A'raj, from Abū Hurairah, from the Prophet ﷺ, similarly.

تخریج: [صحيح] أخرجه النسائي في السنن الكبرى، ح: ٨٣٧٤ من حديث هشام به، ورواه البخاري، ح: ٥٠٨٤ ومسلم، ح: ٢٣٧١ من حديث أيوب عن محمد بن سيرين به * حديث شعيب ابن أبي حمزة: رواه البخاري، ح: ٢٢١٧.

16/17. Chapter: Regarding *Az-Zihār*

(المعجم ١٦، ١٧) بَابُ: فِي الظَّهَارِ

(التحفة ١٧)

2213. It was reported from Salamah bin *Ṣakhr* (Al-Bayādhī), who said: "I was a man who used to be effected by women much more than others. So when the month of Ramaḍān came, I feared that I would do with my wife an act that would remain with me until morning. Therefore, I pronounced *Zihār* on her until the end of the month of Ramaḍān. Once, while she was helping me one night, I saw a portion of her (body), and could not refrain from falling upon her. The next morning, I went out to my people and informed them of what had occurred, and said:

٢٢١٣ - حَدَّثَنَا عُثْمَانُ بْنُ أَبِي شَيْبَةَ وَمُحَمَّدُ بْنُ الْعَلَاءِ الْمَعْنَى قَالَا: حَدَّثَنَا ابْنُ إِدْرِيسَ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ، عَنْ مُحَمَّدِ بْنِ عَمْرٍو بْنِ عَطَاءٍ قَالَ ابْنُ الْعَلَاءِ: ابْنُ عَلْقَمَةَ - بِنِ عَيَّاشٍ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ، عَنْ سَلَمَةَ ابْنِ صَخْرٍ - قَالَ ابْنُ الْعَلَاءِ: الْبَيَاضِيُّ، قَالَ: كُنْتُ امْرَأَةً أُصِيبُ مِنَ النِّسَاءِ مَا لَا يُصِيبُ غَيْرِي فَلَمَّا دَخَلَ شَهْرُ رَمَضَانَ خَفْتُ أَنْ أُصِيبَ مِنْ امْرَأَتِي شَيْئًا يَتَّاعِبُ بِي حَتَّى أَصْبِحَ، فَظَاهَرْتُ مِنْهَا حَتَّى يَنْسَلِخَ شَهْرُ رَمَضَانَ، فَبَيَّنَّا هِيَ تَخْذُمُنِي ذَاتَ لَيْلَةٍ إِذْ تَكَشَّفَ لِي مِنْهَا شَيْءٌ

'Come with me to the Messenger of Allāh ﷺ.' They said: 'No, by Allāh!' So I went to the Prophet ﷺ and informed him (of what occurred). He said: 'You are the one, O Abū Salamah?' I said: 'I am the one, O Messenger of Allāh,' twice, 'and I will bear patiently the Decree of Allāh, the Mighty and Sublime, so judge upon me however Allāh wishes you to.' He said: 'Free a slave.' I said, placing my hand on my back: 'I swear by the One Who has send you with the truth, I own no back except this.' He said: 'Then fast for two consecutive two continuous months.' I replied: 'And how else was this caused except because of fasting?!' He said: 'Then feed a *Wasaq* of dates among sixty needy people.' I said: 'I swear by the One Who has send you with the truth, we spent the night hungry, having no food.' So he said: 'Then go to the one who is in charge of the charity of Banū Zuraiq, and ask him to give it to you, and feed sixty needy people with a *Wasaq* of dates, and feed yourselves and your family the remainder of it.' So I returned to my people and said: 'I found with you narrowness and evil opinion, and I found with the Prophet ﷺ ease and good opinion. And he commanded me to take your charity.'" (*Da'if*)

(One of the narrators) Ibn Al-A'la' added: "Ibn Idrīs said: 'Bayāḍah is a branch of Banū Zuraiq.'"

تخريج: [إسناده ضعيف] أخرجه الترمذي، الطلاق واللعان، باب ما جاء في المظاهر يواقع قبل أن يكفر، ح: ١١٩٨ وابن ماجه، ح: ٢٠٦٢ من حديث محمد بن إسحاق بن يسار به ولم أجد

فَلَمْ أَلْبَثْ أَنْ نَزَوْتُ عَلَيْهَا، فَلَمَّا أَصْبَحْتُ خَرَجْتُ إِلَى قَوْمِي فَأَخْبَرْتُهُمُ الْخَبَرَ وَقُلْتُ: امشُوا مَعِيَ إِلَى رَسُولِ اللَّهِ ﷺ، قَالُوا: لَا وَاللَّهِ! فَأَنْطَلَقْتُ إِلَى النَّبِيِّ ﷺ فَأَخْبَرْتُهُ، فَقَالَ: «أَنْتَ بِذَلِكَ يَاسَلَمَةُ!» قُلْتُ: أَنَا بِذَلِكَ يَارَسُولَ اللَّهِ! مَرَّتَيْنِ وَأَنَا صَابِرٌ لِأَمْرِ اللَّهِ عَزَّوَجَلَّ، فَأَحْكُمْ فِيَّ مَا أَرَاكَ اللَّهُ. قَالَ: «حَرِّزْ رَقَبَةً. قُلْتُ: وَالَّذِي بَعَثَكَ بِالْحَقِّ! مَا أَمْلِكُ رَقَبَةً غَيْرَهَا وَضَرَبْتُ صَفْحَةَ رَقَبَتِي. قَالَ: «فَضْمُ شَهْرَيْنِ مُتَتَابِعَيْنِ». قَالَ: وَهَلْ أَصَبْتُ الَّذِي أَصَبْتُ إِلَّا مِنَ الصِّيَامِ!؟ قَالَ: «فَأَطْعِمِ وَسَقَا مِنْ تَمْرٍ بَيْنَ سِتِّينَ مَسْكِينًا». قَالَ: وَالَّذِي بَعَثَكَ بِالْحَقِّ لَقَدْ بَنْنَا وَحَشِينِ مَا لَنَا طَعَامًا. قَالَ: «فَانْطَلِقِ إِلَى صَاحِبِ صَدَقَةِ بَنِي زُرَيْقٍ فَلْيَدْفَعْهَا إِلَيْكَ فَأَطْعِمِ سِتِّينَ مَسْكِينًا وَسَقَا مِنْ تَمْرٍ وَكُلْ أَنْتَ وَعِيَالُكَ بِقِيَّتِهَا». فَرَجَعْتُ إِلَى قَوْمِي فَقُلْتُ: وَجَدْتُ عِنْدَكُمْ الضِّيقَ وَسُوءَ الرَّأْيِ وَوَجَدْتُ عِنْدَ النَّبِيِّ ﷺ السَّعَةَ وَحُسْنَ الرَّأْيِ وَقَدْ أَمَرَ لِي أَوْ أَمْرِي بِصَدَقَتِكُمْ.

زَادَ ابْنُ الْعَلَاءِ: قَالَ ابْنُ إِدْرِيسَ: وَيَبَاضَةٌ بَطْنٌ مِنْ بَنِي زُرَيْقٍ.

تصريح سماعه * وسليمان لم يسمعه من سلمة، ومع ذلك حسنه الترمذي وصححه الحاكم على شرط مسلم: ٢٠٣/٢ ووافقه الذهبي والسند ضعيف وله شواهد ضعيفة.

Comments:

One *Wasq* equals sixty *Ṣā'* and one *Ṣā'* equals four *Mudd*.

2214. It was reported from Muḥammad bin Ishāq, from Ma‘mar bin ‘Abdullāh bin Hanzalah, from Yūsuf bin ‘Abdus-Salām, from Khuwailah bint Mālik bin Tha‘labah, she said: “My husband, Aws bin Aṣ-Ṣāmit, pronounced *Zihār* upon me, so I went to the Messenger of Allāh ﷺ in order to complain to him. But the Messenger of Allāh ﷺ was defending him against me, and saying: ‘Fear Allāh, for he is the son of your uncle.’ And I did not move until Allāh revealed: ‘Allāh has indeed heard the statement of she who disputes with you about her husband...’^[1] until it was made obligatory (the ruling of *Zihār*). So the Prophet ﷺ said: ‘Let him free a slave.’ I said: ‘He can’t do that.’ So he said: ‘Then let him fast for two consecutive months.’ I said: ‘He is an old man, and cannot fast.’ He said: ‘Then let him feed sixty needy people.’ I said: ‘He has nothing to give as charity.’ But at that very moment, a bushel (*Araq*)^[2] of dates came. I said: ‘O Messenger of Allāh, I will help him with another *Araq*.’ The Prophet ﷺ said: ‘You have done well. Go and feed sixty needy people on his behalf, and return to the son of

٢٢١٤ - حَدَّثَنَا الْحَسَنُ بْنُ عَلِيٍّ: حَدَّثَنَا يَحْيَى بْنُ آدَمَ: حَدَّثَنَا ابْنُ إِدْرِيسَ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ، عَنْ مَعْمَرِ بْنِ عَبْدِ اللَّهِ بْنِ حَظَلَةَ، عَنْ يُوسُفَ بْنِ عَبْدِ اللَّهِ بْنِ سَلَامَ، عَنْ حُوَيْلَةَ بِنْتِ مَالِكِ بْنِ تَعْلَبَةَ قَالَتْ: ظَاهَرَ مِنِّي زَوْجِي أَوْسُ بْنُ الصَّامِتِ، فَجِئْتُ رَسُولَ اللَّهِ ﷺ أَشْكُو إِلَيْهِ وَرَسُولُ اللَّهِ ﷺ يُجَادِلُنِي فِيهِ وَيَقُولُ: «اتَّقِيَ اللَّهَ فَإِنَّهُ ابْنُ عَمِّكَ»، فَمَا بَرِحْتُ حَتَّى نَزَلَ الْقُرْآنُ: ﴿قَدْ سَمِعَ اللَّهُ قَوْلَ الَّتِي تُجَادِلُكَ فِي زَوْجِهَا﴾ [المجادلة: ١] إِلَى الْفُرْصِ فَقَالَ: «يَعْتِقُ رَقَبَةً»، قَالَتْ: لَا يَجِدُ، قَالَ: «فَيَصُومُ شَهْرَيْنِ مُتَتَابِعَيْنِ»، قَالَتْ: يَا رَسُولَ اللَّهِ! إِنَّهُ شَيْخٌ كَبِيرٌ مَا بِهِ مِنْ صِيَامٍ، قَالَ: «فَلْيُطْعِمْ سِتِينَ مِسْكِينًا» قَالَتْ: مَا عِنْدَهُ مِنْ شَيْءٍ يَتَصَدَّقُ بِهِ، قَالَتْ: فَأَتَيْتُ سَاعَتَيْدَ بَعْرَقٍ مِنْ تَمْرٍ، قُلْتُ: يَا رَسُولَ اللَّهِ! فَأَنِي أُعِينُهُ بَعْرَقٍ آخَرَ، قَالَ: «قَدْ أَحْسَنْتِ، أَذْهَبِي فَأُطْعِمِي بِهَا عَنْهُ سِتِينَ مِسْكِينًا، وَارْجِعِي إِلَى ابْنِ عَمِّكَ» قَالَ: وَالْعَرَقُ سِتُونَ صَاعًا.
قَالَ أَبُو دَاوُدَ فِي هَذَا: إِنَّمَا كَفَّرَتْ عَنْهُ مِنْ غَيْرِ أَنْ تَسْتَأْمِرَهُ.

[1] *Al-Mujādilah* 58:1.

[2] A type of basket made of plant fiber, the volume of which is mentioned by one of the narrators at the end of the narration.

your uncle.” He said:^[1] “An ‘*Araq* is sixty *Ṣā’s*. (*Da‘īf*)

Abū Dāwud said: She paid the expiation for him without asking his permission.

Abū Dāwud said: He is the brother of ‘Ubādah bin Aṣ-Ṣāmit.

تخريج: [إسناده ضعيف] أخرجه أحمد: ٤١٠/٦ من حديث محمد بن إسحاق به وصرح بالسماع * معمر بن عبدالله: لم يوثقه غير ابن حبان.

2215. (Another chain) from Ibn Ishāq, with this chain, similarly, except that he said: “An ‘*Araq* is thirty *Ṣā’s*.” (*Da‘īf*)

Abū Dāwud said: This is more correct than the narration of Yahyā bin Ādam.^[2]

قَالَ أَبُو دَاوُدَ: هَذَا أَخُو عُبَادَةَ بْنِ الصَّامِتِ.

٢٢١٥ - حَدَّثَنَا الْحَسَنُ بْنُ عَلِيٍّ: حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ يَحْيَى أَبُو الْأَصْبَغِ الْحَرَّانِيُّ: حَدَّثَنَا مُحَمَّدُ بْنُ سَلَمَةَ عَنْ ابْنِ إِسْحَاقَ بِهَذَا الْإِسْنَادِ نَحْوَهُ إِلَّا أَنَّهُ قَالَ: وَالْعَرَقُ مِكْتَلٌ يَسَعُ ثَلَاثِينَ صَاعًا.

قَالَ أَبُو دَاوُدَ: وَهَذَا أَصَحُّ مِنْ حَدِيثِ يَحْيَى بْنِ آدَمَ.

تخريج: [ضعيف] انظر الحديث السابق وأخرجه البيهقي: ٣٩٢/٧ من حديث أبي داود به.

Comments:

According to *Shaikh* Al-Albānī, the correct definition of the ‘*Araq* (large basket) is fifteen *Ṣā’s*, as the following *Hadīth* indicates.

2216. (Another chain) from Abū Salamah bin ‘Abdur-Raḥmān who said: “An ‘*Araq* is a basket that holds twenty-five *Ṣā’s*.” (*Da‘īf*)

٢٢١٦ - حَدَّثَنَا مُوسَى بْنُ إِسْمَاعِيلَ: حَدَّثَنَا أَبَانُ: حَدَّثَنَا يَحْيَى عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ قَالَ: يَعْنِي الْعَرَقَ: زَنْبِيلاً يَأْخُذُ خَمْسَةَ عَشَرَ صَاعًا.

تخريج: [إسناده ضعيف] أخرجه البيهقي: ٣٩٠/٧ من حديث أبي داود به * أبان هو ابن يزيد العطار ويحيى هو ابن أبي كثير وهو مدلس وعنعن.

2217. It was reported from Bukair bin Al-Ashajj, from Sulaimān bin

٢٢١٧ - حَدَّثَنَا ابْنُ السَّرْحِ: حَدَّثَنَا ابْنُ وَهَبٍ: أَخْبَرَنِي ابْنُ لَهَيْعَةَ وَعَمْرُو بْنُ الْحَارِثِ

[1] It is not clear which of the narrators said this, it appears that it may be attributed to Muḥammad bin Ishāq.

[2] That is, no. 2214.

Yasār, with this narration, he said: "So some dates were brought to the Messenger of Allāh ﷺ, and he gave them to him, and it was approximately fifteen *Ṣā's*. He said: 'Give this as charity.' He replied: 'O Messenger of Allāh! To someone who is poorer than my family and I?' So the Messenger of Allāh ﷺ replied: 'Eat it yourself, and your family.'" (*Da'if*)

عَنْ بُكَيْرِ بْنِ الْأَسْحَجِ، عَنْ سُلَيْمَانَ بْنِ يَسَارٍ بِهَذَا الْخَبَرِ قَالَ: فَأَتَيْتِي رَسُولُ اللَّهِ ﷺ بِتَمْرٍ فَأَعْطَاهُ إِيَّاهُ وَهُوَ قَرِيبٌ مِنْ خَمْسَةِ عَشَرَ صَاعًا. قَالَ: «تَصَدَّقْ بِهَذَا». فَقَالَ: يَا رَسُولَ اللَّهِ! عَلَى أَفْقَرٍ مِنِّي وَمِنْ أَهْلِي؟ فَقَالَ رَسُولُ اللَّهِ ﷺ: «كُلْهُ أَنْتَ وَأَهْلُكَ».

تخریج: [إسناده ضعيف] وأخرجه البيهقي: ٣٩١/٧ من حديث أبي داود به وانظر، ح: ٢٢١٣ والسند مرسل.

2218. It was reported from Al-Awzā'ī, that 'Aṭā' narrated to them from Aws, the brother of 'Ubādah bin Aṣ-Ṣāmit, that the Prophet ﷺ gave him fifteen *Ṣā's* of barely to feed sixty needy people. (*Da'if*)

٢٢١٨ - قَالَ أَبُو دَاوُدَ: قَرَأْتُ عَلَى مُحَمَّدِ بْنِ وَزِيرِ الْمِصْرِيِّ قُلْتُ لَهُ: حَدِّثْكُمْ بِشُرِّ بَنِي بَكْرٍ: حَدَّثَنَا الْأَوْزَاعِيُّ: حَدَّثَنَا عَطَاءُ عَنْ أَوْسِ أَحْيَى عُبَادَةَ بْنِ الصَّامِتِ: أَنَّ النَّبِيَّ ﷺ أَعْطَاهُ خَمْسَةَ عَشَرَ صَاعًا مِنْ شَعِيرٍ إِطْعَامَ سِتِّينَ مِسْكِينًا.

Abū Dāwud said: 'Aṭā' did not meet Aws, and Aws was of those who attended (the Battle of) Badr, whose death was much earlier. The *Hādīth* is *Mursal*, they only reported it "from Al-Awzā'ī, from 'Aṭā', that Aws."^[1]

قَالَ أَبُو دَاوُدَ: وَعَطَاءٌ لَمْ يُدْرِكْ أَوْسًا وَهُوَ مِنْ أَهْلِ بَدْرِ قَدِيمِ الْمَوْتِ، وَالْحَدِيثُ مُرْسَلٌ وَإِنَّمَا رَوَاهُ: عَنِ الْأَوْزَاعِيِّ، عَنْ عَطَاءٍ أَنَّ أَوْسًا.

تخریج: [إسناده ضعيف] أخرجه البيهقي: ٣٩٢/٧ من حديث أبي داود به والسند مرسل.

2219. Hishām bin 'Urwah narrated that Jamīlah was married to Aws bin Aṣ-Ṣāmit, and he was a man who was very easily roused. So when his passions would become strong, he would pronounce *Zihār* on his wife, and because of that Allāh, the Mighty and Sublime,

٢٢١٩ - حَدَّثَنَا مُوسَى بْنُ إِسْمَاعِيلَ: حَدَّثَنَا حَمَّادٌ عَنْ هِشَامِ بْنِ عُرْوَةَ أَنَّ جَمِيلَةَ كَانَتْ تَحْتِ أَوْسِ بْنِ الصَّامِتِ وَكَانَ رَجُلًا بِهِ لَمَمٌ، فَكَانَ إِذَا اشْتَدَّ لَمَمُهُ ظَاهَرَ مِنْ أَمْرَاتِهِ، فَأَنْزَلَ اللَّهُ عَزَّوَجَلَّ فِيهِ كَفَّارَةَ الظَّهَارِ.

[1] Meaning, it was narrated with wording that does not indicate 'Aṭā' was witness to it.

revealed the expiation for *Zihār*.
(*Ṣaḥīḥ*)

Comments:

Jamīlah is the same woman who has been called *Khuwailah* in an earlier narration.

2220. (Another chain) from Hishām bin ‘Urwah, from ‘Urwah, from ‘Āishah, may Allāh be pleased with her, with similar (to no. 2219). (*Ṣaḥīḥ*)

٢٢٢٠ - حَدَّثَنَا هَارُونَ بْنُ عَبْدِ اللَّهِ:
حَدَّثَنَا مُحَمَّدُ بْنُ الْفَضْلِ: حَدَّثَنَا حَمَّادُ بْنُ
سَلَمَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ عُرْوَةَ، عَنْ
عَائِشَةَ رَضِيَ اللَّهُ عَنْهَا مِثْلَهُ.

تخریج: [إسناده صحيح] أخرجه الحاكم: ٤٨١/٢ من حديث محمد بن الفضل: عارم به
وصححه على شرط مسلم ووافقه الذهبي.

2221. It was reported from Sufyān, that Al-Ḥakam bin Abān narrated from ‘Ikrimah, that a man pronounced *Zihār* on his wife, and then engaged in intercourse with her before paying the expiation. He came to the Prophet ﷺ and informed him. The Prophet ﷺ said: “Why did you do what you did?” He said: “I saw the whiteness of her shin in the moonlight!” So he said: “Then stay away from her until you pay the expiation.” (*Da‘īf*)

٢٢٢١ - حَدَّثَنَا إِسْحَاقُ بْنُ إِسْمَاعِيلَ
الطَّالِقَانِيُّ: حَدَّثَنَا سُفْيَانُ: حَدَّثَنَا الْحَكَمُ بْنُ
أَبَانَ عَنْ عِكْرِمَةَ: أَنَّ رَجُلًا ظَاهَرَ مِنْ امْرَأَتِهِ
ثُمَّ وَاقَعَهَا قَبْلَ أَنْ يُكْفَرَ، فَأَتَى النَّبِيَّ ﷺ،
فَأَخْبَرَهُ، فَقَالَ: «مَا حَمَلَكَ عَلَى مَا صَنَعْتَ؟»
قَالَ: «رَأَيْتُ بَيَاضَ سَاقِهَا فِي الْقَمَرِ، قَالَ:
«فَاعْتَرَلْتُهَا حَتَّى تُكْفَرَ عَنْكَ.»

تخریج: [إسناده ضعيف] أخرجه البيهقي: ٣٨٦/٧ من حديث أبي داود به وللحديث شواهد
والسند مرسل.

Comments:

In case of *Zihār*, it is not permissible for one to come near his wife before expiation.

2222. (Another chain) from Sufyān bin ‘Uyainah, from Al-Ḥakam bin Abān, from ‘Ikrimah that a man pronounced *Zihār* on his wife, and then saw the beauty of her shin in the moonlight and so he fell upon her. He then came to the Prophet ﷺ, who commanded him to pay the expiation. (*Da‘īf*)

٢٢٢٢ - حَدَّثَنَا الرَّعْفَرَانِيُّ: حَدَّثَنَا سُفْيَانُ
ابْنَ عُيَيْنَةَ عَنْ الْحَكَمِ بْنِ أَبَانَ، عَنْ عِكْرِمَةَ:
أَنَّ رَجُلًا ظَاهَرَ مِنْ امْرَأَتِهِ، فَرَأَى بَرِيقَ سَاقِهَا
فِي الْقَمَرِ فَوَقَعَ عَلَيْهَا، فَأَتَى النَّبِيَّ ﷺ فَأَمَرَهُ
أَنْ يُكْفَرَ.

تخريج: [إسناده ضعيف] انظر الحديث السابق.

2223. (Another chain) from Al-Ḥakam bin Abān, from 'Ikrimah, from Ibn 'Abbās, from the Prophet ﷺ, with similar (to no. 2222), but he did not mention the shin. (*Hasan*)

٢٢٢٣ - حَدَّثَنَا زِيَادُ بْنُ أَيُّوبَ: حَدَّثَنَا إِسْمَاعِيلُ: حَدَّثَنَا الْحَكَمُ بْنُ أَبَانَ عَنْ عِكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ عَنِ النَّبِيِّ ﷺ نَحْوَهُ، وَلَمْ يَذْكُرِ: السَّقَاقَ.

تخريج: [إسناده حسن] أخرجه النسائي، الطلاق، باب الظهار، ح: ٣٤٨٧ والترمذي، ح: ١١٩٩ وابن ماجه، ح: ٢٠٦٥ من حديث الحكم بن أبان به وقال الترمذي: "حسن صحيح غريب".

2224. (Another chain) from Khālid (who said): "A *Ḥadīth* narrator reported to me, from 'Ikrimah, from the Prophet ﷺ" with similar to the narration of Sufyān (a narrator no. 2222). (*Da'if*)

٢٢٢٤ - حَدَّثَنَا أَبُو كَامِلٍ أَنَّ عَبْدَ الْعَزِيزِ ابْنَ الْمُخْتَارِ حَدَّثَهُمْ: حَدَّثَنَا خَالِدٌ: حَدَّثَنِي مُحَمَّدٌ عَنْ عِكْرِمَةَ عَنِ النَّبِيِّ ﷺ نَحْوَ حَدِيثِ سُفْيَانَ.

تخريج: [إسناده ضعيف] انظر الحديث السابق * محدث مجهول، والسند مرسل.

2225 (Another chain) from Al-Ḥakam bin Abān, narrating this *Ḥadīth*. And he did not mention Ibn 'Abbās. (*Hasan*)

Abū Dāwud said: A narration was written to me from Al-Ḥakam bin Abān, from 'Ikrimah, from Ibn 'Abbās, with its meaning, from the Prophet ﷺ.

٢٢٢٥ - قَالَ أَبُو دَاوُدَ: وَسَمِعْتُ مُحَمَّدَ ابْنَ عَيْسَى يُحَدِّثُ بِهِ: أَخْبَرَنَا مُعْتَمِرٌ قَالَ: سَمِعْتُ الْحَكَمَ بْنَ أَبَانَ يُحَدِّثُ بِهَذَا الْحَدِيثِ. وَلَمْ يَذْكُرِ ابْنَ عَبَّاسٍ. قَالَ أَبُو دَاوُدَ: كَتَبَ إِلَيَّ الْحُسَيْنُ بْنُ حُرَيْثٍ قَالَ: أَخْبَرَنَا الْفَضْلُ بْنُ مُوسَى عَنْ مَعْمَرٍ، عَنِ الْحَكَمِ بْنِ أَبَانَ، عَنْ عِكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ بِمَعْنَاهُ عَنِ النَّبِيِّ ﷺ.

تخريج: [حسن] انظر الحديث السابق، ح: ٢٢٢٣.

Comments:

In the case of *Zihār*, one has to fulfill the expiation before one may return to relations with his wife.

Chapter 17/18. Regarding *Khul'*

(المعجم ١٧، ١٨) بَابُ: فِي الْخُلْعِ
(التحفة ١٨)

2226. Thawbān reported that the Messenger of Allāh ﷺ said: "Any woman who asks her husband for a

٢٢٢٦ - حَدَّثَنَا سُلَيْمَانُ بْنُ حَرْبٍ: حَدَّثَنَا حَمَادٌ عَنْ أَيُّوبَ، عَنْ أَبِي قَلَابَةَ، عَنْ أَبِي

divorce without any cause will be prohibited from smelling the fragrance of Paradise.” (*Sahīh*)

أَسْمَاءُ، عَنْ ثَوْبَانَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «أَيُّمَا امْرَأَةٍ سَأَلْتُ زَوْجَهَا طَلَاقًا فِي غَيْرِ مَا بَأْسٍ فَحَرَامٌ عَلَيْهَا رَائِحَةُ الْجَنَّةِ».

تخریج: [إسناده صحيح] أخرجه ابن ماجه، الطلاق، باب كراهية الخلع للمرأة، ح: ۲۰۵۵ من حديث حماد بن زيد به وحسنه الترمذي، ح: ۱۱۸۷ وصححه ابن حبان (موارد)، ح: ۱۳۲۰ والحاكم على شرط الشيخين: ۲/ ۲۰۰ ووافقه الذهبي.

Comments:

In case there is no conjugal felicity or harmony among couples, and the husband is unwilling to divorce and the wife is insisting on separation, there is no other way for the wife except to go to a *Qāḍī* (judge) and present her case before him. If the judge, after reviewing the facts of the case, asks the wife to return the *Mahr* the husband gave her, and then he revokes the marriage agreement binding them, this kind of separation is called *Khul'* (dislocation, discharge, etc) in Islamic law.

2227. It was reported from ‘Amrah bint ‘Abdur-Raḥmān bin Sa’d Ibn Zurārah, that Ḥabībah bint Sahl Al-Anṣāriyyah was married to Thābit bin Qais bin Shammās. Once the Messenger of Allāh ﷺ came out (of his house) in the early morning and found her at his door. He asked: “Who is this?” She replied: “I am Ḥabībah bint Sahl.” He said: “And what is the matter?” She replied: “Thābit bin Qais and I cannot (remain together).” So when Thābit bin Qais came, the Messenger of Allāh ﷺ said to him: “This is Ḥabībah bint Sahl, and she has said whatever Allāh has willed her to say.” And Ḥabībah said: “O Messenger of Allāh! I (still) have everything that he has given me.” So the Messenger of Allāh ﷺ said to Thābit bin Qais: “Take it from her,” so he took it from her, and she then went to her house. (*Sahīh*)

۲۲۲۷ - حَدَّثَنَا الْقَعْنَبِيُّ عَنْ مَالِكٍ، عَنْ يَحْيَى بْنِ سَعِيدٍ، عَنْ عَمْرَةَ بِنْتِ عَبْدِ الرَّحْمَنِ ابْنِ سَعْدِ بْنِ زُرَّارَةَ أَنَّهَا أَخْبَرَتْهُ عَنْ حَبِيبَةَ بِنْتِ سَهْلِ الْأَنْصَارِيَِّّةِ: أَنَّهَا كَانَتْ تَحْتَ ثَابِتِ بْنِ قَيْسِ بْنِ شَمَّاسٍ وَأَنَّ رَسُولَ اللَّهِ ﷺ خَرَجَ إِلَى الصُّبْحِ فَوَجَدَ حَبِيبَةَ بِنْتِ سَهْلِ عِنْدَ بَابِهِ فِي الْعَلَسِ، فَقَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ هَذِهِ؟» قَالَتْ: «أَنَا حَبِيبَةُ بِنْتِ سَهْلِ قَالَ: «مَا شَأْنُكِ؟» قَالَتْ: «لَا أَنَا وَلَا ثَابِتُ ابْنِ قَيْسٍ - لَزَوْجَهَا - فَلَمَّا جَاءَ ثَابِتُ بْنُ قَيْسٍ قَالَ لَهُ رَسُولُ اللَّهِ ﷺ: «هَذِهِ حَبِيبَةُ: بِنْتُ سَهْلِ» فَذَكَرْتُ مَا شَاءَ اللَّهُ أَنْ تَذْكُرَ. وَقَالَتْ حَبِيبَةُ: يَا رَسُولَ اللَّهِ! كُلُّ مَا أَعْطَانِي عِنْدِي، فَقَالَ رَسُولُ اللَّهِ ﷺ لِثَابِتِ بْنِ قَيْسٍ: «خُذْ مِنْهَا» فَأَخَذَ مِنْهَا وَجَلَسَتْ فِي أَهْلِهَا.

تخریج: [إسناده صحيح] أخرجه النسائي، الطلاق، باب ما جاء في الخلع، ح: ۳۴۹۲ من

حديث مالك به وهو في الموطأ (يحيى): ٥٦٤/٢ وصححه ابن حبان (موارد): ١٣٢٦.

2228. It was reported from 'Amrah, from 'Aishah that Ḥabībah bint Sahl was married to Thābit bin Qais bin Shammās. He once hit her, and broke (some bones). So she came to the Prophet ﷺ after Ṣubḥ and complained to him about Thābit. The Prophet ﷺ called Thābit and said: "Take some of her wealth, and let go of her." He asked: "Will this rectify the matter, O Messenger of Allāh?" He said: "Yes." He said: "I gave her two gardens as her dowry, and she owns them now." The Prophet ﷺ said: "Take them from her, and let her go." So he did that. (*Hasan*)

٢٢٢٨ - حَدَّثَنَا مُحَمَّدُ بْنُ مَعْمَرٍ: حَدَّثَنَا أَبُو عَامِرٍ عَبْدُ الْمَلِكِ بْنِ عَمْرٍو: حَدَّثَنَا أَبُو عَمْرٍو السَّدُوسِيُّ الْمَدِينِيُّ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرٍ بْنِ مُحَمَّدِ بْنِ عَمْرٍو بْنِ حَزْمٍ، عَنْ عَمْرَةَ، عَنْ عَائِشَةَ: أَنَّ حَبِيبَةَ بِنْتَ سَهْلٍ كَانَتْ عِنْدَ ثَابِتِ بْنِ قَيْسِ بْنِ شَمَّاسٍ فَضَرَبَهَا فَكَسَرَ بَعْضَهَا فَأَتَتْ النَّبِيَّ ﷺ بَعْدَ الصُّبْحِ فَاسْتَكْتَمَتْ إِلَيْهِ فَدَعَا النَّبِيُّ ﷺ ثَابِتًا فَقَالَ: «خُذْ بَعْضَ مَالِهَا وَفَارِقْهَا»، فَقَالَ: وَيَصْلُحُ ذَلِكَ يَا رَسُولَ اللَّهِ؟ قَالَ: «نَعَمْ» قَالَ: فَإِنِّي أَصْدَقْتُهَا حَدِيثَيْنِ وَهُمَا بِيَدِهَا فَقَالَ النَّبِيُّ ﷺ: «خُذْهُمَا فَفَارِقْهَا» فَفَعَلَ.

تخريج: [إسناده حسن] أخرجه البيهقي: ٣١٥/٧ من حديث أبي عمرو: سعد بن سلمة بن أبي الحسام السدوسي به.

2229. It was reported from 'Ikrimah, from Ibn 'Abbās that the wife of Thābit bin Qais asked *Khul'* from him, so the Prophet ﷺ made her waiting period one menstrual cycle. (*Hasan*)

Abū Dāwud said: This *Hadīth* has also been reported by 'Abdur-Razzāq, from Ma'mar, from 'Amr bin Muslim, from 'Ikrimah from the Prophet ﷺ in *Mursal* form.

٢٢٢٩ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ الرَّحِيمِ الْبُرَّازُ: حَدَّثَنَا عَلِيُّ بْنُ بَحْرِ الْقَطَّانُ: حَدَّثَنَا هِشَامُ بْنُ يُوسُفَ عَنْ مَعْمَرٍ، عَنْ عَمْرٍو بْنِ مُسْلِمٍ، عَنْ عِكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ: أَنَّ امْرَأَةَ ثَابِتِ بْنِ قَيْسٍ اخْتَلَعَتْ مِنْهُ، فَجَعَلَ النَّبِيُّ ﷺ عِدَّتَهَا حَيْضَةً.

قَالَ أَبُو دَاوُدَ: وَهَذَا الْحَدِيثُ رَوَاهُ عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ، عَنْ عَمْرٍو بْنِ مُسْلِمٍ، عَنْ عِكْرِمَةَ عَنِ النَّبِيِّ ﷺ مُرْسَلًا.

تخريج: [إسناده حسن] أخرجه الترمذي، الطلاق واللعان، باب ما جاء في الخلع، ح: ١١٨٥ عن محمد بن عبدالرحيم به وقال: "حسن غريب" * حديث عبدالرزاق في المصنف، ح: ١١٨٥٨.

2230. It was reported from Nāfi', from Ibn 'Umar who said: "The waiting period of the women who asks for a *Khul'* is one menstrual cycle." (*Ṣaḥīḥ*)

٢٢٣٠ - حَدَّثَنَا الْمُعْتَبِرِيُّ عَنْ مَالِكٍ، عَنْ نَافِعٍ، عَنْ ابْنِ عُمَرَ قَالَ: عِدَّةُ الْمُخْتَلَعَةِ حَيْضَةٌ.

تخریج: [إسناده صحيح] وهو في الموطأ (يحيى): ٥٦٥/٢ .

Chapter 18/19. Regarding A Slave Woman Who Was Married To A Slave Or Free Man And Then Freed

2231. It was reported from Khālid Al-Ḥadh-dhā', from 'Ikrimah, from Ibn 'Abbās that Mughīth was a slave, and he said: "O Messenger of Allāh, intercede on my behalf with her."^[1] So the Messenger of Allāh ﷺ said: "O Barīrah; fear Allāh, for he is your husband, and the father of your children." She said: 'O Messenger of Allāh, are you commanding me with that?' He replied: "No, I am only an intercessor." And his tears were flowing down his cheeks, so the Messenger of Allāh ﷺ said to 'Abbās: "Does it not amaze you how much Mughīth loves her, yet she hates him so?" (*Ṣaḥīḥ*)

(المعجم ١٨، ١٩) بَابُ: فِي الْمَمْلُوكَةِ تُعْتَقُ وَهِيَ تَحْتَ حُرٍّ أَوْ عَبْدٍ (التحفة ١٩)

٢٢٣١ - حَدَّثَنَا مُوسَى بْنُ إِسْمَاعِيلَ: حَدَّثَنَا حَمَادٌ عَنْ خَالِدِ الْحَذَاءِ، عَنْ عِكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ: أَنَّ مُغِيثًا كَانَ عَبْدًا فَقَالَ: يَا رَسُولَ اللَّهِ! اشْفَعْ لِي إِلَيْهَا قَالَ رَسُولُ اللَّهِ ﷺ: «يَا بَرِيرَةُ! اتَّقِي اللَّهَ فَإِنَّهُ زَوْجُكَ وَأَبُو وَلَدِكَ»، فَقَالَتْ: يَا رَسُولَ اللَّهِ! أَتَأْمُرُنِي بِذَلِكَ؟ قَالَ: «لَا إِنَّمَا أَنَا شَافِعٌ»، فَكَانَ دُمُوعُهُ تَسِيلُ عَلَى خَدَيْهِ، فَقَالَ رَسُولُ اللَّهِ ﷺ لِلْعَبَّاسِ: «أَلَا تَعْجَبُ مِنْ حُبِّ مُغِيثِ بَرِيرَةَ وَبُغْضِهَا إِيَّاهُ؟!» .

تخریج: أخرجه البخاري، الطلاق، باب شفاعة النبي ﷺ في زوج بريرة، ح: ٥٢٨٣ من حديث خالد الحذاء به .

Comments:

If a slave man and a slave woman are united in marriage but, later on, the slave-girl is set free before her husband, she has the right to stay or not to stay with her husband.

2232. It was reported from Qatādah, from 'Ikrimah, from Ibn

٢٢٣٢ - حَدَّثَنَا عُثْمَانُ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَفَّانُ: حَدَّثَنَا هَمَّامٌ عَنْ قَتَادَةَ، عَنْ

[1] These narrations are about Barīrah who was freed by 'Āishah, may Allāh be pleased with them.

'Abbās that Barīrah's husband was a black slave called Mughīth, so the Prophet ﷺ gave her the option (of remaining his wife or leaving him), and then commanded her to observe the waiting period. (*Sahīh*)

عِكْرَمَةَ، عن ابن عَبَّاسٍ: أَنَّ زَوْجَ بَرِيرَةَ كَانَ عَبْدًا أَسْوَدَ يُسَمَّى مُغِيثًا فَخَيَّرَهَا يَعْنِي النَّبِيُّ ﷺ وَأَمَرَهَا أَنْ تَعْتَدَ.

تخريج: أخرجه البخاري، الطلاق، باب خيار الأمة تحت العبد، ح: ٥٢٨٠ من حديث همام

به.

2233. It was reported from Hishām bin 'Urwah, from his father, from 'Āishah — regarding the story of Barīrah — “Her husband was a slave, so the Prophet ﷺ gave her the option (of remaining his wife), and she chose herself. And had he been a free man, the Prophet ﷺ would not have given her the option.” (*Sahīh*)

٢٢٣٣ - حَدَّثَنَا عُمَانُ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا جَرِيرٌ عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ فِي قِصَّةِ بَرِيرَةَ قَالَتْ: كَانَ زَوْجُهَا عَبْدًا، فَخَيَّرَهَا النَّبِيُّ ﷺ، فَاخْتَارَتْ نَفْسَهَا، وَلَوْ كَانَ حُرًّا لَمْ يُخَيَّرَهَا.

تخريج: أخرجه مسلم، العتق، باب بيان أن الولاء لمن أعتق، ح: ٩/١٥٠٤ من حديث جرير، والبخاري، المكاتب، باب استعانة المكاتب وسؤاله الناس، ح: ٢٥٦٣ من حديث هشام بن عروة به مطولاً * ولو كان حراً لم يخيرها، مدرج من قول عروة كما بينته رواية النسائي.

2234. It was reported from 'Abdur-Rahmān bin Al-Qāsim, from his father, from 'Āishah that the Prophet ﷺ gave Barīrah the option (to remain with him or leave him), and her husband was a slave. (*Sahīh*)

٢٢٣٤ - حَدَّثَنَا عُمَانُ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا حُسَيْنُ بْنُ عَلِيٍّ وَالْوَلِيدُ بْنُ عُقْبَةَ عَنْ زَائِدَةَ، عَنْ سِمَاكِ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ: أَنَّ بَرِيرَةَ خَيَّرَهَا النَّبِيُّ ﷺ وَكَانَ زَوْجُهَا عَبْدًا.

تخريج: أخرجه مسلم، ح: ١١/١٥٠٤ من حديث الحسين بن علي به، انظر الحديث السابق.

Chapter 19/20. Whoso Said That He Was A Free Man

(المعجم ١٩، ٢٠) - بَابُ مَنْ قَالَ: كَانَ حُرًّا (التحفة ٢٠)

2235. It was reported from Al-Aswad, from 'Āishah, that Barīrah's husband was a free man when she was freed, and she was

٢٢٣٥ - حَدَّثَنَا ابْنُ كَثِيرٍ: أَخْبَرَنَا سُفْيَانُ عَنْ مَنْصُورٍ، عَنْ إِبْرَاهِيمَ، عَنْ الْأَسْوَدِ، عَنْ

given the option (of remaining his wife or leaving him). She replied: "Even if I were to have such and such, I would not like to be with him." (*Da'if*)

تخریج: [إسناده ضعيف] أخرجه الترمذي، الرضاع، باب ما جاء في الأمة تعتق ولها زوج، ح: ١١٥٥ من حديث إبراهيم النخعي به وقال: "حسن صحيح" * إبراهيم النخعي: مدلس ولم أجد تصريح سماعه في هذا الحديث.

Comments:

According to Shaikh Al-Albānī, the statement "he was a free man" is an interpolation, being merely the statement of Al-Aswad bin Yazid, and, according to Imām Al-Bukhārī, *Munqata'* (an interrupted chain of narration), while Ibn 'Abbās' statement "her husband was a slave" is more correct.

Chapter 20/21. When Will She Have Such An Option?

(المعجم ٢٠، ٢١) بَابُ: حَتَّى مَتَى يَكُونُ لَهَا الْخِيَارُ (التحفة ٢١)

2236. It was reported from Abān bin Ṣāliḥ from Mujāhid — and from Hishām bin 'Urwah from his father — (both of them) from 'Āishah, that Barīrah was set free while she was married to Mughīth, a slave of the family of Abū Aḥmad. So the Messenger of Allāh ﷺ allowed her the option, and told her, "If he approaches you, then you do not have any option." (*Da'if*)

٢٢٣٦ - حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ يَحْيَى الْحَرَّانِيُّ: حَدَّثَنِي مُحَمَّدٌ يَعْنِي ابْنَ سَلَمَةَ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ، عَنْ أَبِي جَعْفَرٍ وَعَنْ أَبَانَ بْنِ صَالِحٍ، عَنْ مُجَاهِدٍ. وَعَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ: أَنَّ بَرِيرَةَ أَعْتَقَتْ وَهِيَ عِنْدَ مُغِيثِ عَبْدِ لِيْلِ أَبِي أَحْمَدَ فَخَيَّرَهَا رَسُولُ اللَّهِ ﷺ وَقَالَ لَهَا: «إِنْ قَرَبَكَ فَلَا خِيَارَ لَكَ».

تخریج: [إسناده ضعيف] أخرجه البيهقي: ٢٢٥/٧ من حديث أبي داود به * محمد بن إسحاق عنن وانظر فتح الباري: ٤١٣/٩ لتحقيق المسألة.

Chapter 21/22. If Two Slaves Are Set Free Together, Does The Wife Have The Option?

(المعجم ٢١، ٢٢) بَابُ: فِي الْمَمْلُوكَيْنِ يُعْتَمَانِ مَعًا هَلْ تُخَيَّرُ امْرَأَتُهُ (التحفة ٢٢)

2237. It was reported from 'Ubaidullāh bin 'Abdur-Raḥmān bin Mawhab, from Al-Qāsim, from 'Āishah that she desired to set free slaves who were married (to one

٢٢٣٧ - حَدَّثَنَا زُهَيْرُ بْنُ حَرْبٍ وَنَصْرُ بْنُ عَلِيٍّ - قَالَ زُهَيْرٌ: حَدَّثَنَا - عُبَيْدُ اللَّهِ بْنُ عَبْدِ الْمَجِيدِ: حَدَّثَنَا عُبَيْدُ اللَّهِ بْنُ عَبْدِ الرَّحْمَنِ

another), so she asked the Prophet ﷺ about that. He commanded her to start with the man before the woman. (*Hasan*)

ابن مَوْهَبٍ عَنِ الْقَاسِمِ، عَنْ عَائِشَةَ: أَنَّهَا أَرَادَتْ أَنْ تُعْتَقَ مَمْلُوكَيْنِ لَهَا - زَوْجٌ - قَالَ: فَسَأَلَتِ النَّبِيَّ ﷺ عَنْ ذَلِكَ؟، فَأَمَرَهَا أَنْ تَبْدَأَ بِالرَّجُلِ قَبْلَ الْمَرْأَةِ قَالَ نَصْرٌ: أَخْبَرَنِي أَبُو عَلِيٍّ الْحَنَفِيُّ عَنْ عَبْدِ اللَّهِ.

تخریج: [إسناده حسن] أخرجه ابن ماجه، العتق، باب من أراد عتق رجل وامرأته فليبدأ بالرجل، ح: ٢٥٣٢ من حديث عبیدالله بن عبدالمجید به ورواه النسائي، ح: ٣٤٧٦ من حديث عبیدالله بن عبد الرحمن بن موهب به، وهو حسن الحديث وثقه الجمهور وقال ابن عدي: "حسن الحديث يكتب حديثه".

Chapter 22/23. If One Of The Two Who Are Married Accepts Islam

2238. It was reported from Ibn 'Abbās that a man accepted Islam and came to the Messenger of Allāh ﷺ. Then his wife came as a Muslim after him. He said: "O Messenger of Allāh, she accepted Islam along with me so return her to him." (*Da'if*)

(المعجم ٢٢، ٢٣) بَابُ: إِذَا أَسْلَمَ أَحَدُ الزَّوْجَيْنِ (التحفة ٢٣)

٢٢٣٨ - حَدَّثَنَا عُثْمَانُ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا وَكَيْعٌ عَنِ إِسْرَائِيلَ، عَنْ سِمَاكِ، عَنْ عِكْرِمَةَ، عَنِ ابْنِ عَبَّاسٍ: أَنَّ رَجُلًا جَاءَ مُسْلِمًا عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ ثُمَّ جَاءَتْ امْرَأَتُهُ مُسْلِمَةً بَعْدَهُ، فَقَالَ: يَا رَسُولَ اللَّهِ! إِنَّهَا قَدْ كَانَتْ أَسْلَمْتُ مَعِيَ، فَرَدَّهَا عَلَيْهِ.

تخریج: [إسناده ضعيف] أخرجه الترمذي، النكاح، باب ما جاء في الزوجين المشركين يسلم أحدهما، ح: ١١٤٤ من حديث وكيع به وقال: "صحيح" وصححه الحاكم: ٢/٢٠٠ ووافقه الذهبي * سماك عن عكرمة: سلسلة ضعيفة، راجع تهذيب التهذيب وغيره.

Comments:

Wedlock effected before Islam continues to be valid even after Islam. No renewal is needed.

2239. (Another chain) from Ibn 'Abbās who said: "A woman accepted Islam during the time of the Prophet ﷺ, and then married. Her husband came to the Prophet ﷺ and said: 'O Messenger of Allāh! I had accepted Islam, and she knew of my conversion.' So the Messenger of Allāh ﷺ took her

٢٢٣٩ - حَدَّثَنَا نَصْرٌ بْنُ عَلِيٍّ: أَخْبَرَنِي أَبُو أَحْمَدَ عَنِ إِسْرَائِيلَ، عَنْ سِمَاكِ، عَنْ عِكْرِمَةَ، عَنِ ابْنِ عَبَّاسٍ قَالَ: أَسْلَمَتِ امْرَأَةٌ عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ فَتَزَوَّجَتْ فَجَاءَ زَوْجُهَا إِلَى النَّبِيِّ ﷺ فَقَالَ: يَا رَسُولَ اللَّهِ! إِنِّي كُنْتُ قَدْ أَسْلَمْتُ وَعَلِمْتُ بِإِسْلَامِي

away from her second husband, and returned her to her first husband.” (Da’if)

تخريج: [إسناده ضعيف] أخرجه البغوي في شرح السنة، ح: ٢٢٩٠ من حديث أبي داود، وابن ماجه، ح: ٢٠٠٨ من حديث سماك به وانظر الحديث السابق لعلته.

Chapter 23/24. Up Till When Will She Be Returned To Her Husband If He Accepts Islam After Her?

2240. It was reported from ‘Ikrimah from Ibn ‘Abbās who said: “The Messenger of Allāh ﷺ returned his daughter Zainab to Abū Al-‘Āṣ with their first marriage, and did not do anything again.”

In his narration Muḥammad bin ‘Amr (one of the narrators) said: “...after six years,” Al-Hasan bin ‘Alī (one of the narrators) said: “...after two years.” (Da’if)

فَانْتَزَعَهَا رَسُولُ اللَّهِ ﷺ مِنْ زَوْجِهَا الْآخِرِ وَرَدَّهَا إِلَى زَوْجِهَا الْأَوَّلِ.

(المعجم ٢٣، ٢٤) بَابُ: إِلَى مَتَى تُرَدُّ عَلَيْهِ امْرَأَتُهُ إِذَا أَسْلَمَ بَعْدَهَا (التحفة ٢٤)

٢٢٤٠ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ الْقَيْلِيُّ: حَدَّثَنَا مُحَمَّدُ بْنُ سَلَمَةَ؛ ح: وَحَدَّثَنَا مُحَمَّدُ بْنُ عَمْرٍو الرَّازِيُّ: حَدَّثَنَا سَلَمَةُ يُعْنِي ابْنَ الْفَضْلِ؛ ح: وَحَدَّثَنَا الْحَسَنُ بْنُ عَلِيٍّ: حَدَّثَنَا يَزِيدُ الْمَعْنَى كُلُّهُمُ عَنْ ابْنِ إِسْحَاقَ، عَنْ دَاوُدَ بْنِ الْحُصَيْنِ، عَنْ عِكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ قَالَ: رَدَّ رَسُولُ اللَّهِ ﷺ ابْنَتَهُ زَيْنَبَ عَلَى أَبِي الْعَاصِ بِالنِّكَاحِ الْأَوَّلِ، لَمْ يُحَدِّثْ شَيْئًا.

قال مُحَمَّدُ بْنُ عَمْرٍو فِي حَدِيثِهِ: بَعْدَ سِتِّ سِنِينَ. وَقَالَ الْحَسَنُ بْنُ عَلِيٍّ: بَعْدَ سَتِّينَ.

تخريج: [إسناده ضعيف] أخرجه الترمذي، النكاح، باب ما جاء في الزوجين المشركين يسلم أحدهما، ح: ١١٤٣ وابن ماجه، ح: ٢٠٠٩ من حديث ابن إسحاق به * داود بن حصين: ثقة ولكن قال ابن المديني: "ما روى عن عكرمة فمنكر".

Chapter 24/25. Regarding A Man Who Was Married To More Than Four Women, Or To Two Sisters, And Then He Accepts Islam

2241. Al-Ḥārith bin Qais narrated: “I accepted Islam and I had eight wives. I mentioned that to the Prophet ﷺ who said: ‘Choose four

(المعجم ٢٤، ٢٥) بَابُ: فِي مَنْ أَسْلَمَ وَعِنْدَهُ نِسَاءٌ أَكْثَرُ مِنْ أَرْبَعٍ أَوْ أُخْتَانِ (التحفة ٢٥)

٢٢٤١ - حَدَّثَنَا مُسَدَّدٌ: حَدَّثَنَا هُشَيْمٌ؛ ح: وَحَدَّثَنَا وَهْبُ بْنُ بَقِيَّةَ: أَخْبَرَنَا هُشَيْمٌ عَنْ ابْنِ

among them.” (Da‘if)

Abū Dāwud said: Aḥmad bin Ibrāhīm narrated to us (saying): “Hushaim narrated it to us.” He said: “Qais bin Al-Ḥārith” instead of Al-Ḥārith bin Qais. Aḥmad bin Ibrāhīm said: “This is what is correct.” Meaning Qais bin Al-Ḥārith.

أبي لَيْلَى، عن حُمَيْصَةَ بنِ الشَّمْرَدَلِ، عن الحَارِثِ بنِ قَيْسٍ - قال مُسَدَّدٌ: ابنِ عُمَيْرَةَ، وقال وَهْبٌ: الأَسَدِيُّ - قال: أَسْلَمْتُ وَعِنْدِي ثَمَانُ نِسْوَةٍ، قال: فَذَكَرْتُ ذَلِكَ لِلنَّبِيِّ ﷺ، فقالَ النَّبِيُّ ﷺ: «اخْتَرْ مِنْهُنَّ أَرْبَعًا».

قالَ أَبُو دَاوُدَ: وحدثنا بِهِ أَحْمَدُ بنُ إِبْرَاهِيمَ: حَدَّثَنَا هُشَيْمٌ بِهَذَا الْحَدِيثِ فقال: قَيْسِ بنِ الحَارِثِ، مَكَانَ الحَارِثِ بنِ قَيْسٍ. قالَ أَحْمَدُ بنُ إِبْرَاهِيمَ هَذَا هُوَ الصَّوَابُ يَعْنِي قَيْسَ بنِ الحَارِثِ.

تخريج: [إسناده ضعيف] وأخرجه ابن عبد البر في التمهيد: ٥٦/١٢ من حديث أبي داود به وانظر الحديث الآتي: ٢٢٤٢ * ابن أبي ليلى ضعيف، تقدم، ح: ١٦٣٧، وحميصة مستور لا يعرف ولم يوثقه غير ابن حبان، وللحديث شواهد ضعيفة.

2242. It was reported from Ḥumaidah bin Ash-Shamardhal, from Qais bin Al-Ḥārith, with its meaning (similar to no. 2241). (Da‘if)

٢٢٤٢ - حَدَّثَنَا أَحْمَدُ بنُ إِبْرَاهِيمَ: حَدَّثَنَا بَكْرُ بنُ عَبْدِ الرَّحْمَنِ قَاضِي الكُوفَةِ عن عَيْسَى بنِ الْمُخْتَارِ، عن ابنِ أَبِي لَيْلَى، عن حُمَيْصَةَ بنِ الشَّمْرَدَلِ، عن قَيْسِ بنِ الحَارِثِ بِمَعْنَاهُ.

تخريج: [إسناده ضعيف] أخرجه ابن ماجه، النكاح، باب الرجل يسلم وعنده أكثر من أربع نسوة، ح: ١٩٥٢ من حديث محمد بن أبي ليلى به وللحديث شواهد ضعيفة، وانظر الحديث السابق.

2243. It was reported from Aḍ-Ḍaḥḥāk bin Fairūz, from his father, who said, “I asked: O Messenger of Allāh! I have accepted Islam, and I am married to two sisters.” So the Prophet ﷺ said: “Divorce whichever of them you wish.” (Ḥasan)

٢٢٤٣ - حَدَّثَنَا يَحْيَى بنُ مَعِينٍ: حَدَّثَنَا وَهْبُ بنُ جَرِيرٍ عن أَبِيهِ قال: سَمِعْتُ يَحْيَى بنَ أُبُوبَ يُحَدِّثُ عن يَزِيدَ بنِ أَبِي حَبِيبٍ، عن أَبِي وَهْبِ الجَيْسَانِيِّ، عن الصَّحَّالِ بنِ فَيْرُوزَ، عن أَبِيهِ قال: قُلْتُ: يَا رَسُولَ اللَّهِ! إِنِّي أَسْلَمْتُ وَتَحْتِي أُخْتَانِ، قال: «طَلِّقْ أَيَّتَهُمَا شِئْتَ».

تخریج: [حسن] أخرجه الترمذی، النکاح، باب ما جاء فی الرجل یسلم وعنده أختان، ح: ۱۱۲۹ وابن ماجه، ح: ۱۹۵۱ من حدیث أبی وهب به وقال الترمذی: "حسن غریب" وصححه ابن حبان (موارد)، ح: ۱۲۷۶.

Chapter 25/26. If One Of The Parents Accepts Islam, Who Is The Child Given To?

(المعجم ۲۵، ۲۶) **بَابُ: إِذَا أَسْلَمَ أَحَدُ الْأَبَوَيْنِ لِمَنْ يَكُونُ الْوَلَدُ؟** (التحفة ۲۶)

2244. Rāfi' bin Sinān narrated that he accepted Islam, but his wife refused to do so. So she went to the Prophet ﷺ and said: "She is my daughter, and she is weaned, or almost weaned." And Rāfi' said: "She is my daughter." So the Prophet ﷺ told him, "Sit on this side," and told her, "Sit on that side," and then placed the girl between them. He then said to both of them: "Call her." The girl went towards her mother, but the Prophet ﷺ said: "O Allāh! Guide her," so she went to her father, and he took her. (*Hasan*)

۲۲۴۴ - حَدَّثَنَا إِبْرَاهِيمُ بْنُ مُوسَى الرَّازِيُّ: أَخْبَرَنَا عَيْسَى: حَدَّثَنَا عَبْدُ الْحَمِيدِ بْنُ جَعْفَرٍ: أَخْبَرَنِي أَبِي عَنْ جَدِّي رَافِعِ بْنِ سِنَانَ أَنَّهُ أَسْلَمَ وَأَبَتْ امْرَأَتُهُ أَنْ تُسَلِّمَ، فَأَتَتْ النَّبِيَّ ﷺ فَقَالَتْ: ابْنَتِي وَهِيَ فَطِيمٌ أَوْ شَبَهُهُ - وَقَالَ رَافِعٌ: ابْنَتِي - فَقَالَ لَهُ النَّبِيُّ ﷺ: «أَفْعُدِي نَاحِيَةَ»، وَأَفْعُدِ الصَّبِيَّةَ بَيْنَهُمَا، ثُمَّ قَالَ: «ادْعُواهَا» فَمَالَتِ الصَّبِيَّةُ إِلَى أُمِّهَا، فَقَالَ النَّبِيُّ ﷺ: «اللَّهُمَّ اهْدِهَا»، فَمَالَتِ الصَّبِيَّةُ إِلَى أَبِيهَا، فَأَحَدَهَا.

تخریج: [حسن] أخرجه أحمد: ۴۴۶/۵ من حدیث عیسی، والنسائی فی الكبرى، ح: ۶۳۸۵ من حدیث عبدالحمید بن جعفر به وصححه الحاكم: ۲/۲۰۶، ۲۰۷ ووافقه الذهبي وانظر سنن ابن ماجه، ح: ۲۳۵۲ (بتحقیقی).

Comments:

In case, the couple are separated, their child, providing he is of sound judgment, shall be given the right to choose any of the two. As for the child lacking such ability, scholars have different opinions. For example, a male child will remain in custody of his mother for seven years and a female child for nine years. Later, they will be handed over to the father.

Chapter 26/27. Regarding Li'ān (Mutual Cursing)

(المعجم ۲۶، ۲۷) **بَابُ: فِي اللَّعَانِ** (التحفة ۲۷)

2245. It was reported from Mālik, from Ibn Shihāb that Sahl bin Sa'd As-Sā'idī informed him, that

۲۲۴۵ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ مَسْلَمَةَ الْقَعْنَبِيُّ عَنْ مَالِكٍ، عَنْ ابْنِ شِهَابٍ: أَنَّ

'Uwaimir bin Ashqar Al-'Ajlanī went to 'Āṣim bin 'Adī and said: "O 'Āṣim, what do you think if a man found another man with his wife — should he kill him, in which case you would then execute him, or what else should he do?" 'Āṣim, ask the Messenger of Allāh ﷺ on my behalf regarding this." So 'Āṣim asked the Messenger of Allāh ﷺ, but the Messenger of Allāh ﷺ disliked this issue, and criticized it, so much so that 'Āṣim felt distressed because of what he heard from the Messenger of Allāh ﷺ. When 'Āṣim returned to his family, 'Uwaimir came to him and said: "O 'Āṣim! What did the Messenger of Allāh ﷺ say to you?" He replied: "You did not bring me any good! The Messenger of Allāh ﷺ disliked the issue that I asked him about." 'Uwaimir said: "I swear by Allāh, I will not stop until I ask him myself about it." So 'Uwaimir then went to the Messenger of Allāh ﷺ while he was sitting among the people, and said: "O Messenger of Allāh! What do you think if a man found another man with his wife — should he kill him, in which case you would then execute him, or what else should he do?" So the Messenger of Allāh ﷺ said: "Some (Verses of the) Qur'ān has been revealed regarding you and your spouse, so go and bring her."

Sahl continued: "So they then pronounced the curse upon one another, and I was present along with the people in front of the

سَهْلَ بْنِ سَعْدِ السَّاعِدِيِّ أَخْبَرَهُ أَنَّ عُوَيْمِرَ بْنَ أَشْقَرَ الْعَجْلَانِيَّ جَاءَ إِلَى عَاصِمِ بْنِ عَدِيٍّ فَقَالَ لَهُ: يَا عَاصِمُ! أَرَأَيْتَ رَجُلًا وَجَدَ مَعَ امْرَأَتِهِ رَجُلًا أَيَقْتُلُهُ فَتَقْتُلُونَهُ أَمْ كَيْفَ يَفْعَلُ؟ سَلْ لِي يَا عَاصِمُ! رَسُولَ اللَّهِ ﷺ عَنْ ذَلِكَ؟، فَسَأَلَ عَاصِمٌ رَسُولَ اللَّهِ ﷺ، فَكَرِهَ رَسُولُ اللَّهِ ﷺ الْمَسَائِلَ وَعَابَهَا حَتَّى كَبُرَ عَلَى عَاصِمٍ مَا سَمِعَ مِنْ رَسُولِ اللَّهِ ﷺ، فَلَمَّا رَجَعَ عَاصِمٌ إِلَى أَهْلِهِ جَاءَهُ عُوَيْمِرٌ فَقَالَ يَا عَاصِمُ! مَاذَا قَالَ لَكَ رَسُولُ اللَّهِ ﷺ؟ فَقَالَ عَاصِمٌ: لَمْ تَأْتِنِي بِخَيْرٍ، قَدْ كَرِهَ رَسُولُ اللَّهِ ﷺ الْمَسْأَلَةَ الَّتِي سَأَلْتَهُ عَنْهَا. فَقَالَ عُوَيْمِرٌ: وَاللَّهِ! لَا أَنْتَهَيْ حَتَّى أَسْأَلَهُ عَنْهَا فَأَقْبَلَ عُوَيْمِرٌ حَتَّى أَتَى رَسُولَ اللَّهِ ﷺ وَهُوَ وَسَطَ النَّاسِ فَقَالَ: يَا رَسُولَ اللَّهِ! أَرَأَيْتَ رَجُلًا وَجَدَ مَعَ امْرَأَتِهِ رَجُلًا أَيَقْتُلُهُ فَتَقْتُلُونَهُ أَمْ كَيْفَ يَفْعَلُ؟ فَقَالَ رَسُولُ اللَّهِ ﷺ: «قَدْ أَنْزَلَ فِيكَ وَفِي صَاحِبَتِكَ قُرْآنٌ فَادْهَبْ فَأْتِ بِهَا». قَالَ سَهْلٌ: فَتَلَّعْنَا وَأَنَا مَعَ النَّاسِ عِنْدَ رَسُولِ اللَّهِ ﷺ، فَلَمَّا فَرَعْنَا قَالَ عُوَيْمِرٌ: كَذَبْتُ عَلَيْهَا يَا رَسُولَ اللَّهِ! إِنَّ أَمْسَكْتُهَا، فَطَلَّقَهَا عُوَيْمِرٌ ثَلَاثًا قَبْلَ أَنْ يَأْمُرَهُ النَّبِيُّ ﷺ.

قال ابن شهاب: فكانت تلك سنة المتلاعنين.

Messenger of Allāh ﷺ. When they both finished, ‘Uwaimir said: ‘O Messenger of Allāh, if I keep her (after this), it would be as if I lied against her.’ So he divorced her three times before being ordered by the Prophet ﷺ.”

Ibn Shihāb said: “So this became the practice of those who pronounced *Li‘ān*.”^[1] (*Ṣaḥīḥ*)

تخریج: أخرجه البخاري، الطلاق، باب من جوز الطلاق الثلاث لقول الله تعالى: ﴿الطلاق مرتان...﴾ الخ، ح: ٥٢٥٩ ومسلم، اللعان، ح: ١٤٩٢ من حديث مالك به، وهو في الموطأ (يحيى): ٥٦٧/٢، ٥٦٧.

Comments:

If a husband discovers adultery committed by a wife but he does not have four witnesses to testify to that, he may go to the court and swear four times before the judge that his wife has committed adultery, and swears the fifth time invoking Allāh’s curse upon himself if he were lying. Then the woman swears four times that he is a liar, and she swears a fifth time invoking Allāh’s wrath upon herself in case his allegation is true. This procedure is called *Li‘ān* (cursing). This is followed by a permanent separation of the husband and wife, and the marriage is dissolved.

2246. It was reported from Muḥammad bin Ishāq, that ‘Abbās bin Sahl bin Sa’d narrated to him, from his father, that the Prophet ﷺ said to ‘Aṣim bin ‘Adī: “Keep the woman with you until she gives birth.” (*Ḥasan*)

٢٢٤٦ - حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ يَحْيَى: حَدَّثَنَا مُحَمَّدٌ يَعْنِي ابْنَ سَلَمَةَ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ: حَدَّثَنِي عَبَّاسُ بْنُ سَهْلٍ عَنْ أَبِيهِ: أَنَّ النَّبِيَّ ﷺ قَالَ لِعَاصِمِ بْنِ عَدِيٍّ: «أَمْسِكِ الْمَرْأَةَ عِنْدَكَ حَتَّى تَلِدَ».

تخریج: [إسناده حسن] أخرجه أحمد: ٣٣٥/٥ من حديث محمد بن إسحاق به.

Comments:

It came to be known later that the woman was pregnant. Hence, the inference is that the *Li‘ān* is also possible in the case of pregnant women.

2247. It was reported from Yūnus, from Ibn Shihāb, from Sahl bin Sa’d As-Sā‘idī, who said: “I witnessed them cursing one another in front of the Messenger of Allāh ﷺ, and I was only fifteen

٢٢٤٧ - حَدَّثَنَا أَحْمَدُ بْنُ صَالِحٍ: حَدَّثَنَا ابْنُ وَهْبٍ: أَخْبَرَنِي يُونُسُ عَنْ ابْنِ شَهَابٍ عَنْ سَهْلِ بْنِ سَعْدِ السَّاعِدِيِّ قَالَ: حَضَرْتُ لِعَانَهُمَا عِنْدَ رَسُولِ اللَّهِ ﷺ وَأَنَا ابْنُ خَمْسَ

[1] Issues related to inheritance in such case are discussed later, see no. 2906.

at the time..." and he cited the narration (as no. 2247), and he also said: "It turned out that she was pregnant, and the child was then named after its mother." (*Ṣaḥīḥ*)

تخريج: أخرجه مسلم، ح: ١٤٩٢ من حديث عبدالله بن وهب به، انظر الحديث

السابق: ٢٢٤٥.

2248. It was reported from Ibrāhīm, meaning Ibn Sa'd, from Az-Zuhri, from Sahl bin Sa'd — regarding the narration of the two who pronounced the curse — he said: "The Prophet ﷺ said: 'Watch her closely: If she gives (birth to a child) whose eyes are very black, and whose buttocks are large, then I can only conclude that he told the truth. And if she gives (birth) to one who is reddish in complexion, like a *Waharah*,^[1] then I can only conclude that he lied.'" And then she gave (birth) according to the objectionable characteristics. (*Ṣaḥīḥ*)

تخريج: [صحيح] أخرجه ابن ماجه، الطلاق، باب اللعان، ح: ٢٠٦٦ من حديث إبراهيم بن

سعد به، وانظر الحديث السابق.

2249. (Another chain) From Al-Awzā'i, from Az-Zuhri, from Sahl bin Sa'd As-Sā'idī, with this narration (similar to no. 2247). He said: "And so it — meaning the child — was given its mother's name." (*Ṣaḥīḥ*)

تخريج: أخرجه البخاري، التفسير، سورة النور، باب قوله عزوجل: ﴿والذين يرمون

أزواجهم ولم يكن لهم شهود﴾ ح: ٤٧٤٥ من حديث الفريابي به.

Comments:

Illegitimate children are named after their mothers.

[1] A type of small reptile.

عَشْرَةَ سَنَةٍ، وَسَاقَ الْحَدِيثَ، قَالَ فِيهِ: ثُمَّ خَرَجَتْ حَامِلًا، فَكَانَ الْوَلَدُ يُدْعَى إِلَى أُمِّهِ.

٢٢٤٨ - حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ

الْوُرَكَانِيُّ: أَخْبَرَنَا إِبْرَاهِيمُ يَعْنِي ابْنَ سَعْدٍ عَنْ الزُّهْرِيِّ، عَنْ سَهْلِ بْنِ سَعْدٍ فِي خَبَرِ الْمُتَلَاعِنِينَ، قَالَ: قَالَ النَّبِيُّ ﷺ: «أَبْصُرُوهَا، فَإِنْ جَاءَتْ بِهِ أَدْعَجَ الْعَيْنَيْنِ عَظِيمَ الْأَلْتَيْنِ فَلَا أَرَاهُ إِلَّا قَدْ صَدَقَ، وَإِنْ جَاءَتْ بِهِ أُحْمِرَ كَأَنَّهُ وَحَرَّةٌ فَلَا أَرَاهُ إِلَّا كَاذِبًا» قَالَ: فَجَاءَتْ بِهِ عَلَى النَّعْتِ الْمَكْرُوهِ.

٢٢٤٩ - حَدَّثَنَا مَحْمُودُ بْنُ خَالِدٍ

الدِّمَشْقِيُّ: حَدَّثَنَا الْفَرِّيَابِيُّ عَنِ الْأَوْزَاعِيِّ، عَنِ الزُّهْرِيِّ، عَنْ سَهْلِ بْنِ سَعْدٍ السَّاعِدِيِّ يَهْدَا الْخَبَرَ قَالَ: فَكَانَ يُدْعَى يَعْنِي الْوَلَدَ لِأُمِّهِ.

2250. (Another chain) from Ibn Shihāb, from Sahl bin Sa‘d regarding this narration, he said: “So he divorced her three times in the presence of the Messenger of Allāh ﷺ, and the Messenger of Allāh ﷺ discharged it. And what was done in the presence of the Prophet ﷺ became a *Sunnah*.” Shl said: “And I was present when this occurred in the presence of the Messenger of Allāh ﷺ, so it became the *Sunnah* after this, that those who pronounced *Li‘ān* be separated, and never be allowed to join together (in marriage) again.” (*Da‘if*)

تخريج: [إسناده ضعيف] * عياض: روى عنه ابن وهب أحاديث فيها نظر قاله الساجي، وأما قوله: " وغيره": فمجهول.

2251. (Another chain) from Sufyān (Ibn ‘Uyainah) from Az-Zuhrī, from Sahl bin Sa‘d. Musad-dad (one of the narrators) said (he said): “I witnessed the two people pronounce *Li‘ān* in front of the Messenger of Allāh ﷺ while I was only fifteen (years old). After they had cursed one another, the Messenger of Allāh ﷺ separated between them.” Up to the completion of Musad-dad’s narration.

The others (among the narrators) said that he witnessed the Prophet ﷺ separating between the two who pronounced *Li‘ān*. The man said: “O Messenger of Allāh, if I keep her (after this), it would be as if I lied against her.” (*Sahih*)

Abū Dāwud: Some of them did not

٢٢٥٠ - حَدَّثَنَا أَحْمَدُ بْنُ عَمْرٍو بن السَّرْحِ: حَدَّثَنَا ابْنُ وَهْبٍ عن عِيَاضِ بن عَبْدِ اللَّهِ الْفُهْرِيِّ وَغَيْرِهِ، عن ابنِ شَهَابٍ، عن سَهْلِ بنِ سَعْدٍ في هَذَا الْحَبْرِ قال: فَطَلَّقَهَا ثَلَاثَ تَطْلِيقَاتٍ عِنْدَ رَسُولِ اللَّهِ ﷺ، فَأَنْفَذَهُ رَسُولُ اللَّهِ ﷺ وَكَانَ مَا صُنِعَ عِنْدَ النَّبِيِّ ﷺ سُنَّةً. قال سَهْلٌ: حَضَرْتُ هَذَا عِنْدَ رَسُولِ اللَّهِ ﷺ فَصَصَّتِ السُّنَّةُ بَعْدُ في الْمُتَلَاعِنِينَ أَنْ يُفَرَّقَ بَيْنَهُمَا ثُمَّ لَا يَجْتَمِعَانِ أَبَدًا.

٢٢٥١ - حَدَّثَنَا مُسَدَّدٌ وَوَهْبُ بْنُ بَيَانَ وَأَحْمَدُ بْنُ عَمْرٍو بن السَّرْحِ وَعَمْرٍو بنِ عُثْمَانَ قَالُوا: حَدَّثَنَا سُفْيَانُ عن الزُّهْرِيِّ، عن سَهْلِ بنِ سَعْدٍ قال مُسَدَّدٌ قال: شَهِدْتُ الْمُتَلَاعِنِينَ على عَهْدِ رَسُولِ اللَّهِ ﷺ وَأَنَا ابْنُ خَمْسِ عَشْرَةَ [سُنَّةً]، فَفَرَّقَ بَيْنَهُمَا رَسُولُ اللَّهِ ﷺ حِينَ تَلَاعَنَا وَتَمَّ حَدِيثُ مُسَدَّدٍ، وَقَالَ الْآخَرُونَ: إِنَّهُ شَهِدَ النَّبِيُّ ﷺ فَرَقَ بَيْنَ الْمُتَلَاعِنِينَ فقال الرَّجُلُ: كَذَبْتُ عَلَيْهَا يَا رَسُولَ اللَّهِ! إنْ أَمْسَكْتُهَا.

قال أَبُو دَاوُدَ: وَبَعْضُهُمْ لَمْ يَقُلْ عَلَيْهَا. قال أَبُو دَاوُدَ: لَمْ يُتَابِعِ ابْنَ عِيْنَةَ أَحَدٌ على أَنَّهُ فَرَّقَ بَيْنَ الْمُتَلَاعِنِينَ.

say: "Against her."

Abū Dāwud said: No one has followed after Ibn 'Uyainah narrating that he separated between the two who pronounced the curse on one another. (*Ṣaḥīḥ*)

تخریج: أخرجه البخاري، الحدود، باب من أظهر الفاحشة واللطخ والتهمة بغير بينة،

Comments:

ح: ٦٨٥٤ من حديث سفيان بن عيينة به.

The couple were separated because the marriage agreement had been revoked by *Li'an*, not by divorce. The Messenger of Allāh ﷺ did not give him a command to divorce his wife. There was no need for that. The Messenger of Allāh ﷺ ruled that they were to be separated. This separation is permanent and irrevocable. This obviates the need to utter the statement of divorce.

2252. (Another chain) from Fulaih, from Az-Zuhrī, from Sahl bin Sa'd for this narration; "And she was pregnant, but he denied her pregnancy (that he was the father of the child). So her son was named after her. Then the practice was taken that the child inherit from her, and she inherit from him, whatever Allāh, the Mighty and Sublime, had willed for her." (*Ṣaḥīḥ*)

٢٢٥٢ - حَدَّثَنَا سَلِيمَانُ بْنُ دَاوُدَ الْعَتَكِيُّ: حَدَّثَنَا فُلَيْحٌ عَنِ الزُّهْرِيِّ، عَنْ سَهْلِ بْنِ سَعْدٍ فِي هَذَا الْحَدِيثِ: وَكَانَتْ حَامِلًا فَأُنْكَرَ حَمْلُهَا فَكَانَ ابْنُهَا يُدْعَى إِلَيْهَا ثُمَّ جَرَتْ السُّنَّةُ فِي الْيَمِيرَاتِ أَنْ يَرْتَهَا وَتَرِثَ مِنْهُ مَا قَرَضَ اللَّهُ عَزَّوَجَلَّ لَهَا.

تخریج: أخرجه البخاري، التفسير، سورة النور، باب: ﴿والخامسة أن لعنة الله عليه إن كان

Comments:

من الكاذبين﴾، ح: ٤٧٤٦ عن سليمان بن داود العتكي به.

The inference is that a husband who refuses to claim the unborn baby in the womb of his wife (that is, denies he is the biological father of the unborn baby), the judge has the right to separate the couple through *Li'an*. In this case, the child shall be related to (and named after) its mother.

2253. It was reported from 'Alqamah, from 'Abdullāh (Ibn Mas'ūd): "Once, we were sitting in the *Masjid* on the night of (before) Friday, when a person from the *Anṣār* entered upon us and said: 'If a man finds another man with his wife,

٢٢٥٣ - حَدَّثَنَا عُثْمَانُ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا جَرِيرٌ عَنِ الْأَعْمَشِ، عَنْ إِبْرَاهِيمَ، عَنْ عَلْقَمَةَ، عَنْ عَبْدِ اللَّهِ [بْنِ مَسْعُودٍ] قَالَ: إِنَّا لَلَيْلَةَ جُمُعَةٍ فِي الْمَسْجِدِ، إِذْ دَخَلَ رَجُلٌ مِنْ

and speaks about it, then you would lash him. And if he kills him, then you would kill him. And if he remains silent, he will remain silent while he is incensed with anger. I swear by Allāh, I will ask the Messenger of Allāh ﷺ about it.' The next day, he came to the Messenger of Allāh ﷺ and asked him: 'If a man finds another man with his wife, and speaks about it, then you would lash him. And if he kills him, then you would kill him. And if he remains silent, he will remain silent while he is incensed with anger.'

“The Prophet ﷺ said: ‘O Allāh! Open up (a solution),’ and he continued to supplicate, so the Verses of *Li‘ān* were revealed: ‘And those who accuse their wives, and have no witnesses besides themselves....’^[1]

“And it was this man who was afflicted with this (problem) from among the people. So he came with his wife to the Messenger of Allāh ﷺ, and they pronounced the curse on one another. The man swore four times by Allāh that he is among the truthful ones, and then invoked Allāh’s curse upon himself if he were among the liars. She then went to pronounce the curse, but the Prophet ﷺ said to her; ‘Be cautious!’ But she refused, and did it. When they both turned away, the Prophet ﷺ said: ‘Perhaps she will come with it (the child being) black and curly-haired.’ And she did bring him black and curly-

الأَنْصَارِ فِي الْمَسْجِدِ، فَقَالَ: لَوْ أَنَّ رَجُلًا وَجَدَ مَعَ امْرَأَتِهِ رَجُلًا فَتَكَلَّمَ بِهِ جَلَدْتُمُوهُ، أَوْ قَتَلَ قَتَلْتُمُوهُ، فَإِنْ سَكَتَ سَكَتَ عَلَيَّ غَيْظًا! وَاللَّهِ! لِأَسْأَلَنَّ عَنْهُ رَسُولَ اللَّهِ ﷺ، فَلَمَّا كَانَ مِنَ الْعَدِيدِ أَتَى رَسُولَ اللَّهِ ﷺ، فَسَأَلَهُ، فَقَالَ: لَوْ أَنَّ رَجُلًا وَجَدَ مَعَ امْرَأَتِهِ رَجُلًا فَتَكَلَّمَ بِهِ جَلَدْتُمُوهُ أَوْ قَتَلَ قَتَلْتُمُوهُ أَوْ سَكَتَ سَكَتَ عَلَيَّ غَيْظًا، فَقَالَ: «اللَّهُمَّ! افْتَحْ» وَجَعَلَ يَدْعُو، فَنَزَلَتْ آيَةُ اللَّعَانِ: ﴿وَالَّذِينَ يَرْمُونَ أَزْوَاجَهُمْ وَلَمْ يَكُن لَّهُمْ شُهَدَاءُ﴾ [النور: 6] هَذِهِ الْآيَةُ، فَأَتَيْتَنِي بِهِ ذَلِكَ الرَّجُلُ مِنْ بَيْنِ النَّاسِ، فَجَاءَ هُوَ وَامْرَأَتُهُ إِلَى رَسُولِ اللَّهِ ﷺ، فَتَلَاَعَنَا، فَشَهِدَ الرَّجُلُ أَرْبَعَ شَهَادَاتٍ بِاللَّهِ إِنَّهُ لَمِنَ الصَّادِقِينَ ثُمَّ لَعَنَ الْخَامِسَةَ عَلَيْهِ إِنْ كَانَ مِنَ الْكَاذِبِينَ. قَالَ: فَذَهَبَتْ لِتَلْتَعِنَ فَقَالَ لَهَا النَّبِيُّ ﷺ: «مَهْ»، فَأَبَتْ فَفَعَلْتُ، فَلَمَّا أَذْبَرَا قَالَ: «لَعَلَّهَا أَنْ تَجِيءَ بِهِ أَسْوَدَ جَعْدًا»، فَجَاءَتْ بِهِ أَسْوَدَ جَعْدًا.

[1] An-Nūr 24:6.

haired.” (*Sahih*)

تخریج: أخرجه مسلم، اللعان، ح: ۱۴۹۵ من حدیث جریر بن عبد الحمید به.

2254. It was reported from Hishām bin Ḥassān, that ‘Ikrimah narrated to him, from Ibn ‘Abbās that Hilāl bin Umayyah accused his wife of committing adultery with Sharīk bin Saḥmā’. He made this accusation in front of the Prophet ﷺ, who then said: “Bring the evidence, or else the penalty (will be inflicted) on your back.” He said: “O Messenger of Allāh, if a person sees another man on his wife, should he go and find evidence?” But the Prophet ﷺ continued to say: “Bring the evidence, or else the penalty (will be inflicted) on your back.” Hilāl said: “I swear by the One Who has sent you with the truth as a Prophet, I am indeed telling the truth. And of a surety, Allāh will reveal about me something which will free the penalty from my back.” So the following was revealed: “And those who accuse their wives, and have no witnesses besides themselves...” and he continued reciting until; “he is among the truthful ones.”

The Prophet ﷺ then turned away and called for both of them. They both came, and Hilāl bin Umayyah stood and testified. And the Prophet ﷺ said: “Allāh knows that one of you two is lying, so will either of you repent?” She then stood up and testified, but when she was at the fifth one — that may the anger of Allāh be upon her if he is telling the

۲۲۵۴ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا ابْنُ أَبِي عَدِيٍّ: أَنبَأَنَا هِشَامُ بْنُ حَسَّانَ: حَدَّثَنِي عِكْرِمَةُ عَنْ ابْنِ عَبَّاسٍ: أَنَّ هِلَالَ بْنَ أُمَيَّةَ قَذَفَ امْرَأَتَهُ عِنْدَ النَّبِيِّ ﷺ بِشَرِيكَ بْنِ سَحْمَاءَ، فَقَالَ النَّبِيُّ ﷺ: «الْبَيِّنَةُ أَوْ حُدٌّ فِي ظَهْرِكَ»، فَقَالَ: يَا رَسُولَ اللَّهِ! إِذَا رَأَى أَحَدُنَا رَجُلًا عَلَى امْرَأَتِهِ يَلْتَمِسُ الْبَيِّنَةَ؟! فَجَعَلَ النَّبِيُّ ﷺ يَقُولُ: «الْبَيِّنَةُ وَإِلَّا فَحُدٌّ فِي ظَهْرِكَ»، فَقَالَ هِلَالٌ: وَالَّذِي بَعَثَكَ بِالْحَقِّ نَبِيًّا! إِنِّي لَصَادِقٌ وَلَيُزِيلَنَّ اللَّهُ فِي أَمْرِي مَا يُبْرِئُ بِهِ ظَهْرِي مِنَ الْحُدِّ، فَتَرَلْتُ: ﴿وَالَّذِينَ يَرْمُونَ أَزْوَاجَهُمْ وَلَمْ يَكُن لَهُمْ شُهَدَاءُ إِلَّا أَنفُسُهُمْ﴾ قَرَأَ حَتَّى بَلَغَ مِنَ الصَّادِقِينَ، فَانصَرَفَ النَّبِيُّ ﷺ، فَأَرْسَلَ إِلَيْهِمَا فَجَاءَا فَقَامَ هِلَالٌ بْنُ أُمَيَّةَ فَشَهِدَ وَالنَّبِيُّ ﷺ يَقُولُ: «اللَّهُ يَعْلَمُ أَنَّ أَحَدَكُمَا كَاذِبٌ، فَهَلْ مِنْكُمَا مِنْ تَائِبٍ؟» ثُمَّ قَامَتْ فَشَهِدَتْ، فَلَمَّا [كَانَتْ] عِنْدَ الْخَامِسَةِ أَنَّ غَضَبَ اللَّهِ عَلَيْهَا إِنْ كَانَ مِنَ الصَّادِقِينَ، وَقَالُوا لَهَا: إِنَّهَا مُوجِبَةٌ قَالَ ابْنُ عَبَّاسٍ: فَتَلَكَّأَتْ وَتَكَصَّتْ حَتَّى ظَنَّنَا أَنَّهَا سَتَرَجِعُ، فَقَالَتْ: لَا أَفْضَحُ قَوْمِي سَائِرَ الْيَوْمِ، فَمَضَتْ، فَقَالَ النَّبِيُّ ﷺ: «أَبْصُرُوهَا فَإِنْ جَاءَتْ بِهِ أَكْحَلُ الْعَيْنَيْنِ سَابِعِ الْأَيْتِينَ خَدَلَجَ السَّافِقِينَ فَهُوَ لِشَرِيكَ بْنِ سَحْمَاءَ»، فَجَاءَتْ بِهِ كَذَلِكَ، فَقَالَ النَّبِيُّ ﷺ: «لَوْلَا مَا مَضَى مِنْ

truth — they said to her: “This is the one that will inflict it (the anger of Allāh upon you).” So she faltered, and hesitated, until we thought that she would recant, but she said: “I will not humiliate my people for the rest of time!” And she went ahead (with the curse). So the Prophet ﷺ said: “Watch her carefully: if she brings forth (a child) whose eyes are very black, with large buttocks and heavy shins, then it is Sharīk bin Sahmā’s (child).” And she came with (a child) with those descriptions, so the Prophet ﷺ said: “Were it not for the fact that the (rulings) of the Book of Allāh have already preceded, I would have had another matter (to deal) with her.” (*Sahīh*)

Abū Dāwud said: This is among that which the people of Al-Madīnah are alone in narrating; the narration of Ibn Bash-shār, regarding the *Ḥadīth* of Hilāl.

تخریج: أخرجه البخاري، الشهادات، باب: إذا ادعى أو كذف فله أن يلتمس البينة... إلخ، ح: ٢٦٧١ والترمذي، ح: ٣١٧٩ وابن ماجه، ح: ٢٠٦٧ ثلاثهم عن محمد بن بشار به.

2255. It was reported from ‘Āsim bin Kulaib, from his father, from Ibn ‘Abbās, that the Prophet ﷺ told a man — when he commanded two people to pronounce *Li‘ān* — to place his hand on his mouth, saying for the fifth one: “This is the one that will inflict (the punishment).” (*Sahīh*)

كِتَابِ اللَّهِ لَكَانَ لِي وَهَذَا شَأْنٌ.
قَالَ أَبُو دَاوُدَ: وَهَذَا مِمَّا تَفَرَّدَ بِهِ أَهْلُ
الْمَدِينَةِ حَدِيثُ ابْنِ بَشَّارٍ حَدِيثُ هِلَالٍ.

٢٢٥٥ - حَدَّثَنَا مُحَمَّدُ بْنُ خَالِدٍ
الشَّعِيرِيُّ: حَدَّثَنَا سُفْيَانُ عَنْ عَاصِمِ بْنِ
كَلْبٍ، عَنْ أَبِيهِ، عَنِ ابْنِ عَبَّاسٍ: أَنَّ النَّبِيَّ
ﷺ أَمَرَ رَجُلًا حِينَ أَمَرَ الْمُتَلَاعِنِينَ أَنْ
يَتْلَعَنَا أَنْ يَضَعَ يَدَهُ عَلَى فِيهِ عِنْدَ الْخَامِسَةِ
يَقُولُ: إِنَّهَا مُوجِبَةٌ.

تخریج: [صحیح] أخرجه النسائي، الطلاق، باب الأمر بوضع اليد على في المتلاعنين عند الخامسة، ح: ٣٥٠٢ من حديث سفيان به ولأصل الحديث شواهد.

Comments:

A judge should keep admonishing the couple from time to time, and tell them to desist from proceeding further, because invoking the curse of Allāh is a tremendous matter.

2256. It was reported from ‘Abbād bin Manşūr, from ‘Ikrimah, from Ibn ‘Abbās, who said: “Hilāl bin Umayyah — and he was one of the three whose repentance was accepted by Allāh^[1] — returned from his land at night, and saw a man with his wife. So he saw it (the act) with his eyes and heard it with his ears. But he did not do anything until the next morning. He then went to the Messenger of Allāh ﷺ and said: ‘O Messenger of Allāh, I came to my wife at night and found a man with her, and I saw (it) with my own eyes and heard with my own ears.’ But the Messenger of Allāh ﷺ disliked what he said, and found it difficult. At that, it was revealed: ‘And those who accuse their wives, and have no witnesses besides themselves...’^[2] both Verses. When (the revelation) was complete from the Messenger of Allāh ﷺ, he said: ‘Rejoice, O Hilāl. Allāh, the Glorious and Exalted, has made a way out and a passage for you.’ Hilāl said: ‘That was what I was hoping for from my Lord.’ The Messenger of Allāh ﷺ said: ‘Call for her.’ When she came, the Messenger of Allāh ﷺ recited (these Verses), and reminded them, and informed

٢٢٥٦ - حَدَّثَنَا الْحَسَنُ بْنُ عَلِيٍّ: حَدَّثَنَا
بِرِيدُ بْنُ هَارُونَ: أَخْبَرَنَا عَبَّادُ بْنُ مَنْصُورٍ عَنْ
عِكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ قَالَ: جَاءَ هِلَالُ بْنُ
أُمَيَّةَ وَهُوَ أَحَدُ الثَّلَاثَةِ الَّذِينَ تَابَ اللَّهُ عَلَيْهِمْ
فَجَاءَ مِنْ أَرْضِهِ عِشَاءً فَوَجَدَ عِنْدَ أَهْلِهِ رَجُلًا،
فَرَأَى بَعِيْنِيْهِ وَسَمِعَ بِأُذُنِيْهِ فَلَمْ يَهْجُهُ حَتَّى
أَصْبَحَ، ثُمَّ غَدَا عَلَى رَسُولِ اللَّهِ ﷺ، فَقَالَ:
يَا رَسُولَ اللَّهِ! إِنِّي جِئْتُ أَهْلِي عِشَاءً،
فَوَجَدْتُ عِنْدَهُمْ رَجُلًا، فَرَأَيْتُ بَعِيْنِيْ
وَسَمِعْتُ بِأُذُنِيْ، فَكَرِهَ رَسُولُ اللَّهِ ﷺ مَا جَاءَ
بِهِ وَاشْتَدَّ عَلَيْهِ، فَنَزَلَتْ: ﴿وَالَّذِينَ يَرْمُونَ أَزْوَاجَهُمْ
وَلَمْ يَكُنْ لَهُمْ شُهَدَاءُ إِلَّا أَنْفُسُهُمْ فَشَهَدُوا أَحَدِهِمْ﴾
[النور: ٦، ٧] الْآيَتَيْنِ كِلْتَابِيْهِمَا، فَسَرَّيْ عَنْ
رَسُولِ اللَّهِ ﷺ: فَقَالَ: «أُبَشِّرُ يَا هِلَالُ! قَدْ
جَعَلَ اللَّهُ [عز وجل] لَكَ فَرَجًا وَمَخْرَجًا». قَالَ
هِلَالُ: قَدْ كُنْتُ أَرْجُو ذَاكَ مِنْ رَبِّي، فَقَالَ
رَسُولُ اللَّهِ ﷺ: «أَرْسِلُوا إِلَيْهَا»، فَجَاءَتْ
فَقَتَلَا عَلَيْهِمَا رَسُولُ اللَّهِ ﷺ وَذَكَّرَهُمَا،
وَأَخْبَرَهُمَا أَنَّ عَذَابَ الْآخِرَةِ أَشَدُّ مِنْ عَذَابِ
الدُّنْيَا. فَقَالَ هِلَالُ: وَاللَّهِ! لَقَدْ صَدَّقْتُ
عَلَيْهَا، فَقَالَتْ: قَدْ كَذَبَ، فَقَالَ رَسُولُ
اللَّهِ ﷺ: «لَا عُنُوتَ بَيْنَهُمَا»، فَقِيلَ لِهِلَالٍ:
شَهِدْ، فَشَهِدَ أَرْبَعَ شَهَادَاتٍ بِاللَّهِ إِنَّهُ

[1] Meaning, among those who stayed behind from the Battle of Tabūk.

[2] An-Nūr 24:6,7.

them that the punishment of the Hereafter was more severe than the punishment of this world.

“Hilāl said: ‘I swear by Allāh I have told the truth regarding her.’ She replied: ‘He has lied.’ The Messenger of Allāh ﷺ said: ‘Have the two of them pronounce the *Li’an*.’ Hilāl was told: ‘Testify,’ so he swore by Allāh four times that he was telling the truth. When it was time for the fifth, it was said to him: ‘O Hilāl! Fear Allāh, for the punishment of this world is easier (to bear) than the punishment of the Hereafter. And this (the fifth curse) is the one that inflicts the punishment upon you.’ He said: ‘I swear by Allāh, Allāh will not punish me regarding her, just as He will not whip me due to her.’ He then testified that the curse of Allāh would be upon him if he were of the liars. She was then asked to testify, so she swore by Allāh four times that he was lying. When it was time for the fifth, she was told: ‘Fear Allāh, for the punishment of this world is easier (to bear) than the punishment of the Hereafter. And this (the fifth curse) is the one that inflicts the punishment upon you.’ So she hesitated for some time, then said: ‘By Allāh, I will not disgrace my people.’ She then testified the fifth time that the punishment of Allāh would be upon her if he were telling the truth.

“The Messenger of Allāh ﷺ then separated between them, and ruled that her child not be named after

لِمَنْ الصَّادِقِينَ، فَلَمَّا كَانَتِ الْخَامِسَةَ قِيلَ لَهُ: يَا هِلَالُ! اتَّقِ اللَّهَ فَإِنَّ عَذَابَ الدُّنْيَا أَهْوَنُ مِنْ عَذَابِ الآخِرَةِ، وَإِنَّ هَذِهِ الْمُوجِبَةُ الَّتِي تُوجِبُ عَلَيْكَ الْعَذَابَ، فَقَالَ: وَاللَّهِ لَا يُعَذِّبُنِي اللَّهُ عَلَيْهَا كَمَا لَمْ يَجْلِدْنِي عَلَيْهَا، فَشَهِدَ الْخَامِسَةَ أَنَّ لَعْنَةَ اللَّهِ عَلَيْهِ إِنْ كَانَ مِنَ الْكَاذِبِينَ، ثُمَّ قِيلَ لَهَا: اشْهَدِي فَشَهِدَتْ أَرْبَعَ شَهَادَاتٍ بِاللَّهِ إِنَّهُ لِمَنْ الْكَاذِبِينَ، فَلَمَّا كَانَتِ الْخَامِسَةَ قِيلَ لَهَا: اتَّقِ اللَّهَ فَإِنَّ عَذَابَ الدُّنْيَا أَهْوَنُ مِنْ عَذَابِ الآخِرَةِ، وَإِنَّ هَذِهِ الْمُوجِبَةَ الَّتِي تُوجِبُ عَلَيْكَ الْعَذَابَ، فَتَلَكَّأَتْ سَاعَةً، ثُمَّ قَالَتْ: وَاللَّهِ لَا أَفْضَحُ قَوْمِي فَشَهِدَتِ الْخَامِسَةَ أَنَّ غَضَبَ اللَّهِ عَلَيْهَا إِنْ كَانَ مِنَ الصَّادِقِينَ. فَفَرَّقَ رَسُولُ اللَّهِ ﷺ بَيْنَهُمَا، وَقَضَى أَنْ لَا يُدْعَى وَلَدُهَا لِأَبٍ، وَلَا تُرْمَى وَلَا يُرْمَى وَلَدُهَا، وَمَنْ رَمَاهَا أَوْ رَمَى وَلَدُهَا فَعَلَيْهِ الْحُدُ. وَقَضَى أَنْ لَا يَبْتَئَ لَهَا عَلَيْهِ وَلَا قُوتٌ مِنْ أَجْلِ أَنَّهُمَا يَتَفَرَّقَانِ مِنْ غَيْرِ طَلَاقٍ وَلَا مُتَوَفَّى عَنْهَا، وَقَالَ: «إِنْ جَاءَتْ بِهِ أَصْنِيبُ أَرْبُصِحَّ أُتْبِجَّ حَمْسَ السَّاقِتِينَ فَهَوَّ لِهَالِلٍ، وَإِنْ جَاءَتْ بِهِ أَوْرَقٌ جَعَدًا جُمَالِيًّا خَدَلَجَ السَّاقِتِينَ سَابِعَ الْأَلْيَتَيْنِ فَهَوَّ لِلَّذِي رَمَيْتَ بِهِ»، فَجَاءَتْ بِهِ أَوْرَقٌ جَعَدًا جُمَالِيًّا خَدَلَجَ السَّاقِتِينَ سَابِعَ الْأَلْيَتَيْنِ، فَقَالَ رَسُولُ اللَّهِ ﷺ: «لَوْلَا الْأَيْمَانُ لَكَانَ لِي وَلَهَا شَأْنٌ».

قال عِكْرِمَةُ: فَكَانَ بَعْدَ ذَلِكَ أَمِيرًا عَلَى

any father, and that she not be accused (of adultery), nor her child (of being illegitimate), and that whoever accuses her or her child (of that) should be punished. And he also ruled that she does not have the right of a house or any sustenance from him, since they were to be separated without a divorce or death. And he said: 'If she brings him (the child) having a reddish complexion, with small buttocks, and thin frame and skinny shins, then he is Hilāl's. And if she brings him dark in color, with curly hair, and a heavy frame, having thick shins and large buttocks, then he is (the son) of the one she was accused (of adultery with).'

"So she delivered him, dark in color, with curly hair, and a heavy frame, having thick shins and large buttocks. The Messenger of Allāh ﷺ said: 'Were it not for the testimonies, I would have had a matter (to deal) with her.'"

'Ikrimah said: He (the child) later became a governor over a [Mişr (city)], and he was not named after any father. (*Da'if*)

تخریج: [إسناده ضعيف] أخرجه أحمد: ۲۳۸/۱ عن يزيد بن هارون به * عباد بن منصور

تقدم حاله، ح: ۱۳۳.

Comments:

Scholars differ over the historical background of the Verses of *Li'ān*, and about whose case they were revealed.

2257. It was reported from 'Amr that he heard Sa'eed bin Jubair saying: "I heard Ibn 'Umar saying: 'The Messenger of Allāh ﷺ said to the two who pronounced *Li'ān*:

۲۲۵۷ - حَدَّثَنَا أَحْمَدُ بْنُ حَنْبَلٍ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ قَالَ: سَمِعَ عُمَرُو سَعِيدَ بْنَ جُبَيْرٍ يَقُولُ: سَمِعْتُ ابْنَ عُمَرَ يَقُولُ: قَالَ

“Your judgment is with Allāh. One of you two is lying.” (And he said to the man): “You have nothing to do with her.” He replied: “O Messenger of Allāh, my wealth!” He said: “No wealth (is due) to you. If you have told the truth about her, then it is that with which have permitted of her private parts, and if you have lied against her, then that is even further away from you.” (*Sahih*)

رَسُولُ اللَّهِ ﷺ لِلْمُتَلَاعِنِينَ: «حَسَابُكُمْ عَلَى اللَّهِ، أَحَدُكُمْ كَاذِبٌ لَا سَبِيلَ لَكَ عَلَيْهَا». قَالَ: يَا رَسُولَ اللَّهِ! مَالِي. قَالَ: «لَا مَالَ لَكَ، إِنْ كُنْتَ صَدَقْتَ عَلَيْهَا فَهُوَ بِمَا اسْتَحْلَلْتَ مِنْ فَرْجِهَا، وَإِنْ كُنْتَ كَذَبْتَ عَلَيْهَا فَذَلِكَ أْبَعَدُ لَكَ».

تخریج: أخرجه البخاري، الطلاق، باب قول الإمام للمتلاعنين: إن أحدكما كاذب فهل منكما تائب؟، ح: ٥٣١٢ ومسلم، اللعان، ح: ٥/١٤٩٣ من حديث سفیان بن عیینة به.

Comments:

If *Li'an* takes place, the husband loses his right to get back any part of the dowry (*Mahr*).

2258. It was reported from Ayyub, from Sa'eed bin Jubair, who said: “I said to Ibn ‘Umar: ‘(What is the case of) a man who accused his wife of adultery?’

٢٢٥٨ - حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدٍ بْنِ حَبِيبٍ: حَدَّثَنَا إِسْمَاعِيلُ: حَدَّثَنَا أَيُّوبُ عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: قُلْتُ لَابْنِ عُمَرَ: رَجُلٌ قَذَفَ امْرَأَتَهُ قَالَ: فَرَّقَ رَسُولُ اللَّهِ ﷺ بَيْنَ أَخَوَيْ بَنِي الْعَجْلَانِ وَقَالَ: «اللَّهُ يَعْلَمُ أَنَّ أَحَدَكُمَا كَاذِبٌ، فَهَلْ مِنْكُمَا تَائِبٌ»، يُرَدُّهَا ثَلَاثَ مَرَّاتٍ فَأَيُّبَا، فَفَرَّقَ بَيْنَهُمَا.

“He replied: ‘The Messenger of Allāh ﷺ separated between the two members of Banū Al-‘Ajlān, and he said: “Allāh knows that one of you two is lying, so will either of you repent?’” He said this three times, but both of them refused. So he separated between them.” (*Sahih*)

تخریج: أخرجه البخاري، الطلاق، باب صدق الملاعة، ح: ٥٣١١ من حديث إسماعيل ابن علية، ومسلم، اللعان، ح: ٦/١٤٩٣ من حديث أيوب السخيتاني به.

2259. It was reported from Mālik, from Nāfi', from Ibn ‘Umar, that a person pronounced *Li'an* against his wife during the time of the Messenger of Allāh ﷺ, and negated her child (being his). So the Messenger of Allāh ﷺ

٢٢٥٩ - حَدَّثَنَا الْقَعْنَبِيُّ عَنْ مَالِكٍ، عَنْ نَافِعٍ، عَنْ ابْنِ عُمَرَ: أَنَّ رَجُلًا لَاعَنَ امْرَأَتَهُ فِي زَمَانِ رَسُولِ اللَّهِ ﷺ وَأَنْتَقَى مِنْ وَلَدِهَا، فَفَرَّقَ رَسُولُ اللَّهِ ﷺ بَيْنَهُمَا وَالْحَقَّ الْوَلَدَ بِالْمَرْأَةِ.

separated between them, and he gave the right of the child to the mother. (*Ṣaḥīḥ*)

Abū Dāwud said: Mālik is alone with saying: "And he gave the right of the child to the mother."

Yūnus reported from Az-Zuhrī, from Sahl bin Sa'd, in the *Ḥadīth* about *Li'ān*: "He rejected her pregnancy, so her son was named after her."^[1]

تخريج: أخرجه البخاري، الطلاق، باب: يلحق الولد بالملاعة، ح: ٥٣١٥ ومسلم، اللعان، ح: ١٤٩٤ من حديث مالك به وهو في الموطأ (يحيى): ٥٦٧/٢.

Chapter 27/28. Doubting The Child's Paternity

2260. It was reported from Sufyān, from Az-Zuhrī, from Sa'eed, from Abū Hurairah who said: "A man from the tribe of Banū Fazārah came to the Prophet ﷺ and said: 'My wife has given birth to a black child.' He said: 'Do you have any camels?' He said: 'Yes.' He asked: 'What colors are they?' He said: 'Red.' He asked: 'Are there any that are dark?' He said: 'Indeed, there is one that is dark.' He said: 'So where do you think that is from?' He replied: 'Perhaps it acquired it (the dark color) from one of its ancestors.' He then said: 'And this one — perhaps it (too) acquired it from one of its ancestors?'" (*Ṣaḥīḥ*)

تخريج: أخرجه مسلم، اللعان، ح: ١٥٠٠ من حديث سفيان بن عيينة به.

Comments:

A mere difference of complexion or a different color of skin is no valid basis to deny one's child, unless there is some clear ground. For example, the birth

قَالَ أَبُو دَاوُدَ: الَّذِي تَفَرَّدَ بِهِ مَالِكٌ قَوْلُهُ:
وَأَلْحَقَ الْوَلَدَ بِالْمَرْأَةِ وَقَالَ يُوسُفُ عَنْ
الزُّهْرِيِّ، عَنْ سَهْلِ بْنِ سَعْدٍ فِي حَدِيثِ
اللَّعَانِ: وَأَنْكَرَ حَمَلَهَا فَكَانَ ابْنُهَا يُدْعَى
إِلَيْهَا.

(المعجم ٢٧، ٢٨) بَابُ: إِذَا شَكَّ فِي
الْوَلَدِ (التحفة ٢٨)

٢٢٦٠ - حَدَّثَنَا ابْنُ أَبِي خَلْفٍ: حَدَّثَنَا
سُفْيَانُ عَنِ الزُّهْرِيِّ، عَنْ سَعِيدٍ، عَنْ أَبِي
هُرَيْرَةَ قَالَ: جَاءَ رَجُلٌ إِلَى النَّبِيِّ ﷺ مِنْ بَنِي
فَزَارَةَ فَقَالَ: إِنَّ امْرَأَتِي جَاءَتْ بِوَلَدٍ أَسْوَدَ،
فَقَالَ: «هَلْ لَكَ مِنْ إِبِلٍ؟» قَالَ: نَعَمْ، قَالَ:
«مَا أَلْوَانُهَا؟» قَالَ: حُمْرٌ، قَالَ: «فَهَلْ فِيهَا
مِنْ أَوْزُقٍ؟» قَالَ: إِنَّ فِيهَا لَوْزُقًا، قَالَ:
«فَأَتَى تِرَاهُ؟» قَالَ: عَسَى أَنْ يَكُونَ نَزَعَهُ عِرْقٌ
قَالَ: «وَهَذَا عَسَى أَنْ يَكُونَ نَزَعَهُ عِرْقٌ».

[1] That is no. 2247.

of a baby while the husband has been away from home for such a long period, or a birth in too short of a time after the marriage.

2261. It was reported from Ma'mar, from Az-Zuhrī, with his chain and its meaning, he said: "And he was, at that time, insinuating that he would deny him (as his child)." (*Ṣaḥīḥ*)

٢٢٦١ - حَدَّثَنَا الْحَسَنُ بْنُ عَلِيٍّ: حَدَّثَنَا عَبْدُ الرَّزَّاقِ: أَخْبَرَنَا مَعْمَرٌ عَنِ الرَّهْرِيِّ بِإِسْنَادِهِ وَمَعْنَاهُ، قَالَ: وَهُوَ حِينَئِذٍ يُعْرَضُ بِأَنْ يَنْفِيَهُ.

تخريج: أخرجه مسلم، اللعان، ح: ١٥٠٠ من حديث عبدالرزاق به، انظر الحديث السابق.

2262. It was reported from Yūnus, from Ibn Shihāb, from Abū Salamah, from Abū Hurairah that a Bedouin came to the Prophet ﷺ and said: 'My wife gave birth to a black boy, and I have denied him...' and he mentioned its meaning (similar to no. 2260). (*Ṣaḥīḥ*)

٢٢٦٢ - حَدَّثَنَا أَحْمَدُ بْنُ صَالِحٍ: حَدَّثَنَا ابْنُ وَهَبٍ: أَخْبَرَنِي يُونُسُ عَنِ ابْنِ شِهَابٍ، عَنِ أَبِي سَلَمَةَ، عَنِ أَبِي هُرَيْرَةَ: أَنَّ أَعْرَابِيًّا أَتَى النَّبِيَّ ﷺ، فَقَالَ: إِنَّ امْرَأَتِي وَلَدَتْ غُلَامًا أَسْوَدَ وَإِنِّي أَنْكِرُهُ. فَذَكَرَ مَعْنَاهُ.

تخريج: أخرجه البخاري، الاعتصام بالكتاب والسنة، باب من شبه أصلاً معلوماً بأصل مبين... إلخ، ح: ٧٣١٤ ومسلم، اللعان، باب ١، ح: ٢٠/١٥٠٠ من حديث عبدالله بن وهب به.

Chapter 28/29. Severe Reprimand Regarding Negating One's Child

(المعجم ٢٨، ٢٩) - بَابُ التَّغْلِيظِ فِي الْإِنْتِفَاءِ (التحفة ٢٩)

2263. It was reported from Abū Hurairah, that he heard the Messenger of Allāh ﷺ say, when the Verses of *Li'ān* were revealed: "Any woman who introduces into a people someone who is not of them, Allāh has nothing to do with her, and Allāh will not admit her into His Paradise. And any man who denies his child while he is looking at him will be obstructed from Allāh, and he will be disgraced in front of the creation — the first of them and the last of them." (*Ḥasan*)

٢٢٦٣ - حَدَّثَنَا أَحْمَدُ بْنُ صَالِحٍ: حَدَّثَنَا ابْنُ وَهَبٍ: أَخْبَرَنِي عَمْرُو بْنُ يُونُسَ، عَنِ ابْنِ الْهَادِ، عَنِ عَبْدِ اللَّهِ بْنِ يُونُسَ، عَنِ سَعِيدِ الْمَقْبَرِيِّ، عَنِ أَبِي هُرَيْرَةَ أَنَّهُ سَمِعَ رَسُولَ اللَّهِ ﷺ يَقُولُ حِينَ نَزَلَتْ آيَةُ الْمُتَلَاعِنِينَ: «أَيُّمَا امْرَأَةٍ أَدْخَلْتُ عَلَى قَوْمٍ مِنْ لَيْسَ مِنْهُمْ، فَلَيْسَتْ مِنَ اللَّهِ فِي شَيْءٍ، وَلَنْ يُدْخِلَهَا اللَّهُ جَنَّتَهُ. وَأَيُّمَا رَجُلٍ جَحَدَ وَلَدَهُ وَهُوَ يَنْظُرُ إِلَيْهِ احْتَجَبَ اللَّهُ تَعَالَى مِنْهُ وَفَضَحَهُ عَلَى رُؤُوسِ الْأَوَّلِينَ وَالْآخِرِينَ».

تخريج: [إسناده حسن] أخرجه النسائي، الطلاق، باب التغليظ في الانتفاء من الولد، ح: ٣٥١١ من حديث يزيد بن عبدالله بن الهادي، ورواه ابن ماجه، ح: ٢٧٤٣ من حديث سعيد المقبري به، وصححه ابن حبان (موارد): ١٣٣٥ والحاكم على شرط مسلم: ٢/٢٠٢، ٢٠٣ ووافقه الذهبي * عبدالله بن يونس: حسن الحديث على الراجح.

Chapter 29/30. Claiming An Illegitimate Son

(المعجم ٢٩، ٣٠) **بَابُ: فِي ادِّعَاءِ وَلَدِ الرَّثَا (التحفة ٣٠)**

2264. It was reported from Salm, meaning Ibn Abi Adh-Dhayyāl that some of his companions narrated to him from Sa'eed bin Jubair, from Ibn 'Abbās, that he said: "The Messenger of Allāh ﷺ said: "There is no prostitution of slave-girls in Islam. And whoever engaged in prostitution in *Jāhiliyyah* (and a child was born), then it will be ascribed to his owners (the owners of the slave-girl). And whoever claims a child outside of marriage, he will not inherit from him (the child), nor will the child inherit from him." (*Da'if*)

٢٢٦٤ - حَدَّثَنَا يَعْقُوبُ بْنُ إِبْرَاهِيمَ: حَدَّثَنَا مُعْتَمِرٌ عَنْ سَلْمِ بْنِ أَبِي الدِّيَالِ: حَدَّثَنِي بَعْضُ أَصْحَابِنَا عَنْ سَعِيدِ بْنِ جُبَيْرٍ، عَنْ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا مَسَاعَاةَ فِي الْإِسْلَامِ مَنْ سَاعَى فِي الْجَاهِلِيَّةِ فَقَدْ لِحِقَ بِعَصَبِيهِ، وَمَنْ ادَّعَى وَلَدًا مِنْ غَيْرِ رِشْدَةٍ فَلَا يَرِثُ وَلَا يُورَثُ».

تخريج: [إسناده ضعيف] أخرجه أحمد: ١/٣٦٢ من حديث معتمر به * بعض أصحابنا: لم

أعرفه.

2265. 'Amr bin Shu'aib narrated from his father, from his grandfather, that the Prophet ﷺ ruled regarding those who wished to be considered as inheritors after their father's death — meaning those whom they ascribed themselves to. He ruled that any child that was born to a slave owned by her master, when he engaged in intercourse with her, would be considered as a part of the one who considered him (as a son). But he will not be given any inheritance that

٢٢٦٥ - حَدَّثَنَا شَيْبَانُ بْنُ فَرُّوخَ: حَدَّثَنَا مُحَمَّدُ بْنُ رَاشِدٍ؛ ح: وَحَدَّثَنَا الْحَسَنُ بْنُ عَلِيٍّ: حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ: أَخْبَرَنَا مُحَمَّدُ ابْنُ رَاشِدٍ وَهُوَ أَشْبَعُ عَنْ سُلَيْمَانَ بْنِ مُوسَى، عَنْ عَمْرٍو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: إِنَّ النَّبِيَّ ﷺ قَضَى أَنَّ كُلَّ مُسْتَلْحَقٍ اسْتَلْحَقَ بَعْدَ أَبِيهِ الَّذِي يُدْعَى لَهُ ادِّعَاءُهُ وَرَثَتُهُ فَقَضَى أَنَّ كُلَّ مَنْ كَانَ مِنْ أُمَّةٍ يَمْلِكُهَا يَوْمَ أَصَابَهَا فَقَدْ لِحِقَ بِمَنْ اسْتَلْحَقَهُ وَلَيْسَ لَهُ مِمَّا

had already been distributed before him. He will, however, be given his portion of the inheritance that has not yet been distributed. And such (a child) will not be considered a son if his father denied him. And if the child was from a slave whom he did not own, or from a free woman whom he had fornicating with, then the child will not be considered as his, nor will he inherit from him, even if the one who is considered his father accepts that he is the father, and that is because he is the child of fornication, regardless of whether it was from a free woman or a slave-girl. (*Hasan*)

فَسِمَ قَبْلَهُ مِنَ الْمِيرَاثِ شَيْءٌ وَمَا أَدْرَكَ مِنْ مِيرَاثٍ لَمْ يَفْسَمْ، فَلَهُ نَصِيبُهُ. وَلَا يَلْحَقُ إِذَا كَانَ أَبُوهُ الَّذِي يُدْعَى لَهُ أَنْكَرَهُ. وَإِنْ كَانَ مِنْ أَمَةٍ لَمْ يَمْلِكْهَا أَوْ حُرَّةً عَاهَرَ بِهَا، فَإِنَّهُ لَا يَلْحَقُ بِهِ وَلَا يَرِثُ، وَإِنْ كَانَ الَّذِي يُدْعَى لَهُ هُوَ ادَّعَاهُ فَهُوَ وَلَدٌ زَنِيٌّ مِنْ حُرَّةٍ كَانَ أَوْ أَمَةٍ.

تخريج: [إسناده حسن] أخرجه ابن ماجه، الفرائض، باب: في ادعاء الولد، ح: ٢٧٤٦ من حديث محمد بن راشد به وحسنه البوصيري، ورواه أحمد: ١٨١/٢ عن يزيد بن هارون به.

2266. (Another chain) and he added: “And he was a child of *Zinā*, then it belongs to his mother’s people, whether she was free or a slave. And that is reginning of Islam, as for what was distributed from wealth before Islam, then it has passed.” (*Hasan*)

٢٢٦٦ - حَدَّثَنَا مُحَمَّدُ بْنُ خَالِدٍ: حَدَّثَنَا أَبِي عَنْ مُحَمَّدِ بْنِ رَاشِدٍ بِإِسْنَادِهِ وَمَعْنَاهُ. زَادَ: وَهُوَ وَلَدٌ زَنَا لِأَهْلِ أُمَّهِ مَنْ كَانُوا، حُرَّةً أَوْ أَمَةً، وَذَلِكَ فِيمَا اسْتُلْحِقَ فِي أَوَّلِ الْإِسْلَامِ فَمَا اقْتَسِمَ مِنْ مَالٍ قَبْلَ الْإِسْلَامِ فَقَدْ مَضَى.

تخريج: [حسن] انظر الحديث السابق وأخرجه البيهقي: ٢٦٠/٦ من حديث أبي داود به.

Comments:

In the pre-Islamic Age of *Jāhiliyah*, men kept slave-girls to make them earn money or for sexual indulgence. Often they would wrangle over the ownership of a child born of a slave-girl, the owner of a slave-girl and the adulterer each claiming the child to be his own. Islam ruled that the child belongs to the owner (of the slave-girl), not the adulterer.

Chapter 30/31. Regarding *Al-Qāfah*^[1]

(المعجم ٣٠، ٣١) بَابُ: فِي الْقَافَةِ
(التحفة ٣١)

2267. It was reported from Sufyān

٢٢٦٧ - حَدَّثَنَا مُسَدَّدٌ وَعُثْمَانُ بْنُ أَبِي شَيْبَةَ

[1] Referring to those who examine a person’s traits to determine parentage.

(Ibn 'Uyainah), from Az-Zuhrī, from 'Urwah, from 'Āishah, who said: "One day, the Messenger of Allāh ﷺ came to me very happy (one narrator said: happiness could be seen on his face), and he said: 'O 'Āishah! Do you know that Mujazziz Al-Mudlijī saw Zaid and Usāmah while their heads were covered with a cloth and their feet were exposed, and he said: "These feet are from one another."' (Ṣahīḥ)

Abū Dāwud said: Usāmah was black, and Zaid was white.

تخریج: أخرجه البخاري، الفرائض، باب القائف، ح: ٦٧٧١ ومسلم، الرضاع، باب العمل بالحاق القائف الولد، ح: ١٤٥٩ من حديث سفیان بن عیینة به.

Comments:

The art of judging character from features of face or form of body is known as physiognomy.

2268. It was reported from Al-Laiṭh, from Ibn Shihāb, with his chain and its meaning, he said: "She said: 'He came to me very happy, the happiness was visible on his face.'" (Ṣahīḥ)

Abū Dāwud said: The statement "happiness was visible on his face" is not preserved by Ibn 'Uyainah.

Abū Dāwud said: "Happiness was visible on his face" was added by Ibn 'Uyainah he did not hear it from Az-Zuhrī, he only heard it from someone other than Az-Zuhrī. He said: "the happiness was visible" is in the narration of Al-Laiṭh and others.

Abū Dāwud said: I heard Aḥmad bin Ṣāliḥ saying: "Usāmah was very black like coal, and Zaid was as

المعنى وابن السرح قالوا: حَدَّثَنَا سُفْيَانُ عَنْ الزُّهْرِيِّ، عَنْ عُرْوَةَ، عَنْ عَائِشَةَ قَالَتْ: دَخَلَ عَلَيَّ رَسُولُ اللَّهِ ﷺ - قَالَ مُسَدَّدٌ وَابْنُ السَّرْحِ يَوْمًا مَسْرُورًا وَقَالَ عُثْمَانُ: تُعْرِفُ أَسَارِيرُ وَجْهِهِ، فَقَالَ: «أَيُّ عَائِشَةَ! أَلَمْ تَرَيَّ أَنَّ مُجَزَّزًا الْمُدَلِجِيَّ رَأَى زَيْدًا وَأَسَامَةَ قَدْ غَطَّيَا رُؤُوسَهُمَا بِقَطِيفَةٍ وَبَدَّتْ أقدامُهُمَا فَقَالَ: إِنَّ هَذِهِ الْأَقْدَامَ بَعْضُهَا مِنْ بَعْضٍ».

قَالَ أَبُو دَاوُدَ: كَانَ أَسَامَةُ أَسْوَدَ وَكَانَ زَيْدٌ أَيْضًا.

٢٢٦٨ - حَدَّثَنَا قُتَيْبَةُ: حَدَّثَنَا اللَّيْثُ عَنْ ابْنِ شِهَابٍ بِإِسْنَادِهِ وَمَعْنَاهُ قَالَ: قَالَتْ: دَخَلَ عَلَيَّ مَسْرُورًا تَبْرُقُ أَسَارِيرُ وَجْهِهِ.

قَالَ أَبُو دَاوُدَ: وَكَانَ أَسَامَةُ أَسْوَدَ وَكَانَ زَيْدٌ أَيْضًا.

قَالَ أَبُو دَاوُدَ: وَأَسَارِيرُ وَجْهِهِ لَمْ يَحْفَظْهُ ابْنُ عُيَيْنَةَ.

قَالَ أَبُو دَاوُدَ: أَسَارِيرُ وَجْهِهِ هُوَ تَدْلِيسٌ مِنْ ابْنِ عُيَيْنَةَ لَمْ يَسْمَعْهُ مِنَ الزُّهْرِيِّ إِنَّمَا سَمِعَ الْأَسَارِيرَ مِنْ غَيْرِ الزُّهْرِيِّ. قَالَ: وَالْأَسَارِيرُ فِي حَدِيثِ اللَّيْثِ وَغَيْرِهِ.

قَالَ أَبُو دَاوُدَ: وَسَمِعْتُ أَحْمَدَ بْنَ صَالِحٍ يَقُولُ: كَانَ أَسَامَةُ شَدِيدَ السَّوَادِ مِثْلَ الْقَارِ

white as cotton.”

وَكَانَ زَيْدٌ أَبْيَضَ مِثْلَ الْقَطَنِ .

تخریج: متفق عليه عن قتیبة بن سعید به انظر الحديث السابق .

Comments:

If a child is claimed by several persons or a woman is suspected of having slept with several persons, it being unclear whose child it is, an expert and honest physiognomist may be asked to decide the issue. If physiognomy were a false science, the Messenger of Allāh ﷺ would not rejoice at the statement of the physiognomist.

Chapter 31/32. Those Who Said That Lots Should Be Drawn If They Differ About The Child

2269. It was reported from ‘Abdullāh bin Al-Khalīl, from Zaid bin Arqam, who said: “I was sitting with the Prophet ﷺ when a person came from Yemen and said: ‘Three people from the people of Yemen came to ‘Alī arguing over a child. And they all had intercourse with a woman, in the same time frame, between two cycles. He asked two of them: “Give up the child to this one,” but they became argumentative. Then he said to another two: “Give up the child to this one,” but they became argumentative. The he said to another two: “Give up the child to this one,” but they became argumentative. So he said: “You are a group of partners (in the act) who are differing with each other. I am going to draw lots between you, so whoever pulls (the correct) lot will get the child, and he must pay the other two companions two-thirds of the blood money.” And he then gave (the child) to the one who won the lot.’ At this, the Messenger of Allāh ﷺ laughed (so

(المعجم ٣١، ٣٢) - بَابُ مَنْ قَالَ بِالْقُرْعَةِ إِذَا تَنَازَعُوا فِي الْوَلَدِ (التحفة ٣٢)

٢٢٦٩ - حَدَّثَنَا مُسَدَّدٌ: حَدَّثَنَا يَحْيَى عَنْ الْأَجَلِحِ، عَنِ الشَّعْبِيِّ، عَنْ عَبْدِ اللَّهِ بْنِ الْخَلِيلِ، عَنْ زَيْدِ بْنِ أَرْقَمَ قَالَ: كُنْتُ جَالِسًا عِنْدَ النَّبِيِّ ﷺ فَجَاءَ رَجُلٌ مِنَ الْيَمَنِ فَقَالَ: إِنَّ ثَلَاثَةَ نَفَرٍ مِنْ أَهْلِ الْيَمَنِ اتَّوَأَ عَلِيًّا يَخْتَصِمُونَ إِلَيْهِ فِي وَلَدٍ، وَقَدْ وَقَعُوا عَلَى امْرَأَةٍ فِي طَهْرٍ وَاحِدٍ، فَقَالَ لِاثْنَيْنِ: طِيبَا بِالْوَلَدِ لِهَذَا فَعَلِيًّا، ثُمَّ قَالَ لِاثْنَيْنِ: طِيبَا بِالْوَلَدِ لِهَذَا فَعَلِيًّا، ثُمَّ قَالَ لِاثْنَيْنِ: طِيبَا بِالْوَلَدِ لِهَذَا فَعَلِيًّا فَقَالَ: أَنْتُمْ شُرَكَاءُ مَسْأِكُسُونَ إِنِّي مُفْرَعٌ بَيْنَكُمْ، فَمَنْ قَرَعَ فَلَهُ الْوَلَدُ، وَعَلَيْهِ لِصَاحِبِيهِ ثُلُثَا الدِّيَةِ، فَأَقْرَعَ بَيْنَهُمْ، فَجَعَلَهُ لِمَنْ قَرَعَ، فَضَحِكَ رَسُولُ اللَّهِ ﷺ حَتَّى بَدَتْ أَضْرَاسُهُ أَوْ نَوَاجِدُهُ.

hard) that his molar teeth, or his incisors, could be seen.” (*Da'if*)

تخريج: [إسناده ضعيف] أخرجه النسائي، الطلاق، باب القرعة في الولد إذا تنازعا فيه ... الخ، ح: ٣٥١٩ من حديث الأجلح به وصححه الحاكم: ٣/١٣٥، ١٣٦ من حديث عبدالرزاق * الثوري مدلس وعنن، وللحديث شواهد ضعيفة.

2270. It was reported from 'Abd Khair, from Zaid bin Arqam, who said: "When 'Alī, may Allāh be pleased with him, was in Yemen, three people were brought to him. They had all engaged in intercourse with a woman, in the same time frame, between two cycles. He asked two of them: 'Will you agree to give the child to this one?' They both replied: 'No.' And he asked all of them similarly, but every time he would ask any two, they would respond, 'No.' So he drew lots between them, and then gave the child to the one who drew the lot, and also made him pay two — thirds of the blood money. This was then mentioned to the Prophet ﷺ, who laughed until his molars could be seen." (*Hasan*)

٢٢٧٠ - حَدَّثَنَا حُشَيْشُ بْنُ أَمْرَمَ: حَدَّثَنَا عَبْدُ الرَّزَّاقِ: أَخْبَرَنَا الثَّوْرِيُّ عَنْ صَالِحِ الْهَمْدَانِيِّ، عَنِ الشَّعْبِيِّ، عَنْ عَبْدِ حَيْرٍ، عَنْ زَيْدِ بْنِ أَرْقَمَ قَالَ: أَتَيْتِي عَلَيَّ رَضِيَ اللَّهُ عَنْهُ بِثَلَاثَةِ وَهُوَ بِالْيَمَنِ وَقَعُوا عَلَيَّ امْرَأَةً فِي طَهْرٍ وَاجِدٍ. فَسَأَلْتُ اثْنَيْنِ: أَتَقْرَانِ لِهَذَا بِالْوَلَدِ؟ قَالَا: لَا، حَتَّى سَأَلَهُمْ جَمِيعًا، فَجَعَلَ كُلُّمَا سَأَلَ اثْنَيْنِ قَالَا: لَا، فَأَفْرَعُ بَيْنَهُمْ، فَأَلْحَقَ الْوَلَدَ بِالَّذِي صَارَتْ عَلَيْهِ الْقُرْعَةُ، وَجَعَلَ عَلَيْهِ ثُلُثِي الدِّيَةِ. قَالَ: فَذَكَرَ ذَلِكَ لِلنَّبِيِّ ﷺ فَضَحِكَ حَتَّى بَدَتْ نَوَاجِذُهُ.

تخريج: [حسن] أخرجه النسائي، الطلاق، باب القرعة في الولد إذا تنازعا فيه ... الخ، ح: ٣٥١٨ عن حشيش بن أمرم به ورواه ابن ماجه، ح: ٢٣٤٨ من حديث عبدالرزاق، وللحديث طرق كثيرة عند الحميدي، (ح: ٧٨٦) وغيره.

Comments:

When both the sides of a matter (pros and cons) seem to be almost the same or of an equal weight and it becomes difficult to decide, it is then permissible to decide the issue by means of lots as 'Alī, may Allāh be pleased with him, did, or, as the Messenger of Allāh ﷺ used to do for choosing any one of his wives to accompany him on his journey.

2271. It was reported from Salamah, that Ash-Sh'abī heard from Al-Khalīl or Ibn Al-Khalīl, who said: "A woman was brought

٢٢٧١ - حَدَّثَنَا عُبَيْدُ اللَّهِ بْنُ مَعَاذٍ، حَدَّثَنَا أَبِي: حَدَّثَنَا شُعْبَةُ عَنْ سَلَمَةَ سَمِعَ الشَّعْبِيِّ، عَنِ الْخَلِيلِ أَوْ ابْنِ الْخَلِيلِ قَالَ: أَتَيْتِي بِنِ

to 'Alī, may Allāh be pleased with him, and she had given birth from three men." He narrated similarly, but he did not mention Yemen, nor the Prophet ﷺ, nor 'Alī' asking the other two to give up the child (to the third). (*Da'if*)

Chapter 32/33. Regarding The Types Of Marriages That Were Practiced Before Islam

2272 'Āishah, may Allāh be pleased with her, the wife of the Prophet ﷺ, narrated that there were four types of marriages that were practiced in *Jāhiliyyah*. There was a type which is what the people do today: A man would propose to another man (guardian) for his female ward's (hand in marriage), and would give her a dowry and then marry her. Another type was that a man would say to his wife, after she had finished her menses: 'Call so-and-so, and mate with him,' and her husband would avoid her until it was clear that she was pregnant from that other man whom she was mating with. After her pregnancy was apparent, her husband could then enjoy her if he pleased. And they would only do that type because they desired a bright (and noble) child. This type of marriage was called: 'Mating marriage.' Another type of marriage was that a group of men, less than ten, would visit a woman, all of them enjoying her. So if she became pregnant and gave birth, then a few nights after her delivery,

أَبِي طَالِبٍ رَضِيَ اللَّهُ عَنْهُ فِي امْرَأَةٍ وَكَذَلِكَ مِنْ ثَلَاثَةِ نَحْوِهِ، لَمْ يَذْكُرْ: الْيَمَنَ وَلَا النَّبِيَّ ﷺ وَلَا قَوْلَهُ: طَيِّبًا بِالْوَالِدِ.

تخريج: [ضعيف] انظر الحديث السابق.

(المعجم ٣٢، ٣٣) بَابُ: فِي وُجُوهِ
النِّكَاحِ الَّتِي كَانَ يَتَنَكَحُ بِهَا أَهْلُ
الْجَاهِلِيَّةِ (التحفة ٣٣)

٢٢٧٢ - حَدَّثَنَا أَحْمَدُ بْنُ صَالِحٍ: حَدَّثَنَا عَبَسَةُ بْنُ خَالِدٍ: حَدَّثَنِي يُونُسُ بْنُ يَزِيدَ قَالَ: قَالَ مُحَمَّدُ بْنُ مُسْلِمٍ بْنِ شَهَابٍ: أَخْبَرَنِي عُرْوَةُ بْنُ الرُّبَيْرِ: أَنَّ عَائِشَةَ رَضِيَ اللَّهُ عَنْهَا زَوَّجَ النَّبِيَّ ﷺ أَخْبَرَتْهُ أَنَّ النَّكَاحَ كَانَ فِي الْجَاهِلِيَّةِ عَلَى أَرْبَعَةِ أَنْحَاءٍ، فَنِكَاحٌ مِنْهَا يَنِكَاحُ النَّاسِ الْيَوْمَ، يَخْطُبُ الرَّجُلُ إِلَى الرَّجُلِ وَلَيْتَهُ فَيُضِدُّهَا ثُمَّ يَنِكَحُهَا، وَنِكَاحٌ آخَرُ: كَانَ الرَّجُلُ يَقُولُ لِامْرَأَتِهِ إِذَا طَهَّرَتْ مِنْ طَمَثِهَا أُرْسِلِي إِلَى فُلَانٍ فَاسْتَبْضِعِي مِنْهُ، وَيَعْتَرِزِلُهَا زَوْجَهَا وَلَا يَمْسُهَا أَبَدًا حَتَّى يَبَيِّنَ حَمْلَهَا مِنْ ذَلِكَ الرَّجُلِ الَّذِي تَسْتَبْضِعُ مِنْهُ، فَإِذَا بَيَّنَّ حَمْلَهَا أَصَابَهَا زَوْجُهَا إِنْ أَحَبَّ، وَإِنَّمَا يَفْعَلُ ذَلِكَ رَغْبَةً فِي نِكَاحِ الْوَالِدِ، فَكَانَ هَذَا النَّكَاحُ يُسَمَّى نِكَاحَ الْإِسْتِبْضَاعِ، وَنِكَاحٌ آخَرُ: يَجْتَمِعُ الرَّهْطُ دُونَ الْعَشْرَةِ فَيَدْخُلُونَ عَلَى الْمَرْأَةِ كُلُّهُمْ يُصِيبُهَا، فَإِذَا حَمَلَتْ وَوَضَعَتْ، وَمَرَّ لَيَالٍ بَعْدَ أَنْ تَضَعَ حَمْلَهَا أُرْسَلَتْ إِلَيْهِمْ فَلَمْ يَسْتَطِعْ رَجُلٌ مِنْهُمْ أَنْ

she would call for all of them, and none of them could refuse to come. When they would all gather, she would say to them: 'You know (the result) of what you have done, and I have given birth, and he is your child: O so-and-so,' and she would name whomever she pleased, so her child would be considered his. And the fourth type was that a lot of men would enter upon a woman, for she would not turn away any that came to her — and these were the prostitutes. They would place flags on their doors, and these would act as signs; whoever wanted them would enter in upon them. If she became pregnant and gave birth, then after her delivery, they would all gather and call a *Qāfah*. Then the child would be given to the one whom he saw fit, and so it would be given to him, and called his son. None could refuse that. So when Allāh sent Muḥammad ﷺ, he obliterated all the marriages of the People of *Jāhiliyyah* except for the marriage of the Muslims today. (*Sahīh*)

تخریج: أخرجه البخاري، النكاح، باب من قال: لا نكاح إلا بولي... إلخ، ح: ٥١٢٧ عن أحمد بن صالح به.

Chapter 33/34. "The Child Belongs To The Bed"

2273. 'Āishah narrated: "Sa'd bin Abī Waqqāṣ and 'Abd bin Zam'ah contended in front of the Messenger of Allāh ﷺ regarding a son that was born to the slave woman of Zam'ah. Sa'd said: 'My

يَمْتَنِعُ حَتَّى يَجْتَمِعُوا عِنْدَهَا فَتَقُولُ لَهُمْ: قَدْ عَرَفْتُمْ الَّذِي كَانَ مِنْ أَمْرِكُمْ وَقَدْ وَلَدْتُ وَهُوَ ابْنُكَ يَا فُلَانُ! فَتَسْمِي مَنْ أَحَبَّتْ مِنْهُمْ بِاسْمِهِ فَيُلْحَقُ بِهِ وَلَدَهَا، وَنِكَاحُ رَابِعٍ يَجْتَمِعُ النَّاسُ الْكَثِيرُ فَيَدْخُلُونَ عَلَى الْمَرْأَةِ لَا تَمْتَنِعُ مِمَّنْ جَاءَهَا وَهِنَّ الْبَغَايَا كُنَّ يُنْصَبْنَ عَلَى أَبْوَابِهِنَّ رَايَاتٍ تَكُنُّ عَلَمًا لِمَنْ أَرَادَهُنَّ دَخَلَ عَلَيْهِنَّ، فَإِذَا حَمَلَتْ فَوَضَعَتْ حَمْلَهَا جُمِعُوا لَهَا وَدَعَوْا لَهُمْ الْقَافَةَ، ثُمَّ أَلْحَقُوا وَلَدَهَا بِالَّذِي يَرَوْنَ، فَالْطَّاطَةُ وَدُعَى ابْنِهِ لَا يَمْتَنِعُ مِنْ ذَلِكَ. فَلَمَّا بَعَثَ اللَّهُ مُحَمَّدًا ﷺ، هَدَمَ نِكَاحَ أَهْلِ الْجَاهِلِيَّةِ كُلِّهِ إِلَّا نِكَاحَ أَهْلِ الْإِسْلَامِ الْيَوْمَ.

(المعجم ٣٣، ٣٤) بَابُ: الْوَلَدُ لِلْفِرَاشِ

(التحفة ٣٤)

٢٢٧٣ - حَدَّثَنَا سَعِيدُ بْنُ مَنْصُورٍ وَمُسَدَّدٌ قَالَا: حَدَّثَنَا سُفْيَانُ عَنِ الرَّهْرِيِّ، عَنِ عُرْوَةَ، عَنِ عَائِشَةَ: اخْتَصَمَ سَعْدُ بْنُ أَبِي وَقَّاصٍ وَعَبْدُ بْنُ زَمْعَةَ إِلَى رَسُولِ اللَّهِ ﷺ فِي ابْنِ أُمَةٍ

brother 'Utbah commanded me to find the son of the slave woman of Zam'ah when I arrive in Makkah and take him, because he is his son.' And 'Abd bin Zam'ah said: 'He is my brother, the son of my father's slave woman. He was born in my father's bed.' The Messenger of Allāh ﷺ saw clearly that he resembled 'Utbah, but said: 'The child is ascribed to the bed, and the *Hajar* (stone) is for the *Āhir* (fornicator).^[1] O Sawdah! Wear your *Hijāb* in front of him." Musad-dad (one of the narrators) added: "He is your brother, O 'Abd." (*Ṣaḥīḥ*)

رَمَعَةً، فَقَالَ سَعْدٌ: أَوْصَانِي أَخِي عْتَبَهُ إِذَا قَدِمْتُ مَكَّةَ أَنْ أَنْظُرَ إِلَى ابْنِ أُمِّةٍ زَمَعَةً فَأَقْبِضُهُ فَإِنَّهُ ابْنُهُ، وَقَالَ عَبْدُ بْنُ زَمَعَةَ: أَخِي، ابْنُ أُمِّةٍ أَبِي، وَوُلِدَ عَلَى فِرَاشِ أَبِي، فَرَأَى رَسُولُ اللَّهِ ﷺ سَبَّهَا بَيْنًا بَعْتَبَةً، فَقَالَ: «الْوَلَدُ لِلْفِرَاشِ وَلِلْعَاهِرِ الْحَجَرُ وَاحْتَجِبِي مِنْهُ يَا سَوْدَةَ». زَادَ مُسَدَّدٌ فِي حَدِيثِهِ فَقَالَ: «هُوَ أَحْوَكُ يَا عَبْدًا».

تخریج: أخرجه البخاري، الخصومات، باب دعوى الوصي للميت، ح: ٢٤٢١، ومسلم، الرضاع، باب الولد للفراش وتوفي الشبهات، ح: ١٤٥٧ من حديث سفيان بن عيينة به.

Comments:

All these cases date back to the Age of *Jāhiliyyah* when such nasty things were common and the pagans did not feel ashamed of children born out of wedlock. But Islam has ruled the child "belongs to the owner of the bed." From the face of the child in the afore-mentioned case, it appeared that he was the son of 'Utbah, and that he was an illegitimate child, but in his case the rule was followed and he was given over to "the owner of the bed."

2274. 'Amr bin *Shu'aib* narrated from his father, from his grandfather that a man stood up in front of the Messenger of Allāh ﷺ and said: "So-and-so is my son, for I fornicated with his mother in the times of *Jāhiliyyah*." The Messenger of Allāh ﷺ said: 'There is no prescribing (of genealogies) in

٢٢٧٤ - حَدَّثَنَا زُهَيْرُ بْنُ حَرْبٍ: حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ: أَخْبَرَنَا حُسَيْنُ الْمُعَلَّمِ عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: قَامَ رَجُلٌ فَقَالَ: يَا رَسُولَ اللَّهِ! إِنَّ فَلَانًا ابْنِي عَاهَرْتُ بِأُمِّهِ فِي الْجَاهِلِيَّةِ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «لَا دَعْوَةَ فِي الْإِسْلَامِ، ذَهَبَ أَمْرُ

[1] Some scholars are of the opinion that: "The *Hajar* (stone) is for the *Āhir* (fornicator)" refers to stoning, but others explained that stoning is not for the fornicator, but the one who has been married and fornicates, and that the *Hadūh* means the fornicator does not get anything; no rights over the child, nor inheritance, etc. See the commentary of An-Nawawī on *Ṣaḥīḥ Muslim* (no. 3613,3136,1457); Ibn Hajar in *Fath Al-Bārī* (no. 6750); 'Awn Al-Ma'būd; and *Minnat Al-Mun'im* the commentary on *Ṣaḥīḥ Muslim* by our *Shaiḥ* Ṣafiur-Raḥmān Al-Mubarakpūrī, may Allah have mercy upon him.

Islam. The customs of *Jāhiliyyah* have all gone. The child is ascribed to the bed, and the *Hajar* (stone) is for the '*Āhir* (fornicator).'" (*Ḥasan*)

الْجَاهِلِيَّةِ، الْوَلَدُ لِلْفِرَاشِ وَلِلْعَاهِرِ الْحَجَرُ».

تخریج: [إسناده حسن] أخرجه أحمد: ۲۰۷/۲ عن يزيد بن هارون به.

2275. It was reported from Rabāḥ the slave of Al-Ḥasan bin 'Alī bin Abī Ṭalib, that he said: "My family (those who owned him) married me to a Roman slave-girl of theirs, so I had intercourse with her. She gave birth to a black son, like me, and I named him 'Abdullāh. Then I engaged in intercourse with her, and she gave birth to a black son like me, and I named him 'Ubaidullāh. But then a Roman slave of my master's, by the name of Yuḥannah, ruined her, and spoke with her in their language. She gave birth to a boy who looked like a lizard. I said to her: 'What is this?' She replied: 'This is Yuḥannah's (child).' So we complained to 'Uthmān regarding the both of them. He asked them, and they both confessed (to the fornication). He said to them: 'Are you willing that I judge between you with the judgment of the Messenger of Allāh ﷺ? The Messenger of Allāh ﷺ ruled that the child is ascribed to the bed'" — (one of the narrators said) I think he said: "So he lashed him, and lashed her, and they were both slaves." (*Da'if*)

۲۲۷۵ - حَدَّثَنَا مُوسَى بْنُ إِسْمَاعِيلَ: حَدَّثَنَا مَهْدِيُّ بْنُ مَيْمُونٍ أَبُو يَحْيَى: حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ أَبِي يَعْقُوبَ عَنِ الْحَسَنِ بْنِ سَعْدِ مَوْلَى الْحَسَنِ بْنِ عَلِيِّ بْنِ أَبِي طَالِبٍ، عَنْ رَبَاحٍ قَالَ: زَوَّجَنِي أَهْلِي أُمَّةً لَهُمْ رُومِيَّةٌ، فَوَقَعْتُ عَلَيْهَا، فَوَلَدَتْ غُلَامًا أَسْوَدَ مِثْلِي، فَسَمَّيْتُهُ عَبْدَ اللَّهِ، ثُمَّ وَقَعْتُ عَلَيْهَا فَوَلَدَتْ غُلَامًا أَسْوَدَ مِثْلِي فَسَمَّيْتُهُ عُبَيْدَ اللَّهِ، ثُمَّ طَبِنَ لَهَا غُلَامٌ لِأَهْلِي رُومِيٌّ يُقَالُ لَهُ يُوحَنَّةُ، فَطَرَطَهَا بِلِسَانِهِ فَوَلَدَتْ غُلَامًا كَأَنَّه وَرَعَةٌ مِنَ الْوَرَعَاتِ، فَقُلْتُ لَهَا: مَا هَذَا؟ قَالَتْ: هَذَا لِيُوحَنَّةَ، فَرَفَعْنَا إِلَى عُثْمَانَ - أَحْسِبُهُ قَالَ مَهْدِيُّ: قَالَ: فَسَأَلْتُهُمَا، فَاعْتَرَفَا - فَقَالَ لَهُمَا: أَنْرَضِيَانِ أَنْ أَقْضِيَ بَيْنَكُمَا بِقَضَاءِ رَسُولِ اللَّهِ ﷺ، إِنَّ رَسُولَ اللَّهِ ﷺ قَضَى أَنَّ الْوَلَدَ لِلْفِرَاشِ، وَأَحْسِبُهُ قَالَ: فَجَلَدَهَا وَجَلَدَهُ وَكَانَا مَمْلُوكَيْنِ.

تخریج: [إسناده ضعيف] أخرجه أحمد: ۶۹،۵۹/۱ عن مهدي بن ميمون به * رباح

مجهول، ذكره ابن حبان في الثقات: ۲۳۸/۴ وقال: "لا أدري من هو ولا ابن من هو؟".

Chapter 34/35. Who Has More Right To Take The Child?

2276. ‘Amr bin Shu‘aib narrated from his father, from his grandfather that a woman said: “O Messenger of Allāh! This son of mine: My womb was a protective bag for him, and my breasts were his sustenance, and my house was a protection for him. Now, his father has divorced me, and wishes to take him away from me.” The Messenger of Allāh ﷺ said to her: “You have more right to him, as long as you do not re-marry.” (Hasan)

تخریج: [حسن] أخرجه أحمد: ۱۸۲/۲، ۲۰۳ من حديث عمرو بن شعيب به وصحه الحاكم: ۲۰۷/۲ ووافقه الذهبي * الوليد بن مسلم: صرح بالسماع.

Comments:

This authentic *Hadīth* proves that, until a mother marries again, she has the right to keep the child more than the father and, even after marriage, she has the right to keep the child with her with the consent of the father. In case he does not agree, the child will be given over to the father.

2277. It was reported from Abū Maimūnah Salmā, the freed-slave of some people of Al-Madinah, a truthful man, that he said: “Once, while I was sitting with Abū Hurairah, a Persian lady came to him with a son of hers. Her husband had divorced her, and both of them were claiming him. She said, speaking to him in Farsi, ‘My husband wishes to take my son.’ Abū Hurairah replied: ‘Draw lots over him,’ and he spoke to her (in her language). Her husband then came and said: ‘Who is trying to snatch my child away from me?’ Abū Hurairah said: ‘O Allāh! I am

(المعجم ۳۴، ۳۵) - بَابُ مَنْ أَحَقُّ بِالْوَلَدِ
(التحفة ۳۵)

۲۲۷۶ - حَدَّثَنَا مُحَمَّدُ بْنُ خَالِدٍ السُّلَمِيُّ: حَدَّثَنَا الْوَلِيدُ عَنْ أَبِي عَمْرٍو يَعْنِي الْأَوْزَاعِيَّ: حَدَّثَنِي عَمْرُو بْنُ شُعَيْبٍ عَنْ أَبِيهِ، عَنْ جَدِّهِ عَبْدِ اللَّهِ بْنِ عَمْرٍو: أَنَّ امْرَأَةً قَالَتْ: يَا رَسُولَ اللَّهِ! إِنَّ ابْنِي هَذَا كَانَ بَطْنِي لَهُ وَعَاءً، وَتَدْيِي لَهُ سِفَاءً، وَحِجْرِي لَهُ حِوَاءً، وَإِنَّ أَبَاهُ طَلَّقَنِي وَأَرَادَ أَنْ يَنْزِعَهُ مِنِّي، فَقَالَ لَهَا رَسُولُ اللَّهِ ﷺ: «أَنْتِ أَحَقُّ بِهِ مِمَّا لَمْ تَنْكِحِي».

۲۲۷۷ - حَدَّثَنَا الْحَسَنُ بْنُ عَلِيٍّ الْخَلْوَانِيُّ: حَدَّثَنَا عَبْدُ الرَّزَّاقِ وَأَبُو عَاصِمٍ عَنْ ابْنِ جُرَيْجٍ: أَخْبَرَنِي زِيَادٌ عَنْ هِلَالِ بْنِ أَسَامَةَ، أَنَّ أَبَا مَيْمُونَةَ سَلِمَى مَوْلَى مِنْ أَهْلِ الْمَدِينَةِ رَجُلٌ صَدَقَ قَالَ: بَيْنَمَا أَنَا جَالِسٌ مَعَ أَبِي هُرَيْرَةَ جَاءَتْهُ امْرَأَةٌ فَارْسِيَّةٌ مَعَهَا ابْنٌ لَهَا فَادَّعَايَاهُ وَقَدْ طَلَّقَهَا زَوْجَهَا، فَقَالَتْ: يَا أَبَا هُرَيْرَةَ - رَطَطْتُ لَهُ بِالْفَارِسِيَّةِ - زَوْجِي يُرِيدُ أَنْ يَذْهَبَ بَانِي، فَقَالَ أَبُو هُرَيْرَةَ: اسْتَهَمَا عَلَيْهِ، وَرَطَطَ لَهَا بِذَلِكَ، فَجَاءَ زَوْجُهَا فَقَالَ: مَنْ يُحَاقِنِي فِي وَلَدِي؟ فَقَالَ أَبُو هُرَيْرَةَ:

only saying this because I heard a woman who had come to the Messenger of Allāh ﷺ while I was sitting with him who said: "O Messenger of Allāh, my husband wishes to take my son away from me, even though he gives me water from the well of Abū 'Inabah, and is of benefit to me." So the Messenger of Allāh ﷺ replied: "Draw lots over him." But her husband said: "Who is trying to snatch my child away from me?" The Prophet ﷺ then said: "This is your father, and this is your mother. Take the hand of whichever you please." And he took the hand of his mother, so she took him away." (*Sahīh*)

تخریج: [إسناده صحيح] أخرجه ابن ماجه، الأحكام، باب تخيير الصبي بين أبويه، ح: ٢٣٥١ من حديث زياد بن سعد به وقال الترمذي، ح: ١٣٥٧: "حسن صحيح".

Comments:

Children may be given the right of choice in the afore-mentioned conditions if they have grown up to an age of sound judgment.

2278. It was reported from Nāfi' bin 'Ujairah, from his father, from 'Alī, may Allāh be pleased with him, who said: "Zaid bin Ḥārithah left for Makkah, and brought back Ḥamzah's daughter. Ja'far said: 'I will take her, for I have more right to her. She is the daughter of my uncle, and I am married to her maternal aunt, and a maternal aunt is (like) a mother.'" But 'Alī said: "I have more right to her. She is the daughter of my uncle, and I am married to the daughter of the Messenger of Allāh ﷺ, and she has more right to her." Zaid said: "I have more right to her. I was the

اللَّهُمَّ! إِنِّي لَا أَقُولُ هَذَا إِلَّا أَنِّي سَمِعْتُ امْرَأَةً جَاءَتْ إِلَى رَسُولِ اللَّهِ ﷺ وَأَنَا قَاعِدٌ عِنْدَهُ فَقَالَتْ: يَا رَسُولَ اللَّهِ! إِنَّ زَوْجِي يُرِيدُ أَنْ يَذْهَبَ بَابْنِي وَقَدْ سَقَانِي مِنْ بئرِ أَبِي عَبَّةٍ وَقَدْ نَفَعَنِي، فَقَالَ رَسُولُ اللَّهِ ﷺ: «اسْتَهَمَا عَلَيْهِ» فَقَالَ زَوْجُهَا: مَنْ يُحَافَتِي فِي وَلَدِي؟ فَقَالَ النَّبِيُّ ﷺ: «هَذَا أَبُوكَ، وَهَذِهِ أُمُّكَ، فَخُذْ بِيَدِ أَيِّهِمَا شِئْتَ»، فَأَخَذَ بِيَدِ أُمِّهِ، فَانْطَلَقَتْ بِهِ.

٢٢٧٨ - حَدَّثَنَا الْعَبَّاسُ بْنُ عَبْدِ الْعَظِيمِ: حَدَّثَنَا عَبْدُ الْمَلِكِ بْنُ عَمْرٍو: حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ عَنْ يَزِيدَ بْنِ الْهَادِ، عَنْ مُحَمَّدِ بْنِ إِبْرَاهِيمَ، عَنْ نَافِعِ بْنِ عُجَيْرٍ، عَنْ أَبِيهِ، عَنْ عَلِيِّ رَضِيَ اللَّهُ عَنْهُ قَالَ: خَرَجَ زَيْدُ ابْنِ حَارِثَةَ إِلَى مَكَّةَ فَقَدِمَ بِابْنَتِهِ حَمْرَةَ، فَقَالَ جَعْفَرُ: أَنَا أَخُذُهَا، أَنَا أَحَقُّ بِهَا، ابْنَةُ عَمِّي وَعِنْدِي خَالَتُهَا وَإِنَّمَا الْخَالَةُ أُمٌّ، فَقَالَ عَلِيُّ: أَنَا أَحَقُّ بِهَا، ابْنَةُ عَمِّي، وَعِنْدِي ابْنَةُ رَسُولِ اللَّهِ ﷺ وَهِيَ أَحَقُّ بِهَا، فَقَالَ زَيْدٌ: أَنَا أَحَقُّ بِهَا، أَنَا خَرَجْتُ إِلَيْهَا وَسَافَرْتُ وَقَدِمْتُ بِهَا،

one who left to (get) her, and traveled for her, and brought her back.” The Prophet ﷺ came out” — and he mentioned the narration — he said: “And as for the little girl, I rule that she should go to Ja’far so that she will be with her maternal aunt. And verily, the maternal aunt is a mother.”

(*Hasan*)

تخريج: [حسن] أخرجه البزار في البحر الزخار: ٣/١٠٥، ١٠٦، ح: ٨٩١ من حديث عبد الملك بن عمرو أبي عامر به مطولاً وله طريق آخر عند البيهقي: ٦/٨.

Comments:

In the matter of bringing up and taking care of children, priority is given to the mother, as mentioned in the foregoing *Hadith*, followed by the maternal aunt, followed by paternal relatives. According to Ibn Taimiyyah and Ibn Al-Qayyim, while keeping in view this order of priority, it is also very important to take into account the interest of the child, his present and his future.

2279. (Another chain) from ‘Abdur-Rahmān bin Abī Lailā with this narration, not in its complete form, he said: “So he ruled that she be given to Ja’far, since her maternal aunt was with him.”

(*Hasan*)

٢٢٧٩ - حَدَّثَنَا مُحَمَّدُ بْنُ عِيْسَى: حَدَّثَنَا سَفِيَانُ عَنْ أَبِي فَرَوَةَ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى بِهَذَا الْخَبَرِ وَلَيْسَ بِتَمَامِهِ قَالَ: وَقَضَى بِهَا لِجَعْفَرٍ لِأَنَّ خَالَتَهَا عِنْدَهُ.

تخريج: [حسن] انظر الحديث السابق وللحديث شواهد.

2280. (Another chain) from Hāni’ and Hubairah, from ‘Alī, who said: “When we left Makkah, Ḥamzā’s daughter followed us, crying: ‘O uncle, O uncle!’” So ‘Alī took her hand and brought her, and said (to Fāṭimah): “Take your uncle’s daughter,” so she took her. And Ja’far said: “My uncle’s daughter, and her maternal aunt is with me!” So the Prophet ﷺ ruled that she be given to her maternal aunt, and said: “The maternal aunt is similar in status to a mother.” (*Da’if*)

٢٢٨٠ - حَدَّثَنَا عَبَادُ بْنُ مُوسَى أَنَّ إِسْمَاعِيلَ بْنَ جَعْفَرٍ حَدَّثَهُمْ عَنْ إِسْرَائِيلَ، عَنْ أَبِي إِسْحَاقَ، عَنْ هَانِيٍّ وَهُبَيْرَةَ، عَنْ عَلِيٍّ قَالَ: لَمَّا خَرَجْنَا مِنْ مَكَّةَ تَبِعَتْنَا بِنْتُ حَمَزَةَ تُنَادِي: يَا عَمُّ! يَا عَمُّ! فَتَنَاوَلَهَا عَلِيٌّ فَأَخَذَ بِيَدِهَا وَقَالَ: دُونَكَ بِنْتُ عَمِّكَ، فَحَمَلَتْهَا، فَقَصَّ الْخَبَرَ، قَالَ: وَقَالَ جَعْفَرٌ: ابْنَةُ عَمِّي وَخَالَتُهَا تَحْتِي، فَقَضَى بِهَا النَّبِيُّ ﷺ لِخَالَتِهَا وَقَالَ: «الْخَالَةُ بِمَنْزِلَةِ الْأُمِّ».

تخريج: [إسناده ضعيف] وأخرجه أحمد: ١/٩٨، ١١٥ من حديث إسرائيل به، وصححه

الحاكم: ١٢/٣، ووافقه الذهبي وسنده ضعيف، أبو إسحاق مدلس وعنعن.

Chapter 35/36. Regarding The Waiting Period Of A Divorced Woman

(المعجم ٣٥، ٣٦) بَابُ: فِي عِدَّةِ
الْمُطَلَّغَةِ (التحفة ٣٦)

2281. Asmā' bint Yazīd bin As-Sakan Al-Anṣāriyyah narrated that she was divorced (by her husband) during the time of the Messenger of Allāh ﷺ, and at that time there used to be no waiting period for the divorcee. So when she was divorced, Allāh revealed the waiting period for the divorced lady. Therefore, she was the first regarding whom these Verses of the waiting period for divorced women were applied. (*Hasan*)

٢٢٨١ - حَدَّثَنَا سُلَيْمَانُ بْنُ عَبْدِ الْحَمِيدِ
الْبُهْرَانِيُّ: حَدَّثَنَا يَحْيَى بْنُ صَالِحٍ: حَدَّثَنَا
إِسْمَاعِيلُ بْنُ عِيَّاشٍ: حَدَّثَنِي عَمْرُو بْنُ
مُهَاجِرٍ عَنْ أَبِيهِ، عَنْ أَسْمَاءَ بِنْتِ يَزِيدَ بْنِ
السَّكَنِ الْأَنْصَارِيَّةِ: أَنَّهَا طَلَّقَتْ عَلَى عَهْدِ
رَسُولِ اللَّهِ ﷺ وَلَمْ يَكُنْ لِلْمُطَلَّغَةِ عِدَّةٌ، فَأَنْزَلَ
اللَّهُ عَزَّوَجَلَّ حِينَ طَلَّقَتْ أَسْمَاءَ بِالْعِدَّةِ
لِلطَّلَاقِ، فَكَانَتْ أَوَّلَ مَنْ أُنْزِلَتْ فِيهَا الْعِدَّةُ
لِلْمُطَلَّغَاتِ.

تخریج: [إسناده حسن] أخرجه ابن أبي حاتم في تفسيره: ٤١٤/٢، ح: ٢١٨٦ من حديث إسماعيل بن عياش به ورواه البيهقي: ٤٢٤/٧ من حديث أبي داود به.

Comments:

It is said that Asmā' bint Yazīd was the (paternal) cousin of Mu'adh bin Jabal. She had given the pledge of loyalty to the Messenger of Allāh ﷺ and was a message-bearer for women, carrying their messages to the Messenger of Allāh ﷺ. In the Battle of Yarmūk, she killed nine Romans using a tent pole taken from her tent.

Chapter 37. The Abrogation Of The Waiting Period For One Type Of Divorcee

(المعجم ٣٧) بَابُ: فِي نَسْخِ مَا اسْتُنِيَ
بِهِ مِنْ عِدَّةِ الْمُطَلَّغَاتِ (التحفة ٣٧)

2282. Ibn 'Abbās said, regarding the (two verses): "And divorced women should wait regarding themselves three cycles"^[1] and: "If you are in doubt regarding women who have given up hope of menses, then their waiting period is three

٢٢٨٢ - حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدٍ بْنِ ثَابِتِ
الْمُرُوزِيِّ: حَدَّثَنِي عَلِيُّ بْنُ حُسَيْنٍ عَنْ أَبِيهِ،
عَنْ يَزِيدَ النَّحْوِيِّ، عَنْ عِكْرَمَةَ، عَنْ ابْنِ
عَبَّاسٍ قَالَ: «﴿وَالْمُطَلَّغَاتُ يَرْبِصْنَ بِأَنْفُسِهِنَّ
ثَلَاثَةَ قُرُوءٍ﴾ [البقرة: ٢٢٨] قَالَ: «وَأَلْتَمَسَ بَيْسَنَ

[1] Al-Baqarah 2:228.

months,'^[1] that this was abrogated, and Allāh said: (So if you divorce them before touching them, then you will have no waiting period for them that they have to wait.)" (*Hasan*)

مِنَ الْمَحِيضِ مِنْ نِسَائِكُمْ إِنْ أَرْبَبْتُمْ فَعِدَّتُهُنَّ ثَلَاثَةُ أَشْهُرٍ ﴿الطلاق: ٤﴾ [فَنَسِخَ مِنْ ذَلِكَ وَقَالَ: (وَإِنْ طَلَّقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ تَعْتَدُونَهَا).

تخريج: [حسن] أخرجه النسائي، الطلاق، باب نسخ المراجعة بعد التطليقات الثلاث، ح: ٣٥٨٤ من حديث علي بن حسين بن واقد به وانظر، ح: ٢١٩٥.

Comments:

The *Iddah* of a normal divorcee is three turns of menses and purity. The *Iddah* of a woman in a state of menopause or of a girl with irregular menses not fixed as of yet, is three months. There is no *Iddah* for a woman divorced before the consummation of marriage. A pregnant woman divorced or widowed, shall wait until the delivery of the child. The *Iddah* of a widow is four months and ten days.

Chapter 36/38. Regarding Taking Divorced Women Back

(المعجم ٣٦، ٣٨) بَابُ: فِي الْمُرَاجَعَةِ
(التحفة ٣٨)

2283. It was reported from Ibn 'Abbās, from 'Umar, that the Prophet ﷺ divorced Ḥafṣah and then took her back. (*Ṣaḥih*)

٢٢٨٣ - حَدَّثَنَا سَهْلُ بْنُ مُحَمَّدٍ بْنِ الزُّبَيْرِ الْعَسْكَرِيُّ: حَدَّثَنَا يَحْيَى بْنُ زَكَرِيَّا بْنِ أَبِي زَائِدَةَ عَنْ صَالِحِ بْنِ صَالِحٍ، عَنْ سَلَمَةَ بْنِ كَهَيْلٍ، عَنْ سَعِيدِ بْنِ جُبَيْرٍ، عَنْ ابْنِ عَبَّاسٍ، عَنْ عُمَرَ: أَنَّ النَّبِيَّ ﷺ طَلَّقَ حَفْصَةَ ثُمَّ رَاجَعَهَا.

تخريج: [إسناده صحيح] أخرجه النسائي، الطلاق، باب الرجعة، ح: ٣٥٩٠ من حديث سهل بن محمد به وصححه ابن حبان (موارد): ١٣٢٤ والحاكم على شرط الشيخين: ١٩٧/٢ ووافقه الذهبي وللحديث علة غير قادمة.

Comments:

One may take her back after the first and the second divorce, during a wife's *Iddah* period. A man shall also call two persons to bear witness that he has withdrawn the divorce.

[1] *At-Talāq* 65:4.

Chapter 37/39. Regarding The Maintenance Of One Who Has Been Irrevocably Divorced

2284. It was reported from Sufyān, from Abū Salamah bin ‘Abdur-Raḥmān from Fāṭimah bint Qais, that Abū ‘Amr bin Ḥaṣṣ divorced her irrevocably, and he was not present (in the city). So he sent his representative to her with some barley, but she considered this to be very little. He replied: “I swear by Allāh, you do not have the right to (receive) anything from me!” So she went to the Messenger of Allāh ﷺ and mentioned that to him. He told her: “You do not have the right of maintenance from him.” And he commanded her to observe her waiting period in the house of Umm Sharīk, then he said: “She is a woman whom my Companions visit. Observe your waiting period in the house of Ibn Umm Maktūm, for he is a blind man and you may take off your garments. When you have completed (your waiting period), inform me.” She said: “So when I had finished (the waiting period), I mentioned to him that Mu‘āwiyah bin Abī Sufyān and Abū Jahm both proposed for my hand. The Messenger of Allāh ﷺ said: ‘As for Abū Jahm, his stick never leaves his shoulders. And as for Mu‘āwiyah, he is poor, having no wealth. Marry Usāmah bin Zaid.’ But I disliked that, so he said (again): ‘Marry Usāmah bin Zaid.’ So I married him, and Allāh made much good come out of that, and

(المعجم ٣٧، ٣٩) بَابُ: فِي نَفَقَةِ
الْمَبْتُوتَةِ (التحفة ٣٩)

٢٢٨٤ - حَدَّثَنَا الْقَعْنَبِيُّ عَنْ مَالِكٍ، عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ مَوْلَى الْأَسْوَدِ بْنِ سُفْيَانَ، عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ فَاطِمَةَ بِنْتِ قَيْسٍ: أَنَّ أَبَا عَمْرٍو بْنَ حَفْصِ طَلَّقَهَا ابْنَةً وَهُوَ غَائِبٌ، فَأَرْسَلَ إِلَيْهَا وَكَيْلُهُ بِشَعِيرٍ فَتَسَخَّطَتْهُ، فَقَالَ: وَاللَّهِ! مَالِكٌ عَلَيْنَا مِنْ شَيْءٍ، فَجَاءَتْ رَسُولَ اللَّهِ ﷺ فَذَكَرَتْ ذَلِكَ لَهُ، فَقَالَ لَهَا: «لَيْسَ لَكَ عَلَيْهِ نَفَقَةٌ»، وَأَمَرَهَا أَنْ تَعْتَدَ فِي بَيْتِ أُمِّ شَرِيكٍ، ثُمَّ قَالَ: «إِنَّ تِلْكَ امْرَأَةً يَعْشَاهَا أَصْحَابِي، اغْتَدِي فِي بَيْتِ ابْنِ أُمِّ مَكْتُومٍ فَإِنَّهُ رَجُلٌ أَعْمَى تَصْعِقُ نَيْتَابِكَ، وَإِذَا حَلَلْتَ فَأَذِينِي». قَالَتْ: فَلَمَّا حَلَلْتُ ذَكَرْتُ لَهُ أَنَّ مُعَاوِيَةَ بْنَ أَبِي سُفْيَانَ وَأَبَا جَهْمٍ حَاطَبَانِي، فَقَالَ رَسُولُ اللَّهِ ﷺ: «أَمَّا أَبُو جَهْمٍ فَلَا يَضَعُ عَصَاهُ عَنْ عَاتِقِهِ، وَأَمَّا مُعَاوِيَةُ فَضَعْلُوكَ لَا مَالَ لَهُ، انْكِحِي أُسَامَةَ بْنَ زَيْدٍ». قَالَتْ: فَكْرِهْتُهُ، ثُمَّ قَالَ: «انْكِحِي أُسَامَةَ بْنَ زَيْدٍ»، فَتَكَحَّتْهُ فَجَعَلَ اللَّهُ تَعَالَى فِيهِ خَيْرًا وَاعْتَبَطْتُ بِهِ.

other (women) became jealous of me because of him.” (*Ṣaḥīḥ*)

تخريج: أخرجه مسلم، الطلاق، باب المطلقة البائن لا نفقة لها، ح: ١٤٨٠ من حديث مالك به وهو في الموطأ (يحيى): ٥٨١، ٥٨٠/٢.

2285. It was reported from Yahyā bin Abī Kathīr, that Abū Salamah bin ‘Abdur-Raḥmān narrated to him that Fāṭimah bint Qais narrated to him, that Abū Ḥaḥṣ bin Al-Mughīrah divorced her three times. And he cited the narration, in it: “Khalīd bin Al-Walīd and others from the tribe of Banū Makhzūm came to the Prophet ﷺ and said: “O Prophet of Allāh! Abū Ḥaḥṣ bin Al-Mughīrah has divorced his wife three times, and he has left her a very insignificant amount of maintenance.” So he replied: “She is not entitled to any maintenance.” and he cited the rest of the narration, but the (previous) narration of Mālik is more complete. (*Ṣaḥīḥ*)

تخريج: [صحيح] أخرجه ابن عبد البر في التمهيد: ١٣٧/١٩ من حديث أبي داود به وانظر الحديث السابق.

2286. It was reported from ‘Amr bin Yaḥyā, that Abū Salamah narrated to him, that Fāṭimah bint Qais narrated to him, that Abū ‘Amr bin Ḥaḥṣ Al-Makhzūmī divorced her three times. And he cited the narration, and the part about Khalīd bin Al-Walīd. He said: “The Prophet ﷺ responded: ‘She is not entitled to any provision or a place of residence.’” And he said in it: “The Messenger of Allāh ﷺ sent (a messenger) to her, saying: “Do not do anything with

٢٢٨٥ - حَدَّثَنَا مُوسَى بْنُ إِسْمَاعِيلَ: حَدَّثَنَا أَبَانُ بْنُ يَرِيدَ الْعَطَّارُ: حَدَّثَنَا يَحْيَى بْنُ أَبِي كَثِيرٍ: حَدَّثَنِي أَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ: أَنَّ فَاطِمَةَ بِنْتَ قَيْسٍ حَدَّثَتْهُ أَنَّ أَبَا حَفْصِ بْنِ الْمُغِيرَةَ طَلَّقَهَا ثَلَاثًا، وَسَاقَ الْحَدِيثَ فِيهِ: وَأَنَّ خَالِدَ بْنَ الْوَلِيدِ وَنَفَرًا مِنْ بَنِي مَخْزُومٍ أَتَوْا النَّبِيَّ ﷺ فَقَالُوا: يَا نَبِيَّ اللَّهِ! إِنَّ أَبَا حَفْصِ بْنِ الْمُغِيرَةَ طَلَّقَ امْرَأَتَهُ ثَلَاثًا وَإِنَّهُ تَرَكَ لَهَا نَفَقَةً بَسِيرَةً فَقَالَ: «لَا نَفَقَةَ لَهَا» وَسَاقَ الْحَدِيثَ. وَحَدِيثُ مَالِكٍ أَمَّ.

٢٢٨٦ - حَدَّثَنَا مُحَمَّدُ بْنُ خَالِدٍ: حَدَّثَنَا الْوَلِيدُ: حَدَّثَنَا أَبُو عَمْرٍو عَنْ يَحْيَى: حَدَّثَنِي أَبُو سَلَمَةَ: حَدَّثَنِي فَاطِمَةُ بِنْتُ قَيْسٍ أَنَّ أَبَا عَمْرٍو بْنَ حَفْصِ الْمَخْزُومِيِّ طَلَّقَهَا ثَلَاثًا. وَسَاقَ الْحَدِيثَ وَخَبَرَ خَالِدَ بْنَ الْوَلِيدِ قَالَ: فَقَالَ النَّبِيُّ ﷺ: «لَيْسَتْ لَهَا نَفَقَةٌ وَلَا مَسْكَنٌ»، قَالَ فِيهِ: وَأَرْسَلَ إِلَيْهَا رَسُولُ اللَّهِ ﷺ «أَنْ لَا تَسْبِقِنِي بِنَفْسِكَ».

yourself before (consulting with me.” (*Sahih*)

تخريج: [صحيح] أخرجه ابن عبد البر في التمهيد: ١٣٨/١٩ من حديث أبي داود به * أبو عمرو: هو الأوزاعي.

Comments:

1. In marriage and other important matters, one should take the counsel of the devout and the wise. Prayer of Guidance (*Istikhārah*) is another important means to reach a decision in such matters.
2. Fāṭimah bint Qais' husband was Abū Ḥaḥṣ bin Al-Mughīrah, according to most narrations.

2287. It was reported from Muḥammad bin ‘Amr from Yaḥya, from Abū Salamah, from Fāṭimah bint Qais, she said: “I was married to a man from the Banū Makhzūm, and he divorced me irrevocably.” And then he cited similar to the narration of Mālik.^[1] But he said in it: “Do not give yourself to anyone without (asking) me.” (*Sahih*)

Abū Dāwud said: Ash-Sha‘bī, Al-Bahī, and ‘Aṭā’ reported it like that from ‘Abdur-Raḥmān bin ‘Aṣim, and Abū Bakr bin Abī Al-Jahm, all of them from Fāṭimah bint Qais; that her husband divorced her for the third time.

2288. It was reported from Ash-Sha‘bī, from Fāṭimah bint Qais, that her husband divorced her for the third time, so the Prophet ﷺ did not assign her any maintenance or residence. (*Sahih*)

تخريج: أخرجه مسلم، الطلاق، باب المطلقة البائن لا نفقة لها، ح: ٤٤/١٤٨٠ من حديث سفيان الثوري به وانظر الحديث السابق: ٢٢٨٤.

٢٢٨٧ - حَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ: أَنَّ مُحَمَّدَ بْنَ جَعْفَرٍ حَدَّثَهُمْ: حَدَّثَنَا مُحَمَّدُ بْنُ عَمْرٍو عَنْ يَحْيَى، عَنْ أَبِي سَلَمَةَ، عَنْ فَاطِمَةَ بِنْتِ قَيْسٍ قَالَتْ: كُنْتُ عِنْدَ رَجُلٍ مِنْ بَنِي مَخْزُومٍ فَطَلَّقَنِي الْبَتَّةَ، ثُمَّ سَأَقَ نَحْوَ حَدِيثِ مَالِكٍ قَالَ فِيهِ: «وَلَا تُفَوِّتَنِي بِنَفْسِكَ».

قَالَ أَبُو دَاوُدَ: وَكَذَلِكَ رَوَاهُ الشَّعْبِيُّ وَالْبَيْهَقِيُّ وَعَطَاءٌ عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَاصِمٍ وَأَبُو بَكْرٍ بْنُ أَبِي الْجَهْمِ، كُلُّهُمُ عَنْ فَاطِمَةَ بِنْتِ قَيْسٍ: أَنَّ زَوْجَهَا طَلَّقَهَا ثَلَاثًا.

تخريج: [صحيح] انظر، ح: ٢٢٨٤.

٢٢٨٨ - حَدَّثَنَا مُحَمَّدُ بْنُ كَثِيرٍ: أَخْبَرَنَا سُفْيَانُ: حَدَّثَنَا سَلَمَةُ بْنُ كَهَيْلٍ عَنِ الشَّعْبِيِّ، عَنْ فَاطِمَةَ بِنْتِ قَيْسٍ: أَنَّ زَوْجَهَا طَلَّقَهَا ثَلَاثًا، فَلَمْ يَجْعَلْ لَهَا الشِّيءَ نَفَقَةً وَلَا سُكْنَى.

[1] No. 2284.

2289. It was reported from ‘Uqail, from Ibn Shihāb, from Abū Salamah, from Fāṭimah bint Qais, that she was married to Abū Ḥafṣ bin Al-Mughīrah, and he divorced her the final of the three divorces. So she went to the Messenger of Allāh ﷺ and asked him regarding leaving her house. He commanded her to go to the house of Ibn Umm Maktūm, who was blind. But Marwān refused to believe this narration of hers — that the divorced woman leaves her house. ‘Urwah said: And ‘Āishah also rejected this from Fāṭimah bint Qais.

Abū Dāwud said: Ṣāliḥ bin Kaisān, Ibn Juraij, and Shu‘aib bin Abī Ḥamzah all reported it from Az-Zuhrī.

٢٢٨٩ - حَدَّثَنَا يَزِيدُ بْنُ خَالِدِ الرَّمْلِيِّ: حَدَّثَنَا اللَّيْثُ عَنْ عُمَيْلٍ، عَنْ ابْنِ شِهَابٍ، عَنْ أَبِي سَلَمَةَ، عَنْ فَاطِمَةَ بِنْتِ قَيْسٍ: أَنَّهَا أَخْبَرْتَهُ أَنَّهَا كَانَتْ عِنْدَ أَبِي حَفْصِ بْنِ الْمُغِيرَةِ وَأَنَّ أَبَا حَفْصِ بْنِ الْمُغِيرَةِ طَلَّقَهَا آخِرَ ثَلَاثِ تَطْلِيقَاتٍ، فَزَعَمَتْ أَنَّهَا جَاءَتْ رَسُولَ اللَّهِ ﷺ فَاسْتَفْتَتْهُ فِي خُرُوجِهَا مِنْ بَيْتِهَا، فَأَمَرَهَا أَنْ تَنْتَقِلَ إِلَى ابْنِ أُمِّ مَكْتُومِ الْأَعْمَى، فَأَبَى مَرْوَانُ أَنْ يُصَدِّقَ حَدِيثَ فَاطِمَةَ فِي خُرُوجِ الْمُطَلَّاقَةِ مِنْ بَيْتِهَا.

قال عُرْوَةُ: وَأُنكَرْتُ عَائِشَةَ عَلَى فَاطِمَةَ بِنْتِ قَيْسٍ.

قال أبو داود: وكذلك رَوَاهُ صَالِحُ بْنُ كَيْسَانَ وَابْنُ جُرَيْجٍ وَشُعَيْبُ بْنُ أَبِي حَمْزَةَ كُلُّهُمْ عَنِ الزُّهْرِيِّ.

قال أبو داود: شُعَيْبُ بْنُ أَبِي حَمْزَةَ، وَاسْمُ أَبِي حَمْزَةَ دِينَارٌ، وَهُوَ مَوْلَى زِيَادٍ.

تخریج: [صحیح] انظر، ح: ٢٢٨٤.

Comments:

This narration is brief but the following *Hadīth* is more detailed. Marwān had sent someone to gather this information.

2290. It was reported from Ma‘mar from Az-Zuhrī, from ‘Ubadullāh, who said: “Marwān sent (Qabīshah) to Fāṭimah bint Qais to ask her (about her story). She informed him that she was married to Abū Ḥafṣ, and the Prophet ﷺ had made ‘Alī a governor over a part of Yemen. So Abū Ḥafṣ went with him, and sent

٢٢٩٠ - حَدَّثَنَا مَخْلَدُ بْنُ خَالِدٍ: حَدَّثَنَا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ، عَنِ الزُّهْرِيِّ، عَنْ عُبَيْدِ اللَّهِ قَالَ: أُرْسِلَ مَرْوَانُ إِلَى فَاطِمَةَ فَسَأَلَهَا؟ فَأَخْبَرْتَهُ أَنَّهَا كَانَتْ عِنْدَ أَبِي حَفْصِ، وَكَانَ النَّبِيُّ ﷺ أَمَرَ عَلِيَّ بْنِ أَبِي طَالِبٍ يَعْنِي عَلَى بَعْضِ الْيَمَنِ فَخَرَجَ مَعَهُ زَوْجُهَا فَبَعَثَ إِلَيْهَا بِتَطْلِيقَةٍ كَانَتْ بَقِيَتْ لَهَا، وَأَمَرَ عِيَّاشَ

her a divorce that was remaining (the third divorce). And he commanded Ayyāsh bin Abī Rabī'ah and Al-Hārith bin Hishām to support her, but they both said: 'By Allāh! She is not entitled to any maintenance, unless she be pregnant.' So she went to the Prophet ﷺ, who said: 'You are not entitled to any maintenance unless you are pregnant.' She asked his permission to move (to another house), and he gave her permission. She then said: 'Where shall I move to, O Messenger of Allāh?' He replied: 'To (the house) of Ibn Umm Maktūm — and he was a blind man — for you can take off (change) your garments in front of him and he will not see you.' She remained there until her waiting period finished, and then the Prophet ﷺ married her to Usāmah.

"Qabīshah then returned to Marwān and informed him of this. Marwān replied: 'We have not heard this *Hadīth* except from (this) woman, so we will take the safer opinion which we found the people following.' When Fāṭimah heard this, she replied: '(The judge) between us is the Book of Allāh, for Allāh says: Divorce them for their waiting periods..., until... perhaps Allāh will bring something new to pass.'^[1] She said: 'So what new thing can happen after the third?'" (*Ṣaḥīh*)

Abū Dāwud said: Yūnus reported

ابن أبي ربيعة والحارث بن هشام أن يُنفقاً
عليها، فقالا: والله! ما لها نفقة إلا أن
تكون حاملاً، فأتيت النبي ﷺ فقال: «لا
نفقة لك إلا أن تكوني حاملاً»، واستأذنته
في الانتقال، فأذن لها، فقالت: أين أنتقل
يا رسول الله؟ فقال رسول الله ﷺ: «عند ابن
أم مكتوم» - وكان أعمى - ترضع ثيابها عنده
ولا يبصرها، فلم تزل هناك حتى مضت
عديتها، فأنكحها النبي ﷺ أسامة، فرجع
قبيصة إلى مروان فأخبره ذلك، فقال مروان:
لم نسمع هذا الحديث إلا من امرأة فسناخذ
بالعصمة التي وجدنا الناس عليها، فقالت
فاطمه حين بلغها ذلك: بيني وبينكم كتاب
الله، قال الله: ﴿فَطَلِقُوهُنَّ لِعَدَّتِهِنَّ﴾
[الطلاق: ١] حتى ﴿لَا تَدْرِي لَعَلَّ اللَّهَ يُحْدِثُ
بَعْدَ ذَلِكَ أَمْرًا﴾ [الطلاق: ١] قالت: فأني أمر
يُحْدِثُ بَعْدَ الثَّلَاثِ.

قال أبو داود: وكذلك رواه يونس عن
الزهرري، وأما الزبيدي فروى الحديثين
جميعاً، حديث عبيد الله بمعنى معمر،
وحديث أبي سلمة بمعنى عقيل.

قال أبو داود: ورواه محمد بن إسحاق
عن الزهرري أن قبيصة بن ذؤيب حدثه بمعنى
دل على خير عبيد الله بن عبد الله حين قال:
فرجع قبيصة إلى مروان فأخبره بذلك.

[1] *At-Talāq* 65:1.

it like that from Az-Zuhrī. As for Az-Zubaidī, he reported both of the *Aḥādīth*; that of ‘Ubaidullāh, with the meaning narrated by Ma‘mar, and that of Abū Salamah with the meaning narrated by ‘Uqail.

Abū Dāwud said: Muḥammad bin Ishāq reported it from Az-Zuhrī; that Qabiṣah bin Dhuwaib narrated to him, with a meaning supporting the narration of ‘Ubaidullāh bin ‘Abdullāh when he said: “So Qabiṣah returned to Marwān and informed him of this.”

تخریج: أخرجه مسلم، الطلاق، باب المطلقة البائن لا نفقة لها، ح: ٤١/١٤٨٠ من حديث عبدالرزاق به وهو في المصنف له، ح: ١٢٠٢٥ بطوله.

Comments:

The opinion of Marwān bin Ḥakam, ‘Āishah, and ‘Umar bin Al-Khaṭṭāb was that an irrevocably divorced woman had a right to be provided a place to live during her *Iddah*, and that the husband must provide that. But the statement of Fāṭimah bint Qais is clearer and has more weight, especially because she was the woman in this case, and it was she who had been divorced. So, obviously, her statement, quoting the Prophet ﷺ, that ‘an irrevocably divorced woman had no right to maintenance and housing’ has more weight. The foregoing Verses of the Qur’ān seem to suggest that they concern women who have been given revocable divorces, not those irrevocably divorced.

Chapter 38/40. Whoever Rejected What Fāṭimah Bint Qais Said

2291. It was reported from ‘Ammār bin Ruzaiq, from Abū Ishāq, who said: “I was in *Al-Masjid Al-Jami*’ with Al-Aswad, who said: ‘Fāṭimah bint Qais came to ‘Umar bin Al-Khaṭṭāb, may Allāh be pleased with him, and he said: ‘We are not going to leave the Book of our Lord and the *Sunnah* of our Prophet ﷺ because of the

(المعجم ٣٨، ٤٠) - بَابُ مَنْ أَنْكَرَ ذَلِكَ

عَلَى فَاطِمَةَ بِنْتِ قَيْسٍ (التحفة ٤٠)

٢٢٩١ - حَدَّثَنَا نَصْرُ بْنُ عَلِيٍّ: أَخْبَرَنِي أَبُو أَحْمَدَ: حَدَّثَنَا عَمَّارُ بْنُ رُزَيْقٍ عَنْ أَبِي إِسْحَاقَ قَالَ: كُنْتُ فِي الْمَسْجِدِ الْجَامِعِ مَعَ الْأَسْوَدِ فَقَالَ: أَتَتْ فَاطِمَةُ بِنْتُ قَيْسٍ عُمَرَ بْنَ الْخَطَّابِ رَضِيَ اللَّهُ عَنْهُ فَقَالَ: مَا كُنَّا لِنَدَعَ كِتَابَ رَبِّنَا وَسُنَّةَ نَبِيِّنَا ﷺ لِقَوْلِ امْرَأَةٍ لَا نَدْرِي أَحْفِظْتُ ذَلِكَ أَمْ لَا؟.

statement of a woman regarding whom we do not know: Did she memorize this or not.” (*Ṣaḥīḥ*)

تخريج: أخرجه مسلم، الطلاق، باب المطلقة البائن لا نفقة بها، ح: ٤٦/١٤٨٠ من حديث أبي أحمد الزبيري به.

2292. It was reported from Hishām bin ‘Urwah, from his father, who said: “‘Āishah, may Allāh be pleased with her, disapproved of that very strongly, and said: ‘She was in an isolated place, so her safety was feared for. And it was because of this that the Messenger of Allāh ﷺ allowed her.” (*Ḥasan*)

٢٢٩٢ - حَدَّثَنَا سُلَيْمَانُ بْنُ دَاوُدَ: أَخْبَرَنَا ابْنُ وَهْبٍ: أَخْبَرَنِي عَبْدُ الرَّحْمَنِ بْنُ أَبِي الزِّنَادِ عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ قَالَ: لَقَدْ عَابَتْ ذَلِكَ عَائِشَةُ رَضِيَ اللَّهُ عَنْهَا أَشَدَّ الْعَيْبِ يَعْنِي حَدِيثَ فَاطِمَةَ بِنْتِ قَيْسٍ وَقَالَتْ: إِنَّ فَاطِمَةَ كَانَتْ فِي مَكَانٍ وَحْشٍ فَخِيفَ عَلَيَّ نَاجِيئَهَا فَلِذَلِكَ رَخَّصَ لَهَا رَسُولُ اللَّهِ ﷺ.

تخريج: [إسناده حسن] أخرجه ابن ماجه، الطلاق، باب: هل تخرج المرأة في عدتها، ح: ٢٠٣٢ من حديث عبدالرحمن بن أبي الزناد به وعلقه البخاري في صحيحه، ح: ٥٣٢٦.

2293. It was reported from ‘Abdur-Raḥmān bin Al-Qāsim, from his father, from ‘Urwah bin Az-Zubair that ‘Āishah was asked: “Don’t you see the statement of Fāṭimah?” She replied: “Indeed, there is no good in her mentioning that.” (*Ṣaḥīḥ*)

٢٢٩٣ - حَدَّثَنَا مُحَمَّدُ بْنُ كَثِيرٍ: أَخْبَرَنَا سُفْيَانُ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ، عَنْ أَبِيهِ، عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ: أَنَّهُ قِيلَ لِعَائِشَةَ: أَلَمْ تَرِي إِلَى قَوْلِ فَاطِمَةَ: قَالَتْ: أَمَا إِنَّهُ لَا خَيْرَ لَهَا فِي ذِكْرِ ذَلِكَ.

تخريج: أخرجه البخاري، ح: ٥٣٢٥، ٥٣٢٦، ومسلم، ح: ١٤٨١ من حديث سفیان الثوري به مطولاً.

2294. It was reported from Yahyā bin Sa‘eed, from Sulaimān bin Yasār, regarding Fāṭimah’s leaving the house: “That was due to bad character.” (*Ḍa‘īf*)

٢٢٩٤ - حَدَّثَنَا هَارُونُ بْنُ زَيْدٍ: حَدَّثَنَا أَبِي عَنْ سُفْيَانَ، عَنْ يَحْيَى بْنِ سَعِيدٍ، عَنْ سُلَيْمَانَ بْنِ يَسَارٍ فِي خُرُوجِ فَاطِمَةَ قَالَ: إِنَّمَا كَانَ ذَلِكَ مِنْ سُوءِ الْخُلُقِ.

تخريج: [إسناده ضعيف] أخرجه البيهقي: ٧/٤٣٣ من حديث أبي داود به * سفیان الثوري عنن.

2295. (Another chain) from Yahyā bin Sa‘eed, from Al-Qāsim bin

٢٢٩٥ - حَدَّثَنَا الْقَعْنَبِيُّ عَنْ مَالِكٍ، عَنْ يَحْيَى بْنِ سَعِيدٍ، عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ

Muḥammad and Sulaimān bin Yasār, that he heard the two of them mentioning that Yaḥyā bin Sa‘eed bin Al-‘Āṣ divorced his wife, the daughter of Abdur-Raḥmān bin Al-Ḥakam — irrevocably — and ‘Abdur-Raḥmān made her leave (the house). So ‘Āishah, may Allāh be pleased with her, sent (a messenger) to Marwān bin Al-Ḥakam — and he was the *Amīr* of Al-Madīnah — and she said: “Fear Allāh, and return the woman to her house.” Marwān replied — in the narration of Sulaimān (one of the narrators): “‘Abdur-Raḥmān overcame me (in argument about it),” — in the narration of Al-Qāsim (one of the narrators): “Have you not heard the incident of Fāṭimah bint Qais?” — ‘Āishah said: “There is no harm if you leave the narration of Fāṭimah.” Marwān replied: “If you think that (the reason) was the evil, then the evil that happened between these two is sufficient.” (*Ṣaḥīḥ*)

تخریج: أخرجه البخاري، الطلاق، باب قصة فاطمة بنت قيس ... إلخ، ح: ٥٣٢١،
٥٣٢٢ من حديث مالك به وهو في الموطأ (يحيى): ٥٧٩/٢.

2296. Maimūn bin Mihrān narrated: “I came to Al-Madīnah, and made my way to Sa‘eed bin Al-Musayyab. I said: ‘Fāṭimah bint Qais was divorced and left her house.’ Sa‘eed replied: ‘She is a woman who spread confusion among the people. She was a woman who had a sharp tongue, so she was placed in the hands of Ibn Umm Maktūm, the blind man.’” (*Da‘if*)

وَسُلَيْمَانَ بْنِ يَسَارٍ أَنَّهُ سَمِعَهُمَا يَذْكُرَانِ أَنَّ
يَحْيَى بْنَ سَعِيدِ بْنِ الْعَاصِ طَلَّقَ بِنْتَ
عَبْدِ الرَّحْمَنِ بْنِ الْحَكَمِ الْبَيْتَةَ، فَاتَّقَلَهَا
عَبْدُ الرَّحْمَنِ، فَأَرْسَلَتْ عَائِشَةَ رَضِيَ اللَّهُ عَنْهَا
إِلَى مَرْوَانَ بْنِ الْحَكَمِ وَهُوَ أَمِيرُ الْمَدِينَةِ،
فَقَالَتْ لَهُ: اتَّقِ اللَّهَ وَارْجِعِ الْمَرْأَةَ إِلَى بَيْتِهَا،
فَقَالَ مَرْوَانُ: - فِي حَدِيثِ سُلَيْمَانَ - إِنَّ
عَبْدَ الرَّحْمَنِ عَلَنِي. وَقَالَ مَرْوَانُ: - فِي
حَدِيثِ الْقَاسِمِ - أَوْ مَا بَلَغَكَ شَأْنُ فَاطِمَةَ
بِنْتِ قَيْسٍ؟، فَقَالَتْ عَائِشَةُ: لَا يَضُرُّكَ أَنْ لَا
تَذْكُرَ حَدِيثَ فَاطِمَةَ، فَقَالَ مَرْوَانُ: إِنْ كَانَ
بِكَ الشَّرُّ فَحَسْبُكَ مَا كَانَ بَيْنَ هَذَيْنِ مِنَ
الشَّرِّ.

٢٢٩٦ - حَدَّثَنَا أَحْمَدُ بْنُ يُونُسَ: حَدَّثَنَا
رُهِيرٌ: حَدَّثَنَا جَعْفَرُ بْنُ بُرْقَانَ: حَدَّثَنَا مَيْمُونُ
ابْنُ مِهْرَانَ قَالَ: قَدِمْتُ الْمَدِينَةَ فَدَفِعْتُ إِلَى
سَعِيدِ بْنِ الْمُسَيَّبِ فَقُلْتُ: فَاطِمَةُ بِنْتُ قَيْسٍ
طَلَّقَتْ فَخَرَجَتْ مِنْ بَيْتِهَا، فَقَالَ سَعِيدٌ: تِلْكَ
امْرَأَةٌ فَتَنَّتِ النَّاسَ، إِنَّهَا كَانَتْ لِسِنَّةٍ فَوَضَعَتْ
عَلَى يَدَيِ ابْنِ أُمِّ مَكْتُومٍ الْأَعْمَى.

تخریج: [ضعیف] السند حسن إلى سعید بن المسیب ولكنه لم يذكر من حدثه بهذا فقوله مردود.

Chapter 39/41. An Irrevocably Divorced Woman Leaving Her House During The Day

2297. It was reported from Abū Az-Zubair, from Jābir, who said: "My maternal aunt had been divorced for the third time. She left (her house) to harvest (the fruits) of a date palm that she owned, but a man met her and prevented her. So she went to the Prophet ﷺ and mentioned it to him. He told her: "Go out and harvest your tree, for it is possible that you may give charity from it, or do some other good." (Sahih)

(المعجم ٣٩، ٤١) بَابُ: فِي الْمُبْتَوَاتِ
تَخْرُجُ بِالنَّهَارِ (التحفة ٤١)

٢٢٩٧ - حَدَّثَنَا أَحْمَدُ بْنُ حَنْبَلٍ: حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ عَنْ ابْنِ جُرَيْجٍ: أَخْبَرَنِي أَبُو الزُّبَيْرِ عَنْ جَابِرٍ قَالَ: طَلَّقْتُ خَالَتِي ثَلَاثًا فَخَرَجَتْ تَجِدُ نَخْلًا لَهَا، فَلَقِيهَا رَجُلٌ فَنَهَاهَا، فَأَتَتِ النَّبِيَّ ﷺ فَذَكَرَتْ ذَلِكَ لَهُ، فَقَالَ لَهَا: «اُخْرُجِي فَعُدِّي نَخْلِكَ، لَعَلَّكَ أَنْ تَصَدَّقِي مِنْهُ، أَوْ تَفْعَلِي خَيْرًا».

تخریج: أخرجه مسلم، الطلاق، باب جواز خروج المعتدة البائن ... إلخ، ح: ١٤٨٣ من حديث يحيى بن سعيد القطان به.

Comments:

A divorcee may go out of her house for important work but she must spend the night in her house.

Chapter 40/42. The Abrogation Of Maintenance For A Widowed Woman Because Of The Inheritance Due To Her

2298. Ibn 'Abbās stated that the Verse: "And those who die among you and leave wives (should) bequeath for their wives sustenance for one year, without expelling them (from their homes)" was abrogated with the Verses of inheritance, for she had been assigned a fourth or an eighth. And the period of one year was abrogated, making her waiting

(المعجم ٤٠، ٤٢) - بَابُ نَسْخِ مَتَاعِ الْمُتَوَفَّى عَنْهَا زَوْجَهَا بِمَا فُرِضَ لَهَا مِنَ الْمِيرَاثِ (التحفة ٤٢)

٢٢٩٨ - حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدٍ الْمَرْوَزِيُّ: حَدَّثَنِي عَلِيُّ بْنُ الْحُسَيْنِ بْنِ وَاقِدٍ عَنْ أَبِيهِ، عَنْ يَزِيدَ النَّحْوِيِّ، عَنْ عِكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ ﴿وَالَّذِينَ يُتَوَفَّوْنَ مِنْكُمْ وَيَذُرُونَ أَزْوَاجًا وَصِيَّةً لِأَزْوَاجِهِمْ مَتَاعًا إِلَى الْاِحْوَالِ غَيْرِ إِخْرَاجٍ﴾ [البقرة: ٢٤٠] فَنَسَخَ ذَلِكَ بآيَةِ الْمِيرَاثِ بِمَا فُرِضَ لَهُنَّ مِنَ الرَّبْعِ وَالثُّمْنِ،

period four months and ten days.
(*Hasan*)

وَنَسَخَ أَجَلَ الْحَوْلِ بِأَنْ جَعَلَ أَجَلَهَا أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا.

تخریج: [إسناده حسن] أخرجه النسائي، الطلاق، باب نسخ متاع المتوفى عنها بما فرض لها من الميراث، ح: ٣٥٧٣ من حديث علي بن الحسين بن واقد به.

Comments:

A widow inherits one-eighth of her husband's property in case he has left children, or else one-fourth thereof.

Chapter 41/43. The Rulings Of Mourning For Woman Whose Husband Has Died

2299. It was reported from Ḥumaid bin Nāfi', from Zainab bint Salamah that she informed him: "I visited Umm Ḥabībah when her father Abū Sufyān had died. She called for some perfume that had some yellow *Khalūq* in it, or something else, and she put its oil on a little girl, then rubbed it on her cheeks. She then said: 'I swear by Allāh, I have no desire for perfume, except that I heard the Messenger of Allāh ﷺ say: "It is not permissible for a woman who believes in Allāh and the Last Day that she mourns for a dead person more than three days, except for her husband (in which case she mourns) four months and ten days."' (Zainab continued:) And I also visited Zainab bint Jaḥsh when her brother had died, and she called for perfume and applied it. She then said: 'I swear by Allāh, I have no desire for perfume, except that I heard the Messenger of Allāh ﷺ say, while he was standing on the *Minbar*: "It is not

(المعجم ٤١، ٤٣) - بَابُ إِحْدَادِ الْمُتَوَفَّى عَنْهَا زَوْجَهَا (التحفة ٤٣)

٢٢٩٩ - حَدَّثَنَا الْقَعْنَبِيُّ عَنْ مَالِكٍ، عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرٍ، عَنْ حُمَيْدِ بْنِ نَافِعٍ، عَنْ زَيْنَبِ بِنْتِ أَبِي سَلَمَةَ أَنَّهَا أَخْبَرَتْهُ بِهَذِهِ الْأَحَادِيثِ الثَّلَاثَةِ. قَالَتْ زَيْنَبُ: دَخَلْتُ عَلَى أُمِّ حَبِيبَةَ حِينَ تُؤَفِّي أَبُوهَا أَبُو سُفْيَانَ فَدَعَتْ بِطِيبٍ فِيهِ صُفْرَةٌ خَلُوقٍ أَوْ غَيْرُهُ، فَدَهَنْتُ مِنْهُ جَارِيَةً ثُمَّ مَسَّتْ بِعَارِضِهَا ثُمَّ قَالَتْ: وَاللَّهِ! مَا لِي بِالطِّيبِ مِنْ حَاجَةٍ غَيْرَ أَنِّي سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «لَا يَحِلُّ لِمَرْأَةٍ تُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ أَنْ تُحَدَّ عَلَى مَيِّتٍ فَوْقَ ثَلَاثِ لَيَالٍ إِلَّا عَلَى زَوْجِ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا». قَالَتْ زَيْنَبُ: وَدَخَلْتُ عَلَى زَيْنَبِ بِنْتِ جَحْشٍ حِينَ تُؤَفِّي أُخُوَهَا، فَدَعَتْ بِطِيبٍ فَمَسَّتْ مِنْهُ، ثُمَّ قَالَتْ: وَاللَّهِ! مَا لِي بِالطِّيبِ مِنْ حَاجَةٍ غَيْرَ أَنِّي سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ وَهُوَ عَلَى الْمِنْبَرِ: «لَا يَحِلُّ لِمَرْأَةٍ تُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ أَنْ تُحَدَّ عَلَى مَيِّتٍ فَوْقَ ثَلَاثِ لَيَالٍ إِلَّا عَلَى زَوْجِ أَرْبَعَةَ أَشْهُرٍ

permissible for a woman who believes in Allāh and the Last Day that she mourns for a dead person more than three days, except for her husband (in which case she mourns) four months and ten days.” (Zainab continued:) And I heard my mother, Umm Salamah, say: ‘A woman came to the Messenger of Allāh ﷺ and said: “O Messenger of Allāh, my daughter’s husband has died, and her eyes hurt, so can we apply kohl to them?”’ The Messenger of Allāh ﷺ said: “No,” twice, or thrice, repeating it. Then he said: “It is only four months and ten days. And one of you — in the days of *Jāhiliyyah* — would throw camel dung after one year!”

Humaid said: “So asked to Zainab: ‘What does it mean to “throw camel dung after one year?”’ Zainab replied: ‘In the past, when a woman’s husband had died, she would enter a *Hifsh*, and wear her worst clothes, and would not touch any perfume or anything else until an entire year had passed. Then an animal would be brought to her — a donkey, or sheep, or bird — and she would cleanse (*Taftadd*) herself with it.^[1] And hardly would she cleanse (*Taftadd*) herself with anything except that it would die. She would then exit (that house), and camel dung would be brought to her, and she would fling it away. After that, she could use anything, perfume or otherwise, that she

وَعَشْرًا» قَالَتْ زَيْنَبُ: وَسَمِعْتُ أُمِّي أُمَّ سَلَمَةَ تَقُولُ: جَاءَتْ امْرَأَةً إِلَى رَسُولِ اللَّهِ ﷺ فَقَالَتْ: يَا رَسُولَ اللَّهِ! إِنَّ ابْنَتِي تُؤْفِي زَوْجَهَا عَنْهَا، وَقَدْ اسْتَكْتَحْتُ عَيْنَهَا فَتَكْحَلُهَا؟ فَقَالَ رَسُولُ اللَّهِ ﷺ: «لَا»، مَرَّتَيْنِ أَوْ ثَلَاثًا، كُلُّ ذَلِكَ يَقُولُ: «لَا»، ثُمَّ قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّمَا هِيَ أَرْبَعَةُ أَشْهُرٍ وَعَشْرًا. وَقَدْ كَانَتْ إِحْدَاكُنَّ فِي الْجَاهِلِيَّةِ تَرْمِي بِالْبَعْرَةِ عَلَى رَأْسِ الْحَوْلِ». قَالَ حُمَيْدٌ: فَقُلْتُ لَزَيْنَبَ: وَمَا تَرْمِي بِالْبَعْرَةِ عَلَى رَأْسِ الْحَوْلِ؟ فَقَالَتْ زَيْنَبُ: كَانَتْ الْمَرْأَةُ إِذَا تُؤْفِي عَنْهَا زَوْجَهَا دَخَلَتْ حِفْشًا وَلَبِسَتْ شَرَّ ثِيَابِهَا وَلَمْ تَمَسَّ طِيْبًا وَلَا شَيْئًا حَتَّى تَمُرَّ بِهَا سَنَةٌ ثُمَّ تُؤْتِي بِدَابِيَةِ حِمَارٍ أَوْ شَاةٍ أَوْ طَائِرٍ فَتَنْتَضُّ بِهِ فَقَلَّمَا تَفْتَضُّ بِشَيْءٍ إِلَّا مَاتَ، ثُمَّ تَخْرُجُ فَتُعْطَى بَعْرَةً فَتَرْمِي بِهَا ثُمَّ تُرَاجِعُ بَعْدَ مَا شَاءَتْ مِنْ طِيْبٍ أَوْ غَيْرِهِ.

قَالَ أَبُو دَاوُدَ: الْحِفْشُ بَيْتٌ صَغِيرٌ.

[1] They say the meaning of *Taftadd* is that she would rub it on the front of herself.

pleased.” (*Ṣaḥīḥ*)

Abū Dāwud said: A *Hifsh* is a small house.

تخریج: أخرجه البخاري، الجنائز، باب إحداد المرأة على غير زوجها، ح: ١٢٨١، ١٢٨٢
ومسلم، الطلاق، باب وجوب الإحداد في عدة الوفاة... إلخ، ح: ١٤٨٦ من حديث مالك به،
وهو في الموطأ (يحيى): ٥٩٧، ٥٩٦/٢.

Chapter 42/44. Regarding Such A Woman Moving To Another Residence

2300. It was reported from Zainab bint Ka‘b bin ‘Ujrah, that Al-Furai‘ah bint Mālik bin Sinān — the sister of Abū Sa‘eed Al-Khudrī — narrated that she went to the Messenger of Allāh ﷺ in order to seek his permission to go to her family’s house in Banū Khudrah. And that was because her husband had gone out in order to find some slaves of his that had run away, but when he reached the beginning of Al-Qadūm, they (slaves) caught up with him and killed him. She said: “So I asked the Messenger of Allāh ﷺ about returning to my family since I had no house that I owned, nor any sustenance. The Messenger of Allāh ﷺ said, ‘Yes,’ so I left, until I was at his house, or at the *Masjid*, when he called me, or called for me. I went back to him, and he said: ‘What did you say?’ So I repeated the story of what happened to my husband. He said: ‘Remain in your house until the appointed time finishes.’ So I stayed there for the waiting period of four months and ten days. Then, during the (rule) of ‘Uthmān bin ‘Affān, he called me and asked me

(المعجم ٤٢، ٤٤) بَابُ: فِي الْمَتَوَفَّى
عَنْهَا تُنْتَقَلُ (التحفة ٤٤)

٢٣٠٠ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ مَسْلَمَةَ
الْقَعْنَبِيُّ عَنْ مَالِكٍ، عَنْ سَعْدِ بْنِ إِسْحَاقَ بْنِ
كَعْبِ بْنِ عُجْرَةَ، عَنْ عَمَّتِهِ زَيْنَبِ بِنْتِ كَعْبِ
ابْنِ عُجْرَةَ: أَنَّ الْفُرَيْعَةَ بِنْتَ مَالِكِ بْنِ سِنَانَ
وَهِيَ أُخْتُ أَبِي سَعِيدِ الْخُدْرِيِّ أَخْبَرَتْهَا أَنَّهَا
جَاءَتْ إِلَى رَسُولِ اللَّهِ ﷺ تَسْأَلُهُ أَنْ تَرْجِعَ
إِلَى أَهْلِهَا فِي بَنِي خُدْرَةَ، فَإِنَّ زَوْجَهَا خَرَجَ
فِي طَلَبِ عِبْدٍ لَهُ أَبْغَوْا حَتَّى إِذَا كَانُوا
بِطَرَفِ الْقُدُومِ لِحِقْمِهِمْ فَقَتَلُوهُ، فَسَأَلْتُ رَسُولَ
اللَّهِ ﷺ أَنْ أَرْجِعَ إِلَى أَهْلِي فَإِنِّي لَمْ يَتْرُكْنِي
فِي مَسْكَنِ يَمْلِكُهُ وَلَا نَفَقَةٍ. قَالَتْ: فَقَالَ
رَسُولُ اللَّهِ ﷺ: «نَعَمْ». قَالَتْ: فَخَرَجْتُ
حَتَّى إِذَا كُنْتُ فِي الْحَجْرَةِ أَوْ فِي الْمَسْجِدِ
دَعَانِي أَوْ أَمَرَنِي فَدَعَيْتُ لَهُ، فَقَالَ: «كَيْفَ
قُلْتِ؟» فَرَدَدْتُ عَلَيْهِ الْقِصَّةَ الَّتِي ذَكَرْتُ مِنْ
شَأْنِ زَوْجِي، قَالَتْ: فَقَالَ: «امْكُتِي فِي
بَيْتِكَ حَتَّى يَبْلُغَ الْكِتَابُ أَجَلَهُ». قَالَتْ:
فَاعْتَدَدْتُ فِيهِ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا. قَالَتْ:
فَلَمَّا كَانَ عُثْمَانُ بْنُ عَفَّانٍ أَرْسَلَ إِلَيَّ فَسَأَلَنِي
عَنْ ذَلِكَ فَأَخْبَرْتُهُ فَاتَّبَعَهُ وَقَضَى بِهِ.

about that. I informed him, and he followed it and judged by it.”

(*Ṣaḥīḥ*)

تخريج: [إسناده صحيح] أخرجه الترمذي، الطلاق واللعان، باب ما جاء أين تعتد المتوفى عنها زوجها؟ ح: ١٢٠٤ من حديث مالك به وقال: "حسن صحيح" وهو في الموطأ (يحيى): ٢/٥٩١ وصححه الحاكم: ٢/٢٠٨ ووافقه الذهبي، ورواه النسائي، ح: ٣٥٦٢ وابن ماجه، ح: ٢٠٣١.

Comments:

It is obligatory upon a widow to spend her 'Iddah period in the same house where her husband died, except in abnormal circumstances making it impossible for her to live there.

Chapter 43/45. Those Who Allowed Her To Change Her Residence

(المعجم ٤٣، ٤٥) - بَابُ مَنْ رَأَى
التَّحْوِيلَ (التحفة ٤٥)

2301. 'Aṭā' narrated that Ibn 'Abbās said: "This Verse has abrogated her waiting period at her house. Therefore, she may pass her waiting period wherever she pleases." And this was in reference to the statement of Allāh:... "without expelling her."^[1]

'Aṭā' said: "(In the beginning), if she had wished, she could pass the waiting period in his house and be provided maintenance based on his will. And if she had wished, she could leave, based on Allāh's statement: "So if they leave, there is no sin upon you regarding what they do."^[2] Then, the (laws) of inheritance were revealed, so the ruling of living (at her husband's house) was abrogated. She may pass her waiting period wherever she wishes." (*Ṣaḥīḥ*)

٢٣٠١ - حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدٍ
الْمَرْوَزِيُّ: حَدَّثَنَا مُوسَى بْنُ مَسْعُودٍ: حَدَّثَنَا
شَيْبَلٌ عَنْ ابْنِ أَبِي نَجِيحٍ قَالَ: قَالَ عَطَاءٌ:
قَالَ ابْنُ عَبَّاسٍ: نَسَخَتْ هَذِهِ آيَةُ عِدَّتِهَا
عِنْدَ أَهْلِهَا فَتَعْتَدُ حَيْثُ شَاءَتْ وَهُوَ قَوْلُ اللَّهِ
عَزَّ وَجَلَّ: ﴿عَبْرَ إِخْرَاجٍ﴾ [البقرة: ٢٤٠] قَالَ
عَطَاءٌ: إِنْ شَاءَتْ اغْتَدَّتْ عِنْدَ أَهْلِهَا
وَسَكَنَتْ فِي وَصِيَّتِهَا، وَإِنْ شَاءَتْ خَرَجَتْ
لِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: ﴿فَإِنْ خَرَجْنَ فَلَا جُنَاحَ
عَلَيْكُمْ فِي مَا فَعَلْنَ﴾ [البقرة: ٢٤٠] قَالَ
عَطَاءٌ: ثُمَّ جَاءَ الْمِيرَاثُ فَتَسَخَّرَ السُّكْنَى تَعْتَدُ
حَيْثُ شَاءَتْ.

تخريج: أخرجه البخاري، الطلاق، باب: ﴿والذين يتوفون منكم ويذرون أزواجًا...﴾

[1] Al-Baqarah 2:240.

[2] Al-Baqarah 2:240.

إلخ، ح: ٥٣٤٤، ح: ٤٥٣١ من حديث شبل به.

Chapter 44/46. What Should A Woman Whose Husband Has Died Avoid During Her Waiting Period?

(المعجم ٤٤، ٤٦) بَابُ: فِيمَا تَجْتَنِبُ
الْمُعْتَدَةُ فِي عَدَّتِهَا (التحفة ٤٦)

2302. Umm ‘Atiyyah narrated that the Prophet ﷺ said: “A woman should not mourn for anyone for more than three (days), except for her husband. For him, she must mourn four months and ten days. And she should not wear dyed cloth except for *‘Ashb* cloth.^[1] And she should not apply kohl, nor any perfume except when she is about to become pure from her menses, (for she may use) a small amount of *Qust* or *Azfar*.”^[2] — Instead of *‘Ashb*, Ya‘qūb (one of the narrators) said: “washed” and Ya‘qūb added: “and she should not use dye.” (*Ṣaḥīḥ*)

٢٣٠٢ - حَدَّثَنَا يَعْقُوبُ بْنُ إِبْرَاهِيمَ الدَّوْرَقِيِّ: حَدَّثَنَا يَحْيَى بْنُ أَبِي بُكَيْرٍ: حَدَّثَنَا إِبْرَاهِيمُ بْنُ طَهْمَانَ: حَدَّثَنِي هِشَامُ بْنُ حَسَّانَ؛ ح: وَحَدَّثَنَا عَبْدُ اللَّهِ بْنُ الْجَرَّاحِ الْفُهْهَسَانِيُّ عَنْ عَبْدِ اللَّهِ يَعْنِي ابْنَ بَكْرِ السَّهْمِيِّ، عَنْ هِشَامٍ - وَهَذَا لَفْظُ ابْنِ الْجَرَّاحِ -، عَنْ حَفْصَةَ، عَنْ أُمِّ عَطِيَّةَ أَنَّ النَّبِيَّ ﷺ قَالَ: «لَا تُجِدُ الْمَرْأَةُ فَوْقَ ثَلَاثِ إِلَّا عَلَى زَوْجٍ فَإِنَّهَا تُجِدُ عَلَيْهِ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا، وَلَا تَلْبَسُ ثَوْبًا مَضْبُوعًا إِلَّا ثَوْبَ عَصَبٍ وَلَا تَكْتَجِلُ وَلَا تَمَسُّ طَيِّبًا إِلَّا أَدْنَى طَهْرَتِهَا إِذَا طَهَّرَتْ مِنْ مَحِيضِهَا بِنُدْوَةٍ مِنْ قُسْطٍ أَوْ أَظْفَارٍ». قَالَ يَعْقُوبُ: مَكَانَ عَصَبٍ: إِلَّا مَغْسُولًا. وَزَادَ يَعْقُوبُ: «وَلَا تَخْتَضِبُ».

تخریج: أخرجه البخاري، الطلاق، باب: تلبس الحادة ثياب العصب، ح: ٥٣٤٢، ٥٣٤٣ ومسلم، الطلاق، باب وجوب الإحداد في عدة الوفاة... إلخ، ح: ٦٦/٩٣٨ بعد، ح: ١٤٩١ من حديث هشام بن حسان به.

2303. (Another chain) from Umm ‘Atiyyah, from the Prophet ﷺ with this *Hadith*. It is not as complete as what preceded, Al-Misma‘ī (one of the narrators) said: “Yazīd said:

٢٣٠٣ - حَدَّثَنَا هَارُونُ بْنُ عَبْدِ اللَّهِ وَمَالِكُ بْنُ عَبْدِ الْوَاحِدِ الْمِسْمَعِيُّ قَالَا: حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ عَنْ هِشَامٍ، عَنْ

[1] A certain type of cloth whose strands of fabric are dyed and rinsed well before being woven.

[2] Two types of fragrance or incense.

'And I do not know except that "and she should not use dye" is part of it.'" And Hārūd added: "Nor should she wear died cloth, except for 'Aṣb cloth.'" (*Ṣaḥīh*)

حَفْصَةَ، عَنْ أُمِّ عَطِيَّةَ عَنِ النَّبِيِّ ﷺ بِهَذَا الْحَدِيثِ، وَلَيْسَ فِي تَمَامِ حَدِيثِهِمَا. قَالَ الْمُسَمَعِيُّ: قَالَ يَزِيدُ وَلَا أَعْلَمُهُ إِلَّا فِيهِ «وَلَا تَحْتَضِبُ». وَزَادَ فِيهِ هَارُونُ: «وَلَا تَلْبَسُ ثَوْبًا مَضْبُوعًا إِلَّا ثَوْبَ عَصَبٍ».

تخريج: متفق عليه، انظر الحديث السابق: ٢٣٠٢.

2304. It was reported from Ṣafīyyah bint Shaibah, from Umm Salamah, the wife of the Prophet ﷺ, from the Prophet ﷺ that he said: "A woman whose husband has died should not wear garments dyed with safflower, dyed with *Mishq*,^[1] or jewellery, nor should she use dye, nor kohl." (*Ḥasan*)

٢٣٠٤ - حَدَّثَنَا زُهَيْرُ بْنُ حَرْبٍ: حَدَّثَنَا يَحْيَى بْنُ أَبِي بُكَيْرٍ: حَدَّثَنَا إِبْرَاهِيمُ بْنُ طَهْمَانَ: حَدَّثَنِي بُدَيْلٌ عَنِ الْحَسَنِ بْنِ مُسْلِمٍ، عَنْ صَفِيَّةَ بِنْتِ شَيْبَةَ، عَنْ أُمِّ سَلَمَةَ زَوْجِ النَّبِيِّ ﷺ عَنِ النَّبِيِّ ﷺ أَنَّهُ قَالَ: «الْمُتَوَفَّى عَنْهَا زَوْجُهَا لَا تَلْبَسُ الْمُعْضَفَرَ مِنَ الثِّيَابِ، وَلَا الْمُمَشَّقَةَ، وَلَا الْحُلِيَّ وَلَا تَحْتَضِبُ وَلَا تَكْتَحِلُ».

تخريج: [إسناده حسن] أخرجه النسائي، الطلاق، باب ما تجتنب الحادة من الثياب المصبغة، ح: ٣٥٦٥ من حديث يحيى بن أبي بكير به وصححه ابن حبان (موارد): ١٣٢٨ وحسنه ابن الملقن في تحفة المحتاج، ح: ١٥٠٤.

Comments:

These things fall under the category of cosmetics and shall be avoided during the period of mourning.

2305. Umm Ḥakīm bint Asad narrated from her mother, that her husband died, and her eyes were hurting. (She wished to know) if she could apply *Jilā* as kohl.^[2] So she sent a slave of her's to Umm Salamah, and he asked her about applying *Jilā* as kohl. She replied: "Do not use it as kohl, unless it be for something that you cannot

٢٣٠٥ - حَدَّثَنَا أَحْمَدُ بْنُ صَالِحٍ: حَدَّثَنَا ابْنُ وَهْبٍ: أَخْبَرَنِي مَخْرَمَةُ عَنْ أَبِيهِ قَالَ: سَمِعْتُ الْمُغِيرَةَ بْنَ الصَّحَّاحِ يَقُولُ: أَخْبَرْتَنِي أُمُّ حَكِيمٍ بِنْتُ أَسِيدٍ عَنْ أُمِّهَا: أَنَّ زَوْجَهَا تُوَفِّي، وَكَانَتْ تَسْتَكِي عَيْنَيْهَا فَتَكْتَحِلُ بِالْجِلَاءِ - قَالَ أَحْمَدُ: الصَّوَابُ يَكْحُلُ الْجِلَاءُ -

[1] A reddish clay which was used to dye cloth.

[2] It means brightening or lucidation kohl, referring to *Ithmid*.

avoid — if it becomes difficult. If that occurs, apply it at night, and wipe it away during the day.” Then she added: “The Messenger of Allāh ﷺ visited me when Abī Salamah had died, and I had placed some aloe in my eyes. He said: ‘What is this, O Umm Salamah?’ I said, ‘It is only aloe, O Messenger of Allāh. It has no perfume in it.’ He said: ‘It beautifies the face, so do not apply it except at night, and take it off during the day. And do not comb with perfume, nor with henna, for it colors (the hair).’ She said: ‘So what should I comb with, O Messenger of Allāh?’ He replied: ‘With *Sidr* leaves. You may paste your hair with it.’”^[1] (*Da'if*)

فَأَرْسَلَتْ مَوْلَاةَ لَهَا إِلَى أُمِّ سَلَمَةَ فَسَأَلَتْهَا عَنْ كُحْلِ الْجَلَاءِ؟ فَقَالَتْ: لَا تَكْتَحِلِي بِهِ إِلَّا مِنْ أَمْرِ لَا بُدَّ مِنْهُ يَسْتَدُّ عَلَيْكَ، فَتَكْتَحِلِينَ بِاللَّيْلِ وَتَمْسَحِيَهُ بِالنَّهَارِ ثُمَّ قَالَتْ عِنْدَ ذَلِكَ أُمُّ سَلَمَةَ: دَخَلَ عَلَيَّ رَسُولُ اللَّهِ ﷺ حِينَ تُوْفِّي أَبُو سَلَمَةَ وَقَدْ جَعَلْتُ عَلَى عَيْنِي صَبْرًا فَقَالَ: «مَا هَذَا يَا أُمَّ سَلَمَةَ؟!» فَقُلْتُ: إِنَّمَا هُوَ صَبْرٌ يَأْرَسُولَ اللَّهِ! لَيْسَ فِيهِ طِيبٌ. قَالَ: «إِنَّهُ يَشُبُّ الْوَجْهَ فَلَا تَجْعَلِيهِ إِلَّا بِاللَّيْلِ وَتَنْزِعِيهِ بِالنَّهَارِ، وَلَا تَمْسُطِي بِالطِّيبِ وَلَا بِالْحِنَاءِ فَإِنَّهُ خِضَابٌ». قَالَتْ: قُلْتُ: يَا أَيُّ شَيْءٍ أُمْتَسِطُ يَا رَسُولَ اللَّهِ! قَالَ: «بِالسِّدْرِ تُعْلَفِينَ بِهِ رَأْسُكَ».

تخريج: [إسناده ضعيف] أخرجه النسائي، الطلاق، باب الرخصة للحادة أن تمتشط بالسدر، ح: ٣٥٦٧ من حديث عبدالله بن وهب به ورواه مالك في الموطأ: ٢/٦٠٠، ح: ١٣١١. بلاغًا بتحقيقي * مغيرة بن الضحاك: مستور، وأم حكيم بنت أسيد: لا يعرف حالها (تقريب).

Chapter 45/47. The Waiting Period Of A Pregnant Woman

2306. It was reported from Ibn Shihāb, that ‘Ubaidullāh bin ‘Abdullāh bin ‘Utbah narrated to him, that his father wrote to ‘Umar bin ‘Abdullāh bin Al-Arqam Az-Zuhri, telling him to visit Subai’ah bint Al-Hāriṭh Al-Aslamiyyah and ask her about her narration, and what the Messenger of Allāh ﷺ told her when she asked him her question. So ‘Umar bin ‘Abdullāh

(المعجم ٤٧.٤٥) بَابُ: فِي عِدَّةِ

الْحَامِلِ (التحفة ٤٧)

٢٣٠٦ - حَدَّثَنَا سُلَيْمَانُ بْنُ دَاوُدَ الْمَهْرِيُّ: أَخْبَرَنَا ابْنُ وَهَبٍ: أَخْبَرَنِي يُوسُفُ بْنُ عَبْدِ اللَّهِ عَنْ ابْنِ شِهَابٍ: حَدَّثَنِي عُبَيْدُ اللَّهِ بْنُ عَبْدِ اللَّهِ ابْنِ عُبَيْتَةَ: أَنَّ أَبَاهُ كَتَبَ إِلَى عُمَرَ بْنِ عَبْدِ اللَّهِ ابْنِ الْأَرْقَمِ الزُّهْرِيِّ يَأْمُرُهُ أَنْ يَدْخُلَ عَلَى سُبَيْعَةَ بِنْتِ الْحَارِثِ الْأَسْلَمِيَّةِ فَيَسْأَلَهَا عَنْ حَدِيثِهَا، وَعَمَّا قَالَ لَهَا رَسُولُ اللَّهِ ﷺ حِينَ

[1] *Sidr*, the lote tree, its leaves were used with water or other substances for their clean smell.

wrote back to ‘Abdullāh bin ‘Utbah informing him that Subai‘ah said that she was married to Sa‘d bin Khawlah, and he was of the tribe of Bani ‘Āmir bin Lu‘ai, and had attended the Battle of Badr. He passed away during the Farewell Pilgrimage, and she was pregnant at the time. Soon after his death, she gave birth. Once she had purified from her bleeding, she beautified herself for suitors. Abū As-Sanābil bin Ba‘kak visited her, and he was of the tribe of ‘Abdud-Dār. He said to her: “How come I see you having beautified yourself? Perhaps you wish to get married? I swear by Allāh, you will not get married until four months and ten days pass.” Subai‘ah said: “When he told me that, then as soon as night fell, I grabbed my garments and went to the Messenger of Allāh ﷺ, and asked him about that. He gave me the verdict that I had become permissible (for marriage) as soon as I had given birth, and he commanded me to get married if I so desired.”

Ibn Shihāb said: “I don’t see any problem if she gets married after her delivery, even if she is still bleeding. However, her husband should not approach her until she becomes pure.” (*Ṣaḥīh*)

تخریج: أخرجه مسلم، الطلاق، باب انقضاء عدة المتوفى عنها وغيرها، بوضع الحمل، ح: ١٤٨٤ من حديث ابن وهب، والبخاري، المغازي، باب ١٠، ح: ٣٩٩١ من حديث يونس بن يزيد به.

2307. It was reported from ‘Abdullāh (Ibn Mas‘ūd), that he

اسْتَفْتَيْتُهُ؟، فَكَتَبَ عُمَرُ بْنُ عَبْدِ اللَّهِ إِلَى عَبْدِ اللَّهِ بْنِ عُتْبَةَ يُخْبِرُهُ، أَنَّ سُبَيْعَةَ أَخْبَرَتْهُ، أَنَّهَا كَانَتْ تَحْتِ سَعْدِ بْنِ خَوْلَةَ وَهُوَ مِنْ بَنِي عَامِرِ بْنِ لُؤَيٍّ وَهُوَ مِمَّنْ شَهِدَ بَدْرًا، فَتُوفِّيَ عَنْهَا فِي حَجَّةِ الْوُدَاعِ وَهِيَ حَامِلٌ فَلَمْ تَنْسَبْ أَنْ وَضَعَتْ حَمْلَهَا بَعْدَ وَفَاتِهِ، فَلَمَّا تَعَلَّتْ مِنْ نِفَاسِهَا تَجَمَّلَتْ لِلْحَطَّابِ، فَدَخَلَ عَلَيْهَا أَبُو السَّنَابِلِ بْنُ بَعْكَكٍ - رَجُلٌ مِنْ بَنِي عَبْدِ الدَّارِ - فَقَالَ لَهَا: مَا لِي أَرَاكِ مُتَجَمِّلَةً، لَعَلَّكَ تَرْتَجِينَ النِّكَاحَ؟ إِنَّكَ وَاللَّهِ! مَا أَنْتِ بِنَاكِحٍ حَتَّى تَمُرَّ عَلَيْكَ أَرْبَعَةُ أَشْهُرٍ وَعَشْرًا قَالَتْ سُبَيْعَةُ: فَلَمَّا قَالَ لِي ذَلِكَ جَمَعْتُ عَلَيَّ ثِيَابِي حِينَ أَمْسَيْتُ، فَأَتَيْتُ رَسُولَ اللَّهِ ﷺ فَسَأَلْتُهُ عَنْ ذَلِكَ فَأَقْتَانِي بِأَنْ قَدْ حَلَلْتُ حِينَ وَضَعْتُ حَمْلِي، وَأَمَرَنِي بِالتَّزْوِيجِ إِنْ بَدَأَ لِي.

قال ابن شِهَابٍ: وَلَا أَرَى بَأْسًا أَنْ تَتَزَوَّجَ حِينَ وَضَعْتَ وَإِنْ كَانَتْ فِي دَوْمِهَا، غَيْرَ أَنَّهُ لَا يُقْرَبُهَا زَوْجُهَا حَتَّى تَطْهُرَ.

٢٣٠٧ - حَدَّثَنَا عُثْمَانُ بْنُ أَبِي شَيْبَةَ؛ ح: وَحَدَّثَنَا مُحَمَّدُ بْنُ الْعَلَاءِ - قَالَ عُثْمَانُ: حَدَّثَنَا

said: "Whoever wishes, I am willing to exchange mutual curses with him. Of a surety, the smaller chapter of women^[1] was revealed after (the ruling) of four months and ten days." (*Da'if*)

وَقَالَ ابْنُ الْعَلَاءِ: أَخْبَرْنَا - أَبُو مُعَاوِيَةَ: حَدَّثَنَا الْأَعْمَشُ عَنْ مُسْلِمٍ، عَنْ مَسْرُوقٍ، عَنْ عَبْدِ اللَّهِ قَالَ: مَنْ شَاءَ لَاعْتَهُ لِأَنْزَلْتُ سُورَةَ النَّسَاءِ الْقُصْرَى بَعْدَ الْأَرْبَعَةِ الْأَشْهُرِ وَعَشْرًا.

تخریج: [إسناده ضعيف] أخرجه ابن ماجه، الطلاق، باب الحامل المتوفى عنها زوجها ... الخ، ح: ٢٠٣٠ من حديث أبي معاوية الضرير به * الأعمش مدلس وعنن، وللحديث شواهد ضعيفة، وحديث البخاري، ح: ٤٥٣٢ يغي عنه.

Comments:

The law that a widow shall wait for a period of four months and ten days, and the law that a pregnant woman shall wait until she has delivered the child are not contradictory to each other. The former period (four months and ten days) is for women who are not pregnant. As for pregnant women, the *Iddah* period continues until the delivery of the child.

Chapter 46/48. The Waiting Period For An Umm Al-Walad^[2]

2308. It was reported from 'Amr bin Al-Āṣ, that he said: "Don't try to confuse us about *Sunnah*" — Ibn Al-Muthanna (one of the narrators) said: "The *Sunnah* of our Prophet ﷺ" — The waiting period — meaning for an *Umm Al-Walad* — is four months and ten days." (*Da'if*)

(المعجم ٤٦، ٤٨) **بَابُ: فِي عِدَّةِ أُمِّ الْوَالِدِ (التحفة ٤٨)**

٢٣٠٨ - حَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ أَنَّ مُحَمَّدَ بْنَ جَعْفَرٍ حَدَّثَهُمْ؛ ح: وَحَدَّثَنَا ابْنُ الْمُثَنَّى: حَدَّثَنَا عَبْدُ الْأَعْلَى عَنْ سَعِيدٍ، عَنْ مَطَرٍ، عَنْ رَجَاءِ بْنِ حَبُوةَ، عَنْ قَبِيصَةَ بِنِ دُرَيْبٍ، عَنْ عَمْرِو بْنِ الْعَاصِ قَالَ: لَا تَلْبَسُوا عَلَيْنَا سُنَّتَهُ - قَالَ ابْنُ الْمُثَنَّى: سُنَّةَ نَبِيِّنَا - ﷺ، عِدَّةُ الْمُتَوَفَّى عَنْهَا أَرْبَعَةُ أَشْهُرٍ وَعَشْرًا يَعْنِي أُمَّ الْوَالِدِ.

تخریج: [إسناده ضعيف] أخرجه ابن ماجه، الطلاق، باب عدة أم الولد، ح: ٢٠٨٣ من حديث سعيد بن أبي عروبة به وصححه ابن حبان (موارد) ١٣٣٣ والحاكم على شرط الشيخين: ٢/ ٢٠٩ ووافقه الذهبي وقال الدارقطني: "هو مرسل لأن قبصة لم يسمع من عمرو": ٣١٠/٤.

Comments:

1. A slave woman who is the mother of her owner's child is called an *Umm Walad* (mother of a child).

[1] Referring to *Sūrat At-Ṭalāq*.

[2] Slave woman who has borne a child.

2. There is a difference of opinion among scholars as to the 'Iddah period of the *Umm Walad* whose master has died. Some say that the 'Iddah period for her is three menses, and others say it is one menstrual cycle. But according to those scholars who maintain that this narration is authentic, her 'Iddah period is four months and ten days. Allāh knows best.

Chapter 47/49. The Thrice Divorced Woman Cannot Return To Her Husband Until She Re-Marries

2309. 'Āishah narrated that the Messenger of Allāh ﷺ was asked about a man who divorced his wife for the third time, so she married another husband, who then divorced her before engaging in intercourse with her: Is she permissible for her first husband? The Prophet ﷺ replied: "She is not permissible for her first husband until she tastes his pleasure and he tastes hers." (*Da'if*)

(المعجم ٤٧، ٤٩) - بَابُ الْمُبْتَوَاتِ لَا يَرْجِعُ إِلَيْهَا زَوْجُهَا حَتَّى تَتَكَمَّحَ زَوْجًا غَيْرَهُ
(التحفة ٤٩)

٢٣٠٩ - حَدَّثَنَا مُسَدَّدٌ: حَدَّثَنَا أَبُو مُعَاوِيَةَ عَنِ الْأَعْمَشِ، عَنِ إِبْرَاهِيمَ، عَنِ الْأَسْوَدِ، عَنِ عَائِشَةَ قَالَتْ: سُئِلَ رَسُولُ اللَّهِ ﷺ عَنْ رَجُلٍ طَلَّقَ امْرَأَتَهُ يَعْني ثَلَاثًا فَتَزَوَّجَتْ زَوْجًا غَيْرَهُ فَدَخَلَ بِهَا ثُمَّ طَلَّقَهَا قَبْلَ أَنْ يُوَاعِعَهَا، أَتَحِلُّ لَزَوْجِهَا الْأَوَّلِ؟ قَالَتْ: قَالَ النَّبِيُّ ﷺ: «لَا تَحِلُّ لِلْأَوَّلِ حَتَّى تَذُوقَ عُسَيْلَةَ الْآخِرِ وَيَذُوقَ عُسَيْلَتَهَا».

تخریج: [إسناده ضعيف] أخرجه النسائي، الطلاق، باب الطلاق التي تتكح زوجا ثم لا يدخل بها، ح: ٣٤٣٦ من حديث أبي معاوية الضرير به وللحديث شواهد كثيرة * الأعمش وإبراهيم مدلسان وعنعنا، وحديث البخاري، ح: ٥٢٦١، ومسلم، ح: ١٤٣٣ يغني عنه.

Comments:

It is inferred from this *Hadīth* that just another wedding is not enough, but normal marital relation between the divorced wife and her second husband must take place. If the second husband divorces her without this marital relationship, the woman shall not be lawful for her first husband. Hence, those who marry a thrice divorced woman with the intention to make her lawful for her first husband, in fact, commit adultery, since this conditional marriage is not a valid marriage.

Chapter 48/50. The Gravity Of Fornication

2310. 'Abdullāh (Ibn Mas'ūd) narrated that he asked the Messenger of Allāh ﷺ: "What is the greatest sin?" He replied:

(المعجم ٤٨، ٥٠) بَابُ: فِي تَعْظِيمِ الزَّانَا
(التحفة ٥٠)

٢٣١٠ - حَدَّثَنَا مُحَمَّدُ بْنُ كَثِيرٍ: أَخْبَرَنَا سُفْيَانُ عَنْ مَنْصُورٍ، عَنْ أَبِي وَائِلٍ، عَنْ

“That you make a partner along with Allāh, even though He is the One who created you.” He said: “Then what?” He replied: “That you kill your child out of fear that he will eat with you.” He said: “Then what?” He replied: “That you fornicate with your neighbour’s wife.” ‘Abdullāh said: “And Allāh revealed the affirmation of the Prophet’s ﷺ saying: And those who do not call out to others besides Allāh, and do not kill the soul that Allāh has prohibited, and do not fornicate.”^[1] (*Saḥīḥ*)

عَمْرُو بْنُ شَرْحِبِيلٍ، عَنْ عَبْدِ اللَّهِ قَالَ: قُلْتُ: يَا رَسُولَ اللَّهِ! أَيُّ الذَّنْبِ أَعْظَمُ؟ قَالَ: «أَنْ تَجْعَلَ لِلَّهِ نِدًّا وَهُوَ خَلْقُكَ». قَالَ: قُلْتُ: ثُمَّ أَيُّ؟ قَالَ: «أَنْ تَقْتُلَ وَلَدَكَ خَشْيَةً أَنْ يَأْكُلَ مَعَكَ». قَالَ: ثُمَّ أَيُّ؟ قَالَ: «أَنْ تُزَانِيَ حَلِيلَةَ جَارِكَ». قَالَ: وَأَنْزَلَ تَصْدِيقُ قَوْلِ النَّبِيِّ ﷺ: ﴿وَالَّذِينَ لَا يَدْعُونَ مَعَ اللَّهِ إِلَهًا آخَرَ وَلَا يَقْتُلُونَ النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ وَلَا يَزْنُونَ﴾ الآية [الفرقان: ٦٨].

تخریج: أخرجه البخاري، الأدب، باب قتل الولد خشية أن يأكل معه، ح: ٦٠٠١ عن محمد ابن كثير ومسلم، الإيمان، باب بيان كون الشرك أقيح الذنوب وبيان أعظمها بعده، ح: ١٤١/٨٦ من حديث منصور به.

2311. It was reported from Abū Az-Zubair, from Jābir bin ‘Abdullāh, that he said: “Musaikah came to some of the *Anṣār*, and said: ‘My master forces me to prostitution.’ So because of that, it was revealed: And do not force your slave girls into prostitution.”^[2] (*Saḥīḥ*)

٢٣١١ - حَدَّثَنَا أَحْمَدُ بْنُ إِبْرَاهِيمَ عَنْ حَجَّاجٍ، عَنْ ابْنِ جُرَيْجٍ قَالَ: وَأَخْبَرَنِي أَبُو الزُّبَيْرِ، أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: جَاءَتْ مُسَيِّكَةُ لِبَعْضِ الْأَنْصَارِ فَقَالَتْ: إِنَّ سَيِّدِي يُكْرِهُنِي عَلَى الْبِغَاءِ، فَتَزَلُ فِي ذَلِكَ: ﴿وَلَا تُكْرَهُوا فَتَيَاتِكُمْ عَلَى الْبِغَاءِ﴾.

تخریج: [إسناده صحيح] أخرجه النسائي في الكبرى، ح: ١١٣٦٥ من حديث حجاج بن محمد به.

2312. It was reported from Sa‘eed bin Abī Al-Ḥasan, that he said, regarding the Verse:...and whoever forces them, then indeed, after their compelling, Allāh is Ever-

٢٣١٢ - حَدَّثَنَا عُبَيْدُ اللَّهِ بْنُ مُعَاذٍ: حَدَّثَنَا مُعْتَمِرٌ عَنْ أَبِيهِ: ﴿وَمَنْ يُكْرِهُنَّ فَإِنَّ اللَّهَ مِنْ بَعْدِ إِكْرَاهِهِنَّ غَفُورٌ رَحِيمٌ﴾ [النور: ٣٣] قَالَ قَالَ

[1] *Al-Furqān* 25:68.

[2] *An-Nūr* 24:33.

Forgiving, Extremely Merciful ^[1]
 “Allāh is forgiving to those who
 were forced (into this act).” (*Ḍaʿīf*)

سَعِيدُ بْنُ أَبِي الْحَسَنِ: غَفُورٌ: لَهُنَّ،
 الْمُكْرَهَاتِ.

تخریج: [إسناده ضعيف] كان سليمان التيمي يدلس، تاريخ ابن معين، ح: ٣٦٠٠ وعنن.

The End of the Book of Divorce.

^[1] *An-Nūr* 24:33.